

**WRITTEN COMMENTS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN RESPONSE TO THE REQUEST FILED BY THE STATE OF SURINAME UNDER ARTICLE 67 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS**

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**I. Introduction**

The Inter-American Commission on Human Rights (hereinafter "Commission") has reviewed the request for interpretation presented by the State of Suriname (hereinafter "State") in relation to the Case of *Moiwana Village v. Suriname*, and respectfully submits the written comments that follow. To summarize, the Commission considers that the communication presented by the State does not meet the requirements set forth in Article 67 of the American Convention on Human Rights (hereinafter "American Convention"), or Articles 29(3) and 59 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "Inter-American Court" or "Court"). Article 67 of the American Convention clearly indicates that judgments of the Court are final and not subject to appeal. Requests for interpretation are permissible insofar as appropriate to clarify the scope or meaning of the judgment.

Rather than seeking an interpretation of the scope and meaning of the Court's sentence, the request presented by the State of Suriname attempts to appeal aspects of the sentence which the State finds unfavorable. The State's request is expressly based on its disagreement with portions of the judgment:

Based on the aforementioned Article 67 of the Convention, the Republic of Suriname states that it disagrees with specific parts of the Judgment of June 15, 2005, Case of *Moiwana Village v. Suriname*, taken by this Honorable Court. The State respectfully requests the Court's interpretation to (*sic*) said parts of the judgment.

The State has cited no ambiguity or lack of clarity in the text of the judgment. As indicated by the applicable norms, and as the Court has expressed repeatedly, a State's disagreement with the findings of the Court does not constitute a permissible basis for interpretation under Article 67. As such, the request does not meet the applicable terms of the American Convention and should be deemed inadmissible.

The objective to be met at this stage of the proceedings is full compliance with the orders of the Court relative to the measures of reparation necessary to repair the grave violations established in the judgment.

**II. The request presented does not meet the applicable requirements and should be deemed inadmissible**

Article 67 of the Convention establishes that:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

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Article 29(3) of the Court's Rules of Procedure further specifies that "[j]udgments and orders of the Court may not be contested in any way." Article 59 of those Rules sets forth the procedure for presenting such requests, and indicates that such requests must present "issues relating to the meaning or scope of the judgment" in question. Accordingly, while the individual case system provides a mechanism to enable parties to request clarification in order to fully understand the scope or meaning of a judgment of the Inter-American Court, it expressly precludes the possibility of appeal.

The Court has clearly delineated the permissible purpose and scope of a request for interpretation under the terms of Article 67. As the Court has indicated, "[t]he task of interpretation that corresponds to an international court entails the clarification of a text, not only as regards the decisions in the operative paragraphs, but also as regards determining the scope, meaning and purpose of its considerations."<sup>1</sup> In this regard, the Court has explained that the request for interpretation of a judgment:

should not be used as a means to appeal but rather it should have as its only purpose to clarify the meaning of a ruling when one of the parties maintains that the text in its operative parts or in its considerations lacks clarity or precision, provided that such considerations have a bearing on the operative parts and, therefore, modification or annulment of the respective judgment cannot be petitioned through a request for interpretation.<sup>2</sup>

Requests for interpretation which have the purpose of appealing a judgment, such as that presented by the State of Suriname, must therefore be deemed inadmissible.

The Court has indicated that, in very exceptional circumstances, an appeal for review may be admissible when a fact has come to light after the judgment has been delivered and affects the contents of the decision, or reveals a substantial defect in it.<sup>3</sup> In the case *sub judice*, there is no reference to a relevant subsequent fact that would or could substantially modify the ruling of the Court. The request for review is based on arguments concerning admissibility, merits and reparations with respect to which all

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<sup>1</sup> *Juan Humberto Sánchez v. Honduras, Interpretation of the Judgment on Preliminary Objections, Merits and Reparations* (Art. 67 of the American Convention on Human Rights), Judgment of November 26, 2003, para. 14.

<sup>2</sup> *Cesti Hurtado case. Interpretation of the judgment on reparations.* (Art. 67 of the American Convention on Human Rights). Judgment of November 27, 2001. Series C No. 86, para. 31, citing: *Ivcher Bronstein case. Interpretation of the judgment on merits.* (Art. 67 of the American Convention on Human Rights). Judgment of September 4, 2001. Series C No. 84, para. 19; *Suárez Rosero case. Interpretation of the judgment on reparations.* (Art. 67 of the American Convention on Human Rights). Judgment of May 29, 1999. Series C No. 51, para. 20; *Loayza Tamayo case. Request for interpretation of the judgment of September 17, 1997.* Order of the Court of March 8, 1998. Series C No. 47, paras. 16 and 18; *Eur. Court H.R., Hentrich v. France, (interpretation), Judgment of 3 July 1997*, Reports of Judgments and Decisions 1997-IV, para. 16; *Eur. Court H.R., Allenet de Ribemont v. France, (interpretation), judgment of 7 August 1996*, Reports of Judgments and Decisions 1996-III, paras. 17 and 23; and *Eur. Court H. R., Ringeisen v. Austria, (interpretation), Judgment of 23 June 1973*, Series A, Vol. 16, para 13.

<sup>3</sup> *Cf., Genie Lacayo case. Request for review of the judgment of January 29, 1997.* Order of the Court of September 13, 1997. Series C No. 45, paras. 10-12.

parties were accorded a full procedural opportunity to present their positions.<sup>4</sup> The State had the procedural opportunity to refer to these issues during both the written proceedings before the Court and during the public hearing; there is no legal basis for the State to re-litigate these points subsequent to the issuance of the Court's judgment.

### III. More specific arguments presented by the State in its request

#### a. Concerning the exercise of temporal jurisdiction

The first set of arguments presented by the State concern the processing of the petition insofar as the Commission dealt with certain aspects of the case under the American Declaration of the Rights and Duties of Man and other aspects under the American Convention. The State requests in general terms that the Court review whether the Commission properly followed and completed the procedures set forth under Articles 48 through 50 of the American Convention prior to presenting the instant case before the Court.<sup>5</sup>

As indicated throughout the proceedings before the Honorable Court, the Commission processed the claims presented with full respect for the scope of its temporal jurisdiction, and exercised that jurisdiction accordingly. The Commission's Article 50 report reflects the temporal division of the case in accordance with the scope of that jurisdiction, and the Court has ruled with respect to the nature and scope of its own temporal jurisdiction in relation to this case.<sup>6</sup>

The Commission notes that this request is nothing more than a repetition of arguments raised by the State in its Answer to the Application and subsequent pleadings before the Court. The State was given the full opportunity to present its position in this regard, and there is no basis in the applicable law for the State to re-litigate the objections it presented at that time. A disagreement with the outcome does not provide a justification to request clarification as to the scope or meaning of the Court's judgment.

In its request, the State further refers to the adoption of a "communication labeled as an Article 51 Report by the Esteemed Commission."<sup>7</sup> In the interest of clarification, the Commission simply wishes to confirm that, subsequent to the adoption of its Article 50 report, it prepared and presented its Application before the Court. The Commission did not adopt an Article 51 report in the present case.

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<sup>4</sup> Questions of law and fact that were presented during the appropriate procedural opportunity and with respect to which the Court has already pronounced do not constitute a valid basis for a request for consideration. See generally, I/ A Court H.R., *Case of Lori Berenson-Mejia v. Perú. Request for an Interpretation of the Judgment on the Merits, Reparations and Legal Costs.* (Art. 67 American Convention on Human Rights). Judgment of June 23, 2005. Series C No. 128.

<sup>5</sup> See Request of the State of Suriname, pursuant to Article 67 of the American Convention on Human Rights, dated October 4, 2005 (hereinafter "Request of the State of Suriname"), paras. 5-7.

<sup>6</sup> I/A Court H.R., *Case of Moiwana Village v. Suriname.* Judgment of June 15, 2005, Series C No. 124, paras. 37-44.

<sup>7</sup> Request of the State of Suriname, para. 8.

**b. Concerning the standing accorded to victims to present their own arguments and proof before the Court**

The State takes issue in its request with the standing that enables individuals, once a case has been presented before the Court by the Commission, to present their own arguments, proof and claims for reparation. The State argues that the Rules which enable this direct participation by victims and their representatives are contrary to the American Convention, namely Article 61, which provides that "[o]nly the States Parties and the Commission shall have the right to submit a case to the Court," and Article 57, which indicates that "[t]he Commission shall appear in all cases before the Court." The State indicates in general terms that, under the American Convention, "individuals cannot be given locus standi as an individual party in the proceedings before your Honorable Court."<sup>8</sup>

First, the Commission observes that what the State is presenting with respect to this point is not a request for interpretation of the scope or meaning of the judgment delivered in the Case of Moiwana Village, but rather a challenge to the Rules and practices applied in the individual case system. Consequently, the point raised does not constitute a valid basis for a request for interpretation under Article 67 of the Convention.

The Commission wishes to offer very brief additional considerations in order to give more clarity to the issues that have been raised by the State. The system as currently designed requires that cases be presented before the Court by either a State Party or by the Commission. Individuals are not attributed with the capacity to directly present their claims. In the present instance, it was the filing of the Commission's Application that initiated the proceedings, in full conformity with the terms of the Convention.

Further, as a matter of both norm and practice, the Commission does in fact appear and participate in the litigation of all contentious cases before the Court, in full conformity with the terms of the Convention. Accordingly, the Commission participated in all stages of the presentation of the instant case.

The present proceedings were handled in full conformity with the norms of the American Convention and the applicable Rules of Procedure. While the State has suggested that the Rules of Procedure in some sense contradict the terms of the Convention, it provides no support in fact or in law for its argument.

The Commission has consistently indicated its view that the Rules of Procedure and practices that enable victims to have a direct voice in the proceedings that concern their rights is necessary and consistent with the principles of the inter-American human rights system. As the Court has repeatedly indicated, it is the victims who are the holders of the rights in question, and as such must be vested with the possibility to participate directly in the proceedings that concern those rights.

The Commission notes that, while the State indicates in its request that the European human rights system granted direct standing to victims through a change in the European Convention on Human Rights, this comment requires further precision.

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<sup>8</sup> *Id.*, paras. 9-12.

The European system first incorporated the direct participation of victims in pleadings and the presentation of proof precisely through changes to its Rules of Procedure and practices. Under the pre-Protocol 11 system, once the European Commission or State Party had presented a case before the European Court, victims had full capacity to participate. The changes to the European Convention adopted later had the further and distinct objective of providing individuals with the capacity to initiate proceedings directly before the European Court of Human Rights, without prior proceedings before the European Commission. Accordingly, rather than departing from the practices of the European system with respect to the standing of victims in proceedings initiated by the Commission, the inter-American system has followed them. 000023

**c. Concerning whether the Court devoted sufficient attention to the particularities of its civil law system**

In its request, the State indicates that, while it respects the Court's references to jurisprudence, in its own civil law system the principal source of authority is statutory. The State further expresses that it considers that the Court did not sufficiently understand the characteristics of its legal system and accordingly ignored certain relevant issues.<sup>9</sup>

The Commission simply wishes to note in this regard that the principal source of law in the instant case was the American Convention on Human Rights, interpreted and applied in consonance with the relevant canons of international law and interpretation. The Commission is unable to identify an issue in this section of the State's communication that would constitute a valid request for interpretation. The State appears to be presenting a challenge to the Court's jurisdiction which would clearly fall outside the framework of such a request.

**d. Concerning "specific remarks" by the State**

**i. Concerning the right to return and the intention of certain villagers**

In its request, the State makes reference to several further "specific remarks," the first of which has to do with whether certain villagers had the intention of returning to the sight of the Moiwana massacre. The State contends that they did not.<sup>10</sup>

There is no basis for the State to present or controvert questions of fact subsequent to the issuance of the Court's judgment, and a request for interpretation is not a permissible procedural opportunity to raise further arguments. The Commission simply notes for the record that the contentions of the State in this regard are nothing more than conjecture, and lack any foundation whatsoever.

While the Commission considers the point inadmissible under the terms of Article 67 of the Convention, it wishes to note for the record that the manner in which it is presented is inaccurate. As the Court is well aware, the Commission presented arguments and proof with respect to the way in which the denial of justice for the

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<sup>9</sup> *Id.*, para. 12.

<sup>10</sup> *Id.*, paras. 14-16.

Moiwana massacre had impeded and in fact prevented the villagers from returning to their traditional lands, community and way of life. The Court received eloquent testimony on these points from former villagers during the public hearing.

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While the State cites testimony from the public hearing to the effect that a few villagers briefly visited sites in or around Moiwana, but without the intention of remaining, the State fails to complete the explanation in the sense that the villagers considered that return was impossible. They testified that they considered return impossible because of the denial of justice that has continued over time; because of their consequent inability to honor their dead; and because they have been impeded from carrying out the actions required according to their cultural norms to make return permissible. Taking into account the effort made by the survivors who testified before the Court, the State's attempts to take the citation out of context and distort its meaning is inappropriate. The terms of the Court's judgment confirm the scope, meaning and significance of the testimonies that were presented before the Court.

**ii. Concerning the right to justice and whether there is a need for investigation**

The Commission takes note of the State's position to the effect that "it is not correct to state that the community members do not understand the reasons of (sic) the occurrences."<sup>11</sup> The State goes on to indicate that "members of several villages" took place in hostilities, including acts in violation of international law. It would appear that the State is implying that villagers, in some way relevant to the facts of the present case, either engaged in activity that would be considered criminal, or somehow invited the massacre. The State makes the veiled indications, but then expressly declines to explain them.

The Court analyzed and pronounced upon the right of the victims to investigation and clarification in its sentence. As indicated by the Court, the denial of justice in the present case violated the right of the victims to know the truth about the killings at Moiwana,<sup>12</sup> and denied the right of society as a whole:<sup>13</sup>

In consideration of the many facets analyzed above, the Court holds that Suriname's seriously deficient investigation into the 1986 attack upon Moiwana Village, its violent obstruction of justice, and the extended period of time that has transpired without the clarification of the facts and the punishment of the responsible parties have defied the standards for access to justice and due process established in the American Convention.<sup>14</sup>

In the view of the Commission, the Court's sentence is very clear in its scope and meaning, and the comments of the State do not constitute a cognizable request for interpretation.

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<sup>11</sup> See *id.*, paras. 17-19.

<sup>12</sup> See *Case of Moiwana Village, supra*, paras. 139-167.

<sup>13</sup> *Id.*, para. 153.

<sup>14</sup> *Id.*, para. 163.

The Commission is unable to identify which would be the specific objective of the State's comments in this regard, but formally takes objection and considers that the comments are extremely improper procedurally and substantively, particularly insofar as they can only bring additional pain to the family members of the men, women and young children killed at Moiwana.

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### iii. Concerning Article 21 and the conditions necessary for return

In its request, the State argues that there were no facts and no legal basis presented during the proceedings to justify the Court's ruling to the effect that the State must adopt a series of measures necessary to ensure that community members may use and enjoy their traditional lands, including the creation of an effective mechanism for demarcation and titling of those lands.<sup>15</sup> The Commission considers that the position presented expresses nothing further than the State's disagreement with the findings of the Court, findings arrived at pursuant to having analyzed the arguments, testimony and other forms of proof presented throughout the proceedings.

As the Court indicates in its sentence, the question of the right of return and the need to guarantee the villagers' capacity to use and enjoy their traditional lands was a key element of the proceedings before it. The Commission raised the need to create and ensure conditions for return as a central point of its Application, as a crucial measure of reparation required to remedy the ongoing denial of justice. The petitioners, for their part, provided extensive briefings on the issue of lands rights in relation to their position with respect to the right to property. The State was on notice of these positions and had a full opportunity to respond. In fact, the specific terms of the Court's sentence demonstrate that it fully took into account the factual and legal positions presented on this issue.

The State makes no effort to formulate a question as to the meaning or scope of the Court's judgment in this regard; accordingly, the Commission considers that the disagreement presented is inadmissible in the context of a request for interpretation under Article 67 of the Convention.

## IV. Conclusion

The Commission considers that the request presented by the State of Suriname is a manifestation of points with respect to which it disputes or disagrees with the determinations of fact and law established by the Honorable Court. As such, it seeks not a determination of the scope and meaning of the decision, as contemplated under Article 67 of the American Convention, but rather a reversal or modification of decisions it considers unfavorable. Consequently, the request should be deemed inadmissible for presenting nothing further than arguments for appeal.

As indicated in Article 59(4) of the Court's Rules of Procedure, "[a] request for interpretation shall not suspend the effect of the judgment." The Commission takes note of and values the State's expression at the conclusion of its document to the effect that it will do its utmost to comply with the judgment issued, and respectfully requests that the Court continue to supervise the proceedings until full compliance has been achieved.

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<sup>15</sup> Request of the State, paras. 20-22.