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**REPORT No. 8/24**  
**CASE 13.083**  
REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

AKAWAIO INDIGENOUS COMMUNITY OF ISSENERU  
AND ITS MEMBERS  
GUYANA

Approved electronically by the Commission on April 24, 2024.

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## I. SUMMARY<sup>1</sup>

1. On September 5<sup>th</sup>, 2013, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission”, the “Commission” or the “IACHR”) received a petition and request for precautionary measures presented by the Akawaio Indigenous Community of Isseneru and the Amerindian Peoples Association of Guyana (hereinafter the “petitioners”)<sup>2</sup>, invoking the international responsibility of the Co-operative Republic of Guyana (hereinafter the “State” or “Guyana”) for the violation of the rights of the Isseneru indigenous community and its members (hereinafter “Isseneru”, the “Isseneru community” or the “community”) to property, to equality before the law, to justice and a fair trial, to the protection of mothers and children, to the preservation of health and wellbeing, and to enjoy the benefits of culture, all of them protected by Articles II, VII, XI, XIII, XVIII and XXIII the American Declaration on the Rights and Duties of Man (hereinafter the “American Declaration”), on account of the State’s alleged failure to adequately recognize, respect and protect the community’s territorial rights, its alleged granting of mining permits in the community’s ancestral lands without prior consultation or consent, its lack of protection of the community from the negative impacts of mining, and its alleged failure to provide the community with effective judicial remedies to counter the violations of their rights.

2. On June 6<sup>th</sup>, 2017, the Commission notified the parties of the application of Article 36(3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and placed itself at the disposal of the parties to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR’s Rules to present additional observations on the merits. The State did not submit observations on the admissibility or the merits of the petition, even though it had ample procedural opportunities to do so. The State did, however, twice submit detailed observations on the associated request for precautionary measures, some of which are directly relevant to the issues of admissibility and merits of the petition at hand, and will therefore be described and addressed in the present report, given their pertinence and also as a measure of respect for the State of Guyana’s procedural guarantees and right to legal defense.<sup>3</sup> All the information received by the Commission was duly transmitted to the parties.

## II. POSITIONS OF THE PARTIES

### A. Petitioners

4. Petitioners claim that the State has violated, failed to protect and/or disregarded the human rights of the Isseneru community and its members on account of the following:

4.1. Its failure to adequately identify, recognize, delimit and demarcate the full extent of the Isseneru community’s ancestral lands, in accordance with its customary tenure system, traditions and values, because the property title that was actually granted by the State in 2007 amounts to approximately 25% of the ancestral territory claimed by Isseneru as vital for its physical and cultural survival.

4.2. In close connection with the above, petitioners denounce the inadequacy of the existing legal mechanism for the titling of indigenous lands in Guyana, both in itself, and in its specific application to the resolution of Isseneru’s claim for recognition of its ancestral territory; a number of complex and interrelated reasons support this argument, as follows. (a) Petitioners claim that the Guyanese legal system does not recognize the pre-existence of ancestral territorial rights, but rather visualizes these rights as grants made by the State, which are not inherent or grounded on their history, culture or tradition; for the petitioners this is a discriminatory system - in their view, racial discrimination is evident in relation to the lack of adequate

<sup>1</sup> Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Arif Bulkan, a Guyanese national, did not participate in the debate or decision in this case.

<sup>2</sup> Petitioners have been represented before the Commission by their legal counselors, Messrs. Fergus MacKay -affiliated to the organization Forest Peoples Programme- and David James -independent-.

<sup>3</sup> The Commission informed the State of its decision to incorporate the information gathered in the course of the precautionary measures proceedings into the petition casefile in a letter dated September 2, 2020.

recognition and protection of territorial indigenous rights; moreover they claim that failure to recognize and protect these rights threatens their survival as distinct cultural and territorial entities. (b) They allege that Guyana lacks a procedure in its legislation to title, delimit and demarcate indigenous lands; and that (c) the legal mechanism in place gives an excessive level of discretionary powers and liberty to the Ministry of Amerindian Affairs in the process of deciding on whether, and to what extent, indigenous lands should be “granted” to Amerindian Villages and Communities. (d) They allege that the State has no obligation to issue indigenous territorial property titles; the decision is merely discretionary, regardless of any evidence that may be presented. (e) Petitioners claim that Guyana subjects the recognition of indigenous land rights to the date of adoption of the legislation establishing the “grants” system, and to the date of issuance of title, which causes different types of discriminatory effects; specifically, they claim that the legislation in force restricts indigenous participation, territorial rights and self governance-rights on the basis of whether and when the State has granted rights to the respective community. This is related to their argument that (f) the Guyanese legal system establishes a discriminatory differentiation between titled and untitled communities, insofar as the latter are unable to exercise their territorial rights in any way: the Amerindian Act and Lands Act provisions do not apply to untitled communities, nor to the untitled lands of titled communities. Furthermore, (g) they argue that the legal system in place subordinates indigenous territorial rights to private property, and to the interests and rights of miners and other economic actors; and in connection to this, (h) they claim that the legislation in force lacks any mechanism by which to return ancestral lands to the indigenous communities which have been deprived of them. Also, they claim that (i) the Amerindian Act only allows individual indigenous villages or communities to hold title, and not indigenous peoples as such, contrary to their cultures and traditional tenure systems; as a practical result of this, indigenous territories that were once continuous and contiguous have been fragmented into small islands of titled lands, which are surrounded and crossed by areas of State lands, often assigned to logging and mining interests. (j) Petitioners argue that in its application to the resolution of the Isseneru territorial claim, the legal system in place operated in an arbitrary manner, because their initial request for the full extent of their territory was rejected by the Minister on the subjective grounds that it was too large, without regard for their cultural relationship with the area being claimed.

4.3. Moreover, they claim that their indigenous territorial rights were subordinated by Guyana to the rights of miners and non-indigenous external interests, in expressly excluding pre-existing property rights and mining interests from the scope of the property title that was actually granted; they argue that in the case of Isseneru, the State neglected to issue title until 2007, and this discriminatory omission caused a legal privilege for the pre-existing interests of miners and other non-indigenous land holders, to the detriment of the indigenous community. At the same time, petitioners hold that the State, in granting the 2007 title to Isseneru with express exclusion of pre-existing property rights, deliberately chose not to return to the community those lands upon which mining interests lay, and therefore the State decided to *ab initio* privilege the interests of third parties over the rights of Isseneru, even after having acknowledged the problems caused by mining in Isseneru’s ancestral lands. Petitioners argue that instead of returning these occupied lands to Isseneru, the State has deliberately exempted them from the title deed, regarding them as “lands lawfully held” and subordinating Isseneru’s rights to the rights of their holders; in their view, this situation denies the community security of tenure, impairs the maintenance of its relationships with its traditional lands, unreasonably privileges the interests of miners, and gravely affects the community’s secure access to its means of subsistence. They claim that these cumulative effects threaten Isseneru’s survival as an indigenous community.

4.4. Petitioners contest the non-consulted granting of mining permits and concessions within Isseneru’s ancestral territory, both in the titled areas and in the untitled ones; as well as the judicial upholding of the miners’ rights in two major court cases which have been decided by the High Court of Guyana. Petitioners explain that the title granted to Isseneru over part of its lands contains a provision that excludes and excises prior property rights from the title. These prior property rights include concessions and permits granted to miners and extractive industries. Guyanese judges have now twice decided in favor of miners on the grounds of that provision protecting prior property rights. Petitioners hold that the community’s titled and untitled territory is almost completely encroached by mining permits, which have been granted by the State without even notifying the community or allowing it to participate in the process. Given the protection of prior property rights, petitioners reiterate that these concessions and permits deem the property title over Isseneru’s lands illusory. The destructive environmental effects of these mining operations have been highlighted by the petitioners as a major present threat to their very survival; they emphasize the pollution of their rivers and

creeks with mercury, the destruction of the fertile soil layer, and other negative impacts which bear directly upon their sources of livelihood and their health.

4.5. In response to an argument formulated by the State in the framework of the precautionary measures procedure, petitioners have acknowledged that many of the members of the Isseneru community do carry out mining activities themselves, and that they have entered into association contracts with external miners to participate in the economic benefits of gold and mineral extraction from their titled lands. They claim that Isseneru, as an indigenous community, has the right to pursue its traditional and other economic and livelihood activities, as well as the right to freely determine and pursue its economic, cultural and social development; this may include mining or other extractive activities, and there need not be any inherent contradiction between the exercise of these rights and of other indigenous rights. In any case, they argue that Isseneru had no choice in the matter, so these were not really free decisions. In their view, Isseneru regulates those operations according to its contractual arrangements and its own internal rules; the arrangements, they claim, are legal under the 2006 Amerindian Act. They also allege that Isseneru is best placed to regulate mining on its lands, and best understands the traditional uses and the significance of particular areas or sites, also because it exercises political and social control over mining by its members.

5. On the above grounds, petitioners claim that Guyana has violated the territorial rights of the Isseneru community and its members, as well as their right to equality before the law, their rights to health and welfare, their right to enjoy the benefits of culture, and the rights of mothers and children -the latter particularly affected by the pollution of rivers with mercury-. They also assert that their rights to a fair trial and due process of law have been violated by the State, given the Guyanese judiciary's failure to protect their territorial rights and provide them with an effective remedy before the Courts to seek and obtain protection for their rights, both in relation to the titling of their ancestral lands, and to the protection of miners' rights.

## **B. State**

6. The State did not submit observations on the admissibility or the merits of the petition. It did, however, submit on two occasions observations on the associated request for precautionary measures, some of which are directly relevant to the issues of admissibility and merits of the petition at hand and will therefore be described and addressed in the present report.

7. In its first submission of information regarding the request for precautionary measures, the State argued that *"the allegations set out in the Petition are ill-founded, grossly misleading, prejudicial to the rights of Amerindian peoples and disrespectful in denying the progress that Amerindian peoples have made"*. In this regard, it explains that the Government of Guyana has made very significant efforts to reach the Amerindian communities living in the interior of the country and provide their members with more equitable access to goods and services, in particular to health care and education.

8. As for the specific situation of the Isseneru community, the State holds that on several fronts, its members have largely abandoned their traditional ways and customs. In this sense, it alleges that *"Isseneru residents engage in a cash economy rather than subsistence and as a result there is considerable movement of people and goods in and out of Isseneru"*. The State also considers it untrue that Isseneru's livelihood is almost entirely dependent on hunting, fishing and farming, and is therefore threatened by mining; according to the State, Isseneru is a wealthy community that currently bases its economy and the subsistence of its members on mining, which it carries out at its own initiative and in association with non-indigenous miners, receiving very significant monetary income on that account. The State also argues that the Isseneru community members have lost their traditional culture in aspects such as their building materials, their architecture and their farming systems. The State particularly emphasizes that most of the members of the community have converted to Christianity, and therefore do not preserve an ancestral spiritual connection to their territory. Moreover, the State argues that the members the community and the authorities of the Village Council have abstained from reporting any attacks by miners against members of Isseneru with State authorities such as the Police, the GGMC, the Ministry of Amerindian Affairs or others.

9. In sum, the State has argued that the petitioners have gravely misrepresented the facts to the IACHR, and that they have not exhausted the domestic administrative remedies available to them under the Guyanese legislation.

### III. ADMISSIBILITY

#### A. Competence

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration (deposit of the instrument of ratification of the OAS Charter made on January 8 <sup>th</sup> , 1991)

#### B. Duplication of procedures and international *res judicata*

10. Petitioners declare in their initial submission that, in accordance with article 33(1) of the Rules of Procedure, the subject-matter of this petition is not presently pending in any other international proceeding, nor does it duplicate a petition already examined and settled by the Commission or by another intergovernmental organization.

11. Contrary to the petitioners' statements, in its second submission of information regarding the request for precautionary measures, the State has alleged that *"the IACHR is reminded that the [Amerindian Peoples' Association] and the [Forest Peoples' Programme] on behalf of the Isseneru community also submitted a formal submission to the UNCERD and UN Special Rapporteurs in March 2013 on very similar, if not the same, allegations with regard to their land rights and the health impact of illegal mining to which the Government submitted a response on August 30, 2013. At the same time coincidentally the same organizations on behalf of the Isseneru Community were approaching the IACHR with a petition calling for precautionary measures against Guyana. The Government further emphasizes that the submissions of the two petitions overlap in the same period in 2013. Before the UNCERD had examined their petition and requested the Government to submit its response, the second petition was submitted to the IACHR. The Government therefore was obligated due to its treaty obligations to submit responses to both UNCERD which it did on August 30, 2013 and to the IACHR which it did on November 30, 2013<sup>4</sup> on petitions with very similar, if not the same, allegations from the same organizations representing the same community. The petition to the UNCERD and Special Rapporteurs called for the invocation of Special Procedures to be invoked against Guyana with regard to the UN Convention on the Elimination of All Forms of Racial Discrimination."* In this sense the State invokes articles 28.9 and 33 of the Rules of Procedure of the IACHR, relating to duplication of procedures, and points out that *"the Government is not aware that the petitioners indicated to the IACHR that they had already submitted a petition to the UNCERD in March 2013 which was pending before that body"*. Petitioners did not present any response to this serious allegation by the State.

12. Neither the State nor the petitioners have provided to the Commission copies of the latter's submissions to the Committee on the Elimination of Racial Discrimination, or to the UN Special Rapporteurs; but the State did provide transcripts of parts of its own responses to said submissions. The IACHR is not in a position to determine, on the grounds of the limited information included in the casefile, which specific mechanism was activated before CERD by the petitioners in relation to the case – whether it was a submission of information under the early warning mechanism, or an individual petition for consideration under Article 14 of the ICERD, or information to be considered in conjunction with the State's periodic reports to CERD and evaluated as part of the Committee's concluding observations. Therefore, the following analysis is carried out in relation to all three of those possible legal avenues, so as to determine with full certainty whether the IACHR is competent to examine the instant petition under Article 33 of its Rules of Procedure.

<sup>4</sup> The IACHR notes that this response was provided by the State in the framework of the precautionary measures procedure.

13. The petitioners inform in their initial petition that the Committee on the Elimination of Racial Discrimination has issued pronouncements on different aspects of the Isseneru community's situation in the framework of its mandate, since 2006; specifically, they have briefly referred to the following pronouncements: (i) the concluding observations issued by the CERD Committee on April 4, 2006, upon review of the State's periodic reports from 1978 to 2004, which address several different issues related to indigenous territorial rights in Guyana, and issue some recommendations on the matter; (ii) a letter addressed by the Committee to the State on August 24, 2007, requesting the Government to provide information on its follow-up to said recommendations, and pointing out that certain areas had apparently become deteriorated, or remained unresolved; and (iii) a letter addressed by the Committee to the State on March 1, 2013, reporting that the Committee had considered the situation of the Kako and Isseneru communities in the framework of its 82<sup>nd</sup> session, on the grounds of information received from non-governmental organizations, and requesting the State to provide information on the way in which the Committee's 2006 Concluding Observations had been implemented in relation to both communities, as well as on specific questions regarding mining activities in their territories; this request for information was grounded on Article 9(1) of the ICERD<sup>5</sup>. The Commission notes that many of the factual and legal issues posed in the petition lodged with the IACHR have been mentioned in this last letter from the CERD Committee, which requested specific information in relation to them.

14. The Commission has had the opportunity to elaborate on the content and scope of Article 33 of its Rules of Procedure and it has identified a number of concurrent requirements that must be met in order to conclude that a petition filed before it is pending settlement or has been decided by another intergovernmental organ, namely: identity of parties, identity of subject-matter and factual basis, identity of claims, and identity of the nature and attributions of the corresponding international body. It has specifically explained that "[i]n order to consider that a situation of duplication or international *res judicata* exists in a case, besides the identity of the subjects, the object, and the intent, it is required that the petition is being considered, or has been decided, by an international body with competence to adopt decisions concerning the specific facts contained in the petition, and measures for the effective resolution of the dispute involved."<sup>6</sup> With regard to this latter requirement, the Commission has explained that in order to determine whether there is a pending international procedure or a possible duplication of petitions, it must be borne in mind that "[t]he proceeding in the inter-American system for the protection of human rights is conventional and contentious in nature, and the Inter-American Commission does play an adjudicative role in this procedure"<sup>7</sup>, in order to compare it with the other procedure at issue. In applying this particular requirement, the IACHR has looked into whether the corresponding international body has similar legal prerogatives and attributions, and whether its decisions have a scope which is similar or equal to that of the decisions issued by the Commission.<sup>8</sup>

15. The Committee on the Elimination of Racial Discrimination (CERD) is empowered to consider individual petitions alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) by States Parties who have made the corresponding declaration under Article 14 of that ICERD.<sup>9</sup> It is also empowered to review the periodic reports submitted by States on the implementation of

<sup>5</sup> ICERD, Article 9. "1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties. (...)"

<sup>6</sup> IACHR, Report No. 67/15, Petition 211-07, Admissibility, Jorge Marcial Tzompaxtle Tecpile et al, Mexico, October 27, 2015, par. 34; IACHR, Report No. 33/15, Case 11.754, Admissibility, Pueblo U'wa, Colombia, July 22, 2015, par. 41.

<sup>7</sup> IACHR, Report No. 147/10, Petition 497-03, Admissibility, Jesús Angel Gutiérrez Olvera, Mexico, November 1, 2010, par. 50.

<sup>8</sup> IACHR, Report No. 32/00, Case 11.048, Inadmissibility, Víctor Alfredo Polay Campos, Peru, March 10, 2000, par. 19.

<sup>9</sup> ICERD, Art. 14. "1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. || 2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies. (...) 7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged; || (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner."



the rights established in ICERD, and to address its concerns and recommendations to the State Party in documents entitled “concluding observations”.

16. In the assumption that the petitioners filed an individual petition before the CERD under Article 14 of the ICERD, the Commission considers that it lacks sufficient information in the present case to establish whether the parties, the factual object and the claims formulated by the petitioners on behalf of the Isseneru community before the CERD are, in fact, identical to the ones set forth in the inter-American petition under review, in such a manner as to preclude the IACHR from asserting its own competence over the case. Notwithstanding the above, the Commission does note that the individual petition system operated by the CERD is related solely to possible violations of the ICERD by States Parties to that Convention. Even though the CERD conducts a contentious procedure which results in findings of possible State responsibility for violations of an international treaty, and it has the power to issue recommendations to the States it has found in violation of the ICERD, the legal scope of its attributions is significantly restricted when compared to that of the IACHR, given that it is only the ICERD that serves as its legal parameter for the determination of compliance with State obligations and violations of human rights. In other words, the CERD in its individual petition proceedings is only concerned with possible instances of racial discrimination against one or more persons or groups, and it is not empowered to look into the violations of other, different internationally protected human rights which are not enshrined in the ICERD or directly connected to its provisions, or which have not been violated as a consequence of racial discrimination. For these reasons, the Commission considers that there is no duplication or pending proceedings in the instant case before another international body, as regards the individual petition system operated by the CERD under ICERD and other relevant instruments.

17. Regarding the early warning measures adopted by the CERD, these are adopted by the Committee as part of its regular agenda in order to prevent serious violations of the Convention; they are to be directed at preventing existing problems from escalating into conflicts and can also include confidence-building measures.<sup>10</sup> These measures are eminently preventive in nature, and thus are distinctly different from the contentious, quasi-judicial decision-making procedure followed by the IACHR in application of its individual petition system. They are not designed, as is the IACHR procedure, to arrive at a final settlement of the legal issues at stake and a possible determination of State responsibility for the violation of human rights. In the assumption that the submission of the petitioners to the CERD requested the activation of this urgent action/early warning procedure with regard to Isseneru, it would fail to preclude an assertion of competence by the IACHR over the case, due to its fundamental differences with the individual petition procedure implemented by the Commission.

18. As for the concluding observations issued by CERD after examination of the periodic reports submitted by Guyana, and the reports made by the UN Special Rapporteurs, the Commission considers that they fit into the category of “general examinations of the human rights situation in the State in question”, as per Article 33.2.a. of its Rules of Procedure, and therefore fail to inhibit it from asserting competence in the matter under review.

### **C. Exhaustion of domestic remedies and timeliness of the petition**

19. The requirement of exhaustion of domestic remedies is evaluated by the IACHR separately for each one of the main claims formulated in a petition<sup>11</sup>. In the present case, the Commission must determine whether

<sup>10</sup> Information publicly available at the Office of the High Commissioner on Human Rights’ website, at: <https://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx#about>

<sup>11</sup> The IACHR has followed a consistent line of reasoning in prior cases in this regard. For example, it has held that “the Commission must decide which remedy must have been exhausted depending on the circumstances, that is, the one that is deemed capable of settling the legal situation that has been violated.” [IACHR, Report No. 154/10, Petition 1462-07, Admissibility, Linda Loaiza López Soto and next of kin, Venezuela, November 1, 2010, par. 49] It has also established that “[s]uch remedies must be secure enough; that is, accessible and effective in resolving the situation in question”. [IACHR, Report No. 16/18, Petition 884-07, Admissibility, Victoria Piedad Palacios Tejada de Saavedra, Peru, February 24, 2018, par. 12.] In another decision, it explained: “With a view toward determining the appropriate procedural means within the (...) internal laws, it is necessary to determine first the purpose of the petition submitted for it to hear. (...) the Commission deems it relevant to verify whether the matter before it was submitted to domestic courts through one of the remedies that could have been appropriate and effective for resolving this type of situation domestically.” [IACHR, Report No. 56/08, Case 11.602, Admissibility, Workers dismissed from Petroleos del Perú (PETROPERU) Northwest – Talara Area, Peru, July 24, 2008, par. 58]

petitioners exhausted the available judicial remedies in Guyana in relation to (i) their claim of lack of adequate protection of the territorial rights of the Isseneru community, which is directly linked to their claims regarding the legislation set forth in the Amerindian Act and its incompatibility with inter-American standards, as applied to the community; and (ii) their claim of lack of administrative and judicial protection of Isseneru's territory from the activities of legal and illegal miners.

20. The State, which abstained from submitting its observations on the admissibility and the merits of the petition under review, has not formally contested the exhaustion of domestic judicial remedies in the case at hand. Even though its interventions during the precautionary measures procedure contain several statements in the sense that the petitioners have refrained from reporting some issues affecting Isseneru to the different administrative authorities of the country -for example, the contamination of waters with mercury, the negative effects of mining upon the farming and other subsistence activities of Isseneru, or the exercise of violence by non-indigenous miners-, those allegations have been specifically referred to the precautionary measures requested by petitioners, and do not contain arguments related to the admissibility of the petition under review. Moreover, all of the allegations posed by Guyana in this line assert that petitioners have not resorted to the administrative and governmental authorities through reports or denunciations of the situation; it makes no mention of any judicial remedies that the petitioners have failed to exhaust, whereby the IACHR recalls its peaceful doctrine in the sense that the rule of exhaustion of domestic remedies refers to judicial remedies, not administrative ones.<sup>12</sup> The conclusion that Guyana has not submitted arguments or information pertaining to the exhaustion of domestic judicial remedies in this case, is confirmed by the fact that in its first submission of information during the precautionary measures procedure, the State expressly reserved itself the opportunity of presenting its observations regarding the admissibility and merits of the petition in a separate intervention,<sup>13</sup> which it nonetheless failed to present.

21. Given this silence on the part of Guyana in relation to the admissibility of the petition, and in particular to the issue of exhaustion of domestic remedies in this case in light of Article 31 of the IACHR Rules or Procedure, in application of the uniform doctrine of the Commission in previous cases decided in light of the American Declaration,<sup>14</sup> the IACHR presumes that the State has tacitly renounced the possibility of availing itself of the exception of undue exhaustion of domestic remedies.

22. In the alternative, and taking into account the petitioners' extensive arguments on this point, the Commission considers that the exceptions to the duty to exhaust domestic remedies set forth in Articles 31.2.(a) and 31.2.(c) of the Rules of Procedure are applicable.

23. In relation to the claim of lack of protection of Isseneru's territorial rights, petitioners argue that in Guyana there is no land titling procedure, and that the legal provisions in force in the Amerindian Act are an inadequate and ineffective remedy, insofar as the system has failed to fairly, promptly and finally resolve and secure Isseneru's property rights. They point out a failure in Guyana's land titling procedure to reach a final settlement of Isseneru's property rights, because the community has been requesting title since at least 1987, and its rights have yet to be determined taking into account that the title obtained in 2007 was arbitrarily delimited, and almost all of its titled and untitled lands are in the hands of third parties. For the petitioners, the land titling procedure is therefore an inadequate and ineffective remedy, which has failed to fairly, promptly and finally resolve and secure Isseneru's territorial rights.

24. The Commission notes that the Amerindian Act establishes a procedure for the granting of property titles to indigenous communities over their lands, which is described below. It also notes that such procedure, once activated, eventually led to a resolution of Isseneru's claim to territory, granting it a significant area of

<sup>12</sup> IACHR, Report No. 150/17, Petition 123-08, Inadmissibility, Hernando de Jesús Ramírez Rodas, Colombia, October 26, 2017, par. 10; Report No. 36/05, Petition 12.170, Inadmissibility, Fernando A. Colmenares Castillo, Mexico, March 9, 2005, pars. 38-39; Report No. 44/19, Petition 1185-08, Admissibility, Gerson Mendonça de Freitas Filho, Brazil, April 24, 2019, pars. 7, 10.

<sup>13</sup> In its initial response to the request for information made by the IACHR in the precautionary measures procedure, received on November 30, 2013, the Government of Guyana stated: "This response deals only with the request for information set out in the IACHR letter of 8<sup>th</sup> October and is without prejudice to the right of the Government of Guyana to object to the admissibility of the Petition and to challenge the merits of the Petition"; and also: "The Government of Guyana does not accept that the Petition is admissible and will provide a separate objection to the IACHR in accordance with the process set by the IACHR rules".

<sup>14</sup> IACHR, Report No. 78/00, Case 12.053, Maya Indigenous Communities and their members, Belize, October 5, 2000, pars. 49-53.

land which nonetheless did not correspond to the entire extent initially requested by the community. The decision to grant Isseneru title to property over a certain extent of land was an administrative decision of the Government of Guyana, which was not contested by any judicial means. The Commission notes that Section 64 of the Amerindian Act, entitled "Appeal", establishes a judicial remedy to which title holders may resort whenever they need to contest the relevant governmental decisions: "[a]n Amerindian Village or Community which is dissatisfied with the Minister's decision under section 62 may apply to the High Court for a review of the decision". Thus, the representatives of the Isseneru community did have a judicial remedy available that allowed them to request the High Court of Guyana a review of the decision.

25. Notwithstanding the above, the IACHR considers that this judicial remedy would not have been effective, given the High Court of Guyana's clearly established stance with regard to the non-preexistence of indigenous territorial rights, and with regard to the legal foundation for the recognition of the indigenous right to property over ancestral territories, in the sense that it corresponds to State grants of State lands. This jurisprudence has been applied in two decisions by that very same High Court that concern the Isseneru community, namely, the judgment of August 13, 2008 in the case concerning miner Lalta Narine -described below-, and the judgment of January 17, 2013 concerning miner Joan Chang -also described below-, in both of which the High Court gave legal prevalence to the rights of miners who had been granted permits and concessions by the State over the territorial rights and concerns of Isseneru. In this sense, it is pertinent to reiterate the prior doctrine of this Commission on the ineffectiveness of judicial remedies that bear no reasonable possibilities of success for the plaintiff in cases of indigenous territorial claims:

"It bears pointing out that, the jurisprudence of the IACHR has established that a petitioner may be exempt from the requirement of having to exhaust domestic remedies with regard to a complaint, when it is evident from the case file that any action filed regarding that complaint had no reasonable chance of success based on the prevailing jurisprudence of the highest courts of the State.<sup>15</sup> The Commission notes that the legal proceedings mentioned above do not seem to provide any reasonable expectations of success, because Canadian jurisprudence has not obligated the State to set boundaries, demarcate, and record title deeds to lands of indigenous peoples, and, therefore, in the case of [Hul'qumi'num Treaty Group], those remedies would not be effective under recognized general principles of international law. || Therefore, the IACHR considers that with regard to legal remedies to obtain the declaration and protection of the aboriginal title, the exception to the requirement of exhaustion of domestic remedies applies because the remedy does not constitute an effective protection of the right alleged by the petitioners."<sup>16</sup>

26. *Mutatis mutandis*, the IACHR is of the view that the judicial review remedy established in Section 64 of the Amerindian Act had no reasonable prospects of success for Isseneru's territorial claims, given the High Court of Guyana's stable jurisprudence in the sense of disregarding pre-existing indigenous territorial rights and visualizing them as liberal grants made by the State which should respect miners' rights and entitlements over the corresponding lands. Consequently, that legally established remedy was not effective, and therefore the exception to the duty to exhaust domestic remedies established in Article 31.2.(a) of the Rules of Procedure is applicable.

27. In relation to the claim of lack of administrative and judicial protection of Isseneru's territory from the activities of legal and illegal miners, petitioners have documented two main mining operations in their petition. In relation to the first one, conducted by Mr. Lalta Narine, they invoke the exception of unwarranted delay established in Article 31.2.(c) of the Rules of Procedure, because in their view there has been an undue and unreasonable tardiness in resolving the appeal filed by Isseneru against the injunction granted to miner Narine by the High Court of Guyana. As of the date of presentation of the petition, the victims had been waiting for over four years for a resolution of their appeal against the injunction. Due to the judge of first instance's failure to submit a written judgment, the proceedings were *de facto* suspended.

28. The Commission takes into account that miner Lalta Narine, who holds several prospecting permits to seek gold and other minerals in Isseneru's titled lands and traditional territory, sought a judicial injunction against the community and the GGMC, which was granted on an interim basis on 17 December 2007, and thereafter on an interlocutory extended basis on August 13, 2008, by the High Court of Guyana. The High Court

<sup>15</sup> IACHR, Report No. 16/04, Petition 129-02, Admissibility, *Tracy Lee Housel*, United States, February 27, 2004, par. 36.

<sup>16</sup> IACHR, Report No. 105/09, Petition 592-07, Admissibility, *Hul'qumi'num Treaty Group*, Canada, October 30, 2009, pars. 41-42.

held that the community had no authority over mining concessions which had been authorized prior to the passing of the 2006 Amerindian Act and which had been expressly excluded from their titles in the corresponding deeds, thus visualizing the areas affected by Mr. Narine's mining operations as "lands lawfully held" by a bearer of property rights which had to be protected from the indigenous community's claims; consequently the High Court ordered the community and the GGMC to abstain from interfering with these mining operations. This judgment was appealed by the Village Council on August 27, 2008, and, as of the date of the adoption of the present report, the Guyana Court of Appeal has not heard the case or decided on the appeal. Since over 12 years have elapsed from the moment of the filing of the appeal without a final judicial resolution on its merits, the IACHR concludes that there is an unwarranted delay and therefore the exception set forth in Article 31.2.(c) of the Rules of Procedure applies.

29. The second mining operation documented in the petition is owned by Mrs. Joan Chang, who entered the Isseneru titled lands in 2011 in order to operate under a mining permit issued to her brother in 1989. The community opposed her operations and the GGMC issued "cease work orders" in November and December 2011. Mrs. Chang ignored those orders, and filed a request for an injunction against the community and the GGMC with the High Court, which was granted on January 17, 2013, on grounds similar to those that it had taken into account in the Narine case, thus upholding her right to legally mine in Isseneru's titled lands, ordering the community and the GGMC to abstain from interfering in her operations. Information provided by the petitioners indicates that two appeals were presented against this ruling, one by the community, and another by the GGMC; however, neither appeal has been heard by the Guyana Court of Appeal as of the date of the present report. In any case, regardless of the unwarranted delay in the resolution of said appeals, the IACHR considers that Isseneru was exempted from exhausting this judicial channel due to the fact that this position by the High Court has become its stable jurisprudence with regard to indigenous land conflicts, and therefore any recourse by the petitioners to this same High Court would have been ineffective for the protection of their territorial rights. Given the High Court's constant position in similar cases, decided on the grounds of the same rationale protecting the interests of miners over the rights of other indigenous communities in Guyana, the IACHR considers that, regarding the mining operation conducted by Joan Chang the exception to the duty to exhaust domestic remedies set forth in Article 32.1.(a) of its Rules of Procedure is applicable.

30. As for the timeliness of the petition, the IACHR notes that: the Isseneru community first requested a property title over its ancestral lands in 1987, and reiterated that request in 1994; the property title over a fraction of the requested ancestral territory came to be granted in 2007; mining activities in the community's territory have been taking place for several years, bearing serious environmentally destructive effects; miner Lalta Narine obtained prospecting permits in 2000-2001 and has been carrying out actual mining operations since that time; the High Court granted injunctions against the community and the GGMC in 2007 and 2008, protecting Mr. Narine's mining activities, and the community appealed these decisions in 2008, without their appeal having been heard or resolved up to the present time; and Mrs. Joan Chang's mining operations began in 2011 and were subsequently the matter of an injunction granted in 2013. The petition was received at the IACHR in September, 2013; and the noxious environmental effects of the mining, as well as the lack of a property title over the entirety of Isseneru's ancestral territory, are currently still affecting the community. Therefore, based on these considerations, the IACHR concludes that the petition was received within a reasonable period of time, in the terms of Article 32.2 of the Rules of Procedure.

#### **IV. FINDINGS OF FACT**

##### **A. Delimitation of the subject-matter of the case**

31. The petition under review poses numerous and lengthy arguments regarding the legislation in force on indigenous peoples and mining in Guyana, in general terms, as well as on the mining practices in the country in similarly general terms, and some equally broad considerations on the overall situation of Amerindian Communities in the country. The IACHR has deemed it necessary to delimit the object of the present case and report, restricting it to those factual and legal issues which are directly related to the specific situation of the Isseneru community and its members, whose rights' violations are the central subject-matter of the petition and have been sufficiently documented and supported with factual and legal evidence.

32. Petitioners state that the victims of the human rights violations set forth in the present case are the Isseneru community and its members, as well as the Akawaio people as a whole. Whereas the Commission shall take into account that Isseneru forms part of the Akawaio indigenous people, and will give this fact the corresponding legal significance where pertinent, it clearly lacks sufficient elements to rule on the situation of the Akawaio people as a whole, given this indigenous ethnic group's expanded presence in the territory of three different countries, and the many communities it comprises. Therefore, the present report shall be centered on the specific situation of the Isseneru community of the Akawaio people and its members, as proven by the evidence included in the casefile.

### **B. The community of Isseneru and its ancestral territory**

33. Isseneru is an indigenous community of approximately 230 members, belonging to the Akawaio indigenous people, located on the Middle Mazaruni river, in the tropical forest regions of western Guyana. Their ancestral lands lie within and are part of the territory of the Akawaio people as a whole, which encompasses large areas in Guyana, Brazil and Venezuela. Isseneru is governed and represented by a Village Council, a statutory body under Guyanese law, elected by members of the community. In a communication of April 1<sup>st</sup>, 2014, petitioners informed that 40% of the population of Isseneru was under 18 years old, and that there were many elderly persons, including some over the age of 80. Petitioners have not provided the IACHR a list of the individualized members of the community.

34. The presence of the Akawaio people in the Mazaruni River basin, including in the present-day site of the Isseneru village, can be dated back to thousands of years before the common era, on the grounds of archaeological and historical sources.<sup>17</sup> In 1904, the British Colonial Administration established the Mazaruni Reservation, and the area was further defined in 1911 by the establishment of the Mazaruni Indian District; the ancestral lands of Isseneru were encompassed in both the Reservation and the District. In 1933, the British administration de-reserved the Lower and Middle Mazaruni, and opened the area for mining, thus promoting an influx of non-indigenous population into the region.

35. Expert anthropological testimony by professor Stuart Kirsch, provided by the petitioners in the form of a Report dated 14 July, 2016, explains how the policies of the colonial government in Guyana throughout the past seventy years caused certain displacements and returns over time by the indigenous population of the Middle Mazaruni, populational movements which nevertheless did not affect their ancestral relationship to that territory, where their forefathers had always been present.<sup>18</sup>

36. The affidavits submitted by the petitioners and containing declarations made under oath by community members prove that Isseneru village is located within Akawaio ancestral territory, but that its actual specific location is relatively recent, even though its inhabitants are mostly members of the Akawaio

<sup>17</sup> Some scientific sources for this conclusion, as cited by petitioners, are the following: (1) Denis Williams, "Prehistoric Guyana", Ian Randle Publishers, Kingston, 2003, p. 367-394; (2) Denis Williams, "Archaeology and Anthropology", Vol. 12, Walter Roth Museum, Georgetown, 1998, p. 32; (3) Audrey Butt-Colson, "Land: The Case of the Akawaio and Arekuna of the Upper Mazaruni District, Guyana", Last Refuge Ltd., Panborough, 2009, p. 14-16.

<sup>18</sup> This report explains: "The people from the Middle Mazaruni River were living not far from the current village of Isseneru, and close to their current cassava farms, in the 1950s when gold and diamond miners from the coastal area of Guyana and Brazil began to operate large river dredges on their land. To avoid potential conflicts with the miners, about half of the community relocated to the Upper Mazaruni to live with their relatives. They were encouraged to do so by the colonial administration, which established schools and a health clinic near Kamarang. Other members of the community continued to live in the Middle Mazaruni. || In the early 1970s, however, the State proposed building a dam and a large hydroelectric power plant on the Upper Mazaruni River. Flooding from the proposed dam would have forced the Akawaio to relocate. Consequently, the Akawaio who had previously relocated to the Upper Mazaruni decided to return to their land in the Middle Mazaruni, where they established the current village of Isseneru. But as the people from Isseneru made clear to me in multiple interviews, they were not moving to unknown or unclaimed land; this was where their parents, grandparents, and forbearers previously resided. This was not an unfamiliar place to them; the older people remembered the place names and the old village sites, the location of former gardens, and where all of the resources they needed could be found. || It is important to note that both migrations were made in direct response to the policies of the colonial administration and post-colonial state – initially to avoid the influx of miners from the coast and Brazil, and subsequently to avoid flooding from the proposed dam on the Upper Mazaruni River, which would have left them without anywhere to live. The years they lived in the Upper Mazaruni did not extinguish their land rights in the Middle Mazaruni, and the people who remained behind continued to live in these areas and maintain their land rights as well."

people and hold a living memory of the area as part of their cultural landscape.<sup>19</sup> Petitioners also provided a legible copy of the typewritten minutes of a Conference of Middle Mazaruni Villagers for Land Title, held on October 16, 1993, the content of which also indicates that Isseneru is located within ancestral Akawaio territory.<sup>20</sup>

37. Akawaio land tenure is customarily collective in nature. Territorial title is allocated upon the Akawaio people as a whole, and subsidiary land rights are assigned to families, communities and groups of communities, which thereby acquire land and resource ownership rights upon the traditional territory, with boundaries between them being clearly understood by the members of the people, and strictly respected.<sup>21</sup> As

<sup>19</sup> For example, the Toshao [ancestral governor] of Isseneru in 2017, Mr. Dhaness Larson, declared that “our forefathers traversed and used these lands for fishing, hunting and farming purposes which has been part of the Akawaio territory from time immemorial. (...) Throughout the years, people have been using the resources of the land from all across the Mazaruni region. They would come from the Upper Mazaruni to catch fishes and hunt for food. (...) families from other communities came to Isseneru and settled on its lands that belonged to our forefathers”. [Affidavit of Dhaness Larson, sworn on November 26, 2017.] Likewise, Mr. Carlton Williams, a village elder, declared that “I was born in 1961 in Amokokopai in the Upper Mazaruni. My father was from the Middle Mazaruni; my mother was from the Upper Mazaruni. My maternal grandparents were originally from an Akawaio village on the Cotingo River in Brazil; my paternal grandparents were Akawaios from Puruni. I have lived in Isseneru Village for the past 17 years. I moved to Isseneru from Serunamu, another Akawaio settlement in the Middle Mazaruni. All of these places that I, my parents, and my grandparents, lived are in traditional Akawaio territory. Before I moved to Isseneru in 2000, I used to pass through the village frequently. I moved to Isseneru because I was invited to be a church leader. (...) The majority of people in Isseneru are members of the Alleluia Church. (...) Alleluia started with our elders and they passed it down to us. It’s our tradition (...) in connection to the lands, because it’s where our elders, grandparents, great-grandparents lived – these are traditional lands that were left for us, it was left, entrusted to us, it’s our lands.” [Affidavit of Carlton Williams, provided by the petitioners.] Similarly, Mr. Lawrence Joseph declared: “I am a grandson of one of the pioneers Ginder Joseph, who lived with his family and many others at Haimaraca in the early 1900’s. They moved here from the Upper Mazaruni to look for better hunting and fishing grounds and fertile lands to provide for their families. After an influx of miners in the early 1900’s, my grandfather moved back to the Upper Mazaruni to enjoy peace and harmony until the government of the day proposed a Hydro project for the Upper Mazaruni District in the 1970’s. The Government advised residents to seek new lands and resettle because the entire District would have been flooded to pave the way for the project. This did not happen in reality. However, due to this, my grandfather and Uncle John, decided moving their families back to the Middle Mazaruni where there are abundant lands to go hunting, fishing and farming. During that time, my great grandfather died at Ako creek, a large indigenous village in the early 1800’s in the Kurupung river. These lands were not strange to our fore parents so they came back to settle and farm the lands. As a boy, I remembered living in Anaribisi and today villagers still continue to farm these lands, that are outside of our titled lands. There are artifacts such as clay pots and farming tools that support our history. We are blessed to be part of this land and we must take care of it. We are interconnected with the Akawaios of the Upper Mazaruni and we share one history as a determined people.” [Affidavit of Lawrence Joseph, sworn on November 26, 2017.] Mrs. Jacqueline Joseph, another Isseneru resident, declared along the same lines as follows: “I was born in Warawatta village. I was twelve (12) years when we came to Kurupung through the Membaru trail to live at Sand Hill. (...) We moved from Warawatta in the 1970’s because the government had planned to build a hydro in the Upper Mazaruni and they advised our peoples to look for good lands to resettle. In 1972, we moved to Kurupung with my Uncle John and other families to look for better lands to fish and farm. He knew the Isseneru area well because in the 1800’s, his family resided in the Haimaraca area. There was a village in this area and today there are artifacts that we can use to prove that my ancestors and many other families lived here before we had requested for land title. We travelled the entire Middle Mazaruni river by canoes before outboard engines were brought into the area by miners. We went to Serenamun backdams to make cassava bread and on occasions visited the Alleluia church to praise the Creator. That was our way of life, people resided in the Puruni and Pashinamu area before moving to Isseneru to attend school and have access to the health services. We were living in the Isseneru Creek in the 1980’s. No miner was here when we first came to settle the Isseneru area. We used to drink the water from the Isseneru creek but today it is brown and cannot be consumed anymore.” [Affidavit of Jacqueline Joseph, sworn on November 26, 2017.]

<sup>20</sup> In pertinent part, this document reads: “This Conference of Middle Mazaruni Villagers followed an earlier gathering in August (...). The area described as the Middle Mazaruni is the Mazaruni Valley from Peaima falls below the new Arawai airstrip, down to the Turesi falls below Issano. About fifty people gathered by river from communities in all parts of [Middle Mazaruni] to seek a remedy for the longstanding injustices endured by their people since their homelands were invaded by miners from the coast a century ago. (...) The three villages for which communal title is sought are Isseneru, founded by Alleluia Leaders over ten years ago; Waramuripe, (...) and Sabala’u/Asura, the chosen resettlement site of the very ancient settlement at Issano. (...) Another similar step is strongly advocated (...): that to provide for future needs and development and ensure a democratic system of land usage there should be District Councils for all the major groups of Guyana’s original inhabitants. Laws to implement such a system should include the Middle Mazaruni with the Upper Mazaruni, as the origins, communications and present situation are much the same and they share one Akawaio heritage. (...) Old people know where they belong and have a strong feeling that they must live and die there: they remember the places with a long history and old stories, a place one knows is sacred: the creeks and hills around our new village of Waramuripe are like that. Our homelands are full of memories and friendly spirits, so that it is a great pain and loss to leave them. (...) The names on the maps (rivers, creeks, mountains and hills) are Akawaio words, the footprints of our people’s ancient history. Long ago the names were given. (...) some of our people have gone to the Upper Mazaruni, searching for peace and freedom. But still the placenames tell the story of their passing.”

<sup>21</sup> As explained by Audrey Butt-Colson, “occupation and ownership of land and its resources are structured in accordance with several levels of segmentation (...) – those of the regional group as a whole and of the river groups with their component local communities. The latter are structured spatially by the predominant dual residence pattern, consisting of a number of extended-joint family units, each maintaining two family holdings. Both kinds of settlement will have cultivated plots in the vicinity of their residences”. A. Butt-Colson, op. cit, p. 268. She also explains that “the land and resources of a river valley are owned by the people who customarily dwell there. Their title

[continúa...]

part of this system, within the village's lands, members have rights of occupation and use over specific areas, associated with their family groups; they also have rights in communal areas not associated with any family group. In addition, the Akawaio have a system of "protected areas" within their territories, destined to protect natural resources, including water sources and animal breeding grounds, under the management of an elder or a group of elders. In this way, the entire Akawaio territory is divided into inter-connected and adjacent areas of ownership and use rights, all of them encompassed by the territorial title ethnically vested upon the Akawaio people as a whole. Akawaio customs regulate in detail access and use to these diverse areas by both members of the corresponding family or group, and non-members; the relevant Village Councils play a central role in their management.

38. The Akawaio people provide for most of their subsistence needs with the resources found in their territory. There they hunt, fish, farm, and gather forest produce. Their ancestral diet is composed predominantly of resources harvested from their territory, which also provide the materials for building, medicines, utensils, pottery, hammocks, fuel and boats. Because of the prevailing environmental conditions, which include poor soil quality and low animal density, the Akawaio require large areas to maintain their traditional subsistence and economic practices and satisfy their basic needs.<sup>22</sup> According to the Isseneru community, the full extent of their territory is necessary to preserve its ability to sustain its members in accordance with their customary forest management system and culture.<sup>23</sup>

39. Petitioners assert that the cultural integrity of the Isseneru community also depends on preserving full access to its traditional territory. The relationship between the community and its lands and resources has not only economic but spiritual and sociopolitical dimensions, being indissolubly linked to its cosmology, identity, mythology, traditions and worldview. As explained by the petitioners, "*their cultures and identities are thus inextricably tied to the maintenance of their ongoing and multiple relationships with their traditional territory and its resources. The Akawaio's deep connection to their territory is reinforced and maintained through kinship structures and social relations, cultural and spiritual practices and beliefs, and the customary norms and practices that govern their daily lives*". Their traditional stories, oral history, sacred places, legends, rituals, family ancestry, customary laws, social organization and overall welfare are therefore deeply integrated into the relation with their territory. The Akawaio define themselves as the "*padawong*", a word in their language that means "original people" of the Mazaruni and carries spiritual as well as historical significance.<sup>24</sup>

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derives from its being passed down from generation to generation within the occupying families. It is recognized that these residents jointly hold their rights against people dwelling in other river areas, who similarly lay claim to their own river valleys (...). Whether we are considering a large river area, with several local communities strung out along it, each with its central village settlement, its leaders and internal organization, or whether we are considering a small tributary river with just one such local community, or even an extended-joint family settlement, the important fact is that each community occupies a sector of land and its resources exclusive of others". A Butt-Colson, op. cit., p. 203, 210.

<sup>22</sup> As explained by anthropologist Denis Williams, "[s]ince it is easier to fell and burn secondary forest rather than virgin forest, repeated rotation through a given area is the adaptively optimal strategy of land management generated by manioc horticulture in the Tropical Forest environment. This system, in which land rather than crops is rotated, is a sustainable low-input form of cultivation which can continue indefinitely on these infertile soils provided the carrying capacity of the land is not exceeded. Its obvious limitation is that it can usually support only 10-20 persons/km<sup>2</sup> because at any time only around 10 per cent of the available land is under cultivation. (...) Communities therefore remained small, though, as is implied by the inherent labour intensiveness of fully-fledged manioc horticulture, the term 'shifting cultivation' in fact conceals a high level of relatively sedentary habitation by families scattered over a wide area". Denis Williams, "Prehistoric Guyana", Ian Randle Publishers, Kingston, 2003, p. 387-388.

<sup>23</sup> In relation to their ancestral farming practices, a member of the community, Mr. Carlton Williams, explains in an affidavit provided by petitioners: "There are only some parts of our traditional lands that are used for farming. We cannot use all the land as farmland. There are only narrow areas where people can farm because there is soft soil. Other parts of our lands have hills, a lot of roots, so we don't consider those areas as farming lands; we use them for other purposes. Farming lands are usually flat lands - they can't be hard, can't be wet, can't be stony. We don't use fertilizer, so we have to locate fertile lands. The way we farm, we make one farm and leave it there so the forest can regrow and move to a new area. We have to move farms to allow for regrowth. (...) We farm for about 3 years and then we move." [Affidavit of Carlton Williams, provided by the petitioners.]

<sup>24</sup> The expert anthropological report by Professor Stuart Kirsch, provided by the petitioners, explains the importance of the community's relationship to its territory and resources: "Land is very important to the Akawaio people; they describe the forest as their grocery store, their doctor's office, and their university. They teach their children how to catch fish from the river and creeks that run through their territory, which plants to eat or use for medicinal purposes, how to plant and take care of their cassava farms, and today, how to mine for gold. In addition to cassava, they grow potatoes, bananas, sugar cane, and greens, as well as other crops. Their traditional land base and its natural resources are essential for making a living and maintaining their individual, family, and collective well-being, and their sense of a distinct cultural identity' (Griffiths 2003). The Akawaio regard detailed knowledge of their territory, in both its practical and spiritual dimensions, as attributes of ownership and demonstrations of their land claims. This includes their knowledge of place names, or [continúa...]

40. The State, in turn, has held before the IACHR that *“the claim by the petitioners that Akawaio Isseneru community has traditionally occupied and owned that area is not true. The Isseneru community was started in 1980-1 by their own admission.”* In its first submission of information regarding the request for precautionary measures, the State elaborated on this argument as follows:

“Isseneru is not a traditional Akawaio community. It is a community made up of various Amerindian groups including Akawaio, Arawak and Wapichan peoples, some of whom are also mixed with coastland Guyanese such as the Portuguese, Afro-Guyanese and Indo-Guyanese. There is no basis for claiming it as part of an Akawaio territory. The Akawaios did not ask for this area to be considered as part of their traditional lands when they made their claim to the Amerindian Lands Commission in 1969. They referred only to the Upper Mazaruni which is the area that is now the subject of a court case in the Upper Mazaruni land claim. The anthropological opinions of Audrey Butt-Colson and Tom Griffiths refer to the Upper Mazaruni and not to the people of Isseneru who live in the Middle Mazaruni area. Isseneru community did not exist until some time after 1969.”

41. Despite this assertion, the property title deeds issued to the community by the State in 2007 and 2009 expressly acknowledge that Isseneru *“has from time immemorial been in occupation”* of the lands.

42. Petitioners have responded to this allegation by the State, holding that *“Isseneru self-identifies as an Akawaio community and is considered to be Akawaio by other Akawaio communities, irrespective of some amount of ethnic diversity among its members. Most of its members speak Akawaio and adhere to Akawaio cultural traditions and identity. Isseneru is situated in traditional Akawaio territory and other Akawaio communities understand that this is the case. Indeed, Isseneru’s title is located in close proximity to Kamarang-Warawatta’s title (less than 35 miles distant at their closest points), one of the main Upper Mazaruni Akawaio communities, and the only difference between the Upper and Middle Mazaruni in this context is a series of cataracts and substantial bend in the river that constitute the geographical divide between the upper and middle Mazaruni river.”*

43. The State has further alleged that Isseneru members have abandoned their traditional practices in several different aspects of their culture. For example, it holds that *“Isseneru community members have voluntarily abandoned traditional buildings and the use of traditional materials in favour of more modern buildings of concrete with zinc roofs and glass windows. The multi-purpose centre and the guest house are both made of concrete”*. In this sense, the State points out that *“Isseneru does not depend on the land for building materials”*.

44. The State has also argued that farming is limited in Isseneru because its members have changed it for mining: *“existing farms are small and for personal use. It is reported that the current Toshao has been trying to encourage people to farm so they can supply themselves and the miners”*. It also holds that there is no notice of complaints made by the Toshao or the members of the community with the State authorities regarding any interference with their farming or farms by the miners.

45. The State additionally argues that there is no cultural spiritual relationship with the territory in Isseneru, because they have been converted to Christianity; it has claimed that *“in fact Isseneru’s spirituality is rooted in Christianity and with churches for the Seven Day Adventists and Anglicans as well as the Halleluja movement, an Amerindian interpretation of Christianity. There is no indigenous spiritual relationship which is being affected by mining.”*

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toponyms. To continue to live as Akawaio, they must have land, and consequently they need to have their land rights fully recognized by the government of Guyana. They do not want to live anywhere else; they want to continue living on the land of their grandparents and ancestors. They also need secure land tenure to exclude outsiders, including miners, from using their land.”



46. Petitioners counter-argue the following, in response to such allegation:

“...the members of Isseneru maintain their indigenous spiritual traditions and beliefs even though these may have been affected by the importation of Christianity.

First, as with Isseneru, the Akawaio of the Upper Mazaruni have been heavily missionized, including by the same religious sects as those active in Isseneru. Nonetheless, their ongoing adherence to their spiritual beliefs and practices is well documented as is its centrality to their social, cultural, political and territorial identity and integrity. Second, (...) the ‘Halleluja movement’, as the State calls it, is a syncretic religion combining indigenous and Christian beliefs that is both unique to the indigenous people of western Guyana, the Akawaio especially, and perforce embraces indigenous spirituality and belief systems. Third, it is well documented in other parts of the world that indigenous people can both adhere to religions imported to their lands by others while also maintaining and practicing their indigenous religions and spirituality”.

47. One of the members of the Isseneru community, who defines himself as an Akawaio indigenous person and holds a high-ranking position within the Alleluia religious movement, has explained the extent of the community’s spiritual relationship with their ancestral territory through this particular, syncretic form of worship. In an affidavit provided by the petitioners, Mr. Carlton Williams explains:

“I moved to Isseneru because I was invited to be a church leader. I took on the position of an elder within the Alleluia Church. The majority of people in Isseneru are members of the Alleluia Church.

In the Alleluia Church, we sing songs about the land, about God creating the land. When we sing about the land, it’s about blessings and protections for the land and everything you find on the land. The land and our connection with the land comes about because this is our land and where we live. The land we pray for is for the whole world. We talk about praying for the soul of the earth and protection of the earth; it’s for all of us. We pray to protect our farms so that we don’t get famine, or insects or from drought. Alleluia gives us faith and strength and connection to the land. Alleluia started with our elders and they passed it down to us. It’s our tradition. We the people, it’s our form of worship. In connection to the lands, because it’s where our elders, grandparents, great-grandparents lived – these are traditional lands that were left for us, it was left, entrusted to us, it’s our lands. We need this land for our future. This is how we live. From grandparents to this generation. And we hope that our generations in the future have the same.”

48. Expert testimony by Professor Stuart Kirsch has provided the Commission with information about the response of the Akawaio community members to the State’s arguments regarding their loss of culture, mining practices, intermarriage and religious syncretism.<sup>25</sup>

49. The Commission notes that in its second submission of information during the precautionary measures procedure, the State has admitted the cultural mobility of indigenous communities, which is in fact recognized by the Amerindian Act: “(...) *the submitting organizations have ignored an important innovation in*

<sup>25</sup> Said testimony reads in pertinent part: “The people assembled for the meeting reacted very strongly against the State’s claim that ‘Isseneru is not a traditional Akawaio community’, saying that it was ‘extremely upsetting to hear’. They also objected to having to explain themselves to outsiders and indicated that they had already been interrogated about ‘how we live, where we come from, who we got our land title from’. They added: ‘We know this land is ours, and that’s why we live here’, and ‘Our grandparents [and ancestors] lived, farmed and hunted on all of these lands’. || With regard to the State’s claims about changes in the village, they acknowledged: ‘Today, yes, it is changing’. ‘We have grown from a poor community with a rich culture’, one person added. ‘In the early days’, he continued, ‘we did not live in fancy houses, like you see today. [But] I had a rich childhood’. Another acknowledged: ‘There are churches, permanent buildings, and we have established a permanent village’. One person explained: ‘Before... we lived in different houses [made from forest timber with thatched roofs], but we were told that they had a negative connotation’. ‘Have we done something wrong to build these [new] houses?’ the Toshao asked rhetorically. They blamed the government and development for some of these changes: ‘For the government to claim that we are not Akawaios, when they introduced the schools, which do not teach our history or language’ is hypocritical. Other speakers acknowledged: ‘Sometimes, we are embarrassed that our children don’t speak our language’ and ‘We know that we are losing our culture by only teaching them English. With development comes a lot of changes’. However, others asserted: ‘We are not forgetting our traditions’. One man said: ‘We live here as Kapong’. Several people pointed out: ‘We still make cassava’, their staple food, and ‘drink cassiri’, or cassava beer. Another said: ‘We farm, we hunt, and we fish’, like our grandparents. However, one man acknowledged: ‘It is a challenge to keep our stories and histories; I’m afraid it will be lost’. || Regarding development, (...) another explained: ‘Because we want to be independent as a people, we want to grow our own food, and we are growing our own food. But there is also a need for money. After searching for alternatives, we turned to mining for our own development. But what we find is that the government is coming in with their laws and making it difficult for us. Now the government is upset that we are doing mining. The plan was to be self-sufficient. So our people have gone into mining.’ || Several other people also explained the decision to mine for gold: ‘With this many people in the village we have to mine’. (...) Another noted: ‘When it comes to mining, many outsiders are mining on our land. It came to the point that we decided to use these resources for ourselves.’”

*the Amerindian Act that provides for new communities being formed and after 25 years of communal occupation they too can apply for communal land title. To admit this would damage their argument of ancestral, traditional and aboriginal lands. In fact there are several such communities that have emerged in the last 30-50 years, due to some communities' nomadic lifestyle, and in some of these new communities there is not one linguistic Amerindian group, one such case in the village of Para Bara, Region 9 (...)*".

### **C. Relevant legal framework regarding titling of indigenous lands in Guyana**

50. Guyana has legislation in force establishing a procedure for the granting of property title to Amerindian Villages and Amerindian Communities over their lands, namely, the 2006 Amerindian Act, read in conjunction with other legislative provisions such as those of the Lands Act.

51. Section 2 of the Amerindian Act defines an Amerindian Community as "*a group of Amerindians organised as a traditional community with a common culture and occupying or using the State lands which they have traditionally occupied or used*"; an Amerindian Village as "*a group of Amerindians occupying or using Village lands*"; and Village Lands as "*lands owned communally by a Village under title granted to a Village Council to hold for the benefit of the Village*".

52. Part VI of the Amerindian Act is entitled "*Grants of Communal Land to Amerindian Villages and Amerindian Communities*". Section 59, on "extensions of land", provides that "*[a] Village may, in accordance with subsection (2), apply in writing to the Minister for a grant of State lands as an extension to its Village lands*", and sets out the formal requirements of the corresponding application.

53. Section 60, on "Grants of land", provides in Subsection (1) that "*An Amerindian Community may apply in writing to the Minister for a grant of State lands provided – (a) it has been in existence for at least twenty-five years; (b) at the time of the application and for the immediately preceding five years, it comprised at least one hundred and fifty persons*". Subsection (2) establishes the requirements that an application for lands must fulfil, namely, the name of the community, its number of persons, the reasons for the application, a description of the area requested, and a resolution authorising the application passed by at least two thirds of the community's members. Subsections (3) and (4) set forth other formal requirements.

54. Section 61, on "Acknowledgement and investigation", provides in Subsection (1) that "*[w]ithin one month of receiving an application under section 59 or section 60 the Minister shall respond in writing acknowledging receipt*". Thereafter, according to Subsection (2):

*"Within six months the Minister shall cause an investigation to commence to obtain the following information – (a) a list of the persons in the Amerindian Village or Community and the number of households; (b) the names of the Amerindian peoples of the Amerindian Village or Community; (c) the length of time the Amerindian Village or Community has occupied or used the area requested; (d) the use which the Amerindian Village or Community makes of the land; (e) the size of the area occupied or used by the Amerindian Village or Community; (f) a description of the customs and traditions of the Amerindian Village or Community; (g) the nature of the relationship which the Amerindian Village or Community has with the land; (h) any interests or rights in or over the area of land requested by the Amerindian Village or Community; (i) whether there is a school, health centre or other initiative by the Amerindian Village or community or Government; and (j) any other information which the Minister reasonably considers to be relevant"*.

55. Subsection 3 establishes the type of information that the Minister may accept during the investigation, including oral or written statements by the village or community, authenticated or verified historical documents, sketches and drawings prepared by the village or community, "*surveys prepared or authorised by the Guyana Lands and Surveys Commission*", photographs, anthropological or archaeological reports, and "*information in any other form which the Minister reasonably believes is appropriate*".

56. Section 62, entitled “Decision”, provides that “(1) *The Minister shall make a decision within six months of the investigation being completed*”, and “(2) *In making a decision the Minister shall take into account all information obtained in the investigation and consider the extent to which the Amerindian Village or Community has demonstrated a physical, traditional, cultural association with or spiritual attachment to the land requested*”.

57. Section 63, entitled “Approval”, provides as follows:

“(1) If an application is approved title shall be granted under the State Lands Act.  
 (2) In the case of a Village, title shall be granted to the Village Council to be held for the benefit of the Village.  
 (3) In the case of an Amerindian Community, the Minister shall by order establish a Village Council to hold title on behalf of the applicant Community and upon the grant of title the Amerindian Community becomes a Village.  
 (4) If a Community Council has been recognised under section 85, the Minister shall by order establish the Community Council as a Village Council.”

57. Finally, Section 64, on “Appeal”, establishes that “[a]n Amerindian Village or Community which is dissatisfied with the Minister’s decision under section 62 may apply to the High Court for a review of the decision”.

58. The Amerindian Act refers to the State Lands Act for the purpose of territorial grants. Under Section 63(1) of the Amerindian Act and Section 3(1)(a) of the State Lands Act, the titles issued to Isseneru are known as “Presidential Grants”; this latter Section provides that the President may “*make absolute or provisional grants of any State Lands of Guyana, subject to any conditions (if any) that he thinks fit or as are provided by the regulations for the time being in force*”. Presidential grants therefore are not legally required to take into account pre-existing property rights, nor the rights of indigenous peoples. As stated by the petitioners, “*this was a considered and express decision made by the State without any attempt to balance the rights of indigenous peoples*”.

#### **D. The titling of Isseneru’s lands**

59. The Isseneru community lacked any sort of property title or legal protection for its ancestral lands until 2007. It started requesting title at least since 1987 on repeated occasions, and it had not received anything despite several other indigenous communities in the country receiving grants since 1976, including eight Upper Mazaruni Akawaio communities in 1991<sup>26</sup>. Twenty years after it began the requests, Isseneru was granted a title to a fraction of its ancestral territory, which it had requested to be recognized in its entirety. Isseneru made formal written requests for title in 1987 and 1994, but none was acknowledged or responded. Petitioners provided a copy of a handwritten note attached to a 2004 letter from the Ministry of Amerindian Affairs, in which it is stated that the 1994 request had been received but could not be located.

60. The State’s policy up until 2004 was to consider only those title requests where all of the indigenous communities in a given region had agreed on the physical demarcation, and such demarcation had been carried out. Given that the Akawaio and Arecuna communities of the Mazaruni were unable to agree, Isseneru was prevented from obtaining title. A policy change came about in 2004, as reported in a letter addressed to Isseneru on December 10, 2004, a copy of which was provided by petitioners, in which the Ministry of Amerindian Affairs informed it about this change and invited Isseneru to present an application for title. The letter states:

<sup>26</sup> Petitioner explains that the Akawaio and Arecuna communities of the Upper Mazaruni rejected the title issued to them in 1991 and sought to obtain recognition of their ownership rights over the full extent of their traditional lands, through a complaint submitted to the High Court in October, 1998, based inter alia on the existence of an aboriginal title in the sense of the Commonwealth jurisprudence. The High Court began hearing evidence in the case in December 2011, and as of the date of presentation of the petition had not yet decided on the matter.

“This is to inform you that the Government of Guyana has reviewed its policy on addressing Amerindian land issues. As you are aware the policy required titled communities within a particular administrative region to be demarcated, after which extension of titled communities and titling of untitled communities will be addressed. Unfortunately, none of the ten titled communities in Region 7 agreed to demarcation and as such we could not address the untitled ones. || Having recognized that untitled communities face a lot of difficulties, especially those located in close proximity to mining and forestry concessions, the Government has altered its policy to address the issue on a sub-regional basis. Since the middle Mazaruni has no titled communities, we can now start the process of addressing the untitled ones. In this regard you are required to meet with your community and submit to the Ministry of Amerindian Affairs the community’s request. The request should contain the following: (1) Description of the area requested. (2) population of the village. (3) the date the community was established. (4) Reasons for the request.”

61. Such application was lodged on 26 May, 2005, in a letter in which the community described the area it was requesting, its traditional occupation and use thereof, and the reasons for which they considered it necessary to have a title.<sup>27</sup> The community thereby submitted a request for approximately 1,000 square miles of their ancestral lands, and interactions with the Ministry began through their elected leader or Toshao.

62. In one of the meetings held in 2005 with the state authorities, the Minister stated that the community must reduce the extent of their request because the application “*was too big*”, “*bigger than Barbados*”, and “*the population of the village was small and did not need such a large area of land*”.<sup>28</sup> At that moment the community reluctantly accepted to revise its request, given the urgency of protecting their territory against the mining activities encroaching it.<sup>29</sup> Former Toshao of Isseneru Lewis Larson declared, in an affidavit of December 26, 2017, that “*the Ministry gave us our land title in 2007, but lands were reduced and it did not include large parts*

<sup>27</sup> The letter, a copy of which was provided by the petitioners, states in pertinent part: “Reasons for Official recognition of Land Ownership  
1. As our fore parents have suffered, our present community continues to suffer as a result of the mining activities on our lands. It is seriously causing environmental, social and health problems in our area. Our rivers are being polluted. These are the very rivers that we depend on for fish supply and other domestic purposes. Our lands are destroyed by dredges, leaving barren lands behind. Large pits are dug and now [are] the breeding homes of mosquitoes and other bacteria that cause sickness. Malaria and diarrhea are common sicknesses in Isseneru. Many of our young females are single parents placing pressures on other family members. Our young men are caught up in the ‘gold fever’ where they spend everything they earn on alcohol and other illegal activities at mining camps where these activities take place. The nearest temporary mining settlement is about 10 minutes away from the village where alcohol and drugs are sold and prostitution take place. 2. Concessions are given out without our consent, and most of these concessions are within the vicinity of our village where we hunt, fish, farm and carry out other traditional activities. These miners have or show no respect to us, they destroy some of our sacred sites, old settlements and farm edges. These concessions give miners the power and right (it seems) to our land more than us. This allows them to introduce drugs to our young people, causing teenage pregnancy raising the number of single parent families in our village. 3. We also need our land titled to protect our customary laws and traditional practices. There are evidence and proof that government officers try to persuade us to adopt coastlanders customs. We were advised by these officers to apply for individual house lots, our custom is one where we share communally. We cannot change the way of life we are living. Our lands provide us with game and fish that we use on a daily basis. Farms are an important part of our lives as it provides us with a variety of crops that we eat. The forest provides for us various different materials for our houses and other use such as medicines, craft materials, and fruits. 4. We need our land title because we feel a strong sense of ownership to these lands, our grandfathers and fore-parents were born and buried here, we feel it is a part of us and as such we see it right we continue to live here, like us these lands will be left for our younger and future generations. 5. We also need our land title to ensure us the right to benefit from the resources that exist on our lands. For too long now, others have been exploiting our lands without us gaining any benefits those activities. At least if we are to own it we would have control over what kind activities can take place that will be appropriate for us. 6. Our past leaders had always made representation on the issue of lands for our community but not much came out of those representations. In 1985, the villagers officially approach the government for advice as how to obtain a land title. They were advised to make an application, therefore in 1987 we made a formal request and it was sent to Mr. Dennis George then the Regional Chairman of Region 7, we never heard from him again. Later we were advised to describe the area on a map that was submitted to Mr. Lloyd Andrews. Again this proved futile. We are hoping that these facts will prove to you that the issue of land title is an ongoing problem that we were trying to solve for quite a long time. So it is a great relief to learn that the government is reviewing its policies on addressing Amerindian land issues. 7. In closing we need the government to recognize these lands as ours, so that outsiders will respect us and look at us as human beings and to ensure that we continue to live in peace and harmony and also our children to grow and enjoy a life like all other Guyanese.”

<sup>28</sup> Affidavit provided by Toshao Lewis Larson, who represented the community in these negotiations.

<sup>29</sup> Indeed, in an affidavit sworn on April 24, 2013 and provided to the IACHR by the petitioners, former Toshao of Isseneru Lewis Larson declared that in early 2005, upon presentation of the initial claim to the Ministry of Amerindian Affairs, “I was told by Honourable Minister Rodrigues, in the presence of Council member Claude Bennett that the area of land which was the subject of the land title application of the Village was ‘too big’, that it was ‘bigger than Barbados’ and that the ‘population of the Village was small and did not need such a large area of land’. That, further I was told by Honourable Minister Rodrigues, in the presence of Council member Claude Bennett to reduce the size of the area of land which was the subject of the application of the Village before the application could be dealt with”. Having returned to the village and reported this to the Village Council, “the Villagers were not pleased to hear that their application was not accepted in its original form and reluctantly agreed to reduce the size of area of land applied for mainly because they needed urgent protection of their traditional lands against miners.”

of our hunting and fishing grounds in the title. They didn't ask us which area we would like to reduce, they just hand over the title. As far as I know, no one from the Ministry ever came to discuss the application with us". In this same sense, a later-elected Toshao of Isseneru declared, in an affidavit sworn on November 26, 2017, that "due to the Minister's pressure to reduce our land application, we decided to focus on areas that had mining concessions on them because we really wanted protection from mining activities. We thought that if we had title, then we could have control over those lands and mining concessions would have been exempted from our land title". Nonetheless, when they actually obtained the title, "our land was reduced in size on the title description and our good hunting and fishing grounds were not included", nor were many of their farmlands.

63. After ineffective negotiations, on January 12, 2007, the Ministry addressed a letter to the community, stating that it recognized the difficulties faced by Isseneru due to the mining activities, and desired to accelerate the process, having placed the area requested on a scaled map. It further reiterated its instruction to reduce the extent of the territory that was being requested.<sup>30</sup> On January 30, 2007, the Minister reiterated the request.<sup>31</sup>

64. Petitioners have provided the IACHR with copies of two affidavits sworn by two professional technicians who aided the process of gathering information on Isseneru's ancestral territory and mapping it, in order to file the initial request for title, wherein that process and its methodology are described in detail.<sup>32</sup>

65. Further, the expert anthropological testimony of Professor Kirsch has laid out in detail the reasons for which the initial request for title was so large, namely, the need to secure access to the different natural resources that they require to carry on with their traditional livelihood and customary systems.<sup>33</sup>

<sup>30</sup> According to the letter, a copy of which was provided by the petitioners, the Minister "indicated that a meeting should be held with the community with a view to reducing the area requested from approximately 1000 square miles", and stated that "I am happy that the community is reconsidering their request".

<sup>31</sup> This communication reads in relevant part: "I have gathered from your letter that you may not be aware of all the details of the Isseneru land matter and as such I would seek to provide you with some information. I had indicated earlier to the former Toshao (Lewis Larson) that land matters are dealt with on a first come first served basis. However, recognizing the difficulties being faced by residents of Isseneru due to mining activities, the Ministry was desirous of accelerating the process hence we proceeded to place the area requested on a scaled map. Having knowledge of what occurred in other communities, I indicated that a meeting should be held with the community with a view of reducing the area requested from approximately 1000 square miles. However, no response was received thereafter. Notwithstanding the foregoing, I am happy that the community is reconsidering their request. I would therefore appreciate if we can hear from the Council on this matter as soon as possible, following which we would engage the Geology and Mines Commission".

<sup>32</sup> One of said professionals, Mr. Ron James, explained that in his fieldwork in Isseneru: "we interviewed elders, hunters and other knowledgeable community members about Isseneru's various relationships with its lands, including where and how Isseneru occupies and uses these lands and, more generally, the nature and extent of its customary tenure system. Every day, we led open community meetings in which over 30 community members would participate at a time. || We had bought about 20 sheets of topographical maps, at the scale of 1:50000, from the government of Guyana to use during these meetings. At the meetings, we first used the maps to help orient the community members as to what was depicted on these base maps. We identified the main rivers, mountains, and other landmarks, along with the location of their village on the map, to help them visualize the areas depicted on the base map. Then, we obtained information about their customary land tenure from community members. Such information included the locations of first settlements; the locations of villages; the locations of hunting grounds, fishing grounds, and gathering grounds; and the locations of sacred sites and cultural sites. In order to map such locations, we identified the paths traveled by community members to access such sites. The orientation of the community members to the natural landmarks, such as rivers, creeks, and mountains, on the maps helped to identify such paths. (...) The result was a map covering an area of approximately 1000 square miles. (...) I was and remain confident that the information that I gathered together with Mr. Winter in conjunction with the community was a correct and accurate depiction of Isseneru's customary lands. (...) the evidence that we gathered was entirely consistent with the extent of Isseneru's occupation and use of the land. I was not aware that the Ministry had ever conducted its own investigation of the nature and extent of Isseneru community members' use and occupation of their land."

<sup>33</sup> Professor Kirsch explains: "Before submitting their petition for land title to the Minister for Amerindian Affairs, the Toshao and village council prepared a map of their traditional territory following the natural boundaries of the mountains, rivers, and streams. These boundaries were drawn to include the full range of resources needed to maintain the community and its way of life. Their crops do not grow in the mountains where the soil is rocky. Nor do they grow on swampy ground. Only some of their land is suitable for growing cassava, and because of their practice of shifting cultivation, they rotate their gardens after two consecutive harvests. This is an ecologically sustainable way to farm in tropical systems, as the long fallow period after use allows the forest and soil to regenerate. Other resources are only available in certain parts of their territory, such as purple heart trees (*Peltogyne* sp.), the bark of which was traditionally used to make canoes, which only grow to the south of the village. Mucru plants (known as mana in Akawaio language), which are used to make the long narrow 'squeezers' used to process bitter manioc, or cassava, only grow at higher altitudes to the north. The jasper or flint used to make cassava graters is only available in the mountains. Large fish like the aimara can only be caught downstream from the village. The village council took care to include access to these important resources in making their original request for land title; however, all of these essential resources were eventually excluded from the title granted by the state. Given the restricted size of the land title granted by the state, the Toshao from Isseneru is also concerned about whether they will have enough land suitable for growing cassava in the future. ||

[continúa...]

66. Title was formally granted to the community in August 2007, over approximately 260,16 square miles, that is, close to 25% of what was originally requested. Title deeds were issued on August 7, 2007, and again on January 22, 2009 -the latter title containing a more detailed description of the area that was granted. Both titles expressly exclude “*all lands legally held*”, as well as river and creek banks, and all minerals, which “*shall remain vested in the State*”. The titled area was demarcated between 2009 and 2010, and a “certificate of title” was issued to the community on May 21, 2010, confirming that the title deeds had been registered under the Land Registry Act. The “certificate of title” is a requirement of an administrative nature required to consolidate the process of titling.

67. Petitioners provided a copy of the title issued by Guyana, actually composed of two separate grants, in both of which it is stated, under the heading “*Grant of State Land by his Excellency, Bharrat Jagdeo President of the Co-operative Republic of Guyana*”, that: (i) “*Whereas the Amerindian Community of Isseneru Amerindian Village has from time immemorial been in occupation of a tract of State Land shown on a Plan (...)*”; (ii) in the description of the lands granted and their boundaries, it expressly states “*Save and except all lands legally held*”; (iii) “*Now, therefore, in exercise of the power conferred upon me by Section 3 of the State Lands Act Cap. 62:01, I, Barrat Jagdeo, President of the Co-operative Republic of Guyana do hereby, with effect from 3rd August 2007, grant unto the Isseneru Amerindian Village Council absolutely and forever the said tract of State Land hereinbefore described, all and singular the appurtenances and privileges thereto belonging and appertaining for and on behalf of the Amerindian Community occupying the said tract of land, provided that this grant shall not confer on the grantee the right to any gold, silver or other metals, minerals, ores, bauxite, gems or precious stones, rocks, coal, mineral oil or uranium all of which shall remain vested in the State.*” Petitioners also provided a copy of the three certificates of title to land granted on the 21st of May, 2010, for three areas: one measuring 152869.15 acres or 618.64 square kilometers, another measuring 4728.18 acres or 19.13 square kilometers, and a third measuring 8910.74 acres or 36.06 square kilometers.

68. Petitioners have publicly denounced that the decisions of the Ministry of Amerindian Affairs are not based on objective legal criteria, but rather on arbitrary and subjective considerations of the officers; they cite the Minister, for example, rejecting Isseneru’s territorial claims because the lands requested were too large - without providing any further justification-, and comparing the request (of approximately 1,000 square miles) to the size of Barbados. In a letter addressed to the newspaper Stabroek News, the Minister of Amerindian Affairs responded some of these questionings of the titling process for Isseneru; specifically asked by reporters why it was considered impossible to grant this community the entire extent of 1,000 miles it had requested, the Minister wrote: “*Guyana has a total land mass of 83,000 square miles and there are over 125 Amerindian communities which comprise about 9.2% of the population. If 1000 square miles is granted to each community it is clear what the math will be*”.<sup>34</sup> In a further letter to the same news outlet, the Minister explained that requests for land title are assessed on the grounds of their reasonableness, taking into account the number of inhabitants of the community requesting the title and the extent of the lands requested.<sup>35</sup>

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In contrast to societies that divide land into standardized units that can be bought and sold through the market, every Akawaio family needs access to several different types of land. The people living in Georgetown and other coastal areas of Guyana do not understand the needs of the Akawaio and other Amerindian peoples. Consequently, they tend to view these claims as a ‘massive land grab’, as a senior lawyer in the capital explained.”

<sup>34</sup> “The procedure and the requirements for granting Amerindian communities titled lands are clearly set out in the Act”. Letter by the Minister of Amerindian Affairs published in Stabroek News on October 11, 2007. At: <https://www.stabroeknews.com/2007/10/11/opinion/letters/the-procedure-and-the-requirements-for-granting-amerindian-communities-titled-lands-are-clearly-set-out-in-the-act/>

<sup>35</sup> This second letter, a copy of which was provided by the petitioner, states: “In the case of Micobie [indigenous community], the community submitted a request to the Minister which was reasonable. They subsequently received an Absolute Grant for the same amount of land they requested. In the case of Isseneru, almost two (2) years ago they requested an area measuring approximately 1000 square miles of land. The national patrimony is 83,000 square miles and there are more than 125 Amerindian communities, in addition to the many other non-Amerindian communities. As such, it is impossible to grant a community of less than 350 persons an area of 1000 square miles of land. This position was explained to the Toshao and the villagers. When a new council came to office, the original request was reviewed and they adjusted the area requested to approximately 160 square miles (nearly the size of Barbados). This request was accepted by the Ministry, hence the issuance of the Absolute Grant for 160 square miles on September 5, 2007”. In the petitioners’ view, these communications prove that the system for recognition of indigenous title in Guyana is arbitrary and subjective, unilateral, unduly discretionary, disconnected from the evidence substantiating the request for title upon the cultural specificities of the relevant communities, and unrelated to the rules of international law governing the matter or to the human rights at stake.

69. In its first submission of information regarding the request for precautionary measures, the State argued that Isseneru is not a traditional Akawaio indigenous community, and at the same time it held that the land titling process complied with the legislation in force because it was based on the community's relationship with its territory: *"Isseneru owns 672.83 square miles [sic] of territory under an absolute title that belongs to the community forever. Contrary to the assertions in the Petition, the process for determining the size of the area was governed by the Amerindian Act 2006 and based on occupation, use, Isseneru's physical, traditional and cultural association with the lands as well as their spiritual relationship with the land."*

70. Guyanese law acknowledges the principle that all lands in the country which do not belong to private owners, belong to the State. This principle underlies the Amerindian Act and the State Lands Act, and therefore large areas of ancestral indigenous lands are currently classified as State Lands; the title deeds issued to indigenous peoples specify that the State has granted them tracts of State land. The State Lands Act acknowledges the State as the owner of all lands not privately held under registered titles. Title is granted pursuant to the powers granted to the President of Guyana by the State Lands Act, and it is governed and managed in accordance with the 2006 Amerindian Act. The legal proposition underlying this system is that colonization by the British Crown displaced any preexisting ownership, and that upon acquisition of sovereignty from the British Crown after independence, the Guyanese State became the owner of the territory of Guyana, thus abrogating any preexisting pre-colonial indigenous land rights. The principle is endorsed by the Guyanese judiciary, it is asserted as a defense before the Courts by the Government facing indigenous territorial claims,<sup>36</sup> and it underlies the legislation appertaining to indigenous territorial property.

71. As for the notion of traditional territory, the State has asserted in its second submission of information in the precautionary measures procedure:

*"The concept of 'traditional territories' is not recognized in the Amerindian Act as this can be challenging to define. It is for this reason 'Villages' and 'Communities', representing titled lands and areas to be titled or waiting to be titled if they so wished, were clearly defined.*

*Traditional territories, if taken literally, can mean the entire land mass of Guyana including those occupied by other Guyanese, some having arrived between 500 and 200 years before. Once again there was need for balance given that Amerindians as a group are the largest private land owners in Guyana, and, paramount to national unity is the preservation of the harmony that exists amongst the various ethnic groups.*

*It would have been inconceivable to enact legislation where Amerindians would have titled lands that they own and control with some control over sub-surface rights which other Guyanese do not enjoy, and, that same control is exercised over State lands including lands held by other Guyanese as leases. [sic] However, the Government recognized that some traditional activities practiced by Amerindians outside of their titled land must have some form of protection. This resulted in a S57 of the Amerindian Act which preserved traditional rights on State lands while at the same time protecting the rights of those Guyanese who may have leases to some of those lands."*

#### **E. Mining issues. Relevant legal framework regarding mining operations in indigenous lands in Guyana**

72. Isseneru has complained of the presence of legal and illegal miners in its territory. It complained before the granting of the title, and also during the demarcation process. These complaints have been clearly stated and reiterated in the petition to the IACHR and gave rise to the request for precautionary measures that accompanied it.

73. All subterranean waters, rivers, creeks and other bodies of water, as well as river banks, are excluded from indigenous peoples' title. This is established in Section 53 of the Amerindian Act, and in the title deeds issued to Isseneru. Given its environmental conditions -tropical rainforest-, the territory hosts thousands of rivers, creeks and waterways.

<sup>36</sup> Petitioners cite the Statement of Defense by the Attorney General of Guyana in *Van Mendason et al v. A.G.*, High Court of Guyana, No. 1114-W.

74. Subsoil resources are also excluded from title. Mining Act Section 6 establishes that “*subject to the other provisions of this Part, all minerals within the lands of Guyana shall vest in the State*”; on these grounds the titles granted also exclude subsoil minerals expressly.

75. The Mining Act in Section 8 establishes that persons in Guyana who hold property titles issued prior to 1903 have the right to own, mine and dispose of the base minerals found in those lands. For petitioners, this is discriminatory with regard to indigenous peoples, whose title to property as recognized internationally predates colonial times.

76. Gold mining on communally titled Amerindian Village lands is regulated by sections 48 to 53 of the Amerindian Act of 2006. Due to their relevance for the present case, they are described in the following paragraphs.

77. Section 48, on “Mining”, provides as follows:

“(1) A miner who wishes to carry out mining activities on Village lands or in any river, creek, stream or other source of water within the boundaries of Village lands shall –  
 (a) obtain any necessary permissions and comply with the requirements of the applicable written laws;  
 (b) make available to the Village any information which the Village Council or Village reasonably requests;  
 (c) give the Village Council a written summary of the proposed mining activities including information on –  
 (i) the identity of each person who is involved; (ii) a non-technical summary of the mining activities; (iii) the site where the mining activities will be carried out; (iv) the length of time the mining activities are expected to take; (v) the likely impact of the activities on the Village and the Village lands; (vi) any other matters which the Village Council on behalf of the Village requests and which are reasonably relevant;  
 (d) attend any consultations which the Village Council or Village requests;  
 (e) negotiate with the Village Council on behalf of the Village in good faith all relevant issues;  
 (f) subject to section 51 reach agreement with the Village Council on the amount of tribute to be paid; and  
 (g) obtain the consent of at least two-thirds of those present and entitled to vote at a Village general meeting.”

78. Subsection (2) establishes that the GGMC may facilitate the consultations with the village, but may not take part in any negotiations. According to Subsection (3), “[a] person who contravenes subsection (1) is guilty of an offence and is liable to the penalties prescribed in paragraph (d) of the First Schedule”.

79. Section 49, on “Terms of Agreement”, provides in Subsection (1) that “[a]fter the Village has given its consent under section 48, the Village Council, acting on behalf of the Village, shall enter into a written agreement with the miner”. Subsection 2 establishes some “*implied terms*” that shall be understood to be incorporated into the agreement, including aspects such as the employment of residents and non-residents, the purchase of food and materials; in particular, under letter (d), this subsection provides that “*the miner shall take all reasonable steps to avoid (i) damage to the environment; (ii) pollution of ground water and surface water; (iii) interference with agriculture; (iv) damage to or disruption of flora and fauna; and (v) disruption of residents’ normal activities*”. Subsection 3 enumerates other possible terms that may be included in the agreement if the Village so requires, on aspects such as the behavior of the miner and his agents, an environmental protection programme, waste disposal plans, and others.

80. Section 50 regulates consent for large-scale mining enterprises. According to subsection (1),

“If a Village refuses its consent in respect of large scale mining, a miner may carry out the mining activities if –  
 (a) the Minister with responsibility for mining and the Minister [of Amerindian Affairs] declare that the mining activities are in the public interest;  
 (b) subject to section 51(2) and (3), the Minister with responsibility for mining, in consultation with the Minister [of Amerindian Affairs] determines the fee and the tribute to be paid by the miner to the Village; and  
 (c) the miner gives the Minister with responsibility for mining a written undertaking that he will – (i) comply with the rules made by the Village Council; (ii) require his employees and agents to comply with the rules



made by the Village Council; and (iii) promptly pay fair compensation for any damage caused by his mining activities to Village lands or property owned by residents”.

81. Subsection (2) provides a period of sixty days for negotiations between the Village and the miner, “with a view to reaching an agreement before mining commences”; and according to Subsection (3),

“If the miner and the Village fail to reach agreement under subsection 50(2) the Minister  
 (a) shall require the miner to enter into an agreement with the Minister on behalf of the Village which contains the provisions in section 49(2); and  
 (b) may require the miner to enter into an agreement with the Minister on behalf of the Village covering the items specified in section 49(3)”.

82. Section 51(1) establishes that miners must pay the Village a tribute of at least 7% of the value of any minerals obtained from Village lands through small- or medium-scale mining. As for large-scale mining, Subsection (2) provides that the tribute shall be negotiated in good faith between the miner and the village, or between the miner and the Minister if the Village has refused its consent.

83. Section 52 regulates “*Traditional mining privileges*”. Subsection (1) provides that “[a]n Amerindian who wishes to exercise a traditional mining privilege shall – (a) obtain the consent of the Village Council; and (b) comply with any obligations imposed by or under any other written law”. According to Subsection (2), “[a]n Amerindian who wishes to carry out mining activities which are not covered by a traditional mining privilege shall obtain the permits required by, and comply with the obligations imposed under, any other written law”.

84. Section 53 enables the Guyana Geology and Mines Commission to issue mining permits, concessions or licences over Amerindian titled lands and their surrounding areas. This provision reads as follows:

“Subject to the other provisions of this Part, if the Guyana Geology and Mines Commission intends to issue a permit, concession, licence or other permission over or in – (a) any part of Village lands; (b) any land contiguous with Village lands; or (c) any rivers, creeks or waterways which pass through Village lands or any lands contiguous with Village lands, the Guyana Geology and Mines Commission shall first – (i) notify the Village; and (ii) satisfy itself that the impact of mining on the Village will not be harmful.”

85. The GGMC can therefore issue mining concessions over titled lands, but a village can veto small and medium scale concessions. This coexists with the exclusion of mining concession areas understood as private lands from the scope of the village property title, which divests the Village Council of any authority over them.

86. As for large-scale mining in village lands, a titled village may refuse its consent, but that refusal can be negated “if the Minister with responsibility for mining and the Minister (for Amerindian Affairs) declare that the mining activities are in the public interest”. There is no definition of what is in the public interest.

87. As stated above, all subterranean minerals and all water resources, together with a 66-foot river bank, are retained under government control and cannot be included within Amerindian title; but the GGMC can award mining concessions for the river bank and for the river itself. The justification for the retention of State control over river banks is to allow free passage along the riverbanks.

## **F. Mining operations in Isseneru’s territory**

88. Petitioners have repeatedly asserted that the titled and untitled territory of Isseneru is almost completely encroached by mining permits and concessions. These have been granted by the State without notifying the community or allowing it to participate. As of the date of presentation of the petition, it was reported that over 100 mining permits and concessions had been granted by the State in the ancestral territory (titled and untitled), most of them prior to the issuance of the title in 2007. The property title granted over the Isseneru lands contains a provision that excludes and excises prior property rights from the title. These prior property rights include concessions and permits granted to miners and extractive industries. Miners’ interests thus amount to constitutionally protected property rights, which predated the granting of title to Isseneru. As indicated in the preceding Section, in the petitioners’ view, this protection of miners’ interests supersedes and

negates Isseneru's own rights, largely due to the date in which the State chose to grant the community title. They were therefore excluded from the title when it was delimited in 2007. Given the legal protection of prior property rights, for the petitioners these concessions and permits deem the property title over Isseneru's lands illusory. Petitioners fail to provide specific information on any of these mining permits, concessions and operations, except for those of Messrs. Lalta and Narine, described *infra*.

89. The State has alleged, in its second submission of information regarding the precautionary measures request, that "*the Government is not aware of any recent or [otherwise] approvals of concessions, permits and licenses for mining in Amerindian titled lands which are not in compliance with the provisions of the 2006 Amerindian Act*", in particular regarding Village Councils' power of veto over small- and medium-scale operations. It also alleges that in the Isseneru village "*the Government is unaware of any known approval of recent by the GGMC with respect to issuance of concessions permits and licenses to mine*". Furthermore, it reports that "*Isseneru village lands which is located in a designated mining district has an overlay of mining blocks for which many non-residents hold claims, however most are not active with the exception of Lalta Narine who continues to mine through obtaining an injunction on the GGMC and the Village Council of Isseneru and the Toshao to not interfere [in the mining exploitation]*".

90. Petitioners claim that as of 2010, at the moment of demarcation of the titled lands, there were 24 dredges -mining operations- at Haimaraka, a location inside Isseneru's titled lands. In 2013, the Isseneru community obtained a map of the mining concessions granted by the State in their ancestral -titled and untitled- lands, and found out that almost all of their titled lands, and large parts of their traditional untitled lands, were engulfed by mining concessions. All the concessions had been issued by the State without notifying the community. Given the legal precedents described above, such mining concessions were excised from the property title, and therefore the community had no authority over them and no recourse to seek the protection of its rights. Many of the operations continue to take place over the explicit objections of Isseneru, as indicated by the petitioners.

91. Guyanese judges have twice decided in favor of miners on the grounds of the legal provisions protecting prior property rights. The principle has now been endorsed in other rulings concerning indigenous lands, and thus constitutes an authoritative precedent within the Guyanese legal system.

- *Mr. Lalta Narine's mining operations*

92. A miner named Lalta Narine holds between 14 and 17 prospecting permits within Isseneru's ancestral territory, most of which fall into the lands titled to Isseneru in 2007. He was carrying out mining activities at the time of presentation of the petition, exceeding the limits of his prospecting permits. He has held the permits since 2000, valid for one year, which grant permission to look for, not mine, minerals. He renewed them annually on payment of fees to the GGMC. Petitioners provided copy of a communication addressed by the Land Management Officer of the GGMC on November 29, 2010, to the Ministry of Amerindian Affairs, confirming that Mr. Lalta Narine was granted 14 mining permits, in the months of August and October, 2000. The communication clarifies that "*said permits were issued when the areas in question were not Amerindian village lands, but held the status of vacant state lands*"; it also noted that the permits were currently subject to cease-work orders, pending the decisions of the High Court on the applications made by Mr. Narine in relation to the permits. These prospecting permits were progressively renewed over the course of the following years. Petitioners have provided copies of the renewals issued, in the form of new Prospecting Permits for Medium-Scale operations, in the year 2001, most of them valid until 2003, and covering different tracts of land in the Mazaruni Mining District and the enclosing portions of the Isseneru river; they all express that they are being granted to prospect gold and precious stones, and cover the areas described therein "*with the exception of all lands lawfully held under title*".

93. On 12 December, 2007, the Guyana Lands and Surveys Commission made a study of the location of the mining operations undertaken by Lalta Narine, and formally certified that "*the coordinates obtained was*

*plotted and the plotted position revealed that Mr. Narine mining activity is within the eastern boundary of Isseneru Amerindian Village".* Petitioners annexed a communication from the Guyana Lands and Surveys Commission dated 4 January 2008 confirming that *"the mining activity conducted by Mr. Lalta Narine is in Isseneru's titled land"*, and another communication dated 29 November 2010, listing 14 permits within Isseneru's titled lands and holding *"said permits were issued when the areas in question were not Amerindian village lands, but held the status of vacant state lands"*.

94. According to the information available in the casefile, the Village Council of Isseneru sought to stop the mining activities by occupying the areas covered by the permits in 2007, but Mr. Narine persisted. After the passage of the Amerindian Act in 2006, when Mr. Narine tried to renew the permits, the GGMC requested that he present a copy of a signed agreement with the Isseneru Village Council, as required by Section 48 of the Amerindian Act. He refused, and the GGMC adopted "cease work" orders to halt his unauthorized mining. Mr. Narine thereafter sought an injunction naming both the GGMC and the Isseneru community as defendants. The injunction, which was granted on an interim basis on December 17, 2007, restrained the defendants from interfering with his operations or entering the lands encompassed by his permits. The injunction was extended and made interlocutory in the High Court of Guyana on August 13, 2008. The High Court granted the request holding that the community had no authority over mining concessions that had been authorized prior to the passing of the 2006 Amerindian Act -which was therefore not applicable to them-, and which were expressly exempted in the 2007 title deed, which protects prior property rights in "lands lawfully held". This is despite the fact that the permits were expired and renewed after the entry into force of the Amerindian Act. The High Court, a copy of whose decision was provided by the petitioners, ordered the community to abstain from interfering with Mr. Narine's operations.

95. The community -Village Council- filed an appeal on August 27, 2008, citing inter alia that the permits were expired and then renewed after the passing of the law, and that they were only for prospecting, thus being violated by the mining activities developed by Mr. Narine; but until the date of the petition no final ruling had been made by the Guyana Court of Appeal. On April 3, 2009, the appeal was scheduled to be heard before the Court of Appeal; but the High Court Justice who had rendered judgment on the interlocutory proceedings had not submitted the written reasoning underlying his ruling, for which reason the matter was adjourned, and the Court of Appeal said that it would request a submission of those written reasons. Isseneru's attorney wrote to the Office of Guyana's Chief Justice on April 16, 2009, July 30, 2009, April 7, 2010 and October 25, 2010, indicating that the appeal was still pending. The Isseneru community also wrote to the Chief Justice urging a speedy resolution of the appeal on February 16, and July 12, 2010. Mr. Narine continued to mine in Isseneru territory at the time of the filing of the petition. As of the date of the present report, the appeal has not been heard or resolved. This, despite the fact that the Time Limit for Judicial Decisions Act of 2009 binds judges to give their reasons in writing within 120 days after handing down their rulings. Petitioners hold that they are unaware of any attempt by the judicial authorities to seek or compel submission of the written reasons, or to sanction the judge for this dereliction of duty.

96. The State has provided the IACHR with information on the observations made by a commission of officials from the MNRE, the Natural Resources Agencies, Guyana Geology and Mines Commission, and EPA, which visited Isseneru on November 25, 2013 as part of a fact-finding mission, and reported:

*"The team visited Lalta Narine's mine operation located within the Isseneru Titled Lands. Mr. Narine operation is a land base operation that uses an excavator, pump and sluice box system. This operation discharges its waste into an unknown tributary which finds its way into the Isseneru Creek and hence the Mazaruni River. Analysis of the water within the unknown tributary in the vicinity of the mine produced a turbidity of 370 NTU. This result was far above the standard recommended by GGMC."*

97. Thus, all this time Mr. Narine has kept on mining, causing environmental harm and destruction. In a communication of October, 2014 petitioners informed that Mr. Narine's operations engulfed at least ten percent of Isseneru's titled lands, and an area of its traditional untitled lands. They also report that *"persons employed by Mr. Narine threatened violence, including death, against members of Isseneru Village Council and*

*physically assaulted one person, facts acknowledged by the Bartica Magistrates Court in 2007, which placed the perpetrator on bond for one year”.*

- *Ms. Joan Chang’s mining operations*

98. In 1989, Mr. Ivor Chang acquired a mining permit falling within the lands that would be titled in 2007 to Isseneru. In 2011, his sister, Ms. Joan Chang, entered the Isseneru titled lands in order to begin operations under the mining permit. Her mining operation is within and adjacent to Isseneru’s titled lands. The community objected, but Ms. Chang ignored the objections, and the mining operation started. The community then sought “Cease Work Orders” from the GGMC, and two such orders were issued on 24 November and in December, 2011. However Ms. Chang ignored those orders, and on December 5, 2011, she filed a request for an injunction with the High Court, against the GGMC and the Isseneru community, asking to quash the cease work orders and requiring that Isseneru abstain from interfering with the mining operations. On January 17, 2013, the High Court granted the injunction in favor of Joan Chang, and held that miners who had obtained mining permits prior to the entry into force of the Amerindian Act in March 2006 were not bound by this legislation’s provisions. The Court also held that the title granted to Isseneru explicitly excluded preexisting property rights and that consequently Ms. Chang did not need to obtain permission from the village before carrying out operations on titled land. The High Court held: *“This Court is of the view that this section [of the Amerindian Act requiring permission from the Village Council for entry into and use of titled lands] ...does not refer to persons who already hold claim licenses and have already been on the land prior to the Amerindian Act 2006”* (p. 10). It also held that Isseneru had failed to prove *“that the Far Eye mining licences were not held since 1989 or prior to the coming into operation of the Amerindian Act 2006, nor have they shown cause that the said Far Eye claims were not excluded under the ‘save and except all lands legally held’ clause in State Grant No. 7865; therefore the [Isseneru Village Council] cannot exercise control over the Far Eye mining claims”* (p. 13); and concluded that *“[s]ince the Far Eye claims were held prior to the issue of the State Grant No. 7865, they would have been excluded under the words ‘save and except all lands lawfully held’ and since the Far Eye claims were held prior to the commencement of the Amerindian Act 2006, section 48 of the Amerindian Act could not apply to the Far Eye claims; therefore the [Isseneru Village Council] did not show cause why the order nisi of prohibition should not be made absolute”* (p. 15). Finally, it held that *“a person with an existing mining claim or license prior to 2006 cannot be ordered to cease their operations on the ground that the claim is within the boundaries of the Amerindian titled lands issued subsequent to their acquiring title, and which specifically excluded all mining claims by virtue of the clause ‘save and except all lands lawfully held’ as stated in the grant. In the case the Isseneru Village Council has no authority under the Act to cause the working of the Far Eye claims to be stopped”* (p. 16). The majority of the Court ruled that the mining operations *“were the subject of grants of license made prior to the coming into operation of the Amerindian Act 2006 and were expressly excluded and excepted in the instrument of State Land Grants to the said [V]illage Council made pursuant to the provisions of the Act and therefore are outside of the application of the provisions of said Act”* (p. 2).

99. In this same judgment, Justice Insanally explained: *“It is rather unfortunate that the Guyana Geology and Mines Commission had granted the Far Eye claim licenses before the second respondent [Isseneru] was awarded their title. It is obvious that the drafters of the State Grant took this into consideration when they included the words ‘save and except all lands legally held.’ It may appear to be manifestly unfair to the Isseneru Villagers but the Constitution of Guyana, by virtue of Article 142 has guaranteed all persons the right to property lawfully held”.*

100. As a consequence of this judgment, Isseneru was ordered to refrain from interfering in Joan Chang’s mining operations and the mining operation continued. A further appeal was filed by Isseneru on February 18, 2013, relating to this operation and to a series of active mining permits assigned to Mr. Wayne Heber in another area of Isseneru’s primary farming land. Public reports indicate that the GGMC appealed the High Court’s Chang ruling.<sup>37</sup> The trial judge submitted the written reasons, but neither appeal has been heard to date, with the same results as in the Lalta Narine proceedings. Mining by Joan Chang has continued. Petitioners allege that decisions such as these have been applied in other judicial rulings, and now constitute authoritative precedent

<sup>37</sup> See: “Government says Amerindian Act provides adequate protection for indigenous peoples”. In: Guyana Times, February 15, 2013; At: <https://www.guyanatimesinternational.com/govt-says-amerindian-act-provides-adequate-protection-for-indigenous-peoples/>

within Guyana's common law legal system. The Narine and Chang rulings contributed to confirm and consolidate such precedent, which is now the constant jurisprudence of the Guyana judiciary, upholding the interests of miners over the right of indigenous property title holders.

101. Following public protests over the rulings against Isseneru, representatives of the Government made public statements to the effect that there was no need to amend the Amerindian Act to address the problem; petitioners consider that the provisions of this legislation are the underlying cause of the issue. According to a statement made to the press by the Cabinet Secretary in February, 2013, the Amerindian Act's provisions are sound, grant adequate protection for indigenous peoples, and adequately provide for the resolution of matters such as this one.<sup>38</sup>

102. For the petitioners, these rulings which set the *jurisprudence constante* of the Guyanese courts in this regard, have the following effects:

- a) they legitimize and sanction the issuance of mining permits within Isseneru's traditional lands prior to the grant of its title, without even notifying the community, on the basis that the community has no rights until affirmatively 'granted' such rights by the State;
- b) they exclude those mining permits from, and allow them to survive, the grant of title made in 2007. In doing so, they also sanction the deliberate and ab initio privileging of third party interests in the very title deeds that purport to protect the rights of indigenous communities and without any consideration for those rights in the process;
- c) they invalidate Isseneru's right to control and manage its lands in the corresponding areas even after title had been issued and the statutory rights of the Village Council became operative pursuant to the Amerindian Act; and
- d) they sanction the exclusion of rivers and creeks and their banks from indigenous titles, thereby permitting highly destructive and rampant mining of rivers, even in close proximity to the residential areas of their villages as happened to Isseneru".

103. Petitioners claim that in some instances Isseneru has managed to negotiate *post hoc* agreements with the non-indigenous holders of the mining permits or concessions, decisions over which it had little choice because of the permits' preexistence and legal protection; but other than those few cases the community has not secured a reasonable benefit from these mining activities. They argue that given the encroachment of their titled and untitled lands by mining permits and concessions, the exclusion of the lands held by miners from the property title, and the judicial protection given to miners' interests, Isseneru's title to property has been rendered ineffective and largely worthless. Therefore, they claim that Isseneru has been left with no choice but to make agreements with some of the mining operations encroaching their territory; but the majority operate without any formal agreement with the Village Council. As stated by the petitioners, "*Isseneru had little choice about entering into such agreements as the concessions or permits held by these persons were in place prior to it obtaining title and would continue irrespective of any agreement with Isseneru (...). By entering into agreements with these miners, Isseneru was simply able to obtain a financial benefit from these operations -operations that would have continued anyway- as well as exert some minor degree of jurisdiction over them. That the State now attempts to use these agreements to justify and excuse its own acts and omissions and the harm they continue to cause Isseneru is no more than blaming the victims for a situation that (...) was and remains entirely of the State's own making and for which it bears sole responsibility*". Petitioners further argue: "*that Isseneru has chosen to honour the contractual arrangements made with miners and to complain about those who have refused to enter into such relations is in large part due to concerns about lawsuits for breach of contract and its belief that it has a right to exercise jurisdiction and control over activities within its lands (said agreements being the only way of partially satisfying this objective under current circumstances)*".

### **G. Environmental impacts of mining in Isseneru's lands**

104. The petitioners contend that the cumulative direct effects of the mining by the Narine, Chang and Heber undertakings include: the destruction of farming lands with a corresponding reduction in agricultural

<sup>38</sup> See: "Government says Amerindian Act provides adequate protection for indigenous peoples". In: Guyana Times, February 15, 2013; At: <https://www.guyanatimesinternational.com/govt-says-amerindian-act-provides-adequate-protection-for-indigenous-peoples/>

products for the community; and the destruction of wildlife and fish habitat, with a reduction in these sources or protein and sustenance for the diet of the Isseneru community members.

105. According to the available information, most of the mining projects, permits and concessions affecting indigenous land in Isseneru have lacked any prior environmental or social impact assessment, despite the legal requirement established in Section 11 of the 1996 Environmental Protection Act, which requires an environmental permit for any project which may significantly affect the environment. Schedule 4 of that Act lists in item 9 the “extraction and conversion of mineral resources” as one of such projects. According to the information provided, not contested by the State, the GGMC has not enforced these requirements for small- or medium-scale mining. In almost all cases, they argue, no ESIA has been conducted, and no mitigation measures have been put in place to protect the lands.

106. The existing mining operations have caused extensive occupation and destruction of the community’s lands and natural resources, titled and untitled. The impact of these operations is felt on their environment, their livelihood and their health. Because of the fragile nature of the soils and productive capacity of the lands in the Amazon region where Isseneru resides, and given the scale of the mining taking place within their lands, petitioners contend that those mining operations have caused and will continue to cause irreparable harm to this community’s ability to survive as an indigenous community, under the Inter-American Court’s Saramaka judgment criteria.

107. In an expert testimony by Professor Janet Bulkan, from the University of British Columbia, of November 19, 2017 -provided by the petitioners-, it is concluded:

“A number of consequences flow from the negligence of the government agencies. There is no negotiating space in which the Akawaio rights holders of Isseneru can even discuss the secondary issues of ‘access and benefit sharing’ (...) of the wealth that is extracted from their customary lands. Their rivers and streams are fouled and blocked up with tailings as the EPA does not enforce the requirement for Environmental Permits and the GGMC does not enforce the environmental Mining Regulations 2005. The Akawaio of Isseneru suffer the environmental impacts of crude alluvial mining across their territory – contamination of water bodies, destruction of river beds and river banks, ecosystem destruction and extinction of riverine species, loss of potable water sources, contamination by methylated mercury – and receive at best ‘black water tanks’ imported from Trinidad and Tobago as compensation. Isseneru’s rights to a livelihood are not possible when rivers are polluted and fish stocks degraded, poisoned or destroyed”.

108. A member of the community, Mr. Carlton Williams, explains in his affidavit that *“mining has contributed to increased loss of farming land. Where Lalta Narine’s mining concessions were located – that was the best farm land. It’s flat and highland, so there are no swamps. Now we cannot farm there, even though it is part of our lands. (...) I feel annoyed and anxious about how miners come now and destroy our lands. They are destroying our fishing grounds, mountains, farming grounds. What happened to the future? It wouldn’t be like how my grandparents lived. In the future, our children won’t have the freedom to move around their own traditional lands.”*

109. Another member of the community, Ms. Jacqueline Joseph, describes the environmental impact of mining in an affidavit sworn on November 26, 2017 and provided by the petitioners: *“We were living in the Isseneru Creek in the 1980’s. No miner was here when we first came to settle the Isseneru area. We used to drink the water from the Isseneru creek but today it is brown and cannot be consumed anymore. Mining has affected our lives in many ways. The fishes that we eat are contaminated with mercury and our rivers are destroyed and heavily polluted by the tailings of river dredges. It is no longer safe to travel the river because it is now blocked by the tailings of river dredges. We feel hurt by these situations and I know that we are doing the right thing by taking a stand to defend our lands.”*

110. One of the foremost negative impacts of mining in Isseneru’s territory is the contamination of rivers and creeks with mercury. In 2002 the Canadian International Development Agency (CIDA) funded a study which revealed that between 89 and 96 percent of the population surveyed in Isseneru had dangerous levels

of mercury contamination, as measured by the presence of this metal in their hair.<sup>39</sup> A WWF survey of mercury contamination found that *“no one sampled in Isseneru has a concentration of mercury considered to be safe or even normal. The most salient determinant factor for the elevated Hg levels in Isseneru in the study was diet”*<sup>40</sup>. Due to the contamination with mercury, members of the Isseneru community have been forced to stop consuming many kinds of fish, which is one of the main sources of protein in their diet.

111. In a 2009 press report, Isseneru community members expressed that *“they have been using alternative sources of protein as well as adapting to the use of other foods such as cassava and plantains as opposed to fish”*<sup>41</sup>. This has also interfered with fishing, which is an activity central to their culture. The anthropological expert testimony provided by the petitioners, subscribed by Professor Kirsch, explains in this regard that *“given their exposure to mercury, they have been advised not to consume too much fish, although they lack an alternative source of protein in their diets. They were also told to avoid certain fish with higher levels of mercury, but very few of them follow this advice. Some people say that they have tried to ‘ease up a bit’ on fish consumption because of health concerns. Pregnant women in particular have been discouraged from eating too much fish, although one woman asked me: ‘What’s the alternative?’ Fish is the primary source of protein in the diets of people in Isseneru”*. Documents produced by the State itself have recommended the Akawaio and other people of the Middle Mazaruni to restrict their consumption of fish due to mercury contamination. Both the State and the petitioners have supplied a copy of a leaflet produced by the State in this precise sense, leaflet which has a predominantly visual and educational nature.

112. The State has held, in its first submission of information regarding the request for precautionary measures, that *“all small scale and some medium scale mining in Guyana use mercury as part of the recovery process”*; that the laws of Guyana restrict the use of mercury, which is highly regulated; and that *“Guyana is committed to phasing out mercury (...) by 2022”*. As regards the situation of the Isseneru territory, the State alleges that the major independent study relied on by the petitioners dates back to 1999, and that *“the findings of the study were questioned at the time due to the lack of scientific approach and rigour with regard to the actual reliability of the equipment and capacity of a local agency at that time. Regrettably this study has not been updated”*. Regardless of this, the State reports that after said study, the Government itself conducted an awareness-raising campaign and education programmes in Isseneru regarding mercury, with an initial positive impact, but *“unfortunately it has subsequently been reported that Isseneru residents now disregard the recommendations that serve to protect them from mercury”*. It also contests the accuracy and scientific merits of some of the studies of a broader scope cited in the petition.

113. Petitioners have stated that the Isseneru community members themselves use mercury in their own gold mining operations, and they are reluctant to resort to other options due to their expensive nature, and their mistrust of the operators of the required equipment. In relation to the above, the State has also argued that the residents of Isseneru themselves have contributed to mercury contamination with their own mining practices, and that health issues such as alcoholism preclude a proper assessment of the extent of the problem:

*“In 2009 it was reported in the media that residents of Isseneru were engaged in mining but did not use a retort to ensure safe handling of mercury. In addition residents kept mercury at home near to sleeping and cooking areas. It is clear that the mining carried out by the residents themselves and their careless handling of mercury could result in high levels of mercury in their bodies as a result of inhalation and absorption. The nature of mercury, the variables in its use and the variables in the environment make it difficult at this time to draw any firm conclusions. Another variable is that as Amerindians abandon their traditional culture, including the traditional diet, and adopt a modern ‘American diet’ they are developing new lifestyle diseases. The toshao has noted that increased alcohol consumption in Isseneru is a growing problem. There is also extensive local production of traditional cassava based alcoholic drinks. Alcohol abuse has dangerous and*

<sup>39</sup> Stabroek News. “Isseneru scaling down on fish to limit mercury poisoning”. August 6, 2009. At: <https://www.stabroeknews.com/2009/08/06/news/guyana/isseneru-scaling-down-on-fish-to-limit-mercury-poisoning/>

<sup>40</sup> “Review of Mercury Studies in Guyana for the Development of a Project to Reduce Mercury Pollution”. Saudia Rahat, PAHO Consultant, WWF Guianas, 1998, at p. 14.

<sup>41</sup> Stabroek News. “Isseneru scaling down on fish to limit mercury poisoning”. August 6, 2009. At: <https://www.stabroeknews.com/2009/08/06/news/guyana/isseneru-scaling-down-on-fish-to-limit-mercury-poisoning/>

debilitating effect on the body. (It should be noted that Isseneru has the power to regulate the importation of alcohol into their community).  
Such health issues make it more difficult to assess the impacts of mercury.”

114. Furthermore, the State asserts that Isseneru has not provided the GGMC, the EPA, the Ministry of Natural Resources and Environment, the Indigenous Peoples Commission, the Minister of Amerindian Affairs or the Ministry of Health with a list of mining operations that are causing pollution in their lands or waters, but rather refused to cooperate with those authorities. It also argues that “*Isseneru is a wealthy community with a large income from mining and is able to afford to pay for health care if it does not wish to use the free public health services. However there is no evidence that Isseneru has sought such medical help for mercury poisoning*”.

115. Despite the above, the State submitted in its second presentation to the IACHR during the precautionary measures procedure a document entitled “*Report on the Rapid Assessment of the Presence of Mercury in surface water and soil in the Isseneru Area*”, prepared by the Environmental Protection Agency of Guyana on the grounds of measurements made in December, 2013, which reads in pertinent part:

“Mercury Concentration (Surface water)

The presence of mercury was evident in all the sampled locations (...). Concentrations ranged from 0.85 ppb to 11.81 ppb, and were found to be above US EPA recommended limits for inorganic mercury in surface water (0.144 ppb).

(...) Mercury Concentration (Domestic water)

US EPA has determined that a daily exposure (for an adult of average weight) to inorganic mercury in drinking water at a level up to 2 ppb is not likely to cause any significant adverse health effects. Drinking water sampled in the Village of Isseneru revealed concentrations above this recommended limit (5.6 ppb and 9.4 ppb).

(...) Conclusions and Recommendations

(...) The rapid assessment while not comprehensive revealed that mercury in its organic form is present in the surface waters and river sediments in the Mazaruni River in the vicinity of Isseneru Village. The concentrations of mercury in the surface water and domestic water were found to be above US EPA recommended limits, respectively. Mercury concentrations in the river sediments and soils were all below US EPA recommended limits. It is important to note Mercury is dangerous to human health and gets into the food chain only when it is converted to methyl-mercury, not in its inorganic form. Conversion to methyl-mercury is dependent upon high levels of organic material in the water column or soil.”

116. This same EPA assessment includes some “Notes from interviews with residents of Isseneru Village”, taken during the fieldwork period of December, 2013, as follows in pertinent part:

“- Most of the community members are involved in mining but this is done on the community lands. They also indicated that a majority of the mining activities are done in the Imaracko area. These activities are carried out by the men of the community.

- Residents indicated that they use the water from the River for various domestic activities inclusive of drinking, bathing, washing, etc. It was also indicated that they source drinking water from a small spring located on a tributary of the Mazaruni River.

- Most of the fishing done by the community is done by women. It was indicated that they would source and eat fish from the river but this is done once per week. (...) Apart from the fish sourced from the river, the community also use wild meat such as labba and agouti, and they purchase chicken from various landings.

- While villagers lamented that the Mazaruni River is polluted and allegedly contaminated with mercury, most of the community fishing activities is carried out in small uncontaminated tributaries of the Mazaruni River.

- Persons were asked about the amalgamation of gold by villagers. It was indicated that gold is not burnt in the community. It was also indicated that some 20% of the villagers are owners of mining equipment and these equipments are used to carry out mining activities on community lands.

- It was indicated that some amount of mercury is stored in the homes of miners who mine on the community lands. It was also indicated that some villagers used to sell mercury in the community but this has since stopped about 2 months prior to the Agency’s visit.”

117. In its submissions during the precautionary measures procedure, the State has repeatedly reported that after the presentation of the petition and request for precautionary measures to the IACHR it sent out



teams of public officials to the area in order to verify the existence of the mining operations that were said to be causing the damage, but that the community's authorities, members and counselors were uncooperative and did not provide information or take the delegations to the sites of the alleged operations, which were therefore impossible to prove or disprove. For this reason, even though -as the State reports- *"the Government in April 2014 took the decision to close down all illegal mines operating in the Isseneru Titled Land which were in breach of the Amerindian Act 2006 and or the Mines Act and Regulations 2012"*, such decision was impossible to implement due to the non-cooperation of the community. The State also reports that in May 2014, a delegation of public officials issued closure orders -Cease Work Orders or CWOs- for several mining operations found to be in violation of the law within the Isseneru titled lands; but that the delegation met aggressive opposition by a group of villagers and miners, thereby questioning the effective implementation of said orders.

#### **H. Mining activities carried out by the members of the Isseneru community**

118. In its first presentation of information regarding the request for precautionary measures, the State argues that *"the main source of income for the community of Isseneru is mining. Isseneru has two excavators which are rented out to miners in return for a tribute of 12%. Isseneru community members also have their own dredges which they use to obtain gold. Even the community health worker and her husband are involved in mining. The Isseneru Village Council has also given permission to other miners in return for a percentage of the gold found."* The State also cites at length an article published in the newspaper Stabroek News, where it was reported that *"Isseneru is located in the heart of the gold-mining country and the village has gotten into this activity with most of the villagers engaged in mining in some form or the other. With other jobs scarce it is how the villagers make their money."* Said article also reported that the cost of living in Isseneru is high, which the State regards as a marker of a *"cash economy not a subsistence economy"*; the State points out in this regard that *"Isseneru receives such a high income from mining that Isseneru has built a multi-purpose center costing G\$25,000,000 [approximately US\$125,000] and a guest house costing G\$24,000,000 [approximately US\$120,000]"*.

119. The State further reports that one of the attorneys who represented Isseneru in the filing of the petition before the IACHR, Mr. David James, delivered a communication on May 15, 2014 to the Minister for Natural Resources and the Environment, stating:

*"The Council has informed me that the mines officers from the GGMC visited the village on Saturday May 10, 2014 and proceeded to issue cease work orders to residents engaged in mining within Village titled lands and who were conducting their mining activities with the permission of the Council and Village as they have done for a number of years prior.*

*I am informed that this move by the GGMC to issue cease work orders to residents is unprecedented and therefore comes as a complete surprise to the Council and residents who have always strived to conduct their mining activities in the most responsible way in keeping with the laws and regulations.*

*In these circumstances I kindly request on behalf of the council that this matter be given the urgent attention it warrants. (...)"*

120. In the State's own terms, *"the Government has found this request by Mr. David James (the lawyer for the Isseneru Village Council and the APA, and one of the authors of the petition to the IACHR) quite bewildering. From his own statements made at the meeting with the NTC and the Village in November 2013 he did not wish to have the issue of mining or any issues named in the petition addressed by the Government or any other body. (...) The Government is convinced that the petitioners have no desire to stop mining in the Isseneru Titled Lands nor do they intend to comply with the Amerindian Act 2006, the Mines Act and 2012 Regulations. (...) The Government has provided evidence to show that the Isseneru's main form of economic activity is mining and that it is very lucrative and appears to be very beneficial to members of the community, including the Toshao and some members of the Council in particular who are themselves engaged in mining. By their own rejection of the [Cease Work Orders] issued to protect their residents from harm and unregulated mining operations, the request for precautionary measures cannot and should not be upheld"*.

121. In its second submission of information in the course of the precautionary measures procedure, the State reported as follows:

“The Government wishes to bring to the IACHR’s attention that there are 36 registered dredges owned by 33 persons and the Isseneru Village Council working on 46 mining locations in the Isseneru titled lands. A registered dredge does not give the owner mining rights unless permission is issued by the GGMC to mine in a specified location after the Village Council has convened a special meeting of the community and consent is given by 2/3 of the community at the meeting. This must be communicated to the GGMC in writing by the Village Council as stipulated in the Amerindian Act 2006.

Registered dredges are those dredge machines which have been registered to operate the dredge, however, to locate and to operate the dredge the owner must have a permit issued by the GGMC to operate within a specific location otherwise the owner is in violation of the Mining Act and the 2012 Regulations.

Of the 34 owners of the dredges 7 are female and most are residents of Isseneru. Three dredges owners are not known to be from the community.

The Isseneru Village Council owns a registered dredge #8063 which has 2 locations which it is operating on. In fact, for the last quarter of 2013, one of the locations declared 80 ounces of gold whilst the other location did not declare any production.

Members of the Village Council including the present Toshao Mr. Lewis Larson (registered dredge #8524), the former Toshao Dhaness Larson (#9922) and members of the Larson Family own several dredges some of which have not declared any gold production for that period. The dredges of the Toshao and the former Tshaos did not declare any production of raw gold for the third quarter of 2013.

All of the dredge owners appear to have the consent of the Village Council or so it is claimed by Mr. David James and Toshao of the Village Council. The Government and its agencies without the submission of the written records and the written agreements with the miners cannot confirm this. However, the Government and its agencies are certain that not all are operating with licences to mine from the GGMC as stipulated by law.

As of the third quarter of 2013 the declared gold production for the Isseneru titled lands totalled 2,148 ounces. Prior to the 2013, the price of an ounce of raw gold was \$1800 USD, however, after the decline of the price of gold on the world market in that year, an ounce of raw gold was valued at \$1300 USD. Therefore the value of the declared production of raw gold in the Isseneru titled lands for the third quarter of 2013 was USD\$2,792,400.00!”

122. In this second presentation, the State has summarized its position stating: *“the petitioners have wrongfully advised the Akawaio Isseneru community that it has the right to allow small and medium scale mining in their community of residents and non-residents in breach of the procedures of the 2006 Amerindian Act and the Mining Act and 2012 regulations”*; and that *“the petitioners have brought a request for precautionary measures calling for the suspension of all mining due to irreparable harm to the community yet at the same time the petitioners have ‘approved’ small and medium scale mining in the Isseneru community which are the main contributors to pollution of the environment, turbidity in the water and exposure to mercury; || the petitioners have at the same time opposed the issuance of [Cease Work Orders] to small and medium scale miners on May 10, 2014 who were in violation of the Amerindian Act and the Mining Act and Regulations; the petitioners as a consequence (...) have intervened to reverse the [Cease Work Orders] with the Minister of Natural Resources and the Environment to allow the mining to continue contradicting the request to the IACHR to suspend all mining due to irreparable harm to the community and in so doing removed the very basis for the request for precautionary measures”*.

123. In a Statement of the Tshaos of Region 7 dated August 8, 2012, provided by the petitioners in a communication of October, 2014, it is stated:

“While it may be said that Amerindians themselves are involved in mining, this approval can be revoked by the Village Council should it be deemed as harmful at any point. Further, the instances of this practice are few since many communities would like to preserve the sanctity of their environment. Unlike the cases where the permit is granted by the GGMC, and leaves the Village Council without much authority to affect changes or are left with a lengthy runaround to try to correct the flaws in the agreement”. [sic]

124. Moreover, petitioners claim that the State closed down some of these operations on the grounds of irregularities under the existing regulations, and petitioners claim that this was a punitive measure against Isseneru for having filed a petition with the IACHR: *“community leaders and their legal counsel were explicitly told by the Minister of Natural Resources and the Environment that these measures were taken precisely because they had filed a petition with the Commission”*. Also, they claim that *“the scale and extent of the mining concessions*

*affecting Isseneru's titled and other traditional lands has severely reduced the traditional livelihood options of many community members, leaving them little alternative but to engage in mining activities".*

125. The expert anthropological report submitted by Professor Kirsch describes the community's position regarding mining by its members in its territory:

"Since the 1990s, the people from Isseneru have also operated small-scale or artisanal mines alongside their cassava farms. They do not see a contradiction between the two practices, as both involve 'making use of [their] resources for the benefit of the community'. They reject the State's criticism of their gold mining, as they use the resulting resources to enhance development in their community, which they point out that the State promotes everywhere else in Guyana. Their twelve percent share of gold mined on their land allows the village to provide support to the elderly, families with young children, and children attending school. They have also used these funds to pay for public works that benefit the entire village, including the building where we held our meetings and the guesthouse where we stayed.

To start a new mining project, villagers must apply to the village council for a concession. The village has equipment that it uses to identify prospective mining sites. They use diesel pumps and pressure hoses, a process known as 'jet mining', to mine for gold. Work crews are comprised of people from the village and laborers from the coast. They speak a mixture of Akawaio and English in the camps. (...) They assert that they are careful to follow the rules established by the State to protect their health and the environment when mining gold. (...) Twelve percent of the gold is given to the village, which is the same percentage paid by outsiders who are granted concessions within their titled lands."

126. This report also informs that the village has issued 25 permits for mining within its titled land, although not all of them are active.

## **V. ANALYSIS OF LAW**

### **A. Preliminary considerations**

#### **1. Application of the American Declaration and its interpretation in light of the developments in international human rights law since its adoption**

127. The American Declaration is a source of legal obligation that may be applied by the Inter-American Commission to Guyana on the basis of that State's commitment to uphold respect for human rights as provided for and defined in the Charter of the Organization of American States (OAS).<sup>42</sup> The State of Guyana is bound to respect the provisions of the American Declaration in conformity with the OAS Charter, Article 20 of the IACHR Statute, and Article 49 of the IACHR Rules of Procedure. The American Declaration became the source of legal norms for application by the Commission upon Guyana becoming a Member State to the OAS in 1991.<sup>43</sup> OAS Member States have agreed that the human rights to which the Charter refers are contained and defined in the American Declaration.<sup>44</sup> Many of the American Declaration's central provisions are also binding as customary international law.<sup>45</sup>

<sup>42</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 163; IACHR, Report No. 3/87, Case 9647, Roach and Pinkerton, United States, September 22, 1987, Series A, No. 10, paras. 34-45, 48-49; Inter-American Court of Human Rights, 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, para. 47 ("[T]he member states of the [OAS] have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the [OAS] cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.")

<sup>43</sup> IACHR, Report No. 81/07, Case 12.504, Daniel and Kornel Vaux, Guyana, 15 oct. 2007, par. 24.

<sup>44</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 163; OAS General Assembly Resolution No. 371/78, AG/RES (VIII-O/78), July 1<sup>st</sup>, 1978 (reaffirming Member States' commitment to promote compliance with the American Declaration on the Rights and Duties of Man); OAS General Assembly Resolution No. 370/78, AG/Res. 370 (VIII-O/78), July 1<sup>st</sup>, 1978 (referring to Member States' international commitment to respect the rights recognized in the Declaration).

<sup>45</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 163; IACHR, Report No. 19/02, Case 12.379, Lares-Reyes et al., United States, February 27, 2002, par. 46.

128. The American Declaration contains evolving standards that must be interpreted in accordance with the relevant developments in international human rights law and international law in general<sup>46</sup>, as evidenced by treaties, custom, and other relevant sources of international law. The rights set forth in the American Declaration must consequently be interpreted and applied in the broader context of both the inter-American and international human rights systems, in light of developments in international human rights law since the Declaration was adopted and having regard to other relevant rules of international law applicable to Member States against which complaints of violations of the Declaration are properly lodged.<sup>47</sup> Developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may thus be drawn from the provisions of other prevailing international and regional human rights instruments. In particular, this includes the American Convention on Human Rights, which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.<sup>48</sup> While the Commission clearly does not apply the American Convention in relation to Member States that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the Declaration.<sup>49</sup> The American Convention is the main recognized authority for interpreting the meaning and scope of the American Declaration's provisions.<sup>50</sup>

129. Specifically with regard to indigenous peoples and their rights, the Commission has held that the corpus of international law that is relevant in examining complaints concerning indigenous territories under the American Declaration "includes the developing norms and principles governing the human rights of indigenous peoples".<sup>51</sup> The provisions of the American Declaration must therefore be interpreted and applied "with due regard to the particular principles of international human rights law governing the individual and collective interests of indigenous peoples".<sup>52</sup> These include precepts on their traditional forms of ownership and cultural survival, and on their right to lands, territories and natural resources, which "reflect general international legal principles developing out of and applicable inside and outside the Inter-American system and to this extent are properly considered in interpreting and applying the provisions of the American Declaration in the context of indigenous peoples".<sup>53</sup>

## 2. Individualization of the victims

130. Petitioners have stated that the victims in the present case are the Isseneru community and its members, whom they report are approximately 230 persons. They have not provided a list or census of those members of the community with their individual names.

131. The organs of the Inter-American System have found it admissible, in cases related to the rights of indigenous peoples, for indigenous communities to be regarded as presumed victims.<sup>54</sup> Indigenous communities are holders of rights protected by the inter-American system, and may appear before it to defend

<sup>46</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 96; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 86.

<sup>47</sup> IACHR, Report No. 50/16, Case 12.834, Merits (Publication), Undocumented Workers, United States, Nov. 30, 2016, para. 68. See I/A Ct. H.R., Interpretation of the American Declaration. Advisory Opinion OC-10/89 of July 14, 1989, para. 37. See also ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16 ad 31 ("an international instrument must be interpreted and applied within the overall framework of the juridical system in force at the time of the interpretation").

<sup>48</sup> IACHR, Report 61/08, Grand Chief Michael Mitchell v. Canada, 25 July 2008, par. 64; IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 97, 124; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 87.

<sup>49</sup> See IACHR, Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (2000), para. 38; IACHR, Garza v. United States, Case No. 12.275, Annual Report of the IACHR 2000, paras. 88-89.

<sup>50</sup> IACHR, Report on the Status of Human Rights in Chile, OEA/Ser.L/V/II.34 doc. 21 corr. 1 (1974).

<sup>51</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 124; IACHR, Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 9.

<sup>52</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 131.

<sup>53</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 124, 129.

<sup>54</sup> Inter-American Court of Human Rights. Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 30.

their rights and those of their members.<sup>55</sup> International law on indigenous peoples and communities recognizes them as collective subjects of international law, given that “unified by their particular way of life and identity, [they] exercise some of the rights recognized in the Convention collectively”, including the right to ownership of the land and natural resources.<sup>56</sup> Conversely, those who acquire the legal status of “victims” or “aggrieved parties” in a given case may have suffered the corresponding damages in their condition of members of a collectivity, be it a community or a people. The IACHR has in many cases admitted that it has *ratione personae* competence in relation to indigenous peoples and communities as victims of acts or omissions attributable to a State, if they fulfil the conditions of being organized communities, located in specific places, whose members it is possible to individualize and identify on the grounds of specific criteria.<sup>57</sup>

132. Isseneru is an organized indigenous community, which is located in the Middle Mazaruni Basin in Western Guyana, and it is possible to identify and individualize its members based on their kinship, self-identification and place of residence. The IACHR notes that the number of inhabitants of the community reported by the petitioners coincides with the number of community members that were reported to the State at the moment in which the community formally requested title to its lands, when the Toshao of the time informed that there were 226 persons living in Isseneru. The Commission is therefore satisfied that the Isseneru indigenous community fulfils the criteria of being organized -it has a Village Council recognized under Guyanese law and has a Toshao, or captain, who acts as community leader and representative-, being located in a specific place -the Middle Mazaruni region-, and being composed of persons whom it is possible to individualize and identify based on specific criteria -their ethnicity, their family origins, their place of residence and work-. Consequently, in the present report the Isseneru community as such, and its members, shall be regarded as victims of any human rights violations which are identified and declared in the following sections.

### 3. Cultural change, history and evolution in Isseneru, and their legal effects

133. Guyana has alleged that Isseneru is not a traditional Akawaio community, because its members do not practice traditional Akawaio culture -as it is understood by the State-, insofar as they have abandoned the use of their traditional building materials and currently develop a cash-based economy supported on mining. Moreover, it has claimed that the members of Isseneru have no spiritual or cultural connection to their territory, because they have converted to Christianity and actively practice this faith in different churches and denominations.

134. The organs of the Inter-American System have espoused a comprehensive and dynamic notion of human culture. A broad definition is included in the UNESCO statement by which culture is “*the set of distinctive spiritual, material, intellectual and emotional features of a society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.*”<sup>58</sup> Following the Committee on Economic, Social and Cultural Rights, “[t]he concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificity and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society.”<sup>59</sup> As

<sup>55</sup> Inter-American Court of Human Rights. Advisory Opinion OC-22/16 OF February 26, 2016 (Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System). Series A No. 22, par. 72.

<sup>56</sup> Inter-American Court of Human Rights. Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 154; Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 149; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, pars. 145, 231.

<sup>57</sup> IACHR, Report No. 51/18, Petition 1779-12. Admissibility. Kaqchikuel Maya Indigenous Peoples of Sumpango, et al. Guatemala. May 5, 2018, par. 21; Report No. 64/15 (Admissibility), Petition 633-04, Mayan Peoples and Members of the Cristo Rey, Bullet Tree, San Ignacio, Santa Elena and Santa Familia Communities. Belize, October 27, 2015, para. 27; Report No. 33/15, Case 11.754. Admissibility. Pueblo U’wa. Colombia. July 22, 2015, par. 28; Report No. 63/10, Petition 1119-03, Admissibility, Garifuna Community of Punta Piedra and its Members, Honduras, March 24, 2010, par. 32; Report No. 141/09, Petition 415-07, Admissibility, Diaguaita Agricultural Communities of the Huascoltinos and the members thereof, Chile, December 30, 2009, par. 28; Report No. 75/09, Petition 286-08, Admissibility, Ngöbe Indigenous Communities and their Members in the Changuinola River Valley, Panama, August 5, 2009, par. 26.

<sup>58</sup> UNESCO Universal Declaration on Cultural Diversity of November 2, 2001, Preamble; cited by the Inter-American Court of Human Rights in the Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 237.

<sup>59</sup> CESCR. General Comment 21. Right of everyone to take part in cultural life (art. 15, para. 1(a), of the Covenant). Par. 12. Cited in: Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 239.

for the dynamic and evolutive nature of human cultures, CESCR has indicated that “*culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression ‘cultural life’ is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future*”.<sup>60</sup>

135. The Inter-American Court has expressly dealt with an issue such as the present one, in the following terms:

“it should be made clear that, given the evolutive and dynamic nature of culture, the inherent cultural patterns of the indigenous peoples may change over time and based on their contact with other human groups. Evidently, this does not take away the indigenous nature of the respective peoples. In addition, this dynamic characteristic cannot, in itself, lead to denying the occurrence, when applicable, of real harm to cultural identity. In the circumstances of this case, the changes in the way of life of the communities, noted by both the State and the representatives, have been related to the interference in their territory by non-indigenous settlers and activities alien to their traditional customs.”<sup>61</sup>

136. The issue has also been addressed by the IACHR in examining the relevance of history to the identification of indigenous and tribal peoples. A key element in the determination of when a given group can be regarded as indigenous or tribal is the historical continuity of its presence in a given territory and, for indigenous peoples, an ancestral relationship with the societies that pre-existed a period of colonization or conquest. This does not imply, however, that indigenous or tribal peoples are static societies that remain identical to their predecessors. On the contrary, as human groups, indigenous and tribal peoples have their own social trajectory that adapts to changing times, maintaining in whole or in part the cultural legacy of their ancestors. Indigenous cultures evolve over time, because just like any human society, indigenous peoples -and the communities that compose them- have their own history; they are dynamic human groups, who reconfigure themselves over the course of time on the grounds of the cultural traits that distinguish them. Indigenous culture is continually adapting to historical changes and challenges, and indigenous peoples and communities develop their cultural identity over the course of time.<sup>62</sup> The indigenous communities of the present are the descendants of the inhabitants of pre-Columbian America, not identical to those ancestral peoples. Over the centuries they have experienced specific events which have shaped their distinctive social structures, spirituality and social practices, language, art, folklore, memory and identity – in sum, their culture. It is on the basis of that individual and dynamic history that the relationship of each indigenous people and community with its territory is built, a relationship from which their physical and cultural subsistence emerges, and to which international law has given a privileged level of protection.<sup>63</sup>

137. The organs of the inter-American System have understood, as well, that the cultural identity of indigenous peoples is shared by their members, but it is inevitable that some members of each group will live with less attachment to the corresponding cultural traditions than others. This fact does not, and cannot, lead to the conclusion that indigenous peoples have lost their identity or the rights conferred upon them by international law. As stated by the inter-American Court of Human Rights in the case of the Saramaka People v. Suriname, “[t]he fact that some individual members of the Saramaka people may live outside of the traditional

<sup>60</sup> CESCR. General Comment 21. Right of everyone to take part in cultural life (art. 15, para. 1(a), of the Covenant). Par. 11. Cited in: Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, footnote 238.

<sup>61</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 284.

<sup>62</sup> In this sense, the IACHR has recognized, for example, that the Guatemalan indigenous peoples, in spite of the ethnic discrimination to which they have historically been subjected, “whether they live in rural or urban areas, they maintain an intense level of activity and social organization, a rich culture, and are continuously adapting to situations imposed by the exigencies of historical change, while protecting and developing their cultural identity”. IACHR, Fifth Report on the Situation of Human Rights in Guatemala. Doc. OEA/Ser.L/V/II.111, Doc. 21 rev., April 6, 2001, Chapter XI, par. 4.

<sup>63</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 35.

*Saramaka territory and in a way that may differ from other Saramakas who live within the traditional territory and in accordance with Saramaka customs does not affect the distinctiveness of this tribal group nor its communal use and enjoyment of their property*".<sup>64</sup> Insofar as they continue preserving and living their own cultural traditions, indigenous peoples and their members continue to have the individual and collective rights recognized by the inter-American system.<sup>65</sup>

138. Also, the inter-American human rights bodies have held that indigenous communities may be composed of persons and families that belong to more than one ethnic group, but who regard and identify themselves as a single community. This multiethnic composition of some indigenous communities, which responds to their condition of historical subjects, is consistent with the protection and exercise of their full range of rights under international law.<sup>66</sup> For example, in the Case of the Xákmók-Kásek Indigenous Community v. Paraguay, the petitioner community was composed mostly of members of two distinct ethnic groups -the Enxet-Sur and the Sanapana-, which did not preclude their receiving the full protection of international law.<sup>67</sup>

139. The State itself has admitted that, under the aegis of its own legislation, Amerindian communities are dynamic in nature, and new communities can be constantly formed from pre-existing groups, having the entire scope of rights recognized by the Amerindian Act. It has also admitted that some communities in the country which have accessed the protection of the domestic law are multilingual and multi-ethnic in their composition, a factor that does not preclude their recognition as indigenous communities.<sup>68</sup>

140. It has been proven in the casefile that Isseneru is a community that belongs to the Akawaio people, inasmuch as the absolute majority of its members descend from Akawaio families, speak the Akawaio language, conduct themselves in accordance with Akawaio cultural norms, and self-identify with that group. Isseneru is also regarded as an Akawaio community by other Akawaio communities throughout the Mazaruni river basin, and in the rest of Guyana. Even though some members of the community belong to other indigenous ethnicities, such as Wapichan or Arawak, and became part of the community through marriage; and although other members have come from the non-indigenous population, this fact does not deprive the Isseneru community of its character as a predominantly Akawaio group with a minority multi-ethnic component. What is most important is that the members of the community, be they Akawaio or from other ethnicities, identify themselves as part of Isseneru.

141. The Commission takes special note of the response given by the members of Isseneru to the State's allegations, as documented by petitioners and, in particular, by expert Professor Kirsch, who attended a meeting of village members where the matter was discussed, which has been described, *supra*. The IACHR considers that it is not reasonable for the State to invoke the transformations in their building structures and materials, their use of the English language, their embrace of the Christian faith, or their incorporation of non-indigenous traits into their everyday lives, as an argument wielded against them for the purpose of describing them as an acculturated group which is no longer Akawaio and therefore does not deserve inter-American protection as an indigenous community. The documented history of the families and persons who compose the Isseneru community proves that it was the State itself, in the foregoing decades, who strived to introduce those non-indigenous elements into the community and encouraged them to change their ways and abandon their culture, for the purposes of the public policy then pursued in Guyana. It would be contrary to elementary

<sup>64</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 164.

<sup>65</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 37.

<sup>66</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 38.

<sup>67</sup> Inter-American Court of Human Rights. Case of the Xákmók-Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, pars. 39-43.

<sup>68</sup> In the State's own words: "(...) the submitting organizations have ignored an important innovation in the Amerindian Act that provides for new communities being formed and after 25 years of communal occupation they too can apply for communal land title. To admit this would damage their argument of ancestral, traditional and aboriginal lands. In fact there are several such communities that have emerged in the last 30-50 years, due to some communities' nomadic lifestyle, and in some of these new communities there is not one linguistic Amerindian group, one such case in the village of Para Bara, Region 9 (...)".

considerations of justice and fairness to use the cultural changes brought about over time by these State interventions as legal arguments to deprive Isseneru and its members of the human rights that international law undoubtedly recognizes them.

## **B. Indigenous peoples' and communities' territorial rights**

### **1. General considerations on the rights of indigenous and tribal peoples over their lands and natural resources**

142. Indigenous peoples have unique ways of life, and their worldview is based on their close relationship with their territories. The lands they traditionally use and the resources that are present therein are critical to their physical, cultural and spiritual vitality.<sup>69</sup> Article XXIII of the American Declaration protects this close bond with the land, as well as with the natural resources of the ancestral territories, because it is of fundamental importance for the enjoyment of other human rights; insofar as it is connected to indigenous peoples' very existence, that relationship warrants special measures of protection.<sup>70</sup> As pointed out by the Inter-American Court, "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".<sup>71</sup>

143. The right to private property recognized in Article XXIII of the American Declaration includes, in the case of indigenous peoples, the communal ownership of their lands.<sup>72</sup> The Commission has held that the right to property under Article XXIII of the American Declaration "must be interpreted and applied in the context of indigenous communities with due consideration of principles relating to the protection of traditional forms of ownership and cultural survival and rights to land, territories and resources".<sup>73</sup> Among indigenous peoples, there exists a communal form of collective ownership of the land, in the sense that its possession is not centered on an individual, but rather on the group and its community. Indigenous territorial rights "encompass a different and broader concept that relates to the collective right to survival as an organized people, with control over its habitat as a necessary condition for the reproduction of its culture, for its development and to implement its life project; ownership of the land ensures that the members of the indigenous communities preserve their cultural heritage".<sup>74</sup>

144. The close relationship that indigenous people have with the land should be recognized and understood as the very foundation of their cultures, their spiritual life, their integrity, and their economic

<sup>69</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 1; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 155.

<sup>70</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 128.

<sup>71</sup> Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 79, par. 149; Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 124, 131.

<sup>72</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 5; Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, paras. 148-151; Case of the Yakye Axa Indigenous Community v. Paraguay, paras. 131, 132; Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs. Judgment of March 29, 2006, Series C No. 146, par. 118; Case of the Saramaka People v. Suriname. Preliminary Objections, merits, reparations and costs. Judgment of November 28, 2007, Series C No. 173, par. 90; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 93.

<sup>73</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 115.

<sup>74</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95, footnote 102.



survival.<sup>75</sup> As indicated by the Inter-American Court, “to guarantee the right of indigenous peoples to communal property, it is necessary to take into account that the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values.”<sup>76</sup> Therefore, the right to property under the American Declaration and other relevant instruments has singular importance for indigenous peoples, because the guarantee of the right to territorial property is a fundamental basis for the development of their culture, spiritual life, integrity and economic survival.<sup>77</sup> It is closely related to their rights to an existence in dignified conditions, food, water, health, life, honor, dignity, freedom of conscience and religion, freedom of association, the rights of the family, and freedom of movement and residence.<sup>78</sup> Property of the land ensures that indigenous peoples preserve their cultural heritage, and secures their collective right to survival as organized peoples.<sup>79</sup> Conversely, lack of access to their land and natural resources can produce conditions of extreme poverty for the affected indigenous community, given that the lack of possession of, and access to, their territories prevents them from using and enjoying the natural resources that they need to obtain the goods necessary for their subsistence, develop their traditional cultivation, hunting, fishing or gathering activities, access traditional health systems, and other key socio-cultural functions.<sup>80</sup> Thus, the lack of access to ancestral territories exposes indigenous peoples to precarious living conditions in terms of access to food, water, dignified housing, basic utilities and health.<sup>81</sup> To that extent, the State’s lack of guarantee of indigenous peoples’ right to live in their ancestral territory may imply subjecting them to situations of extreme unprotection, which entail violations of their rights to life, personal integrity, to a dignified existence, food, water, health, education and children’s rights, among others.

145. Consequently, States have an international obligation under the American Declaration to recognize, respect and protect indigenous peoples’ territorial rights. This means that States are in the obligation of establishing legal provisions that recognize those rights, providing mechanisms for their formalization - through titling, delimitation and demarcation-, and implementing judicial and other remedies to protect them. The specific manifestations of this general obligation will be explained in detail in the following sections.

146. The IACHR expresses, in the first place, its recognition of the fact that Guyana has adopted and implemented legislation that enables indigenous -Amerindian- communities and villages to acquire property titles over their ancestral lands. This is no minor achievement; it is in fact commendable and places the country at the legal forefront of the nations of the Americas. All the more so when it is borne in mind that a very significant portion of the Guyanese territory has now been formally granted in full property, and in perpetuity, to different Amerindian groups across the country.

147. Despite the evident legal and historical importance of this step, a number of concrete aspects of the 2006 Amerindian Act, which were applied to the Isseneru community, are found to be inconsistent with international human rights law, as it will be analyzed below.

<sup>75</sup> Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, pars. 148-151.

<sup>76</sup> Inter-American Court of Human Rights. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 154.

<sup>77</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 2.

<sup>78</sup> Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 140(f); IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 2.

<sup>79</sup> Inter-American Court of Human Rights. Case of the Yakye Axa Indigenous Community v. Paraguay, par. 146, 147.

<sup>80</sup> Inter-American Court of Human Rights. Case of the Yakye Axa Indigenous Community v. Paraguay, par. 164; IACHR, Democracy and Human Rights in Venezuela, Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, pars. 1076-1080; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 57.

<sup>81</sup> IACHR. Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, pars. 257-268, 297 – Recommendation 8; IACHR, Third Report on the situation of Human Rights in Paraguay. Doc. OEA/Ser./L/VII.110, Doc. 52, March 9, 2001, Chapter IX, par. 37; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 57.

## 2. The legal notion of indigenous territories, the source of indigenous peoples and communities' entitlement to their ownership, and the main components of the States' corresponding obligations

148. In order to secure effective ownership of indigenous territories, the State is in the obligation of granting collective property title to the lands of the communities, demarcating them and delimiting them from other lands.<sup>82</sup> Indigenous peoples and communities have the right to be granted a formal property title, or other similar State recognition, which gives them legal certainty in their territorial ownership, on the face of action by third parties or by agents of the State.<sup>83</sup> Respect for indigenous peoples' collective rights to property and possession of their ancestral territories is an obligation of OAS Member States; non-compliance with this obligation incurs a State's international responsibility;<sup>84</sup> consequently, the granting of title over ancestral lands is an international obligation of the State, and not a mere liberality, grace or favor on its part.

149. The IACHR has espoused "a broad concept of indigenous land and territories, wherein the latter category includes not only physically occup[ied] spaces but also those used for their cultural or subsistence activities, such as routes of access", because "this approach [is] compatible with the cultural reality of indigenous peoples and their special relationship with the land and territory, as well as with natural resources and the environment in general".<sup>85</sup> The occupation of a territory by an indigenous people or community is thus not restricted to the nucleus of houses where its members live; "rather, the territory includes a physical area constituted by a core area of dwellings, natural resources, crops, plantations and their milieu, linked insofar as possible to their cultural tradition".<sup>86</sup> Likewise, the relationship between indigenous peoples and their territories is not limited to specific villages or settlements; their territorial use and occupation "extend beyond the settlement of specific villages to include lands that are used for agriculture, hunting, fishing, gathering, transportation, cultural and other purposes"<sup>87</sup>, encompassing the territory as a whole. The Inter-American Court has explained in this regard that "the scope of 'respect' afforded to the members of [an indigenous or tribal people's] territory [is not limited] solely to 'villages, settlements and agricultural plots'. Such limitation fails to take into account the all-encompassing relationship that members of indigenous and tribal peoples have with their territory as a whole, not just with their villages, settlements, and agricultural plots."<sup>88</sup>

150. Indigenous peoples have the right to legal recognition of their diverse and specific forms and modalities of control, ownership, use and enjoyment of their territories,<sup>89</sup> "springing from the culture, uses, customs and beliefs of each people"<sup>90</sup>. Given that indigenous peoples have the right to communal property over the lands they have traditionally used and occupied, "the character of these rights is a function of [the respective people's] customary land use patterns and tenure"<sup>91</sup>, where the notion of current use of indigenous territory is understood in a broad sense that encompasses not only permanent occupation of such territory, but also an entire array of permanent and seasonal activities, aimed at the use of the land and natural resources for

<sup>82</sup> Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 98; *Case of the Mayagna (Sumo) Awá Tingni Community v. Nicaragua*, par. 164; *Case of the Xucuru Indigenous People and its members v. Brazil*, par. 117.

<sup>83</sup> Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 115; *Case of the Yakye Axa Indigenous Community v. Paraguay*, par. 143; *Case of the Kaliña and Lokono Peoples v. Suriname*, par. 133.

<sup>84</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District, Belize*, October 12, 2004, par. 115; IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 65.

<sup>85</sup> IACHR, *Follow-up Report – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II.135, Doc. 40, August 7, 2009, par. 160.

<sup>86</sup> Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 120(h); IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 40.

<sup>87</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District, Belize*, October 12, 2004, par. 129.

<sup>88</sup> Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 114.

<sup>89</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District, Belize*, October 12, 2004, par. 115; IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann, United States*, December 27, 2002, par. 130.

<sup>90</sup> Inter-American Court of Human Rights, *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 120.

<sup>91</sup> IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District, Belize*, October 12, 2004, par. 151.

subsistence purposes and other uses related to the exercise of indigenous culture and spirituality.<sup>92</sup> Their unique relationship to traditional territory may be expressed in different ways, depending on the particular indigenous people involved and their specific circumstances: “[i]t may include the traditional use or presence, be it through spiritual or ceremonial ties; settlements or sporadic cultivation; seasonal or nomadic gathering, hunting and fishing; the use of natural resources associated with their customs and any other element characterizing their culture”<sup>93</sup>, all of which are modes of using territory that are protected by the right to property under Article XXIII of the American Declaration.

151. According to the IACHR, indigenous peoples’ property rights are not defined exclusively by their rights or titles within States’ formal legal systems, but also include the forms of indigenous communal property that stem from, are derived from or are grounded upon indigenous custom and tradition.<sup>94</sup> All of these diverse modes of using territory are protected by the right to property, because there is not just one form of using and enjoying property protected under the American Declaration. Both the property and the possession of territories by indigenous and tribal peoples can differ from the classical notion of ownership, and in that sense they are protected by the right to property.<sup>95</sup> For this reason, States must recognize and protect productive systems based on extensive use of territory, on temporary use of crops, along with crop rotation and leaving fields fallow, among many other examples. Disregarding these systems, or considering that they are tantamount to abandonment of the land, deprives the communities of effective security and legal stability in regard to their property rights.<sup>96</sup> In particular, taking into account that these traditional systems for the control and use of territory “are in many instances essential to the individual and collective well-being, and indeed the survival of, indigenous peoples, [given that] control over the land refers both to its capacity for providing the resources which sustain life [and to] the geographic space necessary for the cultural and social reproduction of the group”.<sup>97</sup>

152. Inter-American jurisprudence has characterized indigenous territorial property as a form of property whose foundation lies not in official State recognition, but in the traditional use and possession of land and resources. Indigenous peoples’ territories “are theirs by right of their ancestral use or occupancy”<sup>98</sup>, and the right to indigenous communal property is grounded in indigenous legal cultures, ancestral ownership systems and customary land tenure traditions, independently of State recognition. Indigenous peoples have, therefore, rights of property, possession and ownership over the lands, territories and resources they have historically occupied.<sup>99</sup> In the case of the Maya Communities of the Toledo District, for example, the IACHR concluded that the communities had proven their communal property rights over the lands they inhabited, rights which had arisen “from the longstanding use and occupancy of the territory by the Maya people, which the parties have agreed pre-dated European colonization, and have extended to the use of the land and its resources for purposes relating to the physical and cultural survival of the Maya communities”.<sup>100</sup>

<sup>92</sup> IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, footnote 195.

<sup>93</sup> Inter-American Court of Human Rights. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, Series C No. 146, par. 131.

<sup>94</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 117; IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, footnote 195.

<sup>95</sup> Inter-American Court of Human Rights. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, Series C No. 146, par. 120.

<sup>96</sup> IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 73; IACHR, Second Report on the Situation of Human Rights in Peru, Doc. OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter X, par. 19.

<sup>97</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 128.

<sup>98</sup> IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 68; IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 231.

<sup>99</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 115.

<sup>100</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 127.

153. The possession of the land, consequently, suffices for the indigenous communities to obtain official recognition of their communal ownership.<sup>101</sup> In this same sense, the Inter-American Court has explained that “as a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration”.<sup>102</sup> Official recognition of indigenous ownership is therefore declaratory of a pre-existing right; it is not constitutive of said right.<sup>103</sup> In the Inter-American Court’s words, “in the case of indigenous communities that have occupied their ancestral lands in accordance with customary practices -yet lack real title to the property- mere possession of the land should suffice to obtain official recognition of their communal ownership and the consequent registration”.<sup>104</sup> Given that the foundation of territorial property lies in the historical use and occupation which gave rise to customary land tenure systems, indigenous and tribal peoples’ territorial rights exist even without State actions which specify them, or without a former title to property.<sup>105</sup> Territorial titling and demarcation are thus complex acts that do not constitute rights, but merely recognize and guarantee rights that appertain to indigenous peoples on account of their customary use; the exercise of indigenous peoples’ territorial rights is not conditioned to their express recognition by the State, and the existence of a formal title to property is not a requirement for the existence of the right to indigenous territorial property under the inter-American human rights instruments.<sup>106</sup> The dissociation between the customary right to indigenous property and the existence, or lack thereof, of a formal title to property, implies that the act of granting title by States is an act of official recognition and protection of rights, not an act of constitution of rights; consequently, customary possession and use by indigenous peoples must be the guiding principle for the identification and guarantee of these rights through titling.<sup>107</sup>

154. In application of these rules, the organs of the inter-American system have held that States violate the American Declaration and the American Convention when indigenous lands are considered to be State lands because the communities lack a formal title of ownership or are not registered under such title.<sup>108</sup> A legal system which subjects the exercise and defense of the property rights of indigenous peoples and their members to the existence of a title of private, personal or real ownership over ancestral territories, is inadequate to make such rights effective.<sup>109</sup>

155. Inter-American organs have also ruled that States are in the obligation of formalizing the property title of indigenous communities over their ancestral territories. For the inter-American Court, the relationship between indigenous peoples and their lands “is not merely a privilege that is granted to use the land that can be taken away by the State or overshadowed by property rights of third parties, but a right (...) to obtain title to their territory in order to guarantee the permanent use and enjoyment of this land”<sup>110</sup>. Moreover, the Court has clarified that “traditional possession of their lands by indigenous people has equivalent effects to those of

<sup>101</sup> Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, pars. 148-151; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95.

<sup>102</sup> Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 151; Case of the Sawhoyamaya Indigenous Community v. Paraguay, par. 127.

<sup>103</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95.

<sup>104</sup> Inter-American Court of Human Rights. Case of the Moiwana Community v. Suriname, para. 131.

<sup>105</sup> Inter-American Court of Human Rights, Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 128; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69.

<sup>106</sup> Inter-American Court of Human Rights. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 128; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69.

<sup>107</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69, footnote 189.

<sup>108</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69.

<sup>109</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 111.

<sup>110</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95; Case of the Moiwana Community v. Suriname, par. 211; Case of the Xucuru Indigenous People and its members v. Brazil, par. 117.

a state-granted full property title”, and that “traditional possession entitles indigenous people to demand official recognition and registration of property title”<sup>111</sup>. Official recognition of that property “should be seen as a process of production of evidence establishing the prior ownership of the communities”, and not as a grant of new rights.<sup>112</sup>

156. In addition to titling, the State is in the obligation of delimiting and demarcating the territory, in order to give geographical certainty to the communal property.<sup>113</sup> Demarcation and granting of title should result in the peaceful use and enjoyment of the property;<sup>114</sup> conversely, “failure to comply with these obligations constitutes a violation of the use and enjoyment of the property of the members of the said communities”.<sup>115</sup> Therefore, the State is bound to establish a legislative and administrative mechanism for titling, delimitation and demarcation which grants legal certainty to indigenous territorial property and recognizes those rights in practice, making them enforceable before the State authorities and third parties.<sup>116</sup> This mechanism must comply with the requirements of due process established in the American Convention and the American Declaration.<sup>117</sup> It must be adequate and effective, so as to provide a real possibility for the communities to defend their rights and exercise effective control over their territory without undue interferences.<sup>118</sup> Indigenous peoples have a right not to be subjected to an unreasonable delay in the final settlement of their territorial claims.<sup>119</sup>

157. As for the geographical extension of indigenous ancestral territories, and of the corresponding State obligation to grant title, the IACHR has held that indigenous property rights extend in principle over all of those lands and resources with which indigenous peoples and communities preserve their internationally protected special relationship, that is, a cultural bond of collective memory and awareness of their rights of access or ownership, in accordance with their own cultural and spiritual rules.<sup>120</sup> For the purpose of titling, the “diverse and specific ways and means of control, ownership, use and enjoyment of the territories by the

<sup>111</sup> Inter-American Court of Human Rights, Case of the Sawhoyamaya Indigenous Community v. Paraguay, para. 128.

<sup>112</sup> IACHR, Third Report on the Human Rights Situation in Colombia. Doc. OEA/Ser.L/V/II.102, Doc.9 rev. 1, 26 February 1999, par. 19; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69.

<sup>113</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 96; Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 153.

<sup>114</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 96; Case of the Xucuru Indigenous People and its members v. Brazil, par. 119.

<sup>115</sup> Case of the Kuna Indigenous People of Madungandí and the Embera Indigenous People of Bayano and their members v. Panama, par. 119; Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras, par. 120; Case of the Xucuru Indigenous People and its members v. Brazil, par. 118.

<sup>116</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 97; Case of the Kaliña and Lokono Peoples v. Suriname, par. 133; Case of the Xucuru Indigenous People and its members v. Brazil, par. 119.

<sup>117</sup> Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 138; Case of the Xucuru Indigenous People and its members v. Brazil, par. 130; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 116.

<sup>118</sup> Case of the Xucuru Indigenous People and its members v. Brazil, pars. 130, 132; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, par. 116.

<sup>119</sup> Case of the Xucuru Indigenous People and its members v. Brazil, par. 139; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, par. 116.

<sup>120</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 78; Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 153(b); Case of the Yakye Axa Indigenous Community v. Paraguay, par. 135.

communities should be acknowledged”.<sup>121</sup> In this same line, the granting of title over discontinuous lands, or lands which are divided or fragmented so that the different lots that compose it do not have a single geographical extension, has a negative impact upon the use and enjoyment of the territory.<sup>122</sup>

### 3. Analysis of the case

#### 3.1. The 2006 Amerindian Act

158. Guyana has enacted and implemented the 2006 Amerindian Act, where a procedure is established to grant property title to indigenous villages and communities. In this sense, the Commission disagrees with the petitioners’ assertion that Guyana lacks a legal procedure for titling, delimitation and demarcation of indigenous lands; quite the opposite is true, as evinced by the provisions enshrined in Sections 59 to 64 of the Amerindian Act. The IACHR notes, however, that this legislation is phrased in terms that fail to recognize indigenous peoples’ pre-existing and custom-based rights over their lands and natural resources. As it stems from the language of this Act, indigenous lands are seen on principle as State lands, which the Guyanese authorities decide to grant to those indigenous communities after a set of requirements is fulfilled. Thus, Section 2 of the Amerindian Act defines an Amerindian Community as “a group of Amerindians organized as a traditional community with a common culture and occupying or using the State lands which they have traditionally occupied or used.” Section 59 provides that Amerindian Villages may apply to the Minister of Amerindian Affairs “for a grant of State lands as an extension to its village lands.” Section 60 establishes that Amerindian Communities may apply to said Minister “for a grant of State lands.” And Section 63 provides that “if an application is approved title shall be granted under the State Lands Act.” The Commission notes that the titles actually issued in favor of Isseneru begin with the heading “Grant of State Land”, and they are phrased throughout in that same language.

159. The principle according to which all lands in Guyana that are not in the hands of private owners belong to the State, finds an explanation in the legal presumption by which the British colonization extinguished all preexisting forms of ownership, and thereafter the Crown’s territorial property was passed on to the Guyanese independent State – which therefore abrogated any pre-colonial indigenous title to territory anywhere in the country. This is a principle that underlies the Amerindian Act and other legislation on the matter, and which has been espoused and reiteratively applied by the Guyanese judges, from the highest court in the land onwards. The IACHR states that its application disregards the fact that, under international law, the existence of indigenous property rights over ancestral territories does not depend on State recognition thereof and predates any official title, which is of a merely declaratory and not constitutive nature. Under this system, Isseneru’s lands were considered to be State lands before the granting of title; and its ancestral lands outside of that title continue to be classified as State lands today. Therefore, based on the above-mentioned inter-American standards, the Commission finds that this is not compatible with Article XXIII of the American Declaration.

160. In connection to the lack of recognition of pre-existing territorial rights, the Amerindian Act does not establish a State obligation to grant an indigenous community or village the property over its ancestral lands. From the phrasing of this legislation, it would appear that the granting of lands is a discretionary, unilateral and voluntary decision made by the Minister of Amerindian Affairs, on the grounds of his or her subjective assessment of the information that has been gathered in the course of the relevant investigation. Moreover, it is a decision that the Minister is not bound to adopt and may well abstain from issuing. Indeed, Section 62.2 provides that “*in making a decision the Minister shall take into account all information obtained in the investigation and consider the extent to which the Amerindian Village or Community has demonstrated a physical, traditional, cultural association with or spiritual attachment to the land requested.*” The Act does not define the granting of land as an obligation of the Minister once a given village or community has proven its ancestral connection to a given territory. It appears, therefore, that the Minister has a very broad margin of

<sup>121</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 115; Case of the Sawhoyamaya Indigenous Community v. Paraguay, par. 128.

<sup>122</sup> Inter-American Court of Human Rights, Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras, par. 127.

discretion and that in the terms of the law, the Minister may even deny a community recognition and title of its ancestral territory altogether.

161. In the same line, the IACHR notes that the Amerindian Act does not require the Minister to grant an indigenous village or community the full extent of its ancestral territory. The Minister has a broad margin of discretion to select the number of hectares of land a given Amerindian Village is to receive. This broad discretion also stems from the fact that the Act does not include an enunciation of indigenous territorial rights that would serve to limit and guide the decision-making power. The lack of enunciation of indigenous territorial rights in the Amerindian Act thus has the effect of depriving the Minister of objective parameters and guiding criteria to adopt a decision on whether, and to what extent, to grant property titles.

162. The Amerindian Act does indeed bind the Minister to take into consideration relevant information gathered in the corresponding investigation. In particular, the IACHR notes that the Act gives a certain degree of importance to the information on the Village or Community's bonds with its territory. In this sense, Section 2 defines an Amerindian Community as *"a group of Amerindians organized as a traditional community with a common culture and occupying or using the State lands which they have traditionally occupied or used."* Section 61.2, which describes the investigation that the Ministry must conduct before adopting a decision on the grant of lands, provides that it must obtain information on, inter alia, *"(c) the length of time the Amerindian Village or Community has occupied or used the area requested; (d) the use which the Amerindian Village or Community makes of the land; (e) the size of the area occupied or used by the Amerindian Village or Community; (f) a description of the customs and traditions of the Amerindian Village or Community; [and] (g) the nature of the relationship which the Amerindian Village or Community has with the land"*. Despite this enunciation of information, which is relevant for the purpose at hand, the IACHR notes that the Act does not bind the Minister to decide on the grounds of this information when it indicates that a village or community does indeed have a connection to its territory. The Minister is only required, under Section 62.2, to *"take into account all information obtained in the investigation and consider the extent to which the Amerindian Village or Community has demonstrated a physical, traditional, cultural association with or spiritual attachment to the land requested"*. In the terms of this legislation, even after taking into account and considering this information, the Minister is free to decide in any way she considers appropriate, even refusing the recognition of territorial rights to the applicant community. Further, the Minister does not have to justify the decision in writing.

163. This excessive margin of decision ascribed to the Minister by the Amerindian Act, together with the lack of enunciation of indigenous territorial rights, and the absence of any obligation of the State to actually grant a property title, entail in turn a number of risks of additional violation of the rights protected by the American Declaration. First, whenever a community is granted less than the full extent of its ancestral territory, its property rights will fail to be completely protected, as there will be a given part of its territory which is not formally recognized as being its own. In turn, the corresponding Village Council and the community will have no rights over said unrecognized fraction of the ancestral territory, even though those lands and resources are within their internationally protected sphere, and even if they preserve the vital connection to their territory. Second, indigenous communities that in fact have an ancestral territory but which have not been granted a property title over it, will be placed in a situation of discrimination with regard to those communities that have received property titles, because they will have received a different legal treatment with no justification other than the excessive margin of decision-making that the Amerindian Act grants to the Minister.

164. The IACHR also notes that, as set forth by petitioners, indigenous peoples in Guyana cannot receive title to property over their ancestral lands. Only Amerindian Communities and Amerindian Villages are enabled by the Amerindian Act to request and obtain State grants, which are given only to Amerindian Villages -which is the formal character that Amerindian Communities must assume in order to receive land grants-, individually considered. As for the granting of collective title to individual communities, and not to the peoples to which they belong, the inter-American system has held that this affects the respective people's rights to recognition of legal personality, participation, freedom of association, and territorial rights themselves. The inter-American Court has held in this line 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 to ensure that they*

are able to enjoy their territories in accordance with their traditions”<sup>123</sup>. For them to be able to make decisions on their territories in accordance with their own traditions and forms of organization, juridical personality should be recognized not only to communities,<sup>124</sup> but also to peoples as such. Lacking the legal capacity to collectively enjoy the right to property and resort to domestic courts to claim its violation, indigenous and tribal peoples are in a situation of vulnerability towards both the State and private parties; the State must recognize such capacity to the people and its members, in order for them to fully exercise these rights in a collective manner.<sup>125</sup> Such recognition “may be achieved by implementing legislative or other measures that recognize and take into account the particular way in which the [respective] people view themselves as collectively capable of exercising and enjoying the right to property”.<sup>126</sup>

165. The State has argued in its submissions that the Amerindian Act does not incorporate the notion of “traditional territories” because it can be “*challenging to define*”, and because “*traditional territories, if taken literally, can mean the entire land mass of Guyana including those occupied by other Guyanese*”. In this regard, the IACHR recalls that inter-American human rights standards provide sufficient guidelines and criteria to delimit the extent of a given indigenous community’s territorial rights, on the grounds of the extent of its living relationship to territory, and of its customary land management and tenure systems. Also, the IACHR notes that, according to the information available, no individual Amerindian people of Guyana could claim to have a real vital relationship to the entire territory of the country.

### **3.2. The titling, demarcation and delimitation of Isseneru’s territory**

166. The Commission is satisfied that Isseneru is a village that is located within ancestral Akawaio territory. As proven by historical, archaeological and anthropological materials provided by the petitioners, and described in the foregoing sections, the Mazaruni River basin, especially its Upper and Middle ranges, have been inhabited by the Akawaio people for thousands of years.

167. The State has emphasized, and the petitioners have acknowledged, that the present specific site of the Isseneru village was established relatively recently, in the late 1970s or early 1980s. This is a proven fact; as is the legal doctrine long espoused by the inter-American system, in the sense that for the purpose of protecting indigenous peoples’ rights over lands and natural resources, traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries. For such reason, the specific location of settlements within ancestral territory does not determine the existence of the rights; there may have been movements of the places of settlement along history, without hindrance to the American Declaration’s protection of the corresponding property rights. As explained above, the history of indigenous peoples and their cultural adaptations along time are not obstacles for preserving their fundamental relationship with their territory.<sup>127</sup>

168. In this regard, the influence of outsiders, newcomers, missionaries, miners and governmental agents upon the Akawaio people of the Mazaruni River basin throughout its history is another proven fact, as demonstrated by the historical and anthropological materials on file. Since the establishment by the British Colonial Administration of the Mazaruni Reservation (1904) and the Mazaruni Indian District (1911), alien political institutions have been exerting a direct and determining influence upon the way of life of the Akawaio communities. The de-reservation of the Lower and Middle Mazaruni by the British administration in 1933, with its opening-up of the region for mining activities, promoted a large populational influx of non-indigenous

<sup>123</sup> Case of the Saramaka People v. Suriname, par. 172; Case of the Kaliña and Lokono Peoples v. Suriname, par. 107.

<sup>124</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 155.

<sup>125</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 174.

<sup>126</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 174.

<sup>127</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 70.



miners and other peoples, followed by displacements and relocations of the Amerindian inhabitants. By the middle of the twentieth century, the ancestors of the Isseneru community members were living in the Middle Mazaruni area, but a new influx of miners from the coastal Guyanese regions and from Brazil, with their dredge-based operations in search of gold and diamonds, caused a new mass displacement of the Akawaio towards the Upper Mazaruni. Expert testimony has pointed out that the Government itself promoted this displacement, by encouraging the Middle Mazaruni Amerindian residents to relocate in a village -Kamarang-, where it built a school and set up a health clinic. Some Akawaio families remained in the Middle Mazaruni, though, and they continued living in their ancestral territory and developing their subsistence activities therein.

169. A few decades later, in the 1970s, a hydroelectric dam was projected for construction on the Upper Mazaruni river, with the prospect of massive flooding over the entire area, which led the people who had moved there from the Middle Mazaruni to return here. It was upon this new relocation that the current village of Isseneru was established, in a geographical spot that formed part of the ancestral territory with which the families who went to live there continued to have clear cultural, historical and existential ties. As documented by expert anthropologist, Professor Kirsch, in his testimony to the Commission, *“as the people from Isseneru made clear to me in multiple interviews, they were not moving to unknown or unclaimed land: this was where their parents, grandparents and forbearers previously resided. This was not an unfamiliar place to them; the older people remembered the place names and the old village sites, the location of former gardens, and where all of the resources they needed could be found.”* Also, many of the families continued to live in the area of the Middle Mazaruni, and subsequently moved to the Isseneru village to reside there.

170. In spite of these transfers, displacements and relocations, anthropological studies have confirmed that the Akawaio people of the Mazaruni basin have persisted in preserving their ancestral way of life, within the margins of adaptation and evolution which are normal in any human society. They have preserved their language, worldview, mythology, social structures, traditions, economic activities and identity throughout the centuries, to the point that nowadays these ancestral components of their culture are still visible and recognizable. What is more important, according to the available evidence, they have maintained and kept alive their cultural and spiritual connections to their ancestral territory, a fact that the IACHR considers sufficiently established by the different declarations of community members themselves, transcribed above. Thus the Toshao of Isseneru in 2017 recounted how his grandparents had used the lands surrounding the village as fishing, hunting and farming grounds, and stated that those lands have been *“part of the Akawaio territory from time immemorial”*. A village elder explained that his father was from the Middle Mazaruni, whereas his mother was from the Upper Mazaruni, and that he had moved to Isseneru 17 years ago from another village in the Middle Mazaruni basin; he pointed out that *“all of these places that I, my parents, and my grandparents, lived are in traditional Akawaio territory”*. Moreover, he explained that through the Alleluia church they had kept their traditional connection to those lands alive, because *“it’s where our elders, grandparents, great-grandparents lived – these are traditional lands that were left for us, it was left, entrusted to us, it’s our lands”*. Yet another member of the community explained that his grandfather had lived in the Middle Mazaruni in the early twentieth century, but migrated to the Upper Mazaruni due to the influx of miners at that time, after which the projected hydroelectric dam there led him to decide to return to the Middle Mazaruni area, given that *“these lands were not strange to our fore parents so they came back to settle and farm the lands. (...) There are artifacts such as clay pots and farming tools that support our history.”* As expressed in the record of the Conference of Middle Mazaruni Villagers for Land Title held in 1993, the elders of the community still hold the memory of earlier days when their families lived in this area, and left the mark of their existence and their culture in the names of rivers, hunting grounds and sacred sites: *“Old people know where they belong and have a strong feeling that they must live and die there: they remember the places with a long history and old stories, a place one knows is sacred (...). Our homelands are full of memories and friendly spirits, so that it is a great pain and loss to leave them. (...) The names on the maps (rivers, creeks, mountains and hills) are Akawaio words, the footprints of our people’s ancient history.”*

171. The current vitality of the economic, cultural and spiritual connection between Isseneru and its ancestral territory comes to light when the consistent testimonies of its inhabitants, and expert anthropological opinions, are considered. The IACHR notes that the members of Isseneru feel connected to these territories because they were the lands of their ancestors, both remote and immediate. They carry out their traditional subsistence activities -fishing, hunting, gathering and farming- in those same forests and rivers, and they hold

the living memory of the cultural history of their people as reflected in the names of the places, the family stories, and the myths. As stated by the community in its formal request for title, *“we need our land title because we feel a strong sense of ownership to these lands, our grandfathers and fore-parents were born and buried here, we feel it is a part of us and as such we see it right we continue to live here, like us these lands will be left for our younger and future generations”*.

172. Further, the information available shows that the spiritual dimension of this connection to the land and its resources has been conserved and revitalized by the religious practices of the Alleluia Church. In this regard, one of the church elders, who is also a member of the community, stated in a sworn affidavit provided by the petitioners that:

“in the Alleluia Church, we sing songs about the land, about God creating the land. When we sing about the land, it’s about blessings and protections for the land and everything you find on the land. The land and our connection with the land comes about because this is our land and where we live. The land we pray for is for the whole world. We talk about praying for the soul of the earth and protection of the earth; it’s for all of us. We pray to protect our farms so that we don’t get famine, or insects or from drought. Alleluia gives us faith and strength and connection to the land. Alleluia started with our elders and they passed it down to us. It’s our tradition. We the people, it’s our form of worship. In connection to the lands, because it’s where our elders, grandparents, great-grandparents lived – these are traditional lands that were left for us, it was left, entrusted to us, it’s our lands.”

173. Hence, this spiritual organization, system, and practice, which -the Commission notes- is also protected by the right to religious freedom and worship enshrined in Article III of the American Declaration, has in fact kept alive the connection between the members of Isseneru and the lands and natural resources of the Middle Mazaruni that they clearly remember were inhabited and lived in by their ancestors. This religious system, which the State properly points out is based on Christianity, interacts with their ancestral Amerindian cosmology, mythology and worldview, generating a complex syncretic structure that actually reinforces Isseneru’s bonds to the territory where they live and to its natural resources.

174. The IACHR concludes that it has been sufficiently demonstrated that the Akawaio people of Isseneru have a special relationship with their ancestral territories, which fits naturally into the characterization made by inter-American jurisprudence of a vital connection worthy of the full level of protection bestowed by the American Declaration. The State itself has formally recognized and acknowledged the fact that Isseneru is an Akawaio community that is set within its ancestral territory, when it clearly expressed, in the formal document that granted them title to property over their lands, that Isseneru *“has from time immemorial been in occupation”* of those lands.

175. It has also been proven that the Isseneru community nowadays implements the customary land tenure and management system of the Akawaio people over its ancestral territory. As demonstrated in the casefile, Akawaio land tenure is collective in nature, with the property of the territory allocated to the Akawaio people, and subsidiary territorial rights assigned to communities and families. Within each village’s lands, in this case Isseneru’s, family groups have preferential rights over given areas, there are communal areas, and also protected areas destined to harbor water sources and animal breeding grounds. Access and use of each one of these territorial components is regulated by customary rules that the members of Isseneru know and apply, with the Village Council playing a central role in their administration.

176. Moreover, the economy and livelihood of the Isseneru community members, as part of the Akawaio people, is structured upon broad access to the resources found in the different areas of their territory, where they obtain food, water, medicines, wood and other basic materials. As is the case with numerous other indigenous peoples of the tropical forests, their economic system, based on horticulture, fishing and hunting, requires large areas of land to be successfully implemented, as explained by the testimonies from experts and community members described above. The physical survival and cultural integrity of Isseneru depend on the proper maintenance of this ancestral economic system, which still provides the core base of their livelihood. This, regardless of the mining activities that the State has invoked in its submissions, which provide them a supplementary income in view of the limitations of access to their lands that they have endured on account of mining interests, environmental degradation and other restrictions. For the IACHR, this cultural economic

system, which is very ancient in origin and inextricably interrelated to the forested territory where Isseneru lies, is a sufficient and reasonable justification for their having requested a considerable extension of lands when they applied for title to the Guyanese government. It is also clear that the cultural integrity of Isseneru, reflected in areas as diverse as their kinship structures, language, rituals, social relations, sacred places, medicine, childrearing and economic practices, depends on preserving proper and full access to its traditional territory in its entirety. As concluded by Professor Kirsch in his above-cited expert opinion, *“to continue to live as Akawaio, they must have land, and consequently they need to have their land rights fully recognized by the government of Guyana.”*

177. The Isseneru community, in presenting its formal request for title in 2005, provided the State all the information it needed on the extent of the territory it was requesting. The documentation submitted with the request for title, and the corresponding maps, were all gathered and drawn in a participatory process in which the members of the community themselves explained which portions of land were ancestrally theirs, where in those lands they carried out their everyday subsistence activities, and how that territory was managed by the ancestral Akawaio land tenure system and customs. In the formal request for title, Isseneru informed the State that the extent of territory being asked for was necessary to preserve their ancestral way of life and their subsistence, by securing access to the different natural resources and ecological niches that they required to continue deriving their livelihood: *“Our lands provide us with game and fish that we use on a daily basis. Farms are an important part of our lives as it provides us with a variety of crops that we eat. The forest provides for us various different materials for our houses and other use such as medicines, craft materials, and fruits.”*

178. From the above considerations, the IACHR concludes that (i) Isseneru is a primarily Akawaio indigenous community, (ii) it is geographically set within Akawaio ancestral lands, (iii) the territory that the community claims as its own actually corresponds to the territory that the ancestors and grandparents of its current members lived in, (iv) the Isseneru community of today preserves a vital and spiritual connection to that territory, and (v) the extent of the territory as indicated by the community members themselves is consistent with the extent of their economic, cultural and spiritual systems, in particular with the territorial extension required for them to continue carrying out the subsistence activities from which they derive their livelihood in accordance with the Akawaio land tenure and management systems.

179. The immediate legal consequence of the above conclusions is that the State of Guyana was in the international obligation, under the American Declaration and the OAS Charter, of granting Isseneru a property title over the full extent of its ancestral territory. However, due to the broad discretionary powers granted by the Amerindian Act to the Minister of Amerindian Affairs, only a fraction of that territory was actually given to the community in the property title and deeds issued by Guyana. The titled lands excluded important areas used by the community for fishing, farming, hunting and gathering, as well as for medicinal and spiritual purposes. This implies that in granting a property title over only one-fourth of the ancestral territory that Guyana knew corresponded to the community, it violated the right to property under Article XXIII of the American Declaration, to the detriment of the Isseneru community and its members.

180. The State has argued, in its submissions during the precautionary measures procedure, that *“contrary to the assertions in the petition, the process for determining the size of the area was governed by the Amerindian Act 2006 and based on occupation, use, Isseneru’s physical, traditional and cultural association with the lands as well as their spiritual relationship with the land”*. However, in the IACHR’s view, had these criteria been followed, Isseneru would have obtained the full extent of the ancestral territory it was requesting, and not a fraction thereof.

181. The IACHR also notes that the manner in which this specific titling process unfolded was not consistent with the requirements of due process and legal certainty that inter-American instruments require, for the following reasons:

(a) First, it took approximately twenty years to reach completion, since the first request was presented in 1987 and went unresponded, a subsequent one was filed in 1994 and suffered the same fate, and eventually, at the State’s own invitation by means of a 2004 letter, a new request was presented by Isseneru in 2005, after which the actual issuance of the title took only a couple of years. In its 2005 request for title, the community

expressed its frustration and anguish at the length of time that the formal titling process was taking, given the harsh pressures that they were being subjected to and the silence that they had obtained in response to their 1987 and 1994 submissions; in their own words, *“the issue of land title is an ongoing problem that we were trying to solve for quite a long time. So it is a great relief to learn that the government is reviewing its policies on addressing Amerindian land issues”*. For them, it was and continues to be a matter of human dignity: *“we need the government to recognize these lands as ours, so that outsiders will respect us and look at us as human beings and to ensure that we continue to live in peace and harmony and also our children to grow and enjoy a life like all other Guyanese”*. As stated above, land titling procedures have to comply with the guarantees of due process, which include the relevant indigenous community’s right to obtain a prompt resolution of the claim, without undue delay. This particular titling process did not comply with due process, for it incurred in an unjustified and lengthy delay.

(b) Second, the Isseneru community authorities and members experienced the uncertainty and frustration derived from the overbroad discretionary decision-making margin that the legislation in force ascribes to the Minister for Amerindian Affairs, given that in its dialogue with the community, the Minister demanded a reformulation of the request for title and a reduction of the extent of the ancestral territory that was being asked for, on the subjective grounds that it was *“too big”*, *“bigger than Barbados”*, and that *“the population of the village was small and did not need such a large area of land”* -expressions that were reported by the Toshao of the time in a sworn affidavit, and confirmed by other formal testimonies of community members-.

(c) In demanding a reduction of the area sought by the community, its members and authorities were placed in a very difficult position, given the urgency of protecting their lands from the mining interests and activities that were destroying their environment and polluting their rivers and soil with poisonous byproducts of the gold-seeking dredges, and eventually they yielded to this immediate pressure, relinquishing -for the sole purposes of this negotiation with the Ministry- their legally protected claim to their entire ancestral territory. For the Commission it is understandable that the title to a fraction of the ancestral territory which was granted in 2007 was not immediately contested through a judicial channel because, given the excessive discretionary powers of the Minister under the legislation in force, the long time that had gone by since the initial request for title, and the difficult negotiations that ensued with the Ministry, with the latter’s unfounded assertions of an excess in the size of the territory being requested and the pressures stemming therefrom, the community decided to resign itself to a minor success in the form of a title over one quarter of its legitimately owned lands.

(d) The process was not participatory in nature. Even though the community had the opportunity of submitting its initial request with all the supporting information, the actual decision-making was unilateral by the Government, to the point that the Toshao of the time declared that *“the Ministry gave us our land title in 2007, but lands were reduced and it did not include large parts of our hunting and fishing grounds in the title. They didn’t ask us which area we would like to reduce, they just hand over the title. As far as I know, no one from the Ministry ever came to discuss the application with us”*.

182. Further, the IACHR notes that the delimitation and demarcation of the territory are still unconcluded, as of the date of adoption of the present report. Even though the delimitation of the portion of the territory granted to the community has been mapped, the demarcation of the lands on the ground is yet to be carried out. This is not necessarily detrimental to the community, considering that its full ancestral territory is far broader than the 25% it has formally received, and a physical demarcation of that isolated fraction could even carry negative impacts in environmental, social and cultural terms. However, the IACHR calls upon the State of Guyana to formally recognize the entire ancestral territory that Isseneru proved is its own, delimit it in its full extent in the corresponding maps and other geographical charts, and finally demarcate it on the ground in a participatory, environmentally sound and culturally appropriate manner that satisfies the members of the community and properly differentiates its territory from the surrounding lands.

#### **4. The protection of indigenous territorial rights vis-à-vis the protection of the rights of the general population of a State**

183. The State has argued in different ways that it would have been unreasonable and unfair to recognize Isseneru the full extension of its ancestral territory, given that the community has a comparatively small population, and thus granting it an oversized or disproportionately large portion of the Guyanese territory would have been unfair to other Amerindian groups, and to the population in general. It has claimed in this line that “there was a need for balance given that Amerindians as a group are the largest private land owners in Guyana, and, paramount to national unity is the preservation of the harmony that exists amongst the various ethnic groups”. The IACHR finds, however, this line of argument is inconsistent with the State’s obligations under international law.

184. States must ensure that the members of indigenous and tribal peoples effectively enjoy all human rights in equality with other persons<sup>128</sup>, and failure to comply with that obligation due to the actions or omissions of any public authority can generate international responsibility for the State.<sup>129</sup> This general obligation of States acquires an additional content in the case of indigenous and tribal peoples and their members. The IACHR has recognized that States must adopt special and specific measures aimed at protecting, favoring and improving the exercise of human rights by indigenous peoples and their members.<sup>130</sup> The need for special protection arises from the greater vulnerability of these populations, their historical conditions of marginalization and discrimination, and the deeper impact upon them of human rights violations.<sup>131</sup> This duty of States to afford special protection to indigenous and tribal peoples has been underscored by the IACHR from its early decisions.

185. In its 1972 Resolution on “Special Protection for Indigenous Populations: Action to combat racism and racial discrimination”, the IACHR held that “for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the States”.<sup>132</sup> The IACHR has explained that a central element underlying the relevant norms and principles of international law “is a recognition that ensuring the full and effective enjoyment of human rights by indigenous peoples requires consideration of their particular historical, cultural, social and economic situation and experience. In most instances, this has included identification of the need for special measures by states to compensate for the exploitation and discrimination to which these societies have been subjected at the hands of the non-indigenous.”<sup>133</sup> Consequently, in deciding complaints presented against States, the IACHR has afforded “due consideration to the particular norms and principles of international human rights law governing the individual and collective interests of indigenous peoples, including consideration of any special measures that may be appropriate and necessary in giving proper effect to these rights and interests”.<sup>134</sup>

186. This State obligation to adopt special measures includes the State duty to take positive, effective measures aimed at ensuring indigenous communities’ property rights over their ancestral lands and natural resources.<sup>135</sup> In other words, the general State duty to give special protection to indigenous peoples is specifically applicable in relation to their right to territorial property.<sup>136</sup> As expressed by the Inter-American Court, making reference to the American Convention, the “protection of property under Article 21 of the Convention, read in conjunction with Articles 1(1) and 2 of said instrument, places upon States a positive

<sup>128</sup> IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1072.

<sup>129</sup> Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 79, par. 154.

<sup>130</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 169; IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1072.

<sup>131</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 49; IACHR, Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010, Doc. OEA/Ser.L/V/II. Doc. 68, June 2010, par. 26, Recommendation 11.

<sup>132</sup> Cited in: IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 126; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 96.

<sup>133</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 125; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 95.

<sup>134</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 98.

<sup>135</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 52.

<sup>136</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, par. 126.

obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories they have traditionally used and occupied”.<sup>137</sup>

187. The adoption of these special measures is not discriminatory against the rest of the population, because “[it] is a well-established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. (...) Legislation that recognizes said differences is therefore not necessarily discriminatory. In the context of members of indigenous and tribal peoples, this Court has already stated that special measures are necessary in order to ensure their survival in accordance with their traditions and customs”.<sup>138</sup> Moreover, given that the State is in the international obligation of recognizing and upholding the cultural specificities and diversity of indigenous peoples, should it abstain from adopting the special measures required to protect their territorial and cultural rights, it would be incurring in discrimination of indigenous peoples for lack of the special, differential treatment that international law requires. This is precisely what happened in the case under review, because Guyana abstained from adopting the special measures required by Isseneru to gain prompt and secure access to legal property over its entire ancestral territory.

### **5. Indigenous territorial property vis-à-vis private property, and the right to restitution**

188. Indigenous peoples’ rights over their territories are legally equivalent to non-indigenous private property rights, which stems from the duty of non-discrimination enshrined in the American Declaration. The rights to equality before the law, equality of treatment and non-discrimination mean that States must establish legal mechanisms to clarify and protect indigenous peoples’ right to communal property, in the same way that property rights in general are protected in the domestic legal system.<sup>139</sup> States violate the rights to equality before the law, equal protection of the law and non-discrimination when they fail to grant indigenous peoples “the protections necessary to exercise their right to property fully and equally with other members of the population”.<sup>140</sup> Thus, any legal distinction that privileges the property rights of third parties over the property rights of indigenous peoples is incompatible with Articles II and XXIII of the American Declaration.<sup>141</sup> Applying this rule, in the case of Mary and Carrie Dann the IACHR found a violation of Articles II and XXIII of the American Declaration by the United States, insofar as the facts of the case revealed that the Western Shoshone people, to which the co-plaintiffs belonged, had historically experienced forced expropriation of their lands without benefiting from the application of guarantees established in the US Constitution to protect persons from arbitrary takings of property.<sup>142</sup>

189. Indigenous peoples’ right to ownership of their territories extends to the lands and resources they currently use, and to those lands that were taken from them and with which they still have a vital connection.<sup>143</sup> States must guarantee indigenous peoples the right to restitution of those ancestral lands of which they have been deprived. According to the Court, “the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith”, and “the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred

<sup>137</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 91.

<sup>138</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 103.

<sup>139</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 119, 155.

<sup>140</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 167.

<sup>141</sup> In this sense, the Inter-American Court concluded that Suriname violated Articles 21 and 2 of the American Convention, because its legal system used the term ‘factual rights’ or ‘de facto rights’ to distinguish indigenous rights from the ‘de jure’ rights of the bearers of real title and other property rights subject to registration, recognition and issuance by the State: “This limitation on the recognition of the legal right of the members of the Saramaka people to fully enjoy the territory they have traditionally owned and occupied is incompatible with the State’s obligations under Article 2 of the convention to give legal effect to the rights recognized under Article 21 of such instrument”. Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 110.

<sup>142</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, United States, December 27, 2002, pars. 142-145.

<sup>143</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95, footnote 101; Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 153.2; Case of the Yakye Axa Indigenous Community v. Paraguay, par. 135.

to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality".<sup>144</sup> In this regard, the Court has explained that, whenever there is a conflict between indigenous communal property and individual private property, that conflict must be assessed by the State on a case-by-case basis, taking into account the restrictions that would result from the recognition of one or the other right, and the special dimensions and implications of indigenous territorial property over the collective and individual right to survival and cultural integrity. This does not mean that the indigenous claims will always prevail, as innocent third parties who have received those lands in good faith also have legally protected interests and rights, case in which the indigenous must be given alternative lands of equal extension and quality.

190. The Commission considers that the legal system in force in Guyana is inconsistent with these inter-American standards, insofar as it privileges *ab initio* the property rights and economic interests of third parties over the protection of indigenous peoples' territorial property, and moreover, the legislation lacks any provisions on restitution of the lands of which indigenous communities have been dispossessed and which they must reasonably recover as a matter of human rights.

191. The title deeds issued to Isseneru expressly exclude "all lands legally held" from their scope. Within those "lands legally held", Guyanese judges have included not only lands held in private property by external owners, but also the areas affected by mining permits or concessions, even prospecting permits, which have been assimilated for these purposes to property titles. In the IACHR's view, this means that the Guyanese legal system, as expressed in its legislation, its official property titles and its judicial decisions, has given an *ab initio* priority and prevalence to the rights of non-indigenous parties over ancestral indigenous territories, including the rights of mining concession and permit holders. This situation is incompatible with the inter-American standards described in the foregoing paragraphs, which require a careful consideration of each individual conflict between legally protected rights on a case-by-case basis, taking into account the critical importance that territory has for the Amerindian population. Moreover, the assimilation of mining permits and concessions to private property rights is a disproportionate measure that fails to properly value the transcendence of territorial rights for the livelihood, cultural integrity and very survival of indigenous communities. These additional reasons lead the Commission to conclude that Guyana has violated the rights to property and equality under Articles II and XXIII of the American Declaration.

192. In addition, the IACHR notes that the Amerindian Act does not contain specific provisions on the restitution of lands that indigenous peoples and communities have lost and which have been transferred to third parties, be it in good or bad faith. This means that the legislation in force in Guyana fails to provide its indigenous communities with legal tools or instruments to enforce some of the most important international guarantees ascribed them by international law, namely, the right to restitution of those territories from which they have been unlawfully deprived, and the right to have a judicial authority conduct a case-to-case balancing exercise so as to assess which right should prevail in a given case, whether the right of an ancestral community, or the right of a good-faith third party proprietor.

193. Moreover, the Commission considers that this overall legal *status quo* implies a situation of racial discrimination, which is derived from the differential and diminished degree of protection that is granted to indigenous ownership as compared to the protection received by registered non-indigenous property titles and even economic interests that are not tantamount to private property. These non-indigenous property rights and economic interests are being granted an *a priori*, absolute degree of legal protection, whereas indigenous peoples' territorial property is subordinated in its extent to those private titles and economic interests, lacks an express enunciation of rights in the applicable legislation, and -as proven above- depends for its formalization on a unilateral and overbroad decision-making process established by the law itself. Private property in Guyana is not subject to any of these limitations; the fact that the type of property that is the target of this legal difference in treatment is that of indigenous and tribal peoples, provides this discriminatory legal treatment with a racial element that the IACHR is in the duty to denounce and declare. As stated in prior

<sup>144</sup> Inter-American Court of Human Rights, Case of the Sawhoyamaya Indigenous Community v. Paraguay, par. 128; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95.

decisions, “respect for and protection of the private property of indigenous peoples on their territories is equivalent in importance to non-indigenous property, and... is mandated by the fundamental principle of non-discrimination enshrined in Article II of the American Declaration”.<sup>145</sup>

### **C. Indigenous peoples’ rights over the natural resources in their territory, and mining activities**

194. Indigenous peoples have property rights over the natural resources which are present in their territories. The Inter-American Human Rights System’s jurisprudence has explicitly incorporated, within the material scope of their right to communal property, the natural resources traditionally used by indigenous peoples and linked to their cultures, including uses which are both strictly material and other uses of a spiritual or cultural character:<sup>146</sup> “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. Without them, the very physical and cultural survival of such peoples is at stake”.<sup>147</sup> For the Inter-American Human Rights System, this is a necessary consequence of the right to territorial property: from the right to use and enjoy territory in accordance with indigenous peoples’ traditions and customs, the right to the natural resources which are both in and within the ancestral lands is a necessary derivation. Subsoil resources have a specific legal regime which is explained in the following sections.

#### **1. Specific indigenous rights over natural resources and extractive activities in their territories: non-despoilment of the environment, compensation for losses, prior consultation and consent, prior environmental and social impact assessments, and fair benefit sharing**

195. Indigenous peoples’ right to territorial property protects the connection that indigenous communities have to their territories, and also the natural resources contained in these territories which are linked to their culture, as well as the intangible elements derived from them.<sup>148</sup> The resources that are protected by the right to communal property are those that the indigenous communities “have used traditionally and that are necessary for the very survival, development and continuity of their way of life”.<sup>149</sup> The Inter-American Court, in the case of the Saramaka People v. Suriname, held that “the right to use and enjoyment of the territory would have no meaning if it was not connected to the natural resources that are found within that territory”.<sup>150</sup> Indigenous territorial rights are directly linked to the exercise of indigenous self-determination over their lands and natural resources; in the Court’s terms, “the adequate guarantee of communal property does not entail merely its nominal recognition, but includes observance and respect for the autonomy and self-determination of the indigenous communities over their territory”.<sup>151</sup> In this line, the Court has referred to indigenous self-determination in relation to their ability to freely dispose of their natural

<sup>145</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 12, 2004, par. 119.

<sup>146</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 181.

<sup>147</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, pars. 120, 121.

<sup>148</sup> Inter-American Court of Human Rights. Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 94; Case of the Yakye Axa Indigenous Community v. Paraguay, par. 137; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, par. 145; Case of the Kuna Indigenous People of Madungandí and the Embera Indigenous People of Bayano and their members v. Panama. Preliminary objections, merits, reparations and costs. Judgment of October 14, 2014. Series C No. 284, par. 111, 112; Case of the Garifuna Community of Punta Piedra and its members v. Honduras. Preliminary objections, merits, reparations and costs. Judgment of October 8, 2015. Series C No. 304, par. 165; Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras. Merits, reparations and costs. Judgment of October 8, 2015. Series C No. 324, para. 100; Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs. Judgment of November 25, 2015. Series C No. 309, par. 129; Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of February 5, 2018. Series C No. 346, par. 115.

<sup>149</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, pars. 121, 122; Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama, par. 112.

<sup>150</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, pars. 121, 122; Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama, par. 112.

<sup>151</sup> Inter-American Court of Human Rights. Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 153.



resources and wealth, in order not to be deprived of their inherent means of subsistence.<sup>152</sup> Therefore the ownership of the land relates to the “need to ensure the security and permanence of the control and use of the natural resources (...) which, in turn, preserves the way of life” of the communities.<sup>153</sup> The State is consequently in the obligation of guaranteeing the right of the indigenous peoples to truly control and use their territory and natural resources.<sup>154</sup>

196. Although the Commission has repeatedly indicated that it “recognizes that the right to development implies that each state has the freedom to exploit its natural resources, including through the granting of concessions and acceptance of international investment”<sup>155</sup>, it has also warned that economic activities should be accompanied by measures to ensure that they are not carried out at the expense of the fundamental rights of the persons adversely affected by them.<sup>156</sup> In this sense, economic growth is not an end in itself, but one more component of the realization of the right to development and human rights in general<sup>157</sup>. Taking this into account, the right to development must be sustainable and necessarily put its focus on the wellbeing and rights of persons and communities, more than on economic statistics and commodities<sup>158</sup>. Therefore, economic activities may not compromise or subordinate the fundamental values of democracy and rule of law, in which the human person and his or her rights are at the center; human rights are not an obstacle to economic development, but in fact they are its precondition.<sup>159</sup> The rules of the inter-American system neither prevent nor discourage development projects or extractive activities. Nonetheless, Member States of the OAS have clear obligations to respect and guarantee human rights in relation to extractive industries. A range of human rights are potentially affected by the implementation of extractive projects, including the rights to life, physical integrity, health, non-discrimination, consultation and consent, cultural identity, food, water, information and participation, among others. This is especially the case of the indigenous and tribal communities within whose territories those extractive projects are implemented. Consequently, under the inter-American instruments States must comply with a set of obligations in regard to the extraction, exploitation and development of natural resources in ancestral territories.

197. The State must, in the first place, “refrain from carrying out actions that may result in agents of the State or third parties acting with its acquiescence or tolerance, adversely affecting the existence, value, use and enjoyment of their territory”<sup>160</sup>, given that it must guarantee indigenous peoples’ right to effectively control

<sup>152</sup> Case of the Saramaka People v. Suriname, p. 93; Case of the Kaliña and Lokono Peoples v. Suriname, par. 122; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 154.

<sup>153</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, pars. 121, 122; Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama, par. 112.

<sup>154</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 98; Case of the Yakye Axa Indigenous Community v. Paraguay, par. 137; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, par. 146; Case of the Xucuru Indigenous People and its members v. Brazil, par. 117.

<sup>155</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Chapter VIII. OAS/Series L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 55.

<sup>156</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District. Belize. October 12, 2004, par. 150; IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 24.

<sup>157</sup> IACHR, Special Rapporteur for Economic, Social, Cultural and Environmental Rights, OEA/ Ser.L/V/II, November 1, 2019, para. 45.

<sup>158</sup> IACHR, Business and Human Rights: Inter-American Standards. Special Rapporteur for Economic, Social, Cultural and Environmental Rights, OEA/ Ser.L/V/II, November 1, 2019, para. 45.

<sup>159</sup> IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 24.

<sup>160</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 98; Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, par. 164; Case of the Xucuru Indigenous People and its members v. Brazil, par. 117.

and use their territory and natural resources, without any type of external interference from third parties.<sup>161</sup> Other international bodies have urged States to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources”<sup>162</sup>. On this matter, it is important to highlight that, in the context of business and human rights within the Inter-American system, behavior of actors other than States is also relevant when evaluating State obligations in terms of protection of human rights. This considering that for the IACHR the recognition of human dignity is the foundation for internationally recognized human rights; given that dignity is unconditional, its protection and respect may not depend on extrinsic factors, such as the identity of the aggressor<sup>163</sup>.

198. Indeed, the right to communal property includes the right to the effective possession, use and enjoyment of the territory; the State should make that right to territorial property “truly effective in practice”.<sup>164</sup> Consequently, any activity by the State or third parties which could affect the integrity of the land and natural resources must respect certain parameters, that the State has to guarantee: compensation for those affectations of the right to territorial property which are tantamount to expropriation; real participation of the communities concerned through prior consultation; reasonable benefit for them derived from the activities; and prior execution of social and environmental impact assessments.<sup>165</sup>

199. Thus, in relation to works or activities on indigenous territory, the State must first observe the same requirements as for any limitation of the right to property “for reasons of public utility or social interest”, including payment of compensation.<sup>166</sup> The Court in its judgment on the case of the Saramaka people indicated that the right to receive compensation pursuant to Article 21(2) of the Convention extends not only to the total deprivation of a property title by expropriation, “but also includes deprivation of the normal use and enjoyment of the said property”.<sup>167</sup>

200. In addition to this compensation, the State must comply with the three additional requirements of prior consultation, environmental and social impact assessments, and benefit sharing. These three requirements are aimed at preserving, protecting and guaranteeing the special relationship between indigenous peoples and their territory, in turn securing their subsistence and survival.<sup>168</sup>

201. First, any extractive plan or project in indigenous territory must comply with the requirement of prior, free and informed consultation. Indigenous peoples’ right to be consulted adequately through representative institutions, whenever a decision is to be made that may affect their territorial rights, is based on their right to participation.<sup>169</sup> The effective participation of the peoples or communities affected must be guaranteed in conformity with their customs and traditions, “an obligation that requires the State to receive and provide information and also to ensure constant communication between the parties. The consultations should be conducted in good faith, using culturally acceptable procedures and should be aimed at reaching an agreement.”<sup>170</sup> The consultations must be carried out during the initial stages of the development or investment plan or project; they must be allowed time for internal discussions within the communities so they

<sup>161</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 98; Case of the Yakye Axa Indigenous Community v. Paraguay, par. 137; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, par. 146; Case of the Xucuru Indigenous People and its members v. Brazil, par. 117; Case of the Saramaka People v. Suriname, par. 115.

<sup>162</sup> Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of Indigenous Peoples. (Fifty-first session, 1997) Doc. A/52/18, Annex V, par. 5.

<sup>163</sup> IACHR, Special Rapporteur for Economic, Social, Cultural and Environmental Rights, OEA/Ser.L/V/II, November 1, 2019, par. 184

<sup>164</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 95; Case of the Yakye Axa Indigenous Community v. Paraguay, par. 141.

<sup>165</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, par. 129.

<sup>166</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174.

<sup>167</sup> Case of the Saramaka People v. Suriname, par. 139.

<sup>168</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 175.

<sup>169</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 173; Case of the Kaliña and Lokono Peoples v. Suriname, pars. 202-203, 230.

<sup>170</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174.

can provide an adequate response; and the State must ensure that the members of the peoples or communities are aware of any possible risks, including environmental and health risks.<sup>171</sup> The consultation is a responsibility of the State, even if it is a private company that is promoting or carrying out the activities; it may not be delegated.<sup>172</sup>

202. As clarified in multiple decisions by the inter-American system, whenever a project can threaten the survival of the affected peoples or communities, they have a right to prior, free and informed consent. The Inter-American Court has considered that “regarding large-scale development or extraction projects that would have a major impact within [the indigenous] territory, the State has a duty, not only to consult with the [indigenous people], but also to obtain their free, prior, and informed consent, according to their customs and traditions.”<sup>173</sup> This means that “depending upon the level or impact of the proposed activity, the State may additionally be required to obtain consent” from the relevant people, which is especially the case when it comes to large-scale extractive projects that menace the integrity of their lands and natural resources.<sup>174</sup> For the inter-American organs, the notion of “survival” is not tantamount to mere physical existence: “the phrase ‘survival as a tribal people’ must be understood as the ability of the people to ‘preserve, protect and guarantee the special relationship that [they] have with their territory’, so that ‘they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected (...)’. That is, the term ‘survival’ in this context signifies much more than physical survival”.<sup>175</sup>

203. Second, any plan or project must be preceded by a prior environmental and social impact assessment, carried out by independent and technically capable entities under the State’s supervision.<sup>176</sup> In the Court’s terms, “this should not be conducted as a mere formality, but should make it possible to evaluate alternatives and the adoption of impact mitigation measures, and be executed as part of an assessment of environmental and social impacts that must: (a) be prior to the decision to implement the project or execute the activity; (b) be prepared by independent entities under State supervision; (c) consider, as applicable, the accumulated impacts of other existing or proposed projects, and (d) permit the participation of interested persons or communities and those who are possibly affected. This participation in the social and environmental assessment is specific to this end, and is not the same as the exercise of the right to free, prior and informed consultation of the indigenous peoples or communities mentioned previously, which is more wide-ranging.”<sup>177</sup>

204. Third, the State must ensure that indigenous peoples receive a reasonable benefit from the projects implemented in their territory.<sup>178</sup> The determination of the benefits that are to be received by the

<sup>171</sup> Case of the Saramaka People v. Suriname, par. 133; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, par. 186; Case of the Kaliña and Lokono People v. Suriname, par. 201; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174, footnote 161.

<sup>172</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174, footnote 161; United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples: Report to the Human Rights Council at its Twelfth Session, July 15, 2009, Doc. A/HRC/12/34, par. 54.

<sup>173</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Series C No. 172, par. 134.

<sup>174</sup> Inter-American Court of Human Rights, 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, par. 17.

<sup>175</sup> Inter-American Court of Human Rights, 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, par. 37.

<sup>176</sup> Case of the Saramaka People v. Suriname, par. 129; Case of the Kaliña and Lokono Peoples v. Suriname, par. 201; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174.

<sup>177</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174, footnote 162; Case of the Kaliña and Lokono Peoples v. Suriname, pars. 201, 207, 2015; Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, par. 162.

<sup>178</sup> IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1141, Recommendation 6. Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, par. 129; Case of the Kaliña and Lokono Peoples v. Suriname, par. 201; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 174.

affected communities, like the determination of the compensation for any environmental damages, must be carried out with the full participation of the corresponding peoples, in a culturally appropriate manner.<sup>179</sup>

## 2. Indigenous peoples' economic, social, cultural and environmental rights

205. The organs of the Inter-American Human Rights System have underscored the relationship of interdependence that exists between civil and political rights, and economic, social, cultural and environmental rights, given that they must all be understood in a comprehensive and holistic manner as human rights, without any hierarchy or precedence among them, being fully enforceable in every case before the State authorities legally empowered to protect them<sup>180</sup>. For example, the Inter-American Court has reiteratively understood that the rights to life and personal integrity are directly and immediately linked to the rights to water, food, health and sanitation<sup>181</sup>. The IACHR considers that this approach, based on the connections between rights, constitutes a clear manifestation of the interdependence and indivisibility that exists between civil, political, economic, social, cultural and environmental rights.

### 2.1. The right to a healthy environment

206. Although the American Declaration contains no express references to the protection of the environment, several fundamental rights require, as a necessary precondition for their enjoyment, a minimum environmental quality, and are profoundly affected by the degradation of natural resources. The IACHR has emphasized that there is a direct relationship between the physical environment in which persons live, and the rights to life, security and physical integrity, the realization of which "is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated".<sup>182</sup> In a similar line, the Commission has pointed out that "respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and to preservation of physical well-being. Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being."<sup>183</sup> Both the IACHR and the Inter-American Court have articulated a set of State obligations related to the preservation of an environmental quality which allows for the enjoyment of human rights. State Members of the OAS must prevent the degradation of the environment in order to comply with their human rights obligations under the American Declaration.<sup>184</sup> In this exact vein, Article 36 of the Constitution of Guyana provides that "[i]n the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment".

207. In relation to indigenous and tribal peoples, the protection of the natural resources that are present in ancestral territories, and of such territories' environmental integrity, is necessary to secure certain fundamental rights of their members, such as life, dignity, personal integrity, health, property, privacy and information. These rights are directly affected whenever pollution, deforestation, contamination of waters, or

<sup>179</sup> IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1141, Recommendation 5; Inter-American Court of Human Rights, 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, par. 25.

<sup>180</sup> Inter-American Court of Human Rights, Case of Poblete Vilches and others v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018, Series C, No. 349, par. 100; Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017, Series C No. 340, par. 141; Case of Acevedo Buendia and others v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198 par. 101.

<sup>181</sup> Inter-American Court of Human Rights. Case of Suarez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, par. 130; and Case of Vera Vera and other v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2011, Series C No. 226, par. 43.

<sup>182</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 190.

<sup>183</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 195.

<sup>184</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 193.

other significant environmental damage occurs in ancestral territories. This implies that the State must undertake preventive and positive action aimed at guaranteeing an environment that does not compromise indigenous persons' capacity to exercise their most basic human rights. In this line, the IACHR has explained that the right to life protected by the American Declaration "is not (...) limited to protection against arbitrary killing. States Parties are required to take certain positive measures to safeguard life and physical integrity. Severe environmental pollution may pose a threat to human life and health, and in the appropriate case give rise to an obligation on the part of a state to take reasonable measures to prevent such risk, or the necessary measures to respond when persons have suffered injury".<sup>185</sup>

208. In the case of indigenous peoples and communities, the right to a healthy environment is closely and directly linked to the State's obligation to ensure the "integral development for their peoples", under Articles 30, 31, 33 and 34 of the OAS Charter.<sup>186</sup> Together with economic and social development, the environment is an integral part of the development process because it is one of the pillars of "sustainable development", as has been recognized in multiple international instruments and fora. Article XIX of the American Declaration on the Rights of Indigenous Peoples enshrines "the right to the protection of a healthy environment", which includes indigenous peoples' rights "to live in harmony with nature and to a healthy, safe and sustainable environment"; "to conserve, restore, and protect the environment and to manage their lands, territories and resources in a sustainable way", and "to the conservation and protection of the environment and the productive capacity of their lands or territories and resources".

209. The IACHR and the Office of the Special Rapporteur on ESCER have established that there is a close relationship between human rights, sustainable development, and the environment, whose interaction encompasses innumerable facets and scopes<sup>187</sup>. In consequence, environmental problems affect several rights, which may be felt with greater intensity by certain groups in situations of vulnerability, including indigenous peoples and communities which depend, economically or for their subsistence and survival, on environmental resources; "pursuant to human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination".<sup>188</sup>

210. On the other hand, the Inter-American Court has emphasized that management by indigenous communities of the natural resources in their territories is understood to be favorable to environmental preservation: "In general, indigenous peoples play a significant role in the conservation of nature because certain traditional customs result in sustainable practices and are considered essential for effective conservation strategies. Hence, respect for the rights of indigenous peoples may have positive effects on environmental conservation. Consequently, the rights of such communities and the international environmental standards should be understood as complementary and non-exclusive rights."<sup>189</sup>

*The duty to design, implement and effectively enforce an adequate legal framework*

211. States are in the obligation to implement appropriate legal and regulatory frameworks for the protection of the human rights that may be affected by extractive and development activities; this is a function of the general and basic duty of States to adapt their domestic legal systems to their international obligations, in this case under the American Declaration. Said obligation implies that the legal framework must be well structured in order to require respect for human rights by the various actors who perform extractive and development activities, including State entities and the private sector. Environmental and mining legislation is of particular relevance in this regard. The effective implementation of these legal provisions is necessary to prevent the perpetration of human rights violations against indigenous peoples and communities through

<sup>185</sup> IACHR, Report on the situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997.

<sup>186</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 202; Advisory Opinion OC-23/17 of November 15, 2017: "The Environment and Human Rights"; Series A No. 23, par. 57 and footnote 85.

<sup>187</sup> IACHR, Special Rapporteur for Economic, Social, Cultural and Environmental Rights, OEA/ Ser.L/V/II, November 1, 2019, par. 46

<sup>188</sup> Advisory Opinion OC-23/17 of November 15, 2017: "The Environment and Human Rights"; Series A No. 23, pars. 66, 67; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 209.

<sup>189</sup> Case of the Kalifña and Lokono Peoples v. Suriname, par. 173; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 250.

irregular, harmful or destructive natural resource extraction undertakings.<sup>190</sup> As explained by the Commission, “the absence of regulation, inappropriate regulation or lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights protected by the American Convention”<sup>191</sup>; in the same manner the European Court of Human Rights has held that “the State’s responsibility in environmental cases may also arise from a failure to regulate private industry in a manner securing proper respect for [human rights]”.<sup>192</sup>

212. As explained below, one of the critical aspects of an appropriate legal framework is for it to adequately enshrine protections for indigenous territorial property rights, including provisions on prior, free and informed consultation and consent in relation to extractive activities. Legal uncertainty over the rights of indigenous peoples over their territories and natural resources deems them “especially vulnerable and open to conflicts and violation of rights”.<sup>193</sup>

213. Another element of central importance in this regard is the clear definition, in the legislation or regulations, of the responsibilities and liabilities that arise from human rights violations. The absence or provisions in domestic law ensuring accountability of State officials or private parties can compromise the international responsibility of States; therefore, as part of their general obligation to implement and enforce their legislation, States must ensure compliance by all relevant actors with the mandates of their environmental, mining or criminal legislation in relation to extractive activities, imposing the penalties and sentences provided by the Law in the event of breach or violation.<sup>194</sup>

214. Furthermore, State authorities have the duty, as part of the rule of law, to implement their national environmental protection rules and regulations; this positive obligation is part of the State’s general duty to implement and enforce its own laws, in order to protect the human rights of all persons, including indigenous or tribal peoples and their members.<sup>195</sup> As part of this generic obligation, States must ensure compliance with their environmental and criminal law and regulations in relation to projects for the exploration and exploitation of natural resources in indigenous territories, and impose the penalties and sanctions therein established in cases of non-compliance.<sup>196</sup>

*Prevention of environmental harm, inter alia through proper supervision and monitoring of private actors by the State authorities*

215. States have an obligation to prevent damage to the environment in indigenous or tribal territories that may affect the enjoyment of the corresponding peoples’ or communities’ human rights. Fulfillment of this obligation requires adopting the necessary measures to protect indigenous communities’ habitats from ecological deterioration as a consequence of extractive activities, given that such deterioration reduces their capacities and strategies in terms of food, water, and economic, spiritual or cultural activities.<sup>197</sup> In adopting these measures, State must place “special emphasis on protecting the forests and waters, which are

<sup>190</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 68; IACHR, Resolution No. 12/85, Case No. 7615, Yanomami People v. Brazil, March 5, 1985.

<sup>191</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 69.

<sup>192</sup> ECHR, Hatton and Others v. the United Kingdom. Application No. 36022/97, 8 July 2003, Par. 119.

<sup>193</sup> IACHR, Fifth Report on the Situation of Human Rights in Guatemala. Doc. OEA/Ser.L/V/II.111, Doc. 21 rev., April 6, 2001, Chapter XI, par. 57; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 87.

<sup>194</sup> IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 75.

<sup>195</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 198.

<sup>196</sup> IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 254; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 200.

<sup>197</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 212.

fundamental for their health and survival as communities”.<sup>198</sup> The IACHR has emphasized that States must establish adequate safeguards and mechanisms to ensure that concessions for the exploitation of natural resources do not cause environmental damages that affect the lands of indigenous communities,<sup>199</sup> and it has prompted them to “take steps to prevent harm to affected individuals through the conduct of its licensees and private actors (...) [and to] ensure that measures are in place to prevent and protect against the occurrence of environmental contamination which threatens the lives of the inhabitants of development sectors”.<sup>200</sup>

216. The principle of prevention of environmental harm forms part of customary international law, and “entails the State obligation to implement the necessary measures ex ante damage is caused to the environment, taking into account that, owing to its particularities, after the damage has occurred, it will frequently not be possible to restore the previous situation”.<sup>201</sup> On the grounds of this duty of prevention, “States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment”, in application of a standard of due diligence which is appropriate and proportional to the level of risk of environmental harm.<sup>202</sup> Some of the measures that States can take to comply with this obligation in relation to potentially harmful activities are (i) regulation, (ii) supervision and monitoring, (iii) requiring and approving environmental impact assessments, (iv) establishment of contingency plans, and (v) mitigation of environmental damage.<sup>203</sup>

217. The Court has clearly pointed out that States have an obligation to respect the right to a healthy environment, alongside an obligation to ensure it, including by preventing its violations. This obligation extends to the private sphere, in order to avoid third parties from violating that protected right, through all the legal, political, administrative and cultural measures that may promote its safeguard, and ensure that eventual violations of that right are examined and dealt with as wrongful acts.<sup>204</sup> This includes establishing adequate mechanisms to monitor and supervise certain activities, in order to protect human rights from the actions of public and private actors.<sup>205</sup> For example, in its Report on the Situation of Human Rights in Ecuador of 1997, after noticing the serious impacts of oil exploitation activities upon the health and life of a sector of the population, the Commission “encourage[d] the State to take steps to prevent harm to affected individuals through the conduct of its licensees and private actors”.<sup>206</sup>

218. The IACHR has similarly underscored that a State can incur international responsibility under the American Declaration in specific circumstances for its omission to act with the necessary due diligence to protect individuals from human rights violations committed by private actors.<sup>207</sup> Availing itself of the UN Guiding Principles on Business and Human Rights, the IACHR has established that States’ duty to protect human rights entails taking appropriate steps to prevent, investigate, punish and redress human rights violations by private parties through effective policies, legislation, regulations and adjudications, and it has pointed out that this duty to protect has a grounding in inter-American instruments such as the American Declaration.<sup>208</sup> For

<sup>198</sup> IACHR, Third Report on the Situation of Human Rights in Paraguay. Doc. OEA/Ser./L/VII.110, Doc. 52, March 9, 2001, Chapter IX, Pars. 38, 50 – Recommendation 8.

<sup>199</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 147.

<sup>200</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997.

<sup>201</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 208.

<sup>202</sup> Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, footnote 247, par. 142; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 208.

<sup>203</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 208.

<sup>204</sup> Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, pars. 117, 118.

<sup>205</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 207.

<sup>206</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Chapter VIII. OAS/Series L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 49.

<sup>207</sup> IACHR, Resolution No. 12/85, Case No. 7615, Brazil, March 5, 1985 (Yanomami People v. Brazil); IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 49.

<sup>208</sup> IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 52.

the IACHR, “a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights protected by the American Convention”.<sup>209</sup> Moreover, as part of the generic obligation to implement and enforce legal measures, States must ensure compliance with their environmental and criminal legislation and regulations in relation to projects for the exploration and exploitation of natural resources in indigenous and tribal territories, and impose the sanctions foreseen therein in cases of non-compliance by private actors.<sup>210</sup>

219. As part of this duty of prevention, the inter-American system has developed the notion of “due diligence”, and it has explained that the obligation of duly diligent prevention of human rights violations by non-state actors is triggered by the State’s awareness of the respective situation. As explained by the Court, “[the State’s] obligation to adopt measures of prevention and protection for private individuals in their relations with each other is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger”.<sup>211</sup> In this sense, in order to establish whether there has been a failure to comply with the obligation to prevent violations of human rights, it must be ascertained whether “i) State authorities knew, or should have known, of the existence of a real and immediate risk to life and/or physical integrity of an individual or specific group of individuals and that ii) said authorities did not take the necessary measures, within the realm of their powers and attributions, which, rationally, were expected to be taken to prevent or avoid the risk”.<sup>212</sup> This specific obligation to prevent is enforceable prior to the authorization of the activity or the granting of the necessary permits, as well as during the implementation and life-cycle of the project, by means of supervision, monitoring and oversight.<sup>213</sup> For the case of extractive projects and activities, this duty of prevention is directly linked to the obligation to conduct prior social and environmental impact assessments for any undertaking that is to be implemented within indigenous territories, as explained below.

220. The identification of risks for human rights must be followed by the adoption of measures aimed at preventing their materialization. Therefore, once the potential impacts of a given extractive project are identified, States are in the duty of adopting, or where appropriate requiring the private actor to adopt, mitigation measures aimed at reducing the possible damage which has been identified, or stop its impact if it is already underway, remedying its consequences and ensuring redress through adequate and effective mechanisms.

221. Monitoring and supervision of extractive or development activities is a key component of the obligation of prevention of human rights violations. The existence and proper functioning of a coherent supervision and control system, put in place and operated by the State authorities, is a necessary step to encourage the various actors involved to avoid infringement of the rights of the population located in the area

<sup>209</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Chapter VIII. OAS/Series L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 55.

<sup>210</sup> IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 254; IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 200.

<sup>211</sup> Inter-American Court of Human Rights. Gonzalez and others case (“Cotton Field”) v Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No.205. para. 280; Case of the Pueblo Bello Massacre, Colombia. Judgment of January 2006, Series C No. 140, par 31. 123; Case of the Sawhoyamaya Indigenous Community vs. Paraguay. Judgment of March 29, 2006, Series C No. 146, para. 155; and Case of Valle Jaramillo et al v Colombia. Merits, Reparations and Costs, Judgment of November 27, 2008, Series C No. 192, par. 78

<sup>212</sup> Inter-American Court of Human Rights, Case of the Pueblo Bello Massacre v Colombia, Judgment of January 31, 2006, Series C No. 140, par.123; Case of Gonzalez and others (“Cotton Field”) v Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. para. 283 y 284; Case of the Sawhoyamaya Indigenous Community vs. Paraguay. Judgment of March 29, 2006, Series C No. 146, para. 155; Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 188; Case of Castillo González et al. v. Venezuela. Merits. Judgment of November 27, 2012. Series C No. 256, para. 128; Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 124; Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 143; Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 527.

<sup>213</sup> IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 86.



where they operate. As clarified by the European Court,<sup>214</sup> with regard to activities by private individuals which may be dangerous for human rights, special attention must be paid to specific regulations and systems so that they adequately reflect the special features and characteristics of the activity in question, in such a manner that they can fit those features and characteristics into the monitoring and control of their initiation, performance and safety.

222. Supervision and control mechanisms must incorporate guarantees to ensure the specific rights of indigenous and tribal peoples. Those mechanisms must verify whether, once the project is approved, violations of the right to collective property are taking place – which refers not only to the impact upon the environment in traditional territories, but also to the special relationship that connects them to their lands, including their own forms of economic livelihood, their identities and cultures, and their spiritual heritage. The mechanisms must also allow for establishing whether the extractive activities are affecting the corresponding people's or community's ability to use and enjoy their lands and natural resources in accordance with their customary law and culture. Moreover, in these cases the duty of supervision and control must be fulfilled taking the findings of the prior environmental and social impact assessment as a guide and blueprint for action. Moreover, the monitoring systems must provide effective and culturally appropriate responses to any negative impacts or consequences which are detected.<sup>215</sup>

223. In close connection with the above, States are in the obligation of monitoring and preventing illegal extractive activities in indigenous territories, and of investigating and punishing those responsible for them.<sup>216</sup> Illegal extractive undertakings within ancestral lands threaten and encroach upon the effective ownership and possession of indigenous territories and thus menace the survival of the peoples who inhabit them, in particular due to their impact upon rivers, soil and other resources that provide them with their main sources of livelihood.<sup>217</sup>

*Duties of immediate action in relation to environmental degradation or destruction*

224. Whenever significant ecological or other harm is being caused to indigenous or tribal territories as a consequence of development or investment projects or plans or of extractive concessions, these projects, plans or concessions become illegal, and States have a duty to suspend them, repair the environmental damage, and investigate and sanction those responsible for the harm.<sup>218</sup> Indeed, the IACHR has established that priority must be given to the rights to life and integrity of indigenous communities and their members in these cases; as a consequence, they are entitled to immediate suspension of the extractive plans or projects which threaten these rights.<sup>219</sup> The Commission has also underscored the State obligation to implement, in the framework of projects for natural resource exploitation in indigenous territories, participation mechanisms for determining the environmental damages which have been caused and their impact upon such peoples' basic subsistence activities. Said participation mechanisms must allow for the immediate suspension of the execution of the projects that threaten life or personal integrity, and they must guarantee the imposition of the pertinent administrative or criminal penalties. They must also allow for the determination and materialization of

<sup>214</sup> ECHR. *Oneryildiz v. Turkey*. Application No. 48939/99. 30 November 2004, pars. 89-90; *Kolyadenko and Others v. Russia*. Applications Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05. 9 July 2012, par. 158.

<sup>215</sup> IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 102, 103, 105.

<sup>216</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 268; IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 127.

<sup>217</sup> IACHR, *Report on the Situation of Human Rights in Brazil*. Doc. OAS/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, par. 33; IACHR, *Democracy and Human Rights in Venezuela*. Doc. OAS/Ser.L/V/II, Doc. 54, December 30, 2009; IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*. Doc. OEA/Ser.L/V/II. Doc. 47/15, 31 December 2015, par. 127.

<sup>218</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 216.

<sup>219</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 217; IACHR, *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1141, Recommendation 6; IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 297, Recommendation 6.

indemnities for any damages to the environment and/or basic subsistence activities which are being caused.<sup>220</sup> Correlatively, States are bound to “minimize the adverse effects of development projects on indigenous peoples”<sup>221</sup> and mitigate the damages caused by them. For example, in its judgment on the case of the Saramaka people, the Inter-American Court ordered the State to “implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people”.

225. The IACHR has also explained that a constitutive part of the State’s duties of immediate action in these cases is its obligation to carry out the necessary investigations to identify those responsible for environmental harm, impose the corresponding sanctions, and proceed to provide the appropriate measures of reparation.<sup>222</sup> As stated above, the affected indigenous communities have the right to participate in the determination of the environmental damages caused by the projects and of their impact upon their basic subsistence activities, as well as in the establishment of the indemnity for the damages caused.

226. Indigenous and tribal peoples also have the right to be protected by the State from conflicts with third parties over projects for the exploration and exploitation of natural resources in their ancestral territories, particularly when such conflicts have been caused by the delay or absence of territorial titling and demarcation.<sup>223</sup>

## 2.2. The right to food

227. For indigenous peoples, the preservation of their relationship to their territories is essential to their cultural and nutritional survival.<sup>224</sup> As explained by the UN Special Rapporteur on the Right to Food, “[t]he realization of indigenous peoples’ right to food often depends crucially on their access to and control over the natural resources in the land and territories they occupy or use. Only then can they maintain traditional economic and subsistence activities such as hunting, gathering or fishing that enable them to feed themselves and preserve their culture and distinct identity.”<sup>225</sup>

228. Article XI of the American Declaration expressly enshrines the right to food, stating that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food”. In the same sense, Article 25(1) of the Universal Declaration of Human Rights establishes that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food”. Article 34(j) of the OAS Charter establishes that “[t]he Member States agree (...) to devote their utmost efforts to accomplishing the following basic goals: (...) proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food”. Article 40(1) of the Constitution of Guyana provides that “[e]very person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want”.

229. The Inter-American Court has derived the basic contents of the right to food from a joint interpretation of Article 34(j) of the OAS Charter and the American Declaration: “essentially, this right protects access to food that permits nutrition that is adequate and appropriate to ensure health. (...) this right is realized

<sup>220</sup> IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 217; IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, par. 1141, Recommendation 6; IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 297, Recommendation 6.

<sup>221</sup> IACHR, Follow-up Report – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II.135, Doc. 40, August 7, 2009, par. 165; IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 218.

<sup>222</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 251.

<sup>223</sup> IACHR, Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 188; IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser.L/V/II. Doc. 54, 30 December 2009, pars. 1066, 1071, 1137 – Recommendations 1 to 4.

<sup>224</sup> Case of the Xákmok Kásek Indigenous Community v. Paraguay, par. 282; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 252.

<sup>225</sup> United Nations Special Rapporteur on the right to food. “The Right to Food”. September 12, 2005. UN Doc. A/60/350, par. 23.

when everyone has ‘physical and economic access at all times to adequate food or means for its procurement’.<sup>226</sup> Accessibility and availability thus form part of the core content of this right; availability of food in sufficient quantity and quality to satisfy the dietary needs of the person, free from adverse substances, and culturally acceptable; accessibility of food in economic and physical terms, in a manner that is sustainable and does not interfere with other human rights.<sup>227</sup> Food must also be adequate and appropriate in physical, nutritional and cultural terms; and its procurement must be sustainable.

230. States have an obligation to respect, to protect and to ensure the right to food. As stated by the Court, the obligation to protect this right implies that the State must adopt measures to guarantee that enterprises or individuals do not deprive persons from access to adequate food. In that sense, the right to food is violated whenever a State fails to regulate the activities of individuals or groups in such a manner as to prevent them from violating other persons’ right to food.<sup>228</sup>

231. The IACHR has highlighted the direct connection between the preservation of environmental integrity and access to sources of livelihood and in particular food. The Commission has argued, citing the World Charter for Nature, that “mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients”.<sup>229</sup>

### 2.3. The right to water

232. The right to water is derived from the rights to life, food, health, development and a healthy environment, which stem from the American Declaration and the OAS Charter<sup>230</sup>. The Inter-American Court has held that “among the conditions required for a decent life (...) [are] access to, and the quality of, water, food and health, and (...) these conditions have a significant impact on the right to a decent existence and the basic conditions for the exercise of other human rights. The Court has also included environmental protection as a condition for a decent life”.<sup>231</sup> Insofar as water is an essential element for human survival, for securing livelihoods and an adequate standard of living, it is directly linked to the right to life in conditions of dignity. Other international bodies have underlined the direct relationship that exists between the rights to health, food and water.<sup>232</sup> Environmental protection is directly related to access to water and health, so therefore environmental pollution can directly affect the rights to water, health and survival.<sup>233</sup> Access to water is also a precondition for enjoying certain cultural practices, therefore standing in direct relation to the right to take part in cultural life.<sup>234</sup> In this line, the IACHR has observed that the degradation of the environment can negatively affect access to water, bearing a consequent incidence upon the enjoyment of other human rights including life, health and food. It has therefore underscored the conclusions of the CESCR in the sense that for safeguarding the right to health it is indispensable “to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as

<sup>226</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 216.

<sup>227</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 219.

<sup>228</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 221.

<sup>229</sup> IACHR, Report on the Situation of Human Rights in Ecuador. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 61.

<sup>230</sup> Articles 30, 31, 33, 34, 45, 47 and 48.

<sup>231</sup> Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, pars. 109, 110; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 222, footnote 219.

<sup>232</sup> For example, the Committee on Economic, Social and Cultural Rights has stated that “[t]he right to water is (...) inextricably related to the right to the highest attainable standards of health (...and to) adequate food”. CESCR. General Comment 15. The right to water (Arts. 11 and 12 of the Covenant), par. 3.

<sup>233</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, pars. 109, 110; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 222, footnote 219.

<sup>234</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 222, footnote 220.

radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.<sup>235</sup>

233. Other additional inter-American legal instruments enshrine the right to water in its different manifestations. The Social Charter of the Americas states expressly in Article 9 of Chapter III that “States recognize that water is fundamental for life and central to socioeconomic development and environmental sustainability”, thereby undertaking “to continue working to ensure access to safe drinking water and sanitation services for present and future generations”. Resolution 2349/07 of the OAS General Assembly, on “Water, health and human rights”, provides in Articles 1 and 4 that the States Parties resolve “to recognize that water is essential for life and health” and “indispensable for a life with human dignity”, as well as “to recognize and respect, in accordance with national law, the ancestral use of water by urban, rural and indigenous communities in the framework of their habits and customs on water use”. Resolution 2760/12 of the OAS General Assembly, on “The human right to safe drinking water and sanitation”, in its Article 1 invites States “to continue working to ensure access to safe drinking water and sanitation services for present and future generations”.

234. The organs of the inter-American system have underscored the elements of availability, quality and accessibility of the right to water as components that must be incorporated into any analysis of its legal protection.<sup>236</sup> Hence among the elements that compose the right to water, and that form the object of the State’s obligations to respect, protect and ensure, the Inter-American Court has highlighted availability -in the sense that water supply must be sufficient and continuous for each person’s domestic and personal uses-, quality -in the sense that water must be safe and acceptable in colour, odour and taste-, and accessibility -to everyone without discrimination, within the State’s jurisdiction-.<sup>237</sup> States are in the international obligation of preventing third parties from impairing the enjoyment of the right to water.<sup>238</sup> Following the guidance of the CESCR, the Inter-American Court has established that “access to (...) water (...) includes ‘consumption, sanitation, laundry, food preparation, and personal and domestic hygiene’, and for some individuals and groups it will also include ‘additional water resources based on health, climate and working conditions’”<sup>239</sup>.

235. As for indigenous peoples’ and communities’ right to water, the Inter-American Court, in harmony with the CESCR, has held that “in compliance with their obligations in relation to the right to water, States ‘should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including (...) indigenous peoples’. And should ensure that ‘indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution (...) [and] provide resources for indigenous peoples to design, deliver and control their access to water’.”<sup>240</sup>

#### 2.4. The right to health

236. The Inter-American Court has pointed out that indigenous peoples have the right to access their territory and the natural resources it lodges, which is necessary “to practice traditional medicine to prevent and cure illnesses”.<sup>241</sup> Article XI of the American Declaration states that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical

<sup>235</sup> UN Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Compilation Report (A/HRC/25/53), para. 23; UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, par. 15; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 62.

<sup>236</sup> Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 227.

<sup>237</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 227.

<sup>238</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 229.

<sup>239</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 226.

<sup>240</sup> Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 230.

<sup>241</sup> Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 168.

care, to the extent permitted by public and community resources”. In this regard, both the Court and the Commission have referred to General Comment 14 of the CESCR, dealing with the right to the enjoyment of the highest attainable standard of health, in which it was explained that “[i]ndigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, considering traditional preventive care, healing practices and medicines (...). [I]n indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this regard, (...) denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health”.<sup>242</sup>

237. From a more general standpoint, indigenous communities experience conditions of extreme suffering due to the lack of access to the lands and natural resources that are necessary for their subsistence.<sup>243</sup> For the Inter-American Court, in the case of indigenous peoples, “special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity”.<sup>244</sup> In cases in which indigenous peoples or communities are deprived of nutrition, health and access to clean water because of lack of access to their ancestral territories, States are in the obligation to “take immediate steps to ensure their access to the lands and natural resources on which they depend”, in order to prevent further erosion of their rights to health and to life.<sup>245</sup> In this context, it is critical to guarantee a healthy environment, since the social and health measures that the Article XI alludes to also include those that environmental protection may require, given that environmental damages have the potential to directly affect the full enjoyment of the right to health and a wide range of human rights.<sup>246</sup>

238. In connection with the obligation to repair the environmental damages caused by extractive projects in indigenous lands, the IACHR has indicated that the members of indigenous peoples or communities who have been affected by environmental contamination, lack of access to drinking water or exposure to toxic agents derived from such projects have the right to access the healthcare system without discrimination.<sup>247</sup>

## 2.5. The right to cultural identity and to take part in cultural life

239. The right to take part in cultural life is expressly enshrined in the OAS Charter and the American Declaration, and it comprises the right to cultural identity. The OAS Charter establishes States’ obligation to ensure “the integral development [of] their people (...) [which] encompasses the (...) cultural [aspect]” (Art. 30); the “encouragement of (...) culture” (Art. 47); and the “preserv[ation] and enrich[ment of] the cultural heritage of the American peoples” (Art. 48). Article XIII of the American Declaration provides that “[e]very person has the right to take part in the cultural life of the community”. Based on international instruments such as the American Declaration on the Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169, the Inter-American Court has held that cultural identity is a “fundamental collective human right of indigenous communities that must be respected in a multicultural pluralist and democratic society”.<sup>248</sup> According to Article VIII of the American Declaration on the Rights of Indigenous Peoples<sup>249</sup>, “[i]ndigenous individuals and communities have the right to belong to one or more

<sup>242</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 14, par. 27.

<sup>243</sup> IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser. L/V/II., Doc. 54, 30 December 2009, pars. 1076-1080; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 158.

<sup>244</sup> Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 167.

<sup>245</sup> IACHR, Democracy and Human Rights in Venezuela. Doc. OEA/Ser. L/V/II., Doc. 54, 30 December 2009, par. 1080; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 158.

<sup>246</sup> IACHR, Special Rapporteur for Economic, Social, Cultural and Environmental Rights, OEA/ Ser.L/V/II, November 1, 2019, para. 239.

<sup>247</sup> IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 224; IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 218.

<sup>248</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017: “The Environment and Human Rights”; Series A No. 23, par. 113; Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, par. 217; Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400, par. 231, footnote 233.

<sup>249</sup> AG/Res. 2888 (XLVI-O/16), adopted on June 14, 2016.

indigenous peoples, in accordance with the identity, traditions, customs, and systems of belonging of each people. No discrimination of any kind may arise from the exercise of such a right”.

240. The survival and perpetuation of indigenous peoples’ cultural identity also depends upon the recognition of their ancestral territories.<sup>250</sup> The close relationship between indigenous peoples and their ancestral territories and the natural resources therein is a constitutive element of their culture, understood as a particular way of life.<sup>251</sup> Ancestral burial grounds, places of religious meaning and importance, ceremonial or ritual sites, and historically significant locations, all constitute an intrinsic part of their right to cultural identity. Failure to guarantee the right to communal property and its effective enjoyment impairs the preservation of their ways of life, customs and language<sup>252</sup>; for them, “possession of their traditional territory is indelibly recorded in their historical memory, and their relationship with the land is such that severing that tie entails the certain risk of an irreparable ethnic and cultural loss, with the ensuing loss of diversity”.<sup>253</sup> Consequently, indigenous peoples are entitled to the effective guarantee of their right to live in their ancestral territory so as to preserve their cultural identity; if the State fails to secure such right, they are deprived not only of material possession of their territory but also of the basic foundation for the development of their culture, their spiritual life, their wholeness and their economic survival.<sup>254</sup> States must take into consideration that “the culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview (...), and therefore, of their cultural identity”.<sup>255</sup>

### 3. Analysis of the case

241. The petition under review has posed to the Commission six distinct legal issues in relation to the exploration and exploitation of mineral resources within Isseneru’s ancestral territory. First, the compatibility of Guyanese environmental and mining legislation with inter-American standards. Second, the issuance of several permits for mining prospecting and operations throughout the community’s titled lands, before they became titled. Third, the mining operations of Lalta Narine and Joan Chang, who acquired prospecting and mining permits and concessions before the lands were formally titled to Isseneru and undertook mining operations under those State authorizations even after 2007, in a continuous manner to the present date. Fourth, the status of the mining permits and concessions granted within Isseneru’s untitled ancestral territory. Fifth, the mining activities carried out by the members of the community themselves, either in association with external miners or independently, with negative environmental impacts upon their own titled and untitled territory. Sixth, the general obligations of the Guyanese State in relation to the environmental degradation caused by illegal mining in Isseneru’s ancestral territory, both titled and untitled. The Commission shall delve into each one of these issues separately.

#### 3.1. Environmental and mining legislation in Guyana: the adequacy of the existing legal framework

242. A careful examination of the above-described legal provisions in force in the Mining Code and the Environmental Protection Act in Guyana reveals that some of the applicable inter-American standards have been partially incorporated into the legislation, which nevertheless falls short of reflecting the rules of law

<sup>250</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 160; IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 297, Recommendation 3.

<sup>251</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 155.

<sup>252</sup> Inter-American Court of Human Rights, Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006, Series C No. 146, pars. 73-75.

<sup>253</sup> Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 216.

<sup>254</sup> IACHR. Indigenous and tribal peoples’ rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 161.

<sup>255</sup> Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 135.

derived from the American Declaration and the OAS Charter, thereby requiring specific adjustments in order to harmonize it with Guyana's international obligations.

243. In the first place, the IACHR notes that Guyana has legally and constitutionally reserved for the State the property of subsoil minerals and waters, which are thus expressly excluded from the property title granted to indigenous communities such as Isseneru. This is the same situation of several countries of the Americas, where constitutional or legislative provisions assign ownership of sub-surface mineral and water rights to the State. The Inter-American Human Rights system does not preclude *per se* this type of measure; it is legitimate, in principle, for States to formally reserve for themselves the resources of the soil and water. This does not imply, however, that indigenous or tribal peoples do not have rights that must be respected in relation to the process of mineral exploration and extraction, as well as in regards to access to water -which is a human right in itself, as explained below-; nor does it imply that the State authorities have freedom to dispose of mineral and water resources at their discretion. On the contrary, Inter-American jurisprudence has identified clear rights of indigenous and tribal peoples that States must respect and protect when they plan to extract subsoil resources or exploit water resources, as described in the foregoing paragraphs. Whenever the Guyanese State decides to grant extractive concessions to private actors, its margin of decision is significantly restricted by the international obligations it has acquired under the American Declaration and the OAS Charter, *inter alia*. As a minimum, these obligations are: those appertaining to the prevention of environmental harm and the reparation of any damage caused to the environment; the duty to carry out a prior consultation of the extractive project and obtain the community's consent where applicable; the duty to conduct an environmental and social impact assessment prior to its implementation; the duty to share the benefits of the extractive project with the affected community; and the duty to compensate for any impacts upon the right to property of the relevant community that are tantamount to expropriation.

244. In the same line, the Inter-American Court, referring to the right to property, has explained that "Article 21 of the Convention does not *per se* preclude the issuance of concessions for the exploration and exploitation of natural resources in indigenous or tribal territories".<sup>256</sup> While it is true that all exploration and extraction activities in indigenous territories could affect, to a greater or lesser degree, the use and enjoyment of some natural resources traditionally used by the corresponding people, "it is also true that Article 21 of the Convention should not be interpreted in a way that prevents the State from granting any type of concession for the exploration and extraction of natural resources within [indigenous] territory"<sup>257</sup>. This is where the safeguards established by inter-American jurisprudence play their critical role in the protection of the indigenous communities affected by such extractive concessions. Inter-American standards establish clear limitations upon the State's right to award extractive concessions, described in the preceding paragraph.

245. The Commission also notes that this general reservation of property rights over subsoil minerals in Guyana coexists with certain exceptions, for example, that appertaining to proprietors whose title was issued before 1903, who are the legal owners of any subsoil minerals found in their lands (Mining Act, Section 8). Taking into account that indigenous territorial rights actually predate 1903, being grounded in their ancestral historical presence and use of the land; and that in practice Guyanese indigenous communities only acquired a legally enforceable and opposable title to property of their lands after the enactment of the Amerindian Act in 2006, for the Commission this different legal treatment given to property owners whose title was issued before 1903 is incompatible with the right to equality before the law.

246. As for the provisions of the Mining Act which are relevant for the present case, the IACHR notes that Guyanese law establishes a clear distinction between small- and medium-scale mining operations, on the one hand, and large-scale mining operations, on the other.

247. Concerning small- and medium-scale mining, Section 48 of the Mining Act enshrines a number of requirements that persons who wish to engage in such undertakings must comply with, under penalties of law. This Section, in sum, requires any prospective small- and medium-scale miners to (1) first, obtain all the

<sup>256</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 143.

<sup>257</sup> Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 126.

necessary permits and comply with the corresponding requirements, before the Guyanese mining and environmental authorities; (2) thereafter, provide the affected indigenous community with all the relevant information about the activity and those who will carry it out, as well as its impacts upon the village and the village lands; (3) attend any consultations requested by the village or its council; (4) negotiate with the village council, in order to obtain the consent of two-thirds of its members; (5) negotiate with the Village Council the amount of tribute that the council will receive from the activities; and (6) after reaching an agreement with the community, enter into a written agreement that will include, inter alia, a clause by which *“the miner shall take all reasonable steps to avoid (i) damage to the environment; (ii) pollution of ground water and surface water; (iii) interference with agriculture; (iv) damage to or disruption of flora and fauna; and (v) disruption of residents’ normal activities”*. As per Subsection 2 of Section 48, the Guyana mining authority (the GGMC) may facilitate the consultations with the village, but it may not take part in any of the negotiations. Further on, Section 53 of the Mining Act empowers the GGMC to issue mining permits, concessions or licenses over Amerindian titled lands and their surrounding areas; according to its provisions, whenever the GGMC intends to issue such an authorization, it *“shall first – (i) notify the Village; and (ii) satisfy itself that the impact of mining on the Village will not be harmful”*. In connection with this provision, the Environmental Protection Act requires the conduction of environmental impact assessments in order for any mining operation to receive a permit backed by the Environmental Protection Agency.

248. The IACHR notes that these legal provisions have evidently been designed for the purpose of protecting Amerindian communities from the noxious impacts of mining in their territories. Nonetheless, because of the way they have been phrased, the IACHR finds that they fall short of the inter-American standards described above, for several reasons:

(a) No prior consultation is required for small- or medium-scale mining. The consultations and negotiations that miners must enter under the Act are designed to take place after the issuance of the corresponding permits by the mining and environmental authorities of the Guyanese State. This is contrary to the international obligation of the State to guarantee the realization of consultation before the initiation of the project, in its very inception stages.<sup>258</sup>

(b) The consultation and negotiations established in the Mining Act are a responsibility of the interested miner, and not an obligation of the State authorities. The GGMC is, in fact, forbidden from taking part in the negotiations by the express wording of the Act. As stated above, under inter-American standards, prior consultation is an obligation of the State, which it may not delegate to private parties. The underlying rationale is that economic actors will always have their own interests in mind as a first priority, and this would necessarily trump the balance and fairness of the consultation process.

(c) The negotiation of the tribute to be received by the community, that is, its participation in the benefits of the operation, is also left to the interested miner to negotiate directly with the Village Council and without the participation of the State, which in the IACHR’s view leaves open the possibility of unfair negotiations, and allows private economic actors to exert different types of pressures and apply unbalanced negotiation techniques to the detriment of the affected indigenous community, which is not in a position of equality of arms and can thereby be easily manipulated, coaxed or coerced into agreements that do not benefit it or protect its rights. This is so regardless of the minimum level of 7% prescribed by Section 51(1) of the Mining Act.

(d) The requirement of obtaining consent is a noteworthy achievement of the Guyanese legislation; however, given that the consultation and negotiation process as a whole is left under the responsibility of the private actors interested in the mining project, and the State is expressly excluded from it, this requirement fails to comply with the applicable inter-American standards.

(e) The requirement of conducting a full environmental impact assessment before the issuance of the State permits for the operation is consistent with inter-American standards. This is connected to the requirement established in Section 53, by which the GGMC must satisfy itself that no environmental or other

<sup>258</sup> Inter-American Court of Human Rights. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, pars. 167, 180.



harm will come from the project for the Village, before issuing the corresponding permit, concession or license. The IACHR notes, however, that in the instant case this requirement has not been implemented at all. Further, petitioners have reported that it is only rarely enforced by the Guyanese authorities, even less frequently in relation to small- or medium-scale operations.

(f) The IACHR notes that the written agreement between the miner and the community, by which the miner commits to conduct the operation in such a way that is respectful of the environment and the community's normal activities, is an interesting private safeguard for the integrity of the natural resources in the land; however, it fails to acknowledge that those obligations of the miner are not a matter of private contractual law, but obligations that it owes to the State in the first place – regardless of the existence of such a clause in a private agreement with an indigenous communities, miners and other private economic actors are bound by law to respect the environment, abstain from destroying it, and guarantee that their undertakings will not disrupt the livelihoods of the peoples and communities who live in the area. It is the State's obligation to monitor and ensure compliance with these basic obligations. Framing these obligations of the miner as a matter of private contractual law may well deprive the affected communities of legal means and remedies by which to enforce their internationally protected rights, and by which to exact compliance with the law from the State itself.

249. Concerning large-scale mining operations, Section 50 enables miners to carry out their undertakings dispensing with the consent of the Village altogether; according to its Subsection 1, if an Amerindian Village refuses its consent to a large-scale mining project, the miner may nonetheless carry out the mining activities if the Ministers responsible for Mining and Amerindian Affairs declare that the mining activities are in the public interest. Even though Section 50.2 foresees a period of subsequent negotiations between the Village and the miner, after the decision has been made by the Government to allow the project to proceed, these negotiations may well not result in an agreement, in which case the miner will enter into an agreement with the Ministry, and not the community. Moreover, in these situations the Act leaves the negotiations of benefit-sharing to the miner with the community, without setting a minimum level of tribute, as it does for small- or medium-scale operations.

250. In the Commission's opinion, this legal provision is wholly incompatible with the inter-American human rights standard by which large-scale mining operations, which by definition carry the threat of causing equally large-scale destruction of the environment and profound impacts upon the very existence and survival of the affected indigenous communities, must be preceded by the prior, free and informed consent of those communities in order to proceed in a legal fashion. As explained by the Inter-American Court in its judgment on the case of the Saramaka people, "regarding large-scale development or investment projects that would have a major impact within [indigenous] territory, the State has a duty, not only to consult with the [indigenous community], but also to obtain their free, prior and informed consent, according to their customs and traditions".<sup>259</sup> Therefore, this provision of the Mining Act violates indigenous peoples' rights to property, equality before the law, health, food, water, cultural integrity and a healthy environment, all of them protected under the American Declaration and the OAS Charter.

251. The IACHR underscores that under Guyanese law, none of these legislative safeguards of the Amerindian Act are applicable to the mining operations which were granted permits or concessions before the adoption of the Act in 2006, or before the issuance of title to Isseneru in 2007, because before said dates, the community's territory was legally considered to be State lands.

### **3.2. Mining operations in Isseneru's untitled ancestral lands**

252. One of the problems which has recurrently been brought to the attention of the organs of the inter-American system is that of indigenous communities who, lacking a title to property over their traditional lands and territories, are adversely affected by the implementation of natural resource development projects on those lands. The Inter-American system's jurisprudence deems the procedures for delimitation,

<sup>259</sup> Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 134.

demarcation and granting of property titles over indigenous lands a merely formal recognition of pre-existing property rights for purposes of guaranteeing their effective protection from third parties. Indeed, rights over natural resources are not conditioned on the existence of formal title to property, nor to the finalization of the delimitation or demarcation procedures, but instead exist even without State actions which specify them, because such peoples have communal property rights to land and natural resources based on their traditional patterns of use and occupation of their ancestral territory.<sup>260</sup> Given that indigenous property rights pre-exist their formalization through the State titling mechanism, the implementation of plans or projects for the development of natural resources which are likely to directly or indirectly affect untitled lands and resources must comply with the same procedural and substantive safeguards as those plans or projects developed in their titled lands, as described above. This entails the application of the natural resource property safeguards to the communities that lack a formal property title; States violate indigenous peoples' right to property when they grant concessions for the exploration or exploitation of the natural resources present in ancestral territories which they have not titled, delimited or demarcated.<sup>261</sup> Consequently, States are bound, by virtue of Article XXIII of the American Declaration, to abstain from "granting [extractive] concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified and protected, in the absence of effective consultations with and the informed consent of the [respective] people".<sup>262</sup>

253. Isseneru, through its Village Council, is legally powerless under Guyanese legislation to address the issues of mining concessions and environmental destruction in its untitled lands, given that the Amerindian Act only grants certain attributions of land management to Village Councils over those lands that they have been formally granted in property by the Government. None of the concessions or permits that the State may have granted over those untitled lands have even been notified to the Isseneru community, let alone been consulted. This is all despite the facts that those lands have adequately been proven to be part of Isseneru's ancestral territory, and that the community has a vital and internationally protected link to them and to the resources they lodge. The situation as a whole is detrimental to Isseneru's right to territorial property, and therefore constitutes a violation of Article XXIII of the American Declaration.

254. The IACHR alerts the State of Guyana of the fact that if any permits, concessions or licences are issued for mining, forestry or any other extractive activity within the untitled parts of Isseneru's ancestral territory, before said territory is duly titled, demarcated and delimited in its full extent, Guyana would be in violation of international law, in particular of the right to territorial property protected under Article XXIII of the American Declaration.

255. Petitioners have informed the Commission that the Village Council of Isseneru has entered into post-hoc contractual arrangements with some of the miners who operate within their ancestral lands, a measure over which -they claim- the community had no real freedom or decision-making power, because the operations had not even been notified to it by the State and the miners would continue developing them regardless of the community's rights or opposition. The IACHR has insufficient evidence to decide on the merits of this allegation, given that no information has been provided about the identity or extent of the corresponding mining operations, their location within the ancestral territory, or even the content of the contractual arrangements reached by the community with their operators.

### **3.3. The Narine and Chang mining operations within Isseneru's titled lands**

256. Petitioners have alleged that the entire extent of Isseneru's titled lands has been the object of mining permits and concessions granted by the State, before and after the issuance of the property title in 2007. Even though they have provided a number of maps to support this allegation, the Commission has insufficient evidence in the casefile to determine whether mining concessions, permits or licenses have in fact been issued over the complete extension of the titled lands. The State has responded to this claim, stating that Isseneru does in fact lie within a mining district, and thus *"has an overlay of mining blocks for which many non-residents hold*

<sup>260</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources – Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 187.

<sup>261</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 153.

<sup>262</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 194.

*claims, however most are not active.*” It has expressly stated that the only active mining operations in the community’s titled lands as of the present date are those of Mr. Lalta Narine. It has also asserted that it is not aware of any mining permits or concessions having been granted within those lands after 2007. The Commission has no elements to contest or refute this assertion by the State, which shall therefore be accepted as true. Notwithstanding this conclusion, the IACHR will call upon Guyana to guarantee that any and all mining permits, concessions and licenses that it decides to grant over Isseneru’s ancestral territory in the future are preceded by dutiful compliance with the internationally established safeguards and obligations described in the foregoing paragraphs. These safeguards and obligations, the IACHR notes, should also have been met before granting any concession or license for extractive activities within Isseneru’s ancestral territory, given the pre-existence of the community’s rights to any formal recognition of title by the State; however, given the lack of evidence in the casefile, the Commission is precluded from issuing a ruling on the matter of mining operations different from those of the Narine and Chang permits.

257. As for the specific Narine and Chang operations, the IACHR notes that both have in common that they were not the object of prior consultations, environmental impact assessments or benefit-sharing agreements with Isseneru before their initiation, nor at any moment in the course of their entire subsequent development, thus running counter to the community’s internationally protected rights. The community was not notified of the granting of the permits, as they were both authorized prior to 2007, when its title to property was granted.

258. Also, both operations share the trait of having borne destructive environmental impacts upon the community’s territory, both titled and untitled. According to the information available, such impacts have not been addressed or solved by the State authorities. For example, in a fact-finding mission made in 2013 by a delegation of governmental authorities it was observed and documented that Mr. Narine’s operation was discharging its waste byproducts into the waters of Isseneru Creek and other tributaries of the Mazaruni River, polluting them and increasing their turbidity to unacceptable levels. Despite this documented observation, the State has not taken any measures to halt such harmful actions by a private economic actor. This situation entails a violation of Article XXIII of the American Declaration and of the community’s connected rights to health, water, food, a healthy environment and cultural integrity.

259. Further, both operations were protected by the Guyanese High Court, which characterized them as pre-existing property rights which had been excluded from the property title granted to the community and thus merited the protection of the law, thereby authorizing their continuation. Such judicial decisions were adopted despite the GGMC’s efforts in good faith to protect Isseneru’s territorial rights through “cease-work orders”. These decisions compromise the international responsibility of the Guyanese state. In granting the injunctions requested by Mr. Narine and Mrs. Chang against the Isseneru community and the GGMC, the High Court of Guyana granted full, absolute and *a priori* protection to the private economic interests of miners, equating them to private property rights over the land areas where they were to be conducted, and giving them total priority over the territorial rights of the indigenous community upon whose lands they were being developed. As explained above, inter-American legal standards require State authorities, in particular judges, to carry out a careful case-by-case examination of any conflicts that may emerge between the territorial property rights of indigenous communities and the private property rights of good-faith third parties, so as to reach a balanced resolution of each individual conflict in the way that is most compatible with international law. State authorities should consider the importance that access to land and resources has for indigenous communities, whose very survival may be compromised if their territorial rights are not protected. This was a balancing exercise that was not conducted by the High Court, whose reasoning in both decisions clearly grants prevalence to private economic interests, which -the IACHR notes- run short of property rights, over the affected rights of a vulnerable indigenous community that was fighting for the environmental integrity of its lands.

260. The IACHR also notes that Mr. Narine’s operation was actually illegal under Guyanese law, insofar as he was exceeding the scope of his prospecting permits and carrying out mining operations as such, which were not allowed by the Government. Despite this fact, the State -both administrative and judicial authorities- abstained from halting his operation and imposing the corresponding legal penalties.

261. Consequently, the IACHR declares that Guyana has violated the right to property of the Isseneru community and its members, which pre-existed the granting of formal title to property by the State, in failing to balance such pre-existing right with the private economic interests of mining companies and individual miners in a manner consistent with international law, and in granting those private rights and interests an absolute, *ab initio* prevalence over the territorial rights of Isseneru.

### **3.4. The development of mining activities by members of the Isseneru community**

262. The members of Isseneru have explained the reasons for which they have engaged in mining activities themselves. In their request for title to property over their lands in 2005, the community expressed: *"We also need our land title to ensure us the right to benefit from the resources that exist on our lands. For too long now, others have been exploiting our lands without us gaining any benefits [from] those activities. At least if we are to own it we would have control over what kind [of] activities can take place that will be appropriate for us"*. Further ahead, during a meeting held with the attendance of expert Professor Kirsch after the presentation of the petition to the IACHR, one of the community members explained: *"Because we want to be independent as a people, we want to grow our own food, and we are growing our own food. But there is also a need for money. After searching for alternatives, we turned to mining for our own development. But what we find is that the government is coming in with their laws and making it difficult for us. Now the government is upset that we are doing mining. The plan was to be self-sufficient. So our people have gone into mining."* Another community member held that they needed to mine because of the number of people that composed the community; yet another one stated that taking into account that many miners from the outside were profiting from the resources in their land, they came to the decision to mine and use those resources for themselves.

263. Section 52 of the Mining Act regulates "Traditional mining privileges", that is, culturally established rights to mine for minerals by community members themselves. According to this legal provision, an indigenous person who intends to exercise such a cultural privilege must first obtain the consent of the Village Council, and also "comply with any obligations imposed by or under any other written law". As for members of the community who do not qualify for traditional mining privileges but nonetheless wish to engage in mining, the Mining Act establishes that they must "obtain the permits required by, and comply with the obligations imposed under, any other written law".

264. The Commission considers that under inter-American standards, indigenous peoples have the right to freely decide whether they wish to carry out mining operations upon their ancestral lands, and to engage in these activities if they consider it appropriate. This is part of their right of self-determination, and of their right to exert full control over their natural resources and their development, exploitation, and use. Thus, in accordance with its own cultural norms and procedures, the Isseneru Village Council is empowered by international law to grant its community members whatever mining authorizations it considers acceptable. This is also in line with the provisions of the Guyana Mining Act cited above.

265. However, the IACHR emphasizes that all human rights imply duties for their bearers. This is a matter of basic legal principle, reflected *inter alia* in the fact that the American Declaration, which is the central legal instrument being applied in the present case, is entitled "American Declaration on the Rights and Duties of Man", and has a critically important chapter on the Duties that appertain to the persons who are entitled to enjoy and exercise the rights enshrined in its articles. This legal proposition is fully applicable to indigenous peoples and communities, who are the holders of duties in the same measure that they are the bearers of rights under inter-American law. In relation to the protection of the environment, indigenous peoples have the right to environmental integrity and the right to full ownership and control over their natural resources, but conversely, they have the duty to manage such resources in a way that is sustainable, does not damage them, and preserves them, for the welfare of their own future generations, of the population of the State where they live in, and of humankind as a whole. For the Commission, the right to property over natural resources, and the right to autonomy in their possession and management, does not incorporate a right to destroy them, or to cause unjustified environmental harm.

266. The State has clear duties of assistance, monitoring and support in this regard. Guyana is internationally bound to support its indigenous communities in the proper fulfilment of their own duties of

environmental protection and preservation. In the same manner that it has the international obligation to control the actions of private actors that may damage the environment, the State is in the obligation of adopting all the necessary measures to secure that indigenous peoples, with full respect for their autonomy, can comply with their equally sacred duty to abstain from harming the natural resources upon which their own survival depends. Guyana has an obligation to respect and ensure the right to a healthy environment, inter alia by preventing its violations, by any actors who might carry them out; this State obligation extends, in the same manner as it does to the private sphere, to that of indigenous peoples. However, the specificity of this particular State obligation lies in the fact that indigenous communities have an internationally protected right to autonomy in the management of their natural resources; therefore that autonomous title can and must be made compatible with properly designed State actions -including regulation, monitoring, support, and damage mitigation- aimed at helping indigenous peoples protect their own environment, with the full participation of the respective indigenous authorities, in a proportionate and respectful manner that is mindful of the cultural specificities and environmental characteristics of the corresponding indigenous land.

267. Consequently, the IACHR concludes that the mining activities undertaken by the members of Isseneru themselves are in principle in accordance with their right to autonomous control over the natural resources in their territories, insofar as they correspond to traditional mining rights, in the understanding of the Amerindian Act. Any mining activities by Isseneru members that do not correspond to traditional mining rights according to the Akawaio cultural system, must be regarded in the same way as any other mining operation in indigenous territory and must therefore comply with the same international safeguards of prior consultation, prior environmental impact assessment and benefit-sharing. However, the State also has clear obligations in this regard, namely that of monitoring the development of those mining activities in full consultation with the Village Council and with its participation, being duly respectful of the Isseneru's community right to autonomous management of its natural resources; and it also has the obligation of supporting to the best of its capacity the Isseneru Village Council and the members of the community in the proper and adequate fulfilment of their duties to preserve the environment and conduct their mining operations in a sustainable manner.

### **3.5. Environmental degradation in Isseneru's territory and the corresponding State obligations**

268. Mining operations, both legal and illegal, have inflicted serious environmental destruction to Isseneru's priceless and -until recently- pristine ancestral territory, including the contamination of waters, the destruction of riverbanks, the loss of soil, the reduction of animal species and their habitats, and the destruction of forests. All of this has resulted in a reduction in the agricultural output of the community's farms, in the yields of its hunting and fishing activities, and therefore in the sources of protein and other essential nutrients that form part of their diet. It has also hampered their access to clean, safe drinking water from the sources they have traditionally obtained it, and caused high levels of mercury contamination in their own bodies, as measured by different independent studies over the past few years. The IACHR considers these facts adequately proven in the casefile, on the grounds of the information submitted by both parties, as described in the section on findings of fact.

269. Guyana has been aware for a long time of the serious environmental degradation and destruction caused by mining in Isseneru's territory. The Ministry of Amerindian Affairs, in a letter sent to the community in late 2004 encouraging it to submit an application for property title, expressly acknowledged the severe environmental and social problems faced by indigenous communities affected by mining operations in their untitled territories. In the Ministry's own terms, *"having recognized that untitled communities face a lot of difficulties, especially those located in close proximity to mining and forestry concessions, the Government has altered its [land titling] policy to address the issue on a sub-regional basis"*.

270. In turn, in its application for title, the community described at length the serious environmental problems it was facing as a consequence of the mining activities in its lands. These included the following: (i) they were suffering as a result of the mining activities, which were causing environmental, social and health problems; (ii) social problems caused by the presence of miners in their vicinity; (iii) concessions had been given without their consent, and the miners were destroying the land and its resources; (iv) they felt entitled to benefit from the resources existing in their lands, as well as from their exploitation; (v) the issues with the

lands had been ongoing for many years, and their many requests to the State authorities have gone unanswered; and therefore (vi) territorial titling was a precondition for them to live in dignity as persons.

271. Specifically with regard to the environmental destruction that was unfolding, Isseneru denounced to the Government that *"as our fore parents have suffered, our present community continues to suffer as a result of the mining activities on our lands. It is seriously causing environmental, social and health problems in our area. Our rivers are being polluted. These are the very rivers that we depend on for fish supply and other domestic purposes. Our lands are destroyed by dredges, leaving barren lands behind. Large pits are dug and now [are] the breeding homes of mosquitoes and other bacteria that cause sickness. Malaria and diarrhea are common sicknesses in Isseneru."* As for the lack of consultation of those permits granted by the State, the community reported that *"concessions are given out without our consent, and most of these concessions are within the vicinity of our village where we hunt, fish, farm and carry out other traditional activities. These miners have or show no respect to us, they destroy some of our sacred sites, old settlements and farm edges."* Later, in a letter dated January 30, 2007, the Ministry of Amerindian Affairs expressed to the community, referring to the land titling process, that *"recognizing the difficulties being faced by residents of Isseneru due to mining activities, the Ministry was desirous of accelerating the process"*.

272. Of particular concern is the pollution of waters with mercury -which has been scientifically proven to come as a toxic byproduct of gold mining operations- for over twenty years now. The rivers and creeks of the Isseneru ancestral territory have been proven to bear unacceptably high concentrations of mercury, which has found its way into the human food supply through the fish that Isseneru members harvest from those rivers and constitutes their main source of protein. This is clearly contrary to the full enjoyment of their rights to health, food, water and a healthy environment, a situation which activates the State's duties of immediate reaction in order to protect and secure said enjoyment by the members of this vulnerable community. As of 2014, petitioners have reported that 40% of the members of Isseneru were children under 18 years old. They also informed the IACHR that several members of the community were elderly persons, some of them over 80 years of age. Both populational groups have been proven to be highly vulnerable to mercury contamination.

273. Despite this demonstrated awareness on the part of the State of the serious environmental problems caused by mining in Isseneru's territory, apart from granting title over a fraction of said territory and developing certain awareness-raising campaigns on the impacts of mercury, the governmental authorities refrained from adopting any measures to seriously and effectively deal with the matter in accordance with international law. They did not conduct any monitoring or supervision whatsoever of the legal extractive projects undertaken in Isseneru's titled lands, which were not accompanied by a prior environmental and social impact assessment. Further, government authorities did not halt the projects that they knew were causing environmental degradation in this ancestral territory. It was only until after the filing of the petition to the IACHR, in April 2014, that a team of governmental authorities visited the community and thereafter took merely formal measures to close some illegal mining operations which had been detected. These closures, however, have not been properly implemented, as reported by the State itself, for different causes including the opposition by some community members. Furthermore, no environmental rehabilitation and restoration activities have been undertaken by Guyana within Isseneru's territory, and no legal responsibilities or penalties have been imposed upon the polluters and destroyers of the environment. Thus, at least for over one decade - between 2004 and 2014- the Guyanese State abstained from adopting the urgently required measures of suspension of the harmful activities in Isseneru, imposition of legal sanctions to those responsible for the degradation, and environmental restoration to a reasonably and scientifically feasible extent.

274. In connection with the obligation to remedy the environmental damages which have been caused, the IACHR has indicated that indigenous and tribal peoples whose members are affected by environmental contamination, lack of access to drinking water or exposure to toxic agents derived from extractive projects, have the right of access to the healthcare system without discrimination.<sup>263</sup> Apart from certain awareness-raising campaigns, which included alerting the population of Isseneru about the risks of consuming certain

<sup>263</sup> IACHR. Indigenous and tribal peoples' rights over their ancestral lands and natural resources - Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, par. 218; IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 224.

types of fish which were highly contaminated with mercury, the State has not proven to have carried out any actions aimed at securing the population of Isseneru access to healthcare in order to counter any possible adverse health effects of mercury consumption and intoxication. This is particularly harmful to pregnant women, children and elderly persons, who have been proven to be more vulnerable to this type of pollution. Moreover, the Commission notes that Guyana has argued that *"Isseneru is a wealthy community with a large income from mining and is able to afford to pay for health care if it does not wish to use the free public health services. However there is no evidence that Isseneru has sought such medical help for mercury poisoning"*. This stance runs counter to the State's international obligation to secure, in an *ex officio* and diligent manner, healthcare access for those members of indigenous groups whose health has been affected by the pollution of their drinking waters with mercury.

275. Other measures that the State is bound to take in this regard include securing the affected population's access to safe drinking water and proper sources of nutrition. An expert opinion provided by the petitioners has informed that an unidentified State authority provided them with certain water-storage tanks; but the IACHR has insufficient information to confirm or assess this allegation. The casefile has no information about any measures adopted by Guyana to guarantee that the members of Isseneru have sufficient access to water for their consumption, domestic and hygienic needs, water which they normally obtain from the rivers and creeks of their territory; nor has it been proven that the State has adopted any measures aimed at securing their sources of protein, providing alternatives to the fish they harvest from their polluted rivers, or otherwise compensating this nutritional loss with other means. This failure to act compromises Guyana's international responsibility for the violation of the rights to health, water, food, a healthy environment, and participation in the benefits of culture, all of them protected by the American Declaration.

#### **D. Indigenous peoples' and communities' right to judicial due process, effective remedies and judicial protection**

278. Article XVIII of the American Declaration incorporates the right of any person whose human rights have been violated to count on an effective remedy. Effective remedies, for the inter-American system, must produce results or responses to the violations of the rights established in the Declaration,<sup>264</sup> in such a way that the person can be protected by the courts from those violations once he or she has activated the adequate procedural route for that purpose. The Inter-American Court has held that in order for a remedy to be effective, it needs to be truly adequate to establish whether a violation of human rights has been committed, and to provide the necessary means to repair it.<sup>265</sup>

279. Regarding the judicial guarantees contained in Article 8(1) of the American Convention and Articles XVIII and XXVI of the American Declaration, the inter-American Court has understood that due process of law "includes the conditions that must be met to ensure the adequate defense of those whose rights or obligations are being considered by the court."<sup>266</sup> The effectiveness of the remedies should be assessed in each specific case taking into account whether "domestic remedies exist that guarantee real access to justice to claim reparation for a violation."<sup>267</sup> In this line, State legislation must provide adequate and effective remedies against acts that violate indigenous peoples' rights to communal property.<sup>268</sup>

280. The Commission considers that even though Guyanese legislation provides a remedy to contest the decisions of the Government on Amerindian territorial title -under Section 64 of the Amerindian Act-, and also

<sup>264</sup> Inter-American Court of Human Rights. Case of *Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, par. 191.

<sup>265</sup> Inter-American Court of Human Rights, *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 24; Inter-American Court of Human Rights, *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74, paras. 136-137.

<sup>266</sup> Cf. *Case of the Constitutional Court v. Peru*. Merits, reparations and costs. Judgment of January 31, 2001, Series C No. 71, paras. 69 and 108, and *Case of López et al. v. Argentina*. Preliminary objections, merits, reparations and costs. Judgment of November 25, 2019. Series C No. 396, para. 199

<sup>267</sup> *Case of Goiburú et al. v. Paraguay*. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153, para. 120, and *Case of García Lucero et al. v. Chile*. Preliminary objection, merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 182.

<sup>268</sup> Inter-American Court of Human Rights. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, par. 182.

enables the citizens and Government authorities to participate in judicial procedures in which injunctions have been requested -as happened with the injunction proceedings initiated by Mr. Narine and Mrs. Chang against the GGMC and the Isseneru community-, these judicial remedies have proven to be ineffective for the protection of indigenous territorial rights, given the constant jurisprudence espoused by the High Court of Guyana in the sense of failing to recognize pre-existing indigenous territorial rights, and a priori upholding private property rights and economic interests which are in conflict with them. The line of reasoning and decision established in the Narine and Chang judgments, which have not been heard by the Guyana Court of Appeals despite the presentation of the corresponding appeals years ago, has become the established doctrine of the Guyanese judiciary, and in that sense it has closed the doors for Amerindian communities and villages to seek effective protection of their territorial rights whenever they are violated or disregarded by authorities or private actors alike. This general unavailability of effective remedies was undoubtedly reflected in the specific judicial decisions that, in the cases of Mr. Narine and Mrs. Chang, denied the protection that the Isseneru community urgently and provenly necessitated to preserve the environmental integrity upon which its very survival was contingent.

281. For these reasons, the IACHR considers that Guyana violated the rights to an effective remedy and to due process under Articles XVIII and XXVI of the American Declaration, to the detriment of the Isseneru community and its members.

## **VI. REPORT No. 399/21 AND INFORMATION ABOUT COMPLIANCE**

282. On December 21, 2021, the Commission approved Report No. 399/21 on the admissibility and merits of the instant case, which encompasses paragraphs 1 to 281 supra, and issued the following conclusions:

1. The right to collective territorial property under Article XXIII of the American Declaration, insofar as the provisions of the Amerindian Act related to titling of ancestral indigenous territories (i) fail to recognize the pre-existence of indigenous territorial rights, and visualize them as grants of State lands; (ii) do not establish a State obligation to grant indigenous communities or villages a property title to their ancestral territory; (iii) confer on the Minister of Amerindian Affairs an overbroad and excessive degree of discretionary powers in the decision on whether to grant property title to indigenous communities, with no objective parameters or guidelines set forth in the legislation; (iv) fail to require the Minister to recognize indigenous communities the full extent of their ancestral territories; and (v) do not admit the possibility of granting territorial property to indigenous peoples as a whole, which also affects these peoples' rights to participation and to the recognition of their legal personality.

2. The right to collective territorial property under Article XXIII of the American Declaration, because it has failed to grant Isseneru a property title over its entire ancestral territory, even though the community demonstrated that (i) it is a primarily Akawaio indigenous community, (ii) it is geographically set within Akawaio ancestral lands, (iii) the territory it claims corresponds to that of the ancestors and grandparents of its current members, (iv) it preserves a vital and spiritual link with that territory in its entirety, and (v) it needs the full extent of that territory to continue living in accordance with its economic, cultural and spiritual systems, and to pursue its livelihood and survival as an indigenous community. As the titling process over the entire territory is still uncompleted, Guyana has also failed to properly delimit and demarcate those ancestral lands, thus incurring in an additional violation of Article XXIII of the American Declaration.

3. The rights to justice and due process under Articles XVIII and XXVI of the American Declaration, and the right to participation under Article XX thereof, because (i) the titling process took twenty years to complete and thereby incurred in an unjustified delay in its resolution; (ii) the community authorities and members experienced legal uncertainty and insecurity on account of the overbroad discretionary decision-making margin exercised by the Minister of Amerindian Affairs; (iii) the community was forced to admit a reduction in its legitimate claim to territory because of the Ministry's unfounded assertions on the size of the requested lands; and (iv) the decision-making process was not participatory in nature.



4. The right to equality before the law under Article II of the American Declaration, because the State of Guyana has abstained from adopting the special positive measures required by Isseneru to gain prompt and secure access to legal property over its entire ancestral territory.

5. The right to indigenous collective territorial property under Article XXIII of the American Declaration, because its legal system, as reflected in its legislation, in the title deeds granted to Isseneru and in the decisions of its highest courts, has granted an *ab initio* priority and prevalence to the private property rights and economic interests of third parties over the protection of indigenous territorial property.

6. The right to collective territorial property of Isseneru and other Amerindian communities under Article XXIII of the American Declaration, because its legislation lacks any provisions on restitution of the lands of which indigenous communities have been dispossessed and which they must reasonably recover in accordance with inter-American standards. In this connection, Guyana has violated the right to equality before the law under Article II of the American Declaration, because the differential degree of protection granted to indigenous property when compared to the legal protection received by private non-indigenous property entails a situation of racial discrimination.

7. The right to indigenous collective territorial property under Article XXIII of the American Declaration, and the right to participation under Article XX thereof, insofar as the provisions of its Mining Act fail to properly incorporate the human rights guarantee of prior consultation in cases of small- and medium-scale mining projects, in harmony with the applicable inter-American standards; and also because they have incorporated insufficient guarantees for the Amerindian communities' right to participate in the benefits of extractive operations in indigenous territories.

8. The right to indigenous collective territorial property, and the interconnected rights to health, food, water, a healthy environment and cultural integrity, insofar as the provisions of its Mining Code deny indigenous communities and peoples the right to free and informed consent in cases of large-scale mining projects that threaten their survival.

9. The right to indigenous collective territorial property, and the interconnected rights to health, water, food, cultural integrity and a healthy environment, insofar as in relation to the Isseneru community it has failed to properly implement its legislation requiring the conduction of prior environmental social and impact assessments before the initiation of any mining operation in indigenous territories.

10. The right to equality before the law, because its legislation establishes an unjustified differential treatment between indigenous communities, who are the holders of custom-based ancestral rights over their territories, and private owners whose title to property was issued before 1903, given that the latter are recognized property over the subsoil resources, which Amerindian communities are denied.

11. The right to indigenous collective territorial property of the Isseneru community and its members, because the mining operations developed by Messrs. Lalta Narine and Joan Chang were not the subject of prior consultations, socio-environmental impact assessments, or reasonable benefit-sharing mechanisms before they began implementation.

12. The right to collective territorial property, and its interconnected rights to health, food, water, a healthy environment and cultural integrity, because in relation to the untitled lands within Isseneru's ancestral territory the State has granted mining permits which have not been consulted, assessed in their environmental and social impacts, nor been the matter of reasonable benefit sharing. Moreover, the Isseneru community's right to territorial property has been disregarded because it is legally powerless in relation to its untitled lands under Guyanese law. The IACHR highlights that, if any permits, concessions or licenses are issued for mining, forestry or any other extractive activity within the untitled parts of Isseneru's ancestral territory, before said territory is duly titled, demarcated and delimited in its full extent, the State of Guyana would incur in a violation of international law, in particular of the right to collective property under Article XXIII of the American Declaration.

13. The right to indigenous collective territorial property, and the interconnected rights to health, water, food, a healthy environment and cultural integrity, because Guyana failed to act promptly in relation to the severe instances of environmental degradation and destruction caused by mining operations within Isseneru's ancestral territory, including but not restricted to the operations of Messrs. Narine and Chang, inasmuch as it refrained from halting the projects, restoring the damaged environment to the highest attainable degree, and sanctioning the private parties responsible for the harm. In particular, regarding the pollution of rivers and creeks with mercury, the IACHR considers that the rights of especially vulnerable populations such as children, pregnant women and elderly persons were violated, thus also disregarding Article VII of the American Declaration.

14. The right to health, insofar as the State has not adequately guaranteed access to adequate and culturally acceptable healthcare by those persons who have been negatively affected by mercury contamination and other forms of pollution and environmental degradation in their ancestral territory, contrary to Articles I, VII and XI of the American Declaration.

15. The rights to collective territorial property and to equality before the law of the Isseneru community and its members, because the Guyanese High Court granted full, absolute and *a priori* protection to the private economic interests of Messrs. Narine and Chang, equating those private interests to private property rights and granting them priority and prevalence over the territorial rights of a vulnerable Amerindian group.

16. The rights to justice and due process of law, because the Isseneru community and its members had no access to effective remedies in order to seek the protection of their territorial rights from the destructive impacts of the mining activities developed in their ancestral lands.

283. In consequence, the Inter-American Commission on Human Rights recommended that the Co-operative Republic of Guyana:

1. Adopt the necessary measures to ensure that the Isseneru community and its members receive full reparations for the material and immaterial damages they suffered on account of the violation of their human rights, as declared in the preceding section. These reparations must include measures of compensation, satisfaction, and any other which are appropriate in accordance with inter-American standards, including the provision of any required health-care services to community members affected by environmental pollution.
2. Amend its legislation in order to secure that the provisions of the relevant Acts and regulations related to indigenous territorial property are in harmony with the American Declaration, in accordance with international law according to the present merits report.
3. With full respect for the Isseneru community's right to autonomy and to the free management of its natural resources, adopt any measures necessary to support Isseneru and its members in the proper fulfilment of their own duty to preserve and protect the environment, in particular with relation to the mining operations that they undertake themselves in their ancestral territory.

284. On April 20, 2022, the IACHR transmitted the report to the State with a period of two months to inform the Commission about the measures adopted to comply with its recommendations.

285. On May 3, 2022, the State expressed its consternation given that the content of the notification, the Report and the recommendations of the IACHR were replicated in a local newspaper, despite their confidential nature, and requested a copy of the correspondence sent to the Government between 2015 and 2020, as this was a new Government. On May 11, 2022, the Commission reiterated to the parties that the aforementioned Report must remain confidential until the IACHR decides to publish it and sent the requested correspondence to the State.

286. On June 20, 2022, the State sent a Letter from the Minister of Parliamentary Affairs and Governance to the IACHR and requested an extension to present information on compliance with the recommendations. In said communication, the State indicated that it was not a signatory of the American Convention on Human Rights and requested a hearing on: The admissibility of the petition, verification of the facts, the merits of the matter, the conclusions, and recommendations; and monitoring the effect of the recommendations on the legal system and political harmony of the State. It alleged that the Government took office on August 2, 2020, following the tumultuous events that followed the general elections. The State indicated that the violations concluded in the Report “do not agree with the policy and mandate of its current Government, which recognizes the rights of Amerindians and recognizes the importance of protecting and improving those rights.” Likewise, it requested an extension that takes into consideration the complexity of the matter and the measures to comply with the recommendations.

287. In said communication, the State considered that it had entered the procedure at a later stage, so it should participate in the admissibility stage. It indicated that it had no evidence of having received the four-month period provided to the petitioner to present his additional observations on the merits. It indicated that although the State's observations on admissibility were prepared, they were never forwarded to the IACHR, given the May 2015 elections. It considered that the failure to forward said observations was due to circumstances beyond its control and that it was only recently that it learned of the conclusions of the IACHR Report. The State attached to its communication a written observation on admissibility dated May 3, 2015.

288. Regarding the indigenous Amerindian peoples, the State indicated that only they have special and additional rights over community lands and private property that no other Guyanese group or individual has. That their community ownership is 14% of the land and they are the second largest landowners in Guyana.

289. Regarding land demarcation, he indicated that in 2021, 5 demarcations were completed. It indicated that the titles were being issued to those residing within the town of Capoey. It indicated that the Minister of Finance pointed out that “the Government will continue its support for the rights of Indigenous Peoples by accelerating the land titling program at a cost of \$561.6 million established in the 2022 budget.” The State indicated that Capoey received his absolute title and that the North Pupununi Village of Yupukari has also benefited from an area of 145 square miles.

290. The State indicated that the conclusions and recommendations of the IACHR Report would lead to severe tension and opportunities to create disunity and division in the country. It noted that “[t]he issue of reparations will create fissures between other ethnic groups; some of whom have raised grievances over ancestral lands given that some were enslaved, brought to Guyana and settled in communities for over 300 years.”

291. On June 22, 2022, the IACHR responded to the State that in accordance with Article 51 of its Regulations, the Commission has the power to examine petitions regarding alleged violations of the human rights enshrined in the American Declaration in relation to the States. Members of the OAS that are not parties to the American Convention on Human Rights, as is the case of Guyana. Likewise, it indicated that Report No. 399/21 of the Commission was issued in strict compliance with its Regulations.

292. Likewise, it added that for the processing and decision of the case, the IACHR decided to take into account the relevant arguments regarding the admissibility and merits of the petition that had been stated by the State in its observations of December 2013 and June 2014 reports, that responded to the request for precautionary measures, as indicated in paragraphs 6 to 9 of Report No. 399/21. The Commission also indicated that it took into account the important arguments and allegations raised by the State during the course of the precautionary measures procedure that were relevant to evaluate the admissibility of the petition. The Commission reported that as a way to maximize the State's right of defense, the Commission decided to incorporate into the file of Case 13.083 all the documents received in the course of the precautionary measures' proceedings, which was informed to both parties at the time and it is also referred to in footnote 2 of Report No. 399/21.

293. The IACHR also indicated that the procedural opportunity established in Article 30.3 of its Regulations to present arguments on the admissibility of the petition was duly granted to the State through a communication dated May 28, 2015, with a period of three months. The Commission indicated that it did not receive a request for an extension or a response from the State. Likewise, it indicated that in March 2016, the IACHR transmitted a copy of the communication from the petitioning party in which it expressed its willingness to initiate the friendly settlement procedure, requesting the State to express whether it was interested in said procedure and also reiterated its request for information dated May 28, 2015, to which no response was also received.

294. On the other hand, the Commission indicated to the State that, in the merits stage of the procedure and in accordance with Article 37.1 of its Regulations, the State was given the opportunity to defend itself by requesting its observations by note dated January 25, 2018, with a period of 4 months. In this regard, it explained that again, it did not receive an extension request or response from the State. The Commission reminded the Government that in accordance with the international law principle of identity or continuity of the State, its responsibility subsists for all its powers and organs, regardless of changes in government over time, which is why a government cannot allege the actions or omissions of his predecessor as exoneration of responsibility in the handling of a case or its lack of knowledge of it.

295. In said communication, the Commission also reported that the case was in the stage of compliance with recommendations, so it is important that the State provide the required information on the measures adopted to comply with the recommendations and resolve the situation, so that the IACHR can decide on the publication of its Report. The Commission granted the three-month extension requested by the State and informed it that it could grant working meetings to facilitate dialogue between the parties on compliance with the recommendations, which may be requested by the State.

296. To date, the Commission has not received a response from Guyana regarding compliance with the recommendations of Report No. 399/21.

297. It should be noted that in relation to the right to water, in November 2022, the IACHR learned from a public information source that the residents of Region 7 of the Isseneru village (500 inhabitants) had access to drinking water for the first time, through the water supply system commissioned by the Ministry of Housing and Water, to use water from the Mazaruni River and harvest rainwater<sup>269</sup>. The Commission positively values that the State is fulfilling its obligation to provide water to the community.

## **VII. ACTIONS SUBSEQUENT TO REPORT NO. 297/23 AND COMPLIANCE INFORMATION**

298. On November 28, 2023, the Commission adopted Final Admissibility and Merits Report No. 297/23, covering paragraphs 1 to 297 above, and issued its final conclusions and recommendations to the State. On December 6, 2023, the Commission transmitted the report to the State with a deadline of one month to inform the Inter-American Commission on the measures adopted to comply with its recommendations. On January 10, 2024, the State requested an extension of 3 months to submit its response. On February 1, 2024, the IACHR granted a 3-week extension. As of the date of approval of this report, the IACHR has not received a response from the State in relation to Report 297/23.

## **VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS:**

299. Based on the above determinations of fact and law, the Inter-American Commission concludes that the State of Guyana is responsible for the violations of the following rights of the Isseneru community and its members -set forth in the same order in which they have been identified and declared in the preceding Sections-:

<sup>269</sup> Ministry of Housing and Water, [\\$59M Water Supply System Commissioned at Isseneru](#), Reg. 7, November 22, 2022.

1. The right to collective territorial property under Article XXIII of the American Declaration, insofar as the provisions of the Amerindian Act related to titling of ancestral indigenous territories (i) fail to recognize the pre-existence of indigenous territorial rights, and visualize them as grants of State lands; (ii) do not establish a State obligation to grant indigenous communities or villages a property title to their ancestral territory; (iii) confer on the Minister of Amerindian Affairs an overbroad and excessive degree of discretionary powers in the decision on whether to grant property title to indigenous communities, with no objective parameters or guidelines set forth in the legislation; (iv) fail to require the Minister to recognize indigenous communities the full extent of their ancestral territories; and (v) do not admit the possibility of granting territorial property to indigenous peoples as a whole, which also affects these peoples' rights to participation and to the recognition of their legal personality.

2. The right to collective territorial property under Article XXIII of the American Declaration, because it has failed to grant Isseneru a property title over its entire ancestral territory, even though the community demonstrated that (i) it is a primarily Akawaio indigenous community, (ii) it is geographically set within Akawaio ancestral lands, (iii) the territory it claims corresponds to that of the ancestors and grandparents of its current members, (iv) it preserves a vital and spiritual link with that territory in its entirety, and (v) it needs the full extent of that territory to continue living in accordance with its economic, cultural and spiritual systems, and to pursue its livelihood and survival as an indigenous community. As the titling process over the entire territory is still unconcluded, Guyana has also failed to properly delimit and demarcate those ancestral lands, thus incurring in an additional violation of Article XXIII of the American Declaration.

3. The rights to justice and due process under Articles XVIII and XXVI of the American Declaration, and the right to participation under Article XX thereof, because (i) the titling process took twenty years to complete and thereby incurred in an unjustified delay in its resolution; (ii) the community authorities and members experienced legal uncertainty and insecurity on account of the overbroad discretionary decision-making margin exercised by the Minister of Amerindian Affairs; (iii) the community was forced to admit a reduction in its legitimate claim to territory because of the Ministry's unfounded assertions on the size of the requested lands; and (iv) the decision-making process was not participatory in nature.

4. The right to equality before the law under Article II of the American Declaration, because the State of Guyana has abstained from adopting the special positive measures required by Isseneru to gain prompt and secure access to legal property over its entire ancestral territory.

5. The right to indigenous collective territorial property under Article XXIII of the American Declaration, because its legal system, as reflected in its legislation, in the title deeds granted to Isseneru and in the decisions of its highest courts, has granted an *ab initio* priority and prevalence to the private property rights and economic interests of third parties over the protection of indigenous territorial property.

6. The right to collective territorial property of Isseneru and other Amerindian communities under Article XXIII of the American Declaration, because its legislation lacks any provisions on restitution of the lands of which indigenous communities have been dispossessed and which they must reasonably recover in accordance with inter-American standards. In this connection, Guyana has violated the right to equality before the law under Article II of the American Declaration, because the differential degree of protection granted to indigenous property when compared to the legal protection received by private non-indigenous property entails a situation of racial discrimination.

7. The right to indigenous collective territorial property under Article XXIII of the American Declaration, and the right to participation under Article XX thereof, insofar as the provisions of its Mining Act fail to properly incorporate the human rights guarantee of prior consultation in cases of small- and medium-scale mining projects, in harmony with the applicable inter-American standards; and also because they have incorporated insufficient guarantees for the Amerindian communities' right to participate in the benefits of extractive operations in indigenous territories.

8. The right to indigenous collective territorial property, and the interconnected rights to health, food, water, a healthy environment and cultural integrity, insofar as the provisions of its Mining Code deny indigenous communities and peoples the right to free and informed consent in cases of large-scale mining projects that threaten their survival.

9. The right to indigenous collective territorial property, and the interconnected rights to health, water, food, cultural integrity and a healthy environment, insofar as in relation to the Isseneru community it has failed to properly implement its legislation requiring the conduction of prior environmental social and impact assessments before the initiation of any mining operation in indigenous territories.

10. The right to equality before the law, because its legislation establishes an unjustified differential treatment between indigenous communities, who are the holders of custom-based ancestral rights over their territories, and private owners whose title to property was issued before 1903, given that the latter are recognized property over the subsoil resources, which Amerindian communities are denied.

11. The right to indigenous collective territorial property of the Isseneru community and its members, because the mining operations developed by Messrs. Lalta Narine and Joan Chang were not the subject of prior consultations, socio-environmental impact assessments, or reasonable benefit-sharing mechanisms before they began implementation.

12. The right to collective territorial property, and its interconnected rights to health, food, water, a healthy environment and cultural integrity, because in relation to the untitled lands within Isseneru's ancestral territory the State has granted mining permits which have not been consulted, assessed in their environmental and social impacts, nor been the matter of reasonable benefit sharing. Moreover, the Isseneru community's right to territorial property has been disregarded because it is legally powerless in relation to its untitled lands under Guyanese law. The IACHR highlights that, if any permits, concessions or licenses are issued for mining, forestry or any other extractive activity within the untitled parts of Isseneru's ancestral territory, before said territory is duly titled, demarcated and delimited in its full extent, the State of Guyana would incur in a violation of international law, in particular of the right to collective property under Article XXIII of the American Declaration.

13. The right to indigenous collective territorial property, and the interconnected rights to health, water, food, a healthy environment and cultural integrity, because Guyana failed to act promptly in relation to the severe instances of environmental degradation and destruction caused by mining operations within Isseneru's ancestral territory, including but not restricted to the operations of Messrs. Narine and Chang, inasmuch as it refrained from halting the projects, restoring the damaged environment to the highest attainable degree, and sanctioning the private parties responsible for the harm. In particular, regarding the pollution of rivers and creeks with mercury, the IACHR considers that the rights of especially vulnerable populations such as children, pregnant women and elderly persons were violated, thus also disregarding Article VII of the American Declaration.

14. The right to health, insofar as the State has not adequately guaranteed access to adequate and culturally acceptable healthcare by those persons who have been negatively affected by mercury contamination and other forms of pollution and environmental degradation in their ancestral territory, contrary to Articles I, VII and XI of the American Declaration.

15. The rights to collective territorial property and to equality before the law of the Isseneru community and its members, because the Guyanese High Court granted full, absolute and *a priori* protection to the private economic interests of Messrs. Narine and Chang, equating those private interests to private property rights and granting them priority and prevalence over the territorial rights of a vulnerable Amerindian group.

16. The rights to justice and due process of law, because the Isseneru community and its members had no access to effective remedies in order to seek the protection of their territorial rights from the destructive impacts of the mining activities developed in their ancestral lands.

Subsequently,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE COOPERATIVE REPUBLIC OF GUYANA TO:**

1. Adopt the necessary measures so that the Isseneru community and its members receive comprehensive reparations for the material and non-material damages they suffered due to the violation of their human rights, as stated in the previous section. Such reparations should include compensation, satisfaction and any other

measures that may be appropriate in accordance with Inter-American standards, including the provision of the required health services to the members of the community affected by the environmental contamination.

2. Amend its legislation in order to ensure that the provisions of laws and regulations related to indigenous territorial property are in harmony with the American Declaration, in accordance with international law in accordance with this merits report.

3. With full respect for the Isseneru community's right to autonomy and free management of its natural resources, adopt the necessary measures to support Isseneru and its members in the due fulfillment of their own duty to preserve and protect the environment, particularly in relation to the mining operations that they themselves carry out in their ancestral territory.

## **IX. PUBLICATION**

300. In view of the foregoing and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms contained in the instruments that govern its mandate, will continue to evaluate the measures adopted by the Cooperative Republic of Guyana with respect to the aforementioned recommendations until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of April 2024. (Signed): Roberta Clarke, Chair; Carlos Bernal Pulido, First Vice-Chair; José Luis Caballero Ochoa, Second Vice-Chair; Edgar Stuardo Ralón Ochoa; Andrea Pochak and Gloria Monique de Mees, members of the Commission.