Missing Pieces
An Analysis of the Draft Environmental & Social Impact Reports for the Bakhuis Bauxite Project, West Suriname

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The North-South Institute

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# Table of Contents/Boxes

Acronyms......................................................................................................................... iii

**Section 1: Introduction** ........................................................................................................ 1
  Background ......................................................................................................................... 1
  Purpose ............................................................................................................................... 2
  Organization ....................................................................................................................... 2

**Section 2: Indigenous Rights** .............................................................................................. 3

**Section 3: Substance and Process of the ESIs** ........................................................................ 9

**Section 4: Draft Mining Plans related to the Proposed Bakhuis Bauxite Mine** ...................... 16
  Draft Environmental Management and Monitoring Plan .................................................. 16
  Draft Community Engagement Plan .............................................................................. 19
  Draft Conceptual Closure and Rehabilitation Plan ......................................................... 20

**Section 5: Conclusion — Consolidating the Missing Pieces** ............................................. 22

References ........................................................................................................................... 23
Endnotes ............................................................................................................................... 26

**Box 1:** UN Working Definition of Indigenous Peoples & UN Declaration on the Rights of Indigenous Peoples Articles Concerning Self-identification ........................................... 3

**Box 2:** Summarized Urgent Action Decisions by CERD concerning Indigenous and Tribal Rights and Mining in Suriname ........................................................................... 4

**Box 3:** BHP Billiton’s Commitments as a member of ICMM, encouraging engagement on land rights issues in Suriname ................................................................................. 7

**Box 4:** IFC PS1’s definition of a project’s area of influence ............................................... 13

**Box 5:** Sahdew and Obouter’s (2003) description of Rehabilitation in the East ....................... 21
### Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>BF</td>
<td>Bakhuis Forum</td>
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<tr>
<td>BHPB</td>
<td>Broken Hill Proprietary &amp; Billiton Corporation</td>
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<td>BMS</td>
<td>NV BHP Billiton Maatschappij Suriname</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CEP</td>
<td>Draft Community Engagement Plan: West Suriname Communities</td>
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<td>CERD</td>
<td>UN Committee on the Elimination of Racial Discrimination</td>
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<td>CCRP</td>
<td>Draft Conceptual Closure and Rehabilitation Plan</td>
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<td>CSNR</td>
<td>Central Suriname Nature Reserve</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>EMP</td>
<td>Environmental Management Plan</td>
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<td>EPCM</td>
<td>Engineering, Procurement and Construction Management</td>
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<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
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<td>ESIR</td>
<td>Environmental and Social Impact Report</td>
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<td>FPIC</td>
<td>Free Prior Informed Consent</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GRI</td>
<td>Global Reporting Initiative</td>
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<td>International Finance Corporation</td>
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<td>IIRSA</td>
<td>Regional Infrastructure Integration in South America/Integración de la Infraestructura Regional en Sur América</td>
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<td>Km</td>
<td>Kilometres</td>
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<td>Mine ESIR</td>
<td>The Environmental and Social Impact Assessment of Mining Aspects of the Proposed Bakhuis Bauxite Project: Draft Environmental and Social Impact Report, Volume 1</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>USD</td>
<td>United States Dollars</td>
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<td>VIDS</td>
<td>Vereniging van Inheemse Dorpshoofden in Suriname (Association of Indigenous Village Leaders in Suriname)</td>
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Section 1: Introduction

Background

The Bakhuis Mountains of West Suriname contain reserves of bauxite estimated to be the ninth largest in the world. Under the Bakhuis Bauxite Project, BHP Billiton and Alcoa intend to mine bauxite in a concession area of 2800km². Related activities will entail transporting the bauxite by rail to the nearby Lokono Indigenous communities of Apoera, Section and Washabo, and then barging the raw product down the Corantijn river, along the Atlantic, up the Suriname river to the Paranam refinery for processing into alumina. The Corantijn River and Suriname River will first need to be dredged to enable the transportation of the bauxite, and the Paranam refinery adapted to the lower grade bauxite from Bakhuis. Current plans are for the alumina to be exported for smelting. Nonetheless the Government of Suriname has indicated it is very interested in pursuing an integrated aluminum industry, and has taken actions that show it is seriously considering large-scale hydroelectric development in West Suriname (the Kabalebo Project) to fuel a smelter that will enable processing of the bauxite in Suriname. Further, studies and consultations are currently underway for the establishment of large-scale infrastructure (the IIRSA project), including roads that will connect Suriname to Guyana via a bridge (in the vicinity of the Indigenous villages of Apoera in Suriname and Orealla in Guyana), to facilitate the movement of goods related to bauxite mining across the Guyanas, and provide a road link for other forms of trade running from Brazil through the Guyanas to Venezuela. Conservation offsets for the Bakhuis Bauxite Project include consideration of the Kaboerikreek Protected Area, adjacent to the community of Washabo.

These proposed activities overlap with the traditional territories (both land and water) of the Indigenous Peoples of West Suriname, including the Lokono communities of Apoera, Section and Washabo; and Guyanese Lokono communities living along the Corantijn who also hunt and fish in Suriname. Other affected communities include the Trio settlement of Zandlanding located in Apoera, whose livelihood activities will be affected, as well as Indigenous and Maroon villages downstream of Bakhuis in the Wayambo area. Should the hydroelectric plans become a reality, the traditional territories of Trio communities and associated Indigenous Peoples in Suriname’s Interior will also be severely affected. The barging along the Atlantic and in the Suriname River may also affect other communities using these areas for livelihood purposes.

BHP Billiton and Alcoa have recently submitted to the Government of Suriname and Indigenous communities of West Suriname the environmental and social impact assessment (ESIA) documentation they believe will lead to the Government’s endorsement of the Bakhuis Bauxite Project, and to the potential signing of an Agreement between the companies and government in the near future, with November 25th rumoured as the potential agreement-signing date. This date – and indeed, BHP Billiton’s and Alcoa’s involvement – is currently and somewhat unexpectedly being revised, as the Government casts its net for other potential companies interested in putting in place not only a bauxite mine, but an integrated aluminum industry with the associated hydroelectric dam and smelter.

Nonetheless, with the support of the Association of Indigenous Village Leaders in Suriname (Bureau VIDS), the Indigenous communities of West Suriname are striking an independent Panel of Experts (Indigenous Peoples Panel of Experts -- IPPoE) to review the documentation submitted by the BHP Billiton and Alcoa, and provide concrete advice to the traditional leadership regarding the substance and process of the ESIA. This review will stand the communities in good stead whether or not BHP Billiton or Alcoa – and/or other companies – are involved in the final Bakhuis Mine Project and related developments. Indeed, to date there have been serious flaws with regards to the ESIA process and substance, and the review panel analysis will help illuminate these and measures to address them.
Purpose

The North-South Institute (NSI) has undertaken several projects, in collaboration with Bureau VIDS, to support the affected Indigenous communities in West Suriname.6

In the spirit of collaboration, the purpose of this brief is to provide an initial broad-brush analysis of the environmental and social impact reports (ESIRs) produced by the company consultants, with a view to raising key concerns and questions, and providing constructive commentary. The intention is to complement the in-depth analysis that the experts on the IPPoE will provide. To this end, the brief will identify what is missing in the ESIA in general, focussing largely on the National Institute for the Environment and Development’s (NIMOS) draft ESIA guidelines and company policies, but touching also on international performance standards and jurisprudence.

The brief is based on a close reading of:
• The Environmental and Social Impact assessment of Mining Aspects of the Proposed Bakhuis Bauxite Project: Draft Environmental and Social Impact Report, Volume 1 (Mine ESIR)7
• The Environmental and Social Impact assessment of Transport Aspects of the Proposed Bakhuis Bauxite Project: Draft Environmental and Social Impact Report, Volume 1 (Transport ESIR)8
• Draft Conceptual Closure and Rehabilitation Plan (CCRP)9
• Draft Community Engagement Plan: West Suriname Communities (CEP)10
• Draft Environmental Management and Monitoring Plan Framework for Construction and Operations Phases (EMMP)11
• Public Consultation and Disclosure Plan (PCDP)12

The brief does not include a review of the Preliminary Public Consultation and Disclosure Plan for the Corantijn River Dredging Project Environmental and Social Impact Assessment (SRK Consulting, February 2008), or documentation pertaining to the Suriname River Dredging Project and the Paranam Refinery ESIA, which while related, are omitted from the suite of documents the companies are submitting for Government approval of the Bakhuis Bauxite Mine Project.13

Organization

The brief is organized as follows:
• Section 2 examines issues pertaining to Indigenous rights
• Section 3 analyzes issues concerning the substance and process of the ESIRs
• Section 4 considers draft management plans related to the proposed Bakhuis Bauxite Mine
• Section 5 makes concluding observations
Section 2: Indigenous Rights

The environmental and social impact reports do not address sufficiently the area of Indigenous and human rights. Salient gaps include:

2.1 Lack of a clear definition of Indigenous Peoples that explicitly recognizes Indigenous Peoples’ rights to define their own membership and the fundamental criterion of self-identification. Discussions in the ESIRs currently conflate Maroon and Indigenous Peoples, and also appear to negate the importance of indigeneity. For example, a footnote in the socio-economic baseline study for the Transport ESIR states that:

“The distinction between indigenous and non-indigenous people is at times nebulous, since intermarrying between the two groups has been prevalent over a long period of time. In Ressort Kabalebo, the notion ‘indigenous’ is used in an abstract sense and not always easily applicable in terms of specific individuals. When this is attempted it can lead to problems of identity and disruption of community cohesion. It has led to lack of unity and consequent lack of organization in the local communities.”

But given the special rights of Indigenous Peoples and Maroons, as recognized in international law and jurisprudence, providing a clear definition that recognizes the fundamental criterion of self-identification is critical for their protection. Moreover, this definition will influence any future agreement between the companies and Indigenous communities, in which there will need to be stipulation of employment and other benefits accruing to local Indigenous Peoples, rather than local residents (contrary to current language in the ESIRs). The ESIRs and subsequent negotiations should include explicit reference to Indigenous Peoples rights to define their own membership and the fundamental criterion of self-identification of Indigenous Peoples (as per the United Nations Declaration on the Rights of Indigenous Peoples) and use the accepted United Nations’ working definition of Indigenous Peoples (see box 1).

2.2 No detailed reference to Suriname’s international obligations and commitments regarding human rights. The draft ESIRs currently list only select international agreements regarding environmental management and Indigenous Peoples that

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**Box 1:**

**UN Working Definition of Indigenous Peoples & UN Declaration on the Rights of Indigenous Peoples Articles Concerning Self-identification**

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- Occupation of ancestral lands, or at least of part of them;
- Common ancestry with the original occupants of these lands;
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- Residence on certain parts of the country, or in certain regions of the world;
- Other relevant factors.

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference

**Excerpts from the UN Declaration on the Rights of Indigenous Peoples**

*Article 3* — Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 9* — Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Sources: UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4 paras, 379-382; UN Declaration on the Rights of Indigenous Peoples
Suriname is signatory to, including among others, the United Nations Convention on Biological Diversity (1992), the American Convention on Human Rights (1969) and the United Nations Declaration on the Rights of Indigenous Peoples (2007). However, aside from the limited comments on these agreements, and the short discussion on land rights in setting the regulatory context, there is no discussion of what these agreements mean in practice with regards to the proposed developments in West Suriname. Nor is there an explanation of how the companies will address the rights affirmed in these instruments given their explicit policy commitments to uphold human rights and Indigenous Peoples’ traditional rights

In addition, there is no reference to either decisions concerning Suriname by the Committee for the Elimination of Racial Discrimination (CERD), or the 2007 Saramaka People judgment of the Inter-American Court of Human Rights (IACHR), which is binding on Suriname. In Suriname law, international law takes precedence over national law and therefore this jurisprudence must be considered part of the overall applicable legal and regulatory framework. These are serious omissions which must be rectified in the final ESIR.

CERD has issued several Bakhuis-relevant decisions to Suriname containing concrete recommendations to ensure the country meets its obligations to Indigenous Peoples and Maroons as a signatory to the United Nations Convention for the Elimination of Racial Discrimination. These decisions explicitly address the issue of resources extraction and mining, and range from rewriting the Draft mining law so it does not discriminate against Indigenous Peoples, to producing a framework law for the rights of Indigenous Peoples, to implementing free, prior and informed consent around projects affecting Indigenous and Tribal Peoples (see Box 2). Decision 1(69) (quoted below) is an indirect reference to the Bakhuis Bauxite Project.

**Box 2: Summarized Urgent Action Decisions by CERD concerning Indigenous and Tribal Rights and Mining in Suriname**

**18 August 2005: Decision 1 (67):**
- Drew attention of the State party to its General Recommendation 23 (1997) on the rights of indigenous peoples, urging the State party to ensure the compliance of the revised draft Mining Act with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee’s 2004 recommendations. In particular, the Committee urges the State party to:
  - Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;
  - Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;
  - Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage (para 4).
- Recommended once again that a framework law on the rights of indigenous and tribal peoples be elaborated and that the State Party take advantage of the technical assistance available under the advisory services and technical assistance Programme of the Office of the United Nations High Commissioner for Human Rights for that purpose (para 5).
- Recommended to the State party that it extend an invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (para 6).

**18 August 2006: Decision 1 (69):**
- Reiterated “deep concern about information alleging that the State party has authorized additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent” (para 1).
- Requested “detailed information on the above-mentioned issues be included in the eleventh to thirteenth periodic reports of the State party, to be submitted in a single document on 14 April 2007. The Committee also wishes to receive, as previously requested, detailed information on the current status of the revised draft Mining Act and its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Committee’s 2004 concluding observations” (para 3).
- Drew “the attention of the High Commissioner for Human Rights as well as the competent United Nations bodies, in particular the Human Rights Council, to the particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname, and invites them to take appropriate measures in this regard” (para 4).

Sources: CERD (2005), CERD (2006), emphasis added.
The 2007 Saramaka People judgment by the IACHR is binding on Suriname, and therefore of particular relevance to the developments in West Suriname. Among other things, the judgment calls for the application of the right to self-determination for members of Indigenous and Tribal communities, namely the right “to freely determine and enjoy their own social, cultural and economic development.”20 The judgment requires that by 2010, the Government of Suriname:

a) delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people. With regards to the concessions already granted within traditional Saramaka territory, the State must review them, in light of the present Judgment and the Court’s jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people;

b) grant the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions;

c) remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities;

d) adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out. The Saramaka people must be consulted during the process established to comply with this form of reparation. The State must comply with this reparation measure within a reasonable time;

e) ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory, and 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; and,

f) adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal land tenure system. (emphasis added)21

The implications of this binding judgment for West Suriname are numerous, and will be woven into this brief’s analysis of the Bakhuis Bauxite Project ESIRs.
2.3 Inadequate discussion and engagement of land rights. The ESIRs correctly identify land rights as one of the Indigenous Peoples’ critical concerns and note: “The fact that BMS [NV BHP Billiton Maatschappij Suriname, BHP Billiton’s Surinamese subsidiary] has previously received exploration concession rights in the areas, whereas to date communal land rights have not been granted to the indigenous communities, has exacerbated indigenous people’s [sic] sense of unease about their continued access to land in the future.” Nonetheless, the reports fail to address the issue of land rights adequately – for one, said rights are not granted, they are inherent – or with sufficient depth:

- The Indigenous Peoples’ own preliminary land use map is not referenced. While mapping of traditional land use areas was conducted as part of the work on the Mine ESIA, it was not as in-depth as the traditional land use mapping conducted by the Indigenous Peoples themselves. The ESIRs should highlight and reference Indigenous efforts to map their traditional territory, and to document their traditional use and occupation. However, it is important to make clear that these maps by themselves do not necessarily fully document the traditional land tenure system, but, rather, detail usages of lands and resources. It is therefore a grave error – as is done in the ESIRs – to simply draw lines around symbols on these maps as a means of territorial delimitation.

- The way the land rights impact (Impact SE12) is described in the ESIRs is inaccurate, and the fact that the companies have broken down the ESIRs into separate projects instead of considering all the related developments in one report further compounds this problem (this process issue is discussed further below). The ESIRs currently describe the impact of the developments on the land rights question as “sense of encroachment on indigenous people’s [sic] land.” According to the Mine ESIA, because “the actual encroachment of the project [in this case the mining project] will have a minimal effect on indigenous people’s [sic] land and resources, this assessment evaluates the sense of that encroachment.” There is absolutely no question that the developments WILL encroach on Indigenous Peoples’ traditional lands. This ranges from land in the Bakhuys exploration concession area and land on either side of the Apoera-Bakhuys Road, to areas that are currently farmed and used for hunting and fishing, including the creeks and catchment area feeding into the Nickerie, Kabalebo and Corantijn Rivers, as well as the rivers themselves. It is also critical to note that the water systems are intrinsic to Indigenous traditional territories, with the Corantijn River often referred to as “the lifeline” of the Indigenous communities in the West.

Recognize that mining-related activities WILL encroach – and have already encroached — on traditional territory, and name the impact accordingly, taking out the initial words “sense of”. Moreover, the scale of the encroachment envisaged by the mining project and associated infrastructure will significantly affect the integrity of the Indigenous territory, and these impacts need to be documented in terms of the overall effects on the traditional tenure system and cultural sustainability. In this respect, the Saramaka People judgment, as interpreted by the Inter-American Court in August 2008, provides that any project affecting Indigenous territories must be assessed on the basis of the extent to which it will affect the survival of Indigenous Peoples, which is understood to mean the ability of the affected peoples “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.

- The mitigation measures fail to identify concrete steps to address the land rights situation in West Suriname, contrary to possibilities enshrined in company and industry policies and the orders of the Saramaka People judgment. The Transport ESIR states that “it is not within BMS’s mandate to address land rights issues in Suriname.” Conversely, company policies point out that BMS is in fact in a position to comment on the land rights situation and to encourage the Government of Suriname to address and resolve this issue (see Box 3 for commitments as a member of ICMM).

There is also geographical precedence to support such an active stance. BHP Billiton has very much become involved in land rights issues in the context of other mines, particularly the Tintaya Mine in Peru. And as BHP Billiton’s Health, Safety, Environment and Community (HSEC) Management Standard #7 (7.4) notes, communication with governments “is maintained in order to contribute to the development of public policy [and] relevant legislation.” Promoting positive land rights legislation and policies in Suriname clearly falls within this management standard.
In the absence of company encouragement, and despite community petitions to the government to address the land rights situation, there have been no negotiations on land rights issues in West Suriname at all. Consequently, it is incorrect for the ESIRs to state that “negotiations with Government regarding the land rights of indigenous communities are longstanding.”

The 2007 Saramaka People judgment implies that before issuing a concession for exploitation to the companies, the Government of Suriname should commence the process to delimit, demarcate, and grant collective title over the territory of the members of the Indigenous Peoples in West Suriname. Backed by the Saramaka People judgment, corporate policy and precedence, ESIR mitigation measures should, at a minimum, include the establishment of a negotiations table to address the land rights situation, with a mandate that is jointly negotiated by the communities, the Government of Suriname and other parties as appropriate.

2.4 Lack of recognition of Indigenous Peoples’ right to free, prior and informed consent (FPIC). In May 2005, BMS made a public commitment to affected community leaders to implement free, prior and informed consent (FPIC), but since then has back-pedaled on this commitment. Rather, the BMS/Suralco approach is based on ICMM’s Position Statement on Indigenous Peoples and Mining, which prioritizes engagement and consultation (discussed further in ‘consultation and disclosure’ portion of section 3).

The Public Consultation and Disclosure Plan (PCDP) outlines the companies’ views on FPIC. It correctly highlights that FPIC has been recognized as customary law by the IACHR since 1984 and that it is protected in the Suriname-approved UN Declaration on the Rights of Indigenous Peoples. Yet the PCDP points out that FPIC is not enshrined in the IFC Performance Standards guiding the ESIA, which instead speak of free, prior and informed consultation, leading to broad community support, and to a “social license to operate”. This, however, ignores the fact that IFC performance standard 7 on Indigenous Peoples requires good faith and successfully concluded negotiations with Indigenous Peoples – and hence some form of prior agreement – for projects such as Bakhuis. The PCDP also importantly omits reference to the 2007 Saramaka People decision, which requires the government and companies to obtain the free, prior and informed consent of the affected Indigenous Peoples prior to any activities affecting “the existence, value, use or enjoyment of the territory to which the members of the [Indigenous Peoples in West Suriname] are entitled,” and certainly prior to issuing a license for exploitation for the developments.

Box 3: BHP Billiton’s Commitments as a member of ICMM, encouraging engagement on land rights issues in Suriname

BHPB is a member of the International Council on Mining & Metals’ (ICMM). ICMM’s May 2008 Position Statement on Mining and Indigenous Peoples states that:

“Where existing national or provincial law deals with Indigenous Peoples issues, the provisions of such laws will prevail over the content of this Position Statement to the extent of any inconsistencies. Where no relevant law exists the Position Statement will guide member practices. Companies may also sometimes legitimately point out in discussions with governments any gaps in implementation of international conventions which they have agreed to and ratified (emphasis added).”

The ICMM Position statement also commits its members to:

“Encouraging governments where appropriate to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations (emphasis added).”

Further, Principle 3 of the ICMM Sustainable Development Framework states that ICMM members will:

“Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities”

The Framework also explicitly states that reporting requirements will be used to document whether this principle is being implemented, including “the GRI indicators on land rights, on resettlement and on security and human rights (emphasis added).”

Sources: ICMM (2008); ICMM (2003).
In its August 12, 2008 judgment, which further interpreted the Saramaka People judgment for the State of Suriname, the IACHR reiterated that:

> When large-scale development or investment projects could affect the integrity of the Saramaka people’s lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent in accordance with their customs and traditions.\(^{23}\)

Given the 2007 Saramaka People judgment (and reiterations in the IACHR’s August 2008 interpretation) and articles 105 and 106 of the 1987 Suriname Constitution providing that ratified international treaties “which may be directly applicable to anyone shall have this binding effect as from the time of publication” (art. 105), and, that international instruments which are directly applicable shall supersede conflicting national laws (art.106), the ESIRs should uphold the communities’ right to free, prior and informed consent and enshrine this as a standard to be used in the ESIRs, future operations and closure of the mine and related developments.

2.5 Lack of inclusion of Guyanese Indigenous Peoples in the scope of the assessments. Currently, the ESIRs do not include Indigenous Guyanese communities living downstream on the Corantijn in the assessments (see further Section 3). This omission constitutes a violation of Indigenous rights, and certainly IFC Performance Standard 7 pertaining to Indigenous Peoples. There is no doubt that the traditional use areas of Guyanese Indigenous Peoples will be affected. The Transport ESIR socio-economic baseline notes close links between Guyanese and Surinamese communities, and that the Corantijn is “used by communities on both sides of the river to access hunting and fishing areas in both countries.”\(^{14}\) Yet while the ESIRs correctly point out the fluid family ties across the border and that many Guyanese have integrated into the social fabric of the communities of West Suriname, Guyanese Indigenous people will be discriminated against in terms of any potential benefits. For one, the ESIRs state explicitly that they will not be considered for employment at Bakhuis. In effect, the political border and rules around citizenship will relegate Guyanese Indigenous people living in Suriname to second class citizens who will share the costs and receive none of the direct benefits from the mine, despite Indigenous customs and strong cross-border ties. The upshot of this might be intra-community conflict where this did not exist before. Impacts on Guyanese Indigenous Peoples and their rights cannot be ignored in the ESIRs, and the companies should ensure that these are assessed, mitigated and monitored, even if it means a separate ESIA process undertaken with the approval of Guyanese authorities. Among other concerns, the safety of Guyanese Indigenous people using the Corantijn needs to be seriously addressed in plans regarding bargeing of bauxite.
Key concerns regarding the substance and process of the ESIAs (draft management plans are considered separately in Section 4), include:

3.1 **No effective participation of potentially affected peoples.** Indigenous and Tribal Peoples in Suriname are not involved in decision-making concerning concessions granted by the State that will affect their traditional territories. This was the case with the Bakhuis exploration concession. However, this exclusion counters international jurisprudence. The *Saramaka People* judgment establishes that “ESIAs must be completed prior to the granting of the concession ... the State’s obligation to supervise the ESIAs coincides with its duty to guarantee the effective participation of the Saramaka people in the process of granting concessions.”

3.2 **No ESIA for advanced exploration of the 2800km2 Bakhuis concession.** Contrary to company policies and NIMOS guidelines, no ESIA was conducted for advanced exploration in the Bakhuis concession. According to the Mine ESIR, exploration activities included: active exploration in 528km2 of the concession area; drilling 7700 test holes with approximately 650km2 of gridlines, and an undisclosed amount of trenching; developing roughly 330km of laterite roads and tracks, extending through most of the concession area; restoring an existing airstrip; and developing a camp to house workers, involving clearing an area 200m x 200 m.

NIMOS’ criteria for exploration permits includes that “no more than 10ha of the tenement land is at any one time significantly disturbed land because of mining activities;” anything above this could trigger an environmental assessment. The advanced exploration in Bakhuis would have therefore triggered an ESIA under NIMOS guidelines.

Moreover, company policies note that:

“BHP Billion exploration activities are required to meet our HSEC Management Standards, as well as internal exploration standards. These standards require exploration teams to undertake environmental assessment and impact analysis for target areas and to develop an environmental management plan that describes the planned activities and the controls to ensure land disturbance is minimised.”

Company representatives have apologized publicly for having failed to undertake an ESIA for exploration in Bakhuis, thereby acknowledging their failure to comply with company standards and Government of Suriname draft ESIA guidelines. *The ESIRs should consider mitigating the impacts that have already taken place from exploration activities that did not include the appropriate ESIA process, consultation or agreement-making with the communities. In particular, compensation should be considered for loss of access to hunting, harvesting and fishing grounds. No further advanced exploration work should take place in the concession area without first meeting company policies and obtaining the free, prior and informed consent of the communities. This would require undertaking appropriate ESIA studies and a formal agreement with the Indigenous communities, considering in particular the terms for Indigenous participation in the exploration activities.*

3.3 **Inadequate implementation of company policies regarding consultation and disclosure.** As noted above, the PCDP states that the companies do not uphold FPIC, but instead recognize free, prior and informed consultation, as per ICMM’s position. Indeed, ICMM’s (May 2008) Statement on Indigenous Peoples and Mining commits to:

“Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle. Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. **Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-ground exploration.** Engagement, wherever possible, will be undertaken through traditional authorities within the communities and with respect for traditional decision-making structures and processes” (commitment 3, p. 3, emphasis added).

… “ICMM members recognize that following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted” (commitment 9, page 4, emphasis added).
The problem in West Suriname is that the above commitments are not being met in practice. Indeed, for the exploration phase there was no consultation at all and no involvement by communities in the initial screening or the ‘high-level’ scoping exercise. Instead, the leadership and communities were simply informed that exploration would take place without the chance to comment on mitigation plans (there was no ESIA), or to formally negotiate terms of Indigenous participation or benefits. There was no MoU or Agreement with the communities for this phase, nor was there an assessment of whether or not the companies had a social license to operate for the exploration phase.

This further counters NIMOS guidelines concerning public participation at all stages of the ESIA process, and the requirement that:

“During all the EA steps, the project proponent must provide opportunities for interested members of the public, particularly those from local communities affected by the project, to access information on the project. The proponent must identify, record and take into account public concerns and comments.”

However, it wasn’t until February 2006, and only following repeated requests by the Village Chiefs, that the company consultants undertook their first information-sharing workshops in the communities, even though the first scoping document (for internal use only) was produced in 2003.

The claims of the current ESIRs and PCDP (reiterated in the CEP) regarding consultation and disclosure paper over these and other serious deficiencies with the ESIA process that have been described in detail elsewhere. Among some of the main problems that continue to be perpetuated in the ESIR documents and approach, are:

- **There is no mention of community protocols for consultation and consent, despite best efforts on behalf of the communities to have these recognized and implemented.** Instead the companies consistently make their own plans for consultation, and then ask the communities for comment. In its interpretation of the Saramaka People judgment, the IACHR explains that:

  "By declaring that the consultation must take place 'in conformity with their customs and tradition', the Court recognized that it is the Saramaka people, not the State, who must decide which person or group of persons will represent the Saramaka people in each consultation process ordered by the Tribunal."

It continues that:

"The Saramaka must inform the State which person or group of persons with represent them in each ... consultation process. The State must then consult with those Saramaka representatives to comply with the Court's orders. Once such consultation has taken place, the Saramaka people will inform the State of the decisions taken, as well as their basis."

It concludes by emphasizing that all issues related to any consultation processes with the Saramaka "must be determined and resolved by the Saramaka people in accordance with their traditional customs and norms...." This clearly indicates that community consultation protocols must be respected unless otherwise agreed to by the affected people. **The final ESIRs should reference community protocols for consultation and consent, and future consultations should implement community policies.**

- **Imposition of unrealistic company deadlines, leading to ‘consultations’ that are not ‘free’ or ‘informed’.** While there has recently been more dialogue around timing and process for information-sharing workshops and consultations, the communities are consistently being pressured into accepting company deadlines. For example, Village Chiefs asked for a postponement of information sharing following the tragic death of a school child after a boat of schoolchildren capsized in the Corantijn River. The companies pushed hard to have the information sharing soon after this tragedy, even though the conditions were not appropriate for the information sharing to be meaningful. Moreover, the communities were pressured into agreeing to consultations regarding the draft ESIRs shortly after the information sharing, even though they did not yet have the capacity to understand the contents of the thousands of pages of complex, technical documents. **It is only after receiving input from independent experts, understanding this advice, and setting dates for consultations that fit in with community timelines and processes, that community consultations on the draft ESIRs might be ‘free’, ‘informed’ and meaningful.**
o Time and again the PCDP refers to workshops specifically geared for information-sharing as consultations. The Chiefs and Bureau VIDS have reiterated that the two cannot be conflated, and in order to engage in meaningful consultation it takes time to process all the technical information. Information-sharing workshops are inappropriately presented as consultations in ESIR documentation, and this should be corrected in the final documentation.

o The ESIRs inaccurately present all the Bakhuis Forum (BF) meetings as consultation events. While it is true that this forum helped to encourage dialogue among the parties, and that issues arising regarding the process of consultations were discussed, it is disingenuous to count the BF as substantive ESIA consultations. On this the Chiefs and Bureau VIDS have been very clear. Moreover, it should be noted that VIDS and NSI have recommended the BF be evaluated for its effectiveness, particularly in light of the many actions promised within this forum which were not delivered.

o Lack of disclosure of key documents. The ESIRs mention several documents that were never disclosed to communities or to Bureau VIDS, despite repeated requests. These include the internal (2003) scoping document, independent reviews of the ESIA process, feasibility studies discussing alternatives, and the Biodiversity Strategy and Action Plan referred to in the ESIRs. On October 8, 2008 Bureau VIDS and the communities finally received a version of one independent review months after the initial drafts had been received and reviewed by the companies and their consultants. Key documents should be made publicly available and be subject to comment by the affected Indigenous Peoples.

3.4 Inappropriate Approach/Scope/Cumulative Impacts. The fragmented approach to the ESIA process has been the subject of much comment by the affected communities, VIDS, NSI and others. Breaking up the project into separate elements disaggregates the impacts to such a degree that it is currently impossible to determine the full scope of impacts of the mining-related activities with the documents provided. This is true for a several reasons:

o The documents are not yet complete, and the current approach of segmenting the ESIA has been considered illegal in other jurisdictions. The Corantijn River Dredging ESIA will not be completed until next year, however it is critical to comprehending the full extent of project impacts (and is inextricably linked to the transport aspects of the ESIA). According to the Transportation ESIR: “Dredging of the Corantijn River may alter the river hydrology at various locations by changing currents and the natural migration of sandbanks. This in turn may have an impact on the ecological functioning of the river, e.g., by affecting the distribution of river flora and fauna (including birds). Deepening of the river may result in increased riverbank erosion, which is of particular concern in the vicinity of Apoera where riverbank erosion is already occurring.”

Clearly, the dredging will have significant impacts on local livelihoods (especially fishing) and provokes safety concerns. Residents along the Suriname River could suffer similar effects, especially as larger/more ships transport alumina for export. Finally, while not as important for the communities in West Suriname, the Paranam refinery ESIA will be critical for the Government and communities living alongside the refinery to understand the real impacts of the Bakhuis project. Yet, instead of recognizing the linkages between these projects in assessing the overall impacts of mining Bakhuis, current project documents state repeatedly that parallel ESIs are not in fact linked. Indeed, even the cumulative impacts assessment chapter of the Transport ESIR does not recognize that the Suriname River Dredging Project is inextricably related, and therefore consciously leaves out a discussion of this project’s impacts.

It should be noted that NIMOS’ mining guidelines underscore that at a minimum, a description of a mining project should include: power facilities; transport and access; mining; processing and metallurgy plan; mine closure and reclamation; and, risk assessment, among a variety of other topics. The current fragmentation into multiple projects makes for a lack of clarity regarding what the ‘project’ actually is. According to NIMOS, all aspects must be integrated into a full picture.

Indeed, the current fragmentation/segmentation of the project into separate ESIs has been considered illegal in other jurisdictions. In the United States, for example, there are numerous instances where courts have overturned approvals of ESIs on the basis of improper segmentation.
The links between biophysical and socio-economic impacts never seem to be made – they remain largely disaggregated. Only a few attempts are made at linking biophysical and social impacts, such as in the cumulative effects chapter of the Mine ESIR, which refers to the social implications of nuisance impacts. Biophysical effects on wildlife, for example, and potential implications for the cultural integrity and subsistence of Indigenous Peoples are missing from the analysis and mitigation measures.

The scope of the assessment does not include the complete area of influence of the mining related developments. For example:

- **Indigenous communities in Guyana are left out.** The ESIRs recognize that potentially affected communities along the Corantijn River in Guyana include the Indigenous communities of Orealla and Siparuta, as well as the community of Corriverton and its surrounds. However, the study teams were not able to visit Guyana or consult with these communities, on the advice of the Ministry of Foreign Affairs of Suriname, due to the disputed delimitation between the two countries. Consequently, no assessment was undertaken on effects, no mitigation measures are proposed for affected Guyanese communities, and the draft environmental monitoring plan omits monitoring of effects on Guyanese.

- **Suriname River impacts from the transportation are not considered in detail,** and from the documents submitted it appears no additional studies or monitoring will take place along the Suriname river. In the past, the impacts of the BHP Billiton/Suralco Coermotibo mine on the environment and people were not assessed or monitored, which included barging of bauxite. This situation can no longer continue, and in the case of Bakhuis, the impacts from barging on the Suriname river and the expansion of the refinery should be assessed with appropriate mitigation measures and monitoring in place, rather than the ESIRs simply stating that there will be no substantial difference in impacts from the barges related to operations at Bakhuis compared to those currently used for other mines. **Assessment, mitigation measures and monitoring of impacts must be undertaken for the Suriname River transportation corridor.**

- **The scope of the cumulative impacts assessment is deficient.** Currently, the cumulative assessment does not include two key large-scale projects, namely:
  - The Kabalebo Hydroelectric project and associated refinery and/or smelter development in West Suriname “due to uncertainty around whether the projects will be developed.” Instead the ESIR states: “If or when the projects are re-activated, then cumulative impacts may be reassessed at that time.”
  - The Integration of Regional Infrastructure on South America (IIRSA) project because according to the Transport ESIR “these are long-term concept plans for the region, and the projects are not likely to be implemented in the near future.”

The rationale for not considering these two projects in the cumulative impacts assessment is flawed. If the government proceeds with Bakhuis, there is increased likelihood of the construction of the dam and smelter. The scheme not only features in current government multi-year plans, but officials have indicated in person that the hydro project is very much a ‘live’ option. There has also been much media coverage of the government’s intentions for an integrated aluminum industry in West Suriname, with current talks with BHP Billiton and Alcoa on hold as they search for companies interested in implementing the full suite of projects required for an integrated aluminum industry in the West. With regards to the IIRSA, the Bakhuis mine project is also a long-term project – it has a 50-year life cycle. There is no doubt that the IIRSA will be developed within the project timeframe for Bakhuis. The Inter-American Development Bank (IDB) has already commissioned ESIAAs to look at impacts and select consultations have taken place in Paramaribo.

It should be noted that NIMOS’ guidelines call for EAs to consider “cumulative environmental impacts likely to result from the project in combination with existing or planned projects or
activities. Moreover, according to IFC Peformance Standard (PS) 1, the project’s area of influence includes (see Box 4):

“associated facilities that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project.”

Finally, the Inter-American Court on Human Rights states clearly that:

“one of the factors that the environmental and social impact assessment should address is the cumulative impact of existing and proposed projects. This allows for a more accurate assessment on whether the individual and cumulative effects of existing and future activities could jeopardize the survival of the Indigenous or tribal people.”

Following IFC PS 1’s definition of the project’s area of influence, NIMOS’ mining guidelines, and the Saramaka People judgment, the cumulative impact assessment of the Bakhuis ESIRs should consider the Kabalebo hydrodam and potential smelter, as well as the IIRSA, among any other potential projects planned for the future.

3.5 Lack of rigorous consideration of alternatives, or presentation of rationale for current option. With regards to the alternatives for transportation options, while feasibility studies are cited, it should be noted that these were not disclosed when requested. Moreover, right now, it appears that economic motives largely drove the decision for the chosen option. There is no real discussion on why the slurry pipeline was eliminated (aside from potential project delays), or how the potential impacts (social, environmental) of that option compare with the current choice. This violates NIMOS mining guidelines which require a description of the alternatives and their impacts on the environment (defined to include social aspects).

Moreover, there was no discussion or community participation in deciding options for potential sites of infrastructure, such as the port/jetty and bauxite handling facility in Apoera. Given the harmful impacts of locating this infrastructure right next to Zandlanding (encroachment on fishing grounds, etc.), why was there no consideration of an alternative siting of the port/jetty, for example, downstream of the communities where fewer negative socio-environmental effects might be felt? If decisions concerning siting of the jetty, bauxite handling facility and other related infrastructure are still to be negotiated with the communities through the Impact Benefit Agreement (IBA), then the ESIRs should be very clear that final siting has not yet been resolved, and provide impact information on alternative locations.

3.6 Lack of analysis on the “no project’ option. The current ESIRs do not adequately discuss the scenario under which there should be no Bakhuis Project. This is a standard requirement in ESIA processes, including the Akwe:kon Voluntary Guidelines and the NIMOS mining guidelines.

3.7 Very rushed timeframes not only for the data collection, but also in process expectations. The draft ESIRs, particularly the Transport ESIR, refer time and again to the rushed timeframes and limited fieldwork. For most studies, only a single reconnaissance trip was taken due to restrictive project timelines. Besides this stated limitation, the documents themselves belie any potential for appropriate consultation or process following the dissemination of the draft ESIRs. The January Transportation ESIR includes a construction schedule that begins in June 2008, implying that the contents of the ESIR would
be disseminated, consulted, finalized, approved and a license for exploitation issued within a period of 5 months. Nonetheless, the documents state that construction will take place “subject to BMS being granted a mining license by the Government of Suriname”64 A key question is whether construction activities have started prior to Government approval.

3.8 Breach of best practice and human rights by pressuring communities into signing an Interim Agreement without legal counsel present. On September 9, 2008, company general managers and the Chiefs of West Suriname signed an Interim Agreement concerning the Bakhuis Project, stating, among other things, the companies’ commitment to signing an IBA with the communities, and to enabling the development of a community development plan. However, the signing of the agreement was neither ‘free’ nor fully ‘informed’, and is far from the FPIC required by the Saramaka Judgment. The signing was not ‘free’ in that there was tremendous pressure on the community leadership to sign this agreement in light of repeated statements by BHP employees that the company would pull out of the project if the agreement was not signed, and increased agitation among the current community workers employed by BHP Billiton worried about potential job loss should the company pull out because the agreement was not signed. It was not ‘informed’ in that the community leadership had not yet received substantive legal counsel on the agreement, and they had no legal counsel present at the signing (while the companies were represented by board and senior management).

3.9 Suggestion in the ESIRs that an impact benefit agreement with the communities will be negotiated following the issuing of a license and during construction is backwards, and not best practice. Currently, the Community Engagement Plan notes that “negotiations for an Impact-Benefit Agreement will be pursued during [the construction phase].”65 While the companies are to be commended for the commitment to negotiate an IBA, the process and timing is far from ideal, and it is important to stress that an IBA is not necessarily the same as obtaining FPIC. Indeed, experience shows that communities have far more leverage in terms of their negotiating position prior to government approval. To facilitate this, the Government of Suriname could put political pressure on the companies to make significant progress in negotiating an agreement with the affected communities as a condition to approving the project, as has been done in the case of BHP Billiton in Canada. 66 At the very least, prior to obtaining Government approval for the project, and prior to construction, the companies and communities should negotiate a Memorandum of Understanding or framework agreement that will set the stage for the impact benefit agreement-making process. This MoU should have been a pre-cursor to any formal agreement with the communities (indeed prior to any interim agreement). It sets the terms for the process, including requirements for funding, technical support and legal counsel to enable the communities to negotiate on equitable terms.

3.10 Lack of focus on gendered impacts. While there is some mention of gender impacts in the documents (for example, the Mine ESIR refers to gender in relation to labour quotas),67 there is insufficient attention particularly around gender impacts of the mine in the Indigenous communities. During the exploration phase there were significant impacts on women whose spouses or sons left to work at Bakhuis for a two-week rotation period. These impacts included increased workloads stemming from childcare, Eldercare and pressure to engage in fishing as a source of food. Impacts on the gender roles in farming were also noted. Men mentioned increased pressure to provide for their families when they returned, which resulted in very little family time during their week at home.68

All this points to the importance of considering gender impacts in designing the mine site and employment rotations and conditions (particularly in dealing with potential family breakups, increased family violence etc.). For example, women will be even more affected by barging and may not be able to fish as close to home; they may also take their children along, which has safety implications for all. Furthermore, as women are primarily responsible for farming (their access to these plots may be severely affected by the current transportation routes) mitigation measures regarding this will need to be considered. Finally, research by VIDS/NSI has uncovered a deep concern regarding the increasing role of prostitution (and associated STDs) in response to existing large projects (logging) near the villages. This is an equally pressing threat around Bakhuis.69 Currently there is little or no discussion regarding prostitution in the ESIRs or mitigation measures. The final ESIRs should examine more closely gender impacts of the mine-related activities and recommend appropriate mitigation measures. These should consider not only terms of employment equity issues, but also the impact of the mine on the traditional roles and responsibilities of men and women in the Indigenous communities, access to traditional foods and livelihoods, and safety.
There should further be in-depth assessment of issues related to prostitution (and resulting STDs), with mitigation measures and plans described.

3.11 No panel of experts to guide the ESIA process. VIDS/NSI noted in a 2007 document that the litmus test for whether the companies were committed to embarking on a world class ESIA was whether, among other things, it established a panel of experts to guide the Transport ESIA (it had not for the Mine ESIA, which we pointed out as a major flaw) This was also recommended by Dr. Robert Goodland, in a review commissioned by VIDS and NSI. Instead of establishing such a Panel, the companies elected to undertake external reviews of its ESIA process that have not all been disclosed despite repeated requests, with one recent exception — it was only in October 2008 that Bureau VIDS and the communities finally received a version of one independent review.

3.12 Conservation values and economic concerns trumping human rights considerations. The current mine plans and mitigation measures show a clear preference for the economic bottom line and conservation values, over human rights, sustainable livelihoods and cultural integrity considerations. For example, the exploration concession comprises five water catchment areas which feed into the Nickerie River, the Kabalebo (a tributary of the Corantijn), Left Adampada Creek, Falawatra and Mozes Creek (both tributaries of the Nickerie). These catchments individually cover between 4% and 54% of the entire concession. ESIR plans currently note that “since runoff from mining [bauxite plateaus in envelopes 1 and 2] could affect the Adampada Creek [a tributary of the Coppename River which flows into the Central Suriname Nature Reserve (CSNR)], BMS has undertaken not to mine any bauxite located within the Adampada catchment area.” In short, the ESIR admits that there will be environmental contamination that could affect the Adampada Creek and the integrity of ecosystems within the CSNR.

Instead, plans are to mine the Nickerie and Kabalebo River catchments, both of which are critical for the livelihoods of Indigenous Peoples living downstream. While mitigation measures in the ESIRs do propose that mining in the Kabalebo catchment area be put off for 15 years while further impact studies are carried out, the assumption is that this area will eventually be mined, with no further studies for the Nickerie river. The Mining ESIA in fact states there will be no significant impacts for communities downstream on the Nickerie, and therefore they are not included in the EMMP. In light of the admission that contamination of the Adampada Creek could be possible, claims that impacts to the Nickerie River and downstream communities will not be significant raise questions and clear concerns that the Indigenous Peoples Panel of Experts review will have to consider. At the very least, monitoring in areas used by downstream communities on the Nickerie should be a priority, and a mechanism for ongoing two-way communication with these communities well established. These areas should be included in the EMMP. With regards to mining in the Kabalebo catchment area, West Suriname Indigenous communities need to be very involved in the follow-up studies and decisions as this is an important fishing, hunting and gathering area central to their traditional livelihoods and cultural integrity.

Further, the ESIRs clearly highlight the preference given to economic factors in decision-making, over those related to human rights. For example, on ore extraction, the mining ESIR notes that:

“Although BMS studies showed that all the deposit areas can be ripped with a CAT D11 dozer, the hard cap on the uppermost part of the bauxite profile in some areas requires a combination of blasting and ripping. The choice between ripping and blasting will be made on economic grounds and it is assumed that 50% of all material will be blasted so that the bauxite is loosened and can be excavated (emphasis added).”

**Economic grounds should not be the sole criteria driving decision-making on whether to blast or rip for ore extraction**: indeed, socio-environmental impacts, such as on the migration of wildlife due to the noise of the blasting or impact on nesting sites etc., should be front and centre in decision-making. Already, communities are experiencing adverse impacts on wildlife in the area, and 50 years of dynamiting as opposed to ripping could have significant effects on wildlife availability and Indigenous livelihoods.

Finally, currently there is no discussion of compensatory offsets for mining that includes Indigenous Peoples as the key managers of the offset areas. Compensatory offsets are always an essential and important compensatory mechanism where any critical habitat may be lost or affected. In the case of Bakhuis, offsets should be tropical rainforest nearby or adjacent to the area of forest being lost. **Prior to independent evaluation by experts, the ESIRs should include a compensatory offset package based on IUCN’s new paradigm of protected areas, namely Indigenous Protected Areas.**

15
Section 4: Draft Management Plans Related to the Proposed Bakhuis Bauxite Mine

Before commenting on the draft management plans submitted, it is important to point out two critical omissions:

- **No Environmental Management Plan (EMP) for advanced exploration.** As noted above, the Bakhuis project violated its own company policies and NIMOS guidelines by not undertaking an ESIA for the exploration phase. Nor did the company submit an EMP for exploration to the Government or for public review, as per NIMOS guidelines. Such an EMP should have addressed issues around communications and local relations, but in practice the communities had no input at all. According to the ESIRs, the company intends to continue advanced exploration work in the Bakhuis concession while it is actively mining. **Future exploration work should be considered for approval only following submission of adequate EMPs, among other NIMOS requirements.**

- **No Emergency Response Plan (ERP).** According to NIMOS guidelines, documentation submitted must include a prevention and emergency response plan. While the ERP can build on existing company emergency preparedness procedures, as the companies propose, it must be available for public review. This has not occurred. Currently the ESIA documentation refers to, but does not include, an emergency response plan. Considering the hazardous activities that will be taking place in and around the Indigenous communities, Government and community approval of the ERP is critical. For example, the fuel facility in Apoera will be expanded to 1.62 million litres of diesel (2-3 tanks) and every 10-12 days fuel will be delivered to Apoera by (river) tanker. Should there be spills during the transportation of the fuel, or at the fuel facility in Apoera, the impacts on the livelihoods and safety of the Indigenous Peoples in the communities and those living downstream would be significant. **The companies should submit a draft ERP of the initial mining-related and construction activities for review and approval by the government and communities.**

4.1 Draft Environmental Management and Monitoring Plan

Concerns and questions regarding the draft EMMP include:

- **No inclusion of social impacts.** The current EMMP places no emphasis on social impacts at all (aside from those around benefits), contrary to the definition of “environment” used in other plans – such as the draft closure plan. Instead, “social aspects are addressed in a separate, complementary Community Engagement Plan (CEP) and BMS will supplement the CEP by assisting communities to create a community development plan.” There is an argument to be made that **social and environmental impacts and monitoring should be considered together, rather than in two different plans, as per increasing experience that social and environmental impacts are interrelated. Indeed, until social impacts are duly considered, with monitoring measures identified and mitigation plans in place, the ESIA should not be approved and the project should not go ahead.**

- **No overt mention of local Indigenous Peoples as key participants in company monitoring, and no inclusion of traditional/local knowledge to supplement western data collection techniques.** The communities seem to be left out as a major audience and target of the EMMP, despite international best practice and agreements that state they should be the key participants in environmental and social monitoring. It should be emphasized that while the draft CEP does mention the possibility of community-based monitoring of impacts, this is insufficient on its own. **Community-based and managed monitoring should be established to oversee the social and environmental impacts of mining-related activities, including gendered and human rights impacts.**

Furthermore, as per the Akwe:kon guidelines, there should be emphasis on local and traditional knowledge, not only western scientific data collection. **Company managed monitoring, as outlined in the**
**EMMP, should make it a priority to train and employ local Indigenous people in all monitoring activities, and value local knowledge alongside western knowledge.**

- **Weak model for ‘independent review.’** Currently the draft EMMP notes that “throughout construction (and operations), external audit using external peer reviews is recommended,” and refers to BMS contracting external monitors. The model for independent monitoring and review currently in place at BHP Billiton’s Ekati mine in Canada is often cited as one of the most innovative aspects of this mine, and should be adapted for Bakhuis. *It is advisable that an independent monitoring body be established as a ‘watchdog’ to monitor company activities. The composition of this body should be the subject of negotiations, with consideration given to each Indigenous community appointing an expert, along with government and company appointees. While this independent review body is being established, any external reviews conducted should be jointly negotiated with the communities, and outcomes of the reviews disclosed publicly.* To date only one external review has been shared with the communities, and this only in October 2008, months after the first draft appeared.

- **Limited scope of monitoring.** The current scope for the EMMP appears to be limited mostly to the areas of operation instead of the area of influence of the mining-related activities (see Box 4 above). As mentioned above, the scope of the EMMP needs to change to include monitoring of downstream areas and species that people use for their livelihoods. Indeed, these criteria (areas and species that people use) should top the ‘indicative list of aspects that will be monitored’, and the list should be further refined to include, for example, key wildlife species and fish, and dimensions of human health and well-being, among other social aspects (currently left out of the list).

Moreover, the current scope of the EMMP does not include the Dredging project ESIA, and yet it does refer to maintenance dredging. This is confusing: Does the EMMP cover or not cover dredging? *Ideally, the EMMP would include all aspects of the mining-related activities, including the dredging, rather than there being multiple monitoring plans. However, in order to do this, the dredging ESIA and its results will first need to be incorporated.*

Further, currently there are no measures included in the monitoring with regards to local Indigenous employees and their terms of employment. *It will be critical to negotiate appropriate terms of reference for recruiting and employing local Indigenous employees, and to include monitoring of implementation in order to learn from and adapt these terms as necessary.*

- **Lack of clarity with regards to whether/how activities currently underway are being monitored, and if these plans have been the subject of consultation and negotiation in the communities of West Suriname.** As noted above, construction activities were scheduled to begin as early as June 2008. The EMMP refers to an Engineering, Procurement and Construction Management (EPCM) contractor Construction Environmental Control Plan, to an Emergency Response Plan (ERP) for the construction that will be prepared by the EPCM Contractor, and to an EMMP Implementation Plan — BMS Construction to be prepared by SRK. Current plans are to workshop the construction ERP, present scenarios and consult with the communities. Key questions are whether or not these documents, along with ERP scenarios, were the subject of discussions, consultations and negotiations in the communities prior to the construction activities currently taking place? *It is imperative that all documents pertaining to construction planning be well consulted with the communities prior to construction starting.*

With regards to the EMMP Implementation Plan – BMS Construction, the current chart outlining what this plan might contain again says nothing about social impacts, which are critical aspects of construction planning, especially around the accommodation camp. Moreover, construction seems to involve dredging in the river, which again emphasizes the need for the Dredging ESIA to be completed and be the subject of appropriate community consultation and decision-making before construction commences. *It is critical that the construction planning EMMP take into consideration social impacts, especially around the camp site construction and operation, and that the communities have input into final plans and managing these impacts. Because dredging is part of the construction activities, the Dredging ESIA needs to be completed and be the subject of appropriate community consultation and decision-making before construction commences.*
• **Vagueness re standards and guidelines.** With regards to standards, the EMMP refers only to BHP Billiton and Alcoa corporate requirements. Will the companies not be carrying through the IFC Performance Standards into all aspects of the mining operations? Similarly, there is no reference to either community policies and protocols, or the role of the Akwe:kon guidelines in monitoring impacts. The latter were singled out in the IACHR’s 2008 interpretation of **Saramaka People** as international best practice that is directly relevant to ESIR processes. *The EMMP should reference the Akwe:kon guidelines and IFC Performance Standards as key tools that will be used to guide company monitoring activities, and revise company responsibilities to ensure that all people employed in monitoring are trained in using these tools (and do in fact use them). In addition, community policies should also be referenced as important tools to guide the EMMP.*

• **Communications/reporting of environmental incidents and other subjects with the communities.** Currently all EMMP reporting, including of environmental incidents, appears to be directed upwards through company channels. All communications with the communities on these issues are being left to BMS’ corporate social responsibility (CSR) person. *It is advisable that the Bakhuis project director and key staff involved in environmental monitoring (the Environmental Superintendent for example) be among those formally responsible for communicating with the communities, particularly in relation to environmental incidents of concern. This should not be left solely to the CSR representative, who may not be trained in the subjects under discussion. Finally, any internal reporting that the communities request – such as the social reports by the CSR Superintendent* – *should be provided to them.*

• **Community input into method statements around hazardous materials and emergency responses needs to be specified.** *Currently Method Statements concerning hazardous materials and emergency responses are revised continuously by the Health Safety and Environment (HSE) Manager, but it is critical that communities have knowledge of these issues and input into these statements.*

• **No mention of hiring community liaison people.** Currently the EMMP refers to the CSR Superintendent as having chief responsibility with regards to community liaison. Among other topics, the Superintendent “will inform affected parties at least two months in advance of the commencement of construction and operations activities that may potentially impact them.”91 Clearly, simply informing affected parties is not enough; the liaison person should document and make sure community concerns are incorporated into decision-making about upcoming activities. While this will be the subject of future negotiations, *it will be critical to ensure that the communities themselves have in place a liaison person to dialogue with the company. This should be an employed position, paid for with company funds, but serving the communities. Consideration should be given to having one liaison person per community (including the settlement of Zandlanding).*

• **Inappropriate grievance mechanism.** Currently the EMMP refers to the CSR Superintendent and Officers at BMS maintaining a community grievance mechanism “to receive and respond to complaints and other issues of concern.”92 It also refers to BMS accommodating “local values and practices” wherever possible with regards to a grievance mechanism.93 Grievance mechanisms need to be the subject of negotiations within the communities, as the current model will not lead to optimal results. Indeed, one mechanism that is working well in Canada is the establishment of a committee made up of local Indigenous people that deals with all issues, including grievances, regarding recruiting Indigenous employees and employment at the mine.94 Indigenous employees feel far more comfortable voicing grievances to their own people than to company staff, who might be perceived as a potential threat to job security if the employee is seen to be unsatisfied. *The communities of West Suriname should consider establishing a committee to be in place for the life cycle of the mine project to help with all issues concerning Indigenous recruitment and workplace conditions, including serving as the first place of call with regards to work-related grievances.*

• **More clarity needed with regards to spelling out the responsibilities of operations contractors in achieving “satisfactory environmental performance”**.95 *It is essential to spell out for operations contractors all the applicable international conventions addressing environmental and social matters, including the recent IACHR judgments. IFC Performance Standards and agreements with the communities should also be referenced, with due training regarding the contents of these agreements and their implications for mine operations. Measures for enforcing implementation of practices that accord with these agreements should be developed.*
• **Clarify standards for reporting and disclosure.** The EMMP should be specific on which guidelines they will use for reporting, for example the Global Reporting Initiative (as per the ICMM Position Statement on Indigenous Peoples). In addition, there should be disclosure of key mine-related documents to community members who request them, including audits and reviews.

• **Revision of environmental measures.** The following should be taken into consideration in the overarching environmental measures currently proposed:
  
  o **Ensure that the no-go areas in the concession include sites of importance (e.g., nesting) to the animals and fish that the communities use (15.3)**
  
  o **Incorporate community researchers and their traditional knowledge in revegetation efforts, alongside western-scientists (15.4)**
  
  o **Rather than focusing solely on pursuing effective community engagement and facilitating community development, a key focus should be on monitoring social impacts (health, gender, household economy, cultural integrity, etc), and on Indigenous training, employment and business (not simply ‘local’) (15.7)**
  
  o **Include measures to ensure protection of cultural integrity, such as: bussing community members to the mine site each day (as is done for Alobaka dam employees); enabling employees to come home for the weekend to participate in Saturday mission work, religious services, and family life; facilitating consumption of traditional foods at the mine site; adapting rotations to facilitate seasonal traditional activities (such as helping community women to open up farming plots). It should be noted that currently there is a focus on conservation measures, but none on conserving cultural integrity.**

The above measures will no doubt be the subject of negotiations in the IBA, and therefore it is imperative that the ESIA's contain in-depth analysis of these issues, including proposed compensation measures.

### 4.2 Draft Community Engagement Plan

Many of the comments above regarding the EMMP relate also to the draft CEP. Those specific to the draft CEP, presented here in order of chronology in which they appear in the CEP, include:

• **The principles of engagement of Indigenous Peoples should be amended to include language from the Saramaka People judgment regarding consultation, consent and decision-making, and potentially also reference language in the Akwe:kon guidelines.**

  *58* Bullet 3 should be rewritten to say 'respect and support the right (not ‘desire’) of the participating communities to determine their own development priorities…”

• **The CEP should cover ‘closure’ as well, not just development, transport and operations after construction.”**

• **The scope of the CEP needs to be amended.** Currently the CEP “includes all area of contact stemming from the construction and operation of the Bakhuis project.”

  *59* As per the IFC definition of ‘stakeholder engagement,’ which the CEP quotes, the Plan should include all communities affected by the project activities, not simply those in direct contact. Further, it is imperative that the CEP recognize the position of West Suriname Indigenous communities” that they are not only stakeholders but rights holders and owners of their traditional territories. This is very likely also the position of other Maroon/Indigenous Peoples who might be affected by activities along the Bakhuis transportation corridor. Although the CEP does recognize that it may be “necessary to extend the geographical reach of the CEP in future,” the effort to include other affected communities should be made before mining begins. This follows company policies and commitments. Special consideration should be given to Guyanese communities that will be affected by bauxite transportation.

• **The representation and role of the Bakhuis Forum (BF) needs to be evaluated, and consideration given to participation by the Chief of Wanapan and/or the Trio Granman.** As human rights and other
impacts begin to be experienced, a key question is whether the Chief of Apoera can continue representing the people of Zandlanding, or whether the Chief of Wanapan, and by extension the Trio Granman, should participate in BF meetings. The Chief of Apoera will likely have much on his hands working for the interests of his people, let alone those of the Trio. As noted above, VIDS and NSI have also recommended that the BF be evaluated for its questionable effectiveness and representation as a site for consultation.

- The CEP supercedes the Public Consultation and Disclosure Plan, but issues around misrepresenting consultation in the communities are repeated. It is not accurate to state that consultation in West Suriname started in March 2005. Community leaders had their first information-sharing workshop in Paramaribo in June 2005 (with some meetings to ask for these beforehand) and the first round of information-sharing at the community level didn’t take place until February 2006. In addition, the CEP claims there were preliminary discussions on the CEP in June 2007. None of these sessions can be conflated with consultation. As with the PCDP, the CEP should correct this misrepresentation of consultation and refer to community policies on consultation and consent.

- With regards to both the guidelines and international context grounding engagement, it is critical to again include reference to Saramaka People, CERD, Akwe:kon guidelines and the UN Declaration on the Rights of Indigenous Peoples, and to draw from these standards the appropriate provisions for complying with consultation and free, prior and informed consent. The current box summarizing Akwe:kon is too selective and, among other things, provides no substance on the guidelines’ provisions for operationalizing FPIC at all stages of ESIA and decision-making, including the establishment of “a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community.”

- The employment recruitment policy for West Suriname Indigenous Peoples should be the subject of negotiations between the Indigenous communities and BMS, and should not be formulated unilaterally by BMS. Likewise for job-training and capacity-building.

- Issues around resettlement and displacement need to be carefully considered. According to the CEP only 1 household will be physically displaced and that monitoring of displaced people will continue into the construction phase, but there is no doubt that many households will be economically displaced in terms of impacts on livelihood activities, and the ESIRs should include an appropriate assessment of this impact and suggested compensation measures. Economic displacement is defined as occurring “when project land acquisition or project activities remove or limit the economic activities and livelihoods of affected people” According to the CEP, negotiated resettlement and compensation frameworks and associated compensation arrangements will be completed prior to construction, and monitoring of displaced people will continue into the construction phase. However, as noted above, prior to any negotiations concerning resettlement and compensation, it is imperative that an MoU be in place to guide these negotiations, including allocation of funding for technical and legal support to the communities. Nonetheless, it appears that construction may already have started, and a question is whether these arrangements are in fact already in place, or whether this company commitment has not been fulfilled.

- Considering the Bakhuis Forum as the appropriate venue for engagement action planning should be reviewed in light of IBA negotiations. Currently, it is unclear how the CEP, EMMP and other plans fit into the IBA negotiations. The IBA will likely contain many of the elements that seem to be fragmented right now, among other things: stipulations around liaison with the communities, a hiring committee, and an IBA implementation committee – many elements that right now make up the CEP. A negotiations team will clearly need to be set up to negotiate these elements, and the 6-months timeframe stipulated for the ‘engagement action planning’ component should be reviewed as this goes hand-in-hand the IBA negotiations.
4.3 Draft Conceptual Closure and Rehabilitation Plan

Key comments and concerns include:

- The CCRP should rectify the perception that the concession area is ‘terra nullius’. It states that “the concession area is uninhabited and undisturbed, apart from the exploration program activities”. The concession area is in fact the traditional use area of Indigenous Peoples and Maroons.

- Again there is no reference to Saramaka People in setting the legal framework.

- The following statement should be clarified: “BMS consulted widely during the ESIA processes with numerous meetings held in small communities…” A variety of other closure plans are referred to for geographical areas outside of West Suriname, in light of the narrow scope of the CEP, have these plans been disclosed to affected villages and have communities been consulted on their contents?

- **Closure objectives.** The following should be highlighted as key areas of importance and impact:
  
  - Water (rivers, creeks) and not only land in terms of sustainable use.
  - Wildlife trading. There is no real discussion of the wildlife trading, despite the fact that the Bakhuis project could have long lasting effects on this important economy.
  - Prostitution/Sexually Transmitted Diseases (STDs). The effects of prostitution are similarly ignored and STDs are left out of the list of health impacts in the description of the socio-economic environment.
  - Rehabilitating soil conditions. This is a deep concern is West Suriname as indications are that conditions for rehabilitation in Bakhuis are far less favourable than in East Suriname (Moengo-Coermotibo), where rehabilitation has been far from successful. Indeed, the Mine ESIR notes that:

    “Over half the areas drilled in the concession area have no topsoil [a requirement for rehabilitation], while more than half of the profiles of the remaining areas drilled have a topsoil layer between 40 and 80 cm in thickness. These profiles represent about 80% of all profiles and altogether they have an average thickness of about 20 cm of topsoil (in the Moengo-Coermotibo mining area, 60 cm of topsoil is used for rehabilitation of mined out areas, with only variable success). Furthermore it is evident that the majority of the Bakhuis topsoil is gravelly or very gravelly, making it less suitable for rehabilitation purposes. It is clear there is a paucity of topsoil for effective rehabilitation of the mined-out areas in the Bakhuis concession area. Mitigation will be difficult…”

- Prior to commencing any mining activities at Bakhuis, it is imperative the companies ensure that rehabilitation efforts in East Suriname shift from being a “feeble attempt” with “only variable success” to being successful. Only then will there be some confidence that rehabilitation efforts in the more difficult Bakhuis terrain might lead to success.

- The Plan is correct in noting that social monitoring requirements need to be developed very early to ensure that community people can be trained in skills useful outside of the mining industry.

- The closure objectives should include reference to obtaining free, prior and informed consent of the affected communities, as per Saramaka People.

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**Box 5: Sahdew and Obouter’s (2003) description of Rehabilitation in the East**

“The wasteland that is left [following bauxite mining] can often hardly be rehabilitated because it is a landscape of bare kaolin without a layer of humus: a soil on which barely anything grows. Or it is a swamp where the alkaline environment maintains itself... The few feeble attempts at ‘rehabilitation’ [in Suriname] are no use at all: one area is planted with exotic pine trees that hardly grow, in the other areas holes are made for planting neem trees, mango trees and other exotic species, whereas before there was natural forest with a great diversity of plant and animal species.”

• **Scope of closure plan:**
  o Currently there seems to be a bias to look at the concession area only, rather than the transportation facilities and routes.
  o The CCRP does not include the closure of the “Sol” fuel facility in Apoera as it is privately owned. BMS should require the “Sol” facility in Apoera to submit a closure plan if it is supplying BMS.
  o Not all communities that will be affected by the closure of operations were consulted, including those in Guyana.

• **Monitoring:**
  o Monitoring of rehabilitation should include local Indigenous people and their knowledge, not just local research and educational institutions.
  o The independent review body for the mine might be in the best position to monitor closure plans, in addition to a body comprised of community and company people. It is critical that experts in environmental and social issues – not only CSR people – be involved in monitoring the closure planning.

• As the CCRP states, resources for reclamation should be set aside BEFORE mining commences. This has been highlighted also by Goodland as a key issue (2006b).
Section 5: Conclusion — Consolidating the Missing Pieces

This review concludes that much work needs to be done to bring the draft ESIRs up to Government of Suriname, company and international standards, and to meet Suriname’s international obligations and recent orders by the Inter-American Court of Human Rights. There are many ‘missing pieces’ that need still to come together. In particular, the draft ESIRs:

• Are incomplete and inappropriately fragmented. Documentation concerning dredging impacts is noticeably absent.

• Provide very little information on social impacts or the mitigation of these impacts. This is particularly true in the area of human rights and Indigenous rights (for example, land rights), however there is also inadequate analysis linking environmental and social impacts among the various components of the ESIA. Key affected communities are currently left out of the analysis and mitigation plans.

• Omit key information concerning Suriname’s international obligations, particularly the orders of the Inter-American Court of Human Rights under Saramaka People.

• Fail to provide appropriate analysis of cumulative impacts, including proposed projects towards an integrated aluminum industry in West Suriname (the Kabalebo project, IIRSA).

• Do not adequately consider alternative options or a ‘no-go’ scenario.

• Paper over deficiencies regarding violations of company and Government policies concerning the lack of an ESIA for advanced exploration, and ignore community policies regarding consultation and consent.

• Provide inconsistent application of IFC standards. It is not clear how or if these standards will be applied during implementation (they are not referenced in management plans).

• Fail to include consideration of traditional knowledge alongside western science in currently proposed monitoring activities.

The final ESIRs should respond to the above comments, and provide the pieces that are now missing, to ensure the full suite of impacts are appropriately identified and mitigation and compensation measures in place. This type of rigour is critical also to ensure that subsequent negotiations based on the ESIRs are as informed as possible.

Indeed, the affected Indigenous Peoples of West Suriname are also potentially in a position to ensure their concerns are addressed through negotiated agreements with the companies. Prior to entering into substantive negotiations with the companies, it will be critical to negotiate an MoU concerning the principles underpinning, and terms of the negotiation, including funding for technical and legal counsel. While there is no blueprint for Impact-Benefit or other agreements involving Indigenous communities and companies, recent agreements have included:

• Provisions for Indigenous employment that address: quotas; training and apprenticeships; flexible work schedules to enable traditional activities; facilities to enable preparation of traditional foods within the work camp; cross-cultural training for both Indigenous and non-Indigenous employees; counseling; subsidized transportation from communities to the work site, etc. A committee may be established (sometimes joint company-Indigenous) to ensure employment provisions are enforced, and an indigenous employment coordinator hired to act as liaison between the communities and company.

• Provisions concerning training in skills that can be transferred once the mine closes.

• Ensuring contractors and subcontractors abide by negotiated employment policies as well.

• Provisions giving priority to awarding contracts to service the mine to Indigenous companies (plus provisions for technical, institutional and financial capacity-building).
• Financial/equity provisions, such as Indigenous communities receiving royalties, profit shares, fixed cash amounts linked to specific events in the lifetime of a mine, or equity interests in the project, with possible representation of Indigenous members on the company’s board of directors.

• Compensation to individuals who suffer losses caused by the mine (hunters, farmers, etc). IBAs may specify how to determine who is ‘affected’ and the process for calculating compensation.

• Environmental protection measures. The IBA can include: a list of anticipated environmental impacts, specific measures to minimize the impact on wildlife and/or sites of economic/cultural importance; the establishment of an independent monitoring system/body; conditions for a security deposit to finance mine closure/rehabilitation. The agreement may also lay out the environmental protection standards that are most acceptable to the communities, stated in very clear terms.

• Provisions to minimize negative social and cultural impacts of mining projects, such as: prohibition of access to Indigenous lands, hunting grounds and sacred sites by non-aboriginals; provisions for the development of social programs, such as counseling services to help Indigenous communities deal with stress, financial issues, and protection of vulnerable groups such as women and children; the development of community-based monitoring programmes, based on traditional knowledge, to monitor the social and cultural impacts of mining, including impacts on women; programs targeted to minimize tensions between Indigenous and non-Indigenous people through awareness-raising about the special rights of Indigenous Peoples.

• Establishment of an Implementation committee (also known as a coordination or management committee), that could comprise Indigenous community members, company officials and independent members that are jointly appointed. Some committees have been empowered to give financial incentives or penalties to companies who fail to comply.

• A dispute resolution mechanism.

• A term for review of the IBA (often 5 years).

In closing, the draft Bakhuis ESIRs highlight the complexity of the project, and the fact that much information is still unavailable concerning the likely impacts of the mine and related activities. This is not only because of the limited timeframe and process for the ESIA, but because the project scope and description is constantly shifting. This will be especially true in the future, particularly if more exploration activities take place. For this reason, agreement-making between the communities and the company should follow a phased approach. Apart from the MoU or Framework Agreement concerning the negotiations process itself, IBAs should be considered for both the construction phase and individual operations phases (most immediately for envelope 1 of the concession site only). Community-company negotiations should not be a one-time event to cover the entire concession area. Future mining envelopes and future advanced exploration should be subject to further and separate ESIA, and spur separate negotiations.119
References


Innes, Larry. Larry Innes is a lawyer and was a member of the negotiations team for the Innu Nation concerning Voisey Bay Nickel Mine in Canada. Personal Communication. September 2008.


Royal Haskoning Consultants. 2007. “Strategic Environmental Assessment (SEA) of Transport Infrastructure Initiatives (among others IIRSA) in Suriname (Draft).” Inter-American Development Bank. 12 June.


Tintaya’s Dialogue Table: Agreement on the Consolidation of the Progress on the Process of the Dialogue Table (December 2004).


Endnotes

1 Mine ESIR, p.5-2, 5.2.2.1. In 2005, the US Geological Survey estimated that Suriname’s Reserve Base (not yet proven) is 600,000,000 metric dry tons (in Mine ESIR, p. 5-3 chart). At today’s prices, this translates to income (not including costs) of around 325 million USD per year over the 50-year life cycle of the mine, or a total of $16.2 billion USD (Mineral commodity summary 2008, available at http://minerals.usgs.gov/minerals/pubs/commodity/bauxite/)

2 Current estimates are that “approximately 5% of the exploration concession, or 140km², will be physically disturbed by activities related to mining of Bakhuis” (Keeremaker cited in Mine ESIR, p. 5-12, 5.5.1.3.)

3 In the case of the Suriname river, the dredging will be to enable larger ships to transport the refined bauxite for export.

4 The vision for an integrated aluminum industry in the West was originally proposed in the 1970s, and has recently become a highlight in government policy statements and actions. For example, the Bakhuys and Kabalebo projects feature prominently in the President R.R. Venetiaan’s 2005-2009 multi-year plan (Venetian, R.R. November 23, 2005. Suriname Regeringsverklaring 2005-2009, speech at the National Assembly), in regional discussions of the Technical Executive Group of the Venezuela-Brazil-Guyana-Suriname Hub of IIRSA (Regional Infrastructure Integration in South America/Integración de la Infraestructura Regional en Sur América) (See www.iirsa.org), and in ongoing national media reports. Indeed, in August 2007, national newspaper De Ware Tijd reported on a Chinese delegation to Suriname that included members of the China Development Bank, Chinalco and Sino-Hydro, all of whom have expressed interest in the potential hydro project in West Suriname (Cairo 2007). The Chinese delegation also visited the communities of west Suriname, leaving behind Sin-Hydro T-Shirts (Pers Comm., Chief Areopa, January 2008). Most recently Suriname’s interest in pursuing an integrated aluminum industry was the subject of a July 2008 article in Caribbean Net News (Cairo 2008), as well as in an October 11 article in De Ware Tijd “Toekomst Billiton in gevaar.” Indeed, negotiations have currently been stopped with BHP Billiton and Suralco regarding Bakhuis, as the government searches for other companies that might be interested in putting in place an integrated aluminum industry hydroelectric development, with interest expressed by China’s Chinalco and Switzerland’s Glencore.

5 See, October 11, 2008 article in De Ware Tijd “Toekomst Billiton in gevaar.”

6 These include a project funded by Canada’s International Development Research Centre “Suriname Pilot Project” (2004-2006) and a project funded by the Inter-American Development Bank “Indigenous Peoples and Mining in West Suriname: Building Community Capacity and Encouraging Dialogue” (2006-2008). Project descriptions and documents are available at www.nsi-ins.ca (with the exception of the final report of the IDB project, which the Bank has decided not to make publicly available).

7 Mine ESIR, SRK Consulting (2008a).
8 Transport ESIR, SRK Consulting (2008b).
9 CCRP, SRK Consulting (2008c).
10 CEP, SRK Consulting (2008d).
12 PCDP, SRK Consulting (2008f).

13 Current company plans are to have the draft dredging ESIR available for comment and completion in early 2009, with dredging expected to begin in March 2009 (Personal Communication, Andy Witcomb, BHP Billiton, HSE Manager Projects, October 8, 2008).

14 At one point the terms Indigenous and Maroons are conflated when a socio-economic study states that: “[Sipaliwini district] is inhabited mainly by Arowak Amerindians and Kwinti Maroons, who are acknowledged to be indigenous peoples” (Transport ESIR, 10-3 [10.3.1]).

15 Transport ESIR, 10-3, footnote 2.

16 Mine ESIR, 5-34, footnote 7, states: “BMS defines local residents as persons who are: Current, legitimate residents of the local communities of Apoera Dorp, Apoera Plan, Washabo and Sandlanding; Surinamese residents.” The special rights of Indigenous peoples trump those of other residents and therefore preference should be given to local Indigenous people rather than simply local residents as BMS suggests.

17 Section 3.2.2. of the Mine ESIR (p. 3-2), or section 3.2.2 of the Transport ESIR (pp. 3-3, 3-4).
18 Mine ESIR, p. 3-14, 3.2.5.
19 There is some discussion of events and decisions prior to the 2007 Saramaka People judgment in 3-15 of the Mine ESIR.
20 IACHR (November 28, 2007), para 95.
21 Ibid, para 194.
22 Mine ESIR, 10-14.
23 Transport ESIR, p. 10-20, (para 10.3.13)
24 Mine ESIR, 10-15.
26 IACHR (August 12, 2008), para 37.
28 See, for example, Jose de Echave, Karyn Keenan, Maria Kathia Romero and Angela Tapia (2006); and, the Tintaya Dialogue Table Agreement, “Agreement on the Consolidation of the Progress on the Process of the Dialogue Table”.
On September 18, 2006 the community leadership submitted its most recent petition to the President of Suriname concerning addressing the land rights situation in West Suriname, with no government reaction to date.

Transport ESIR, 11-13.

See IFC’s PS7 para 13 and associated guidance notes.

IACHR (November 28, 2007), para 194 (a).

IACHR (August 12, 2008), para 17.

7-34. See also VIDS 2008; Weitzner 2008 (forthcoming).

IACHR (August 12, 2008) j), para 41

Mine ESIR, 5-4, 5.2.4.


See, for example, Artist and Madsian (2007); Weitzner (2007); Weitzner (2008 forthcoming)

IACHR (August 12, 2008), para. 18.

Ibid. para. 19.

Ibid. para. 27.

See, for example Weitzner (2007, 2008); Artist and Madsian (2007); Molenaar (2007).

Transport ESIR 8-16, 8.7.16

For example, footnote 6 in Transport ESIR, p. 5-23: “BMS, Suralco, Staatsolie and MAS are currently investigating dredging of the Suriname River in order to provide greater draft and improved access to ships exporting alumina from the paramarind refinery. This is known as the Suriname River Dredging Project and an ESIA of the project is being undertaken. This is unrelated to the Bakhuis Transport Project.” However, it is related to the overall impacts of mining at Bakhuis, and therefore documentation pertaining to this needs to be considered in the overall assessment.

Transport ESIR, p. 11-3.

NIMOS (2005), Mining guidelines, p. 14, 5.1.

For a discussion of these cases, see Environmental Law Alliance Worldwide U.S. (2000)

Transport ESIR, p. 7-3, 7.1.2.1.

Since then a judgment from an arbitration tribunal of the United Nations Convention on the Law of the Sea was made in September 2007 (Transport ESIR, p. 8-8, 8.5)

This was clear from a visit to Coermotobo by West Suriname community members in 2005, where answers to questions regarding monitoring revealed that monitoring of social and environmental impacts was not taking place (see Weitzner 2007).

Transport ESIR, p. 11-3.

Ibid.

Personal Communication, January 2008, Ms. Vasseur, Director of the Bauxite Institute of Suriname.

See references in endnote 4.

See for example, Royal Haskoning Consultants (2007).


IFC PS 1, para ii.

IACHR (August 12, 2008), para 41.

Transport ESIR, p. 5-6, 5.6.


Ibid. p.18, 5.4.

See, for example, Transport ESIR, p. 6-3, 6.12.

Transport ESIR, page 5-5, footnote 3.

CEP, p.11.

See, for example, Bielowski (2003); Sosa and Keenan (2001); Weitzner (2006).

Mine ESIR, 13-6.

Weitzner (2007).

See for example Weitzner (2006).

Weitzner (2007).

Goodland (2006a).

Mine ESIR, Table 6-5, p. 6-26.

Ibid. p.5-12, 5.5.2.

Ibid. p.5-22, 5.5.6.1.

Indeed, while Kaboerkreek is mentioned as a potential offset, it should be noted that this would likely ONLY be considered by the Indigenous Peoples in West Suriname if the model of protection was based on the new paradigm of Indigenous protected area recognized by the IUCN (see Weitzner 2007 for a discussion of this issue).

See IUCN (2003) and (2004).


Mine ESIR, p.5-10, 5.5.1.3.


Ibid. p.2.

EMMP, page 29 refers to Bakhuis data management specialists and data monitoring assistants. This should involve local people as much as possible, and include local traditional knowledge not just western science. In fact, the value of local knowledge is at one point acknowledged in the Transport ESIA biophysical baseline, which cites that the number of terrestrial animals species identified by local sources in the transportation corridor between Bakhuis-Apoea-Niew Nickerie was more than double that of a field survey (Transport ESIA, p. 6-35, 6.2.8.5.)

EMMP, p.10.

Ibid. p.11.

Ibid. p.38, footnote 16, states that “an external BHP Billiton audit was undertaken in both 2005 and 2007, which encompassed the Bakhuis exploration programme.” Despite repeated requests, these reviews were not shared with the communities.

Ibid. p.6.

Ibid. p.52, Footnote 22.

Ibid. p.51.

Ibid. p. 57.

Ibid. P.37.

Ibid. p. 50.

Ibid. p.16.

Ibid. page 50.

Committees of this type have been established by the Innu and Inuit affected by Voisey Bay nickel mine in Labrador, Canada. To date, implementation officers note that these are working well (Larry Innes, Personal Communication, September 2008)

EMMP, p. 31.

CEP, p.8.

Ibid. p.1 There are inconsistencies throughout the document, as in some places closure is also referred to.

Ibid. p. 2, 1.2

Ibid. p. 2.

Ibid. page 11.

Ibid. p. 15.

Ibid. p.15.


CEP, p.16.

Ibid. p.19.

Ibid. p. 19, footnote 7.

Ibid. p.19.

Ibid. p.12.

Ibid. p.5.

Ibid. p.35.

Ibid. p.4.

Ibid. p.16.

Community members have visited Coermotibo on at least two occasions, once with the IDRC-funded project led by the VIDS/NSI (June 2005), and another by the companies (December 2006). On both occasions the communities remarked at the inadequacy of the rehabilitation efforts, particularly the inappropriate and non-native trees that has been used. The failure of rehabilitation efforts in East Suriname has been discussed by Surinamese academics as well (see for example, Sahdew and Obouter 2003).


Sahdew and Obouter (2006: 3).


CCRP, p.29.

This list draws heavily from Sosa and Keenan (2001).

This recommendation is based on the experience of Lutsel K’e Dene First Nation and their negotiations with BHP Billiton concerning the Ekati diamond mine in Canada. In their IBA with BHP Billiton, Lutsel K’e Dene First Nation negotiated based on the a ‘project’ that included the whole claim block, rather than specifying the project as mining activities around the first kimberlite pipe. This meant that as more kimberlite pipes were discovered, the First Nation was not able to accrue the type of benefits they had expected based on the new discoveries. For this reason, they have recommended to the communities in West Suriname (see Weitzner 2006) that they be very careful about the description of the ‘project’ they are negotiating, and not negotiate an IBA based on a whole claim block area but instead on each pipe (and in the case of Bakhuis, this would translate to each mining envelope).