



FAX ORIGINAL 000001

**THE OFFICE OF THE PROCURATOR GENERAL
WITH THE HIGH COURT OF JUSTICE IN SURINAME**

[Redacted]

To: **The Secretariat of the
Inter-American Court of Human Rights
Attn. Pablo Saavedra Alessandri
Secretary**

[Redacted]

Our reference: *P.G. 3592105*

**Subject: Request to the Honorable Court based on Article 67 of the
American Convention on Human Rights (the Convention)**

Paramaribo, October 04th, 2005

Dear Mr. Saavedra,

The Republic of Suriname kindly requests your attention to the following.

1. Article 66 of the Convention states:

- 1. ***"Reasons shall be given for the judgment of the Court.***
- 2. ***If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment"***

Article 67 of the Convention states:

"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 the parties, provided the request is made within ninety days from the date of notification of the judgment".

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The State acknowledges that the Convention specifically indicates that the judgment of the Court is not open to appeal. With the possibility to request an interpretation as to the meaning and scope of the judgment, the framers of the Convention gave the parties that disagree with the judgment the opportunity to petition your Honorable Court.

2. Based on 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 said parts of the judgment.

3. The Republic of Suriname notes that the full text of said judgment was sent to the State by the Court's notification letter dated July 14, 2005 REF.: CDH - 11.821/227, which was received by the Agent of the State on July 19, 2005. Since this request is made within the period provided for in article 67 of the Convention, the State, as a party in this judgment, requests the Court to take this request in consideration.

A. GENERAL REMARKS

4. Article 61 of the Convention states:

1. ***"Only the States parties and the Commission shall have the right to submit a case to the Court.***
2. ***In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed."***

5. In order for the Court to hear a case, Article 61 section 2 of the Convention mandates that the procedures set forth in Articles 48 and 50 shall have been completed. The State argued in all previous communications during

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the proceedings and at the public hearing held in September 2004 before your Honorable Court, that the Commission wrongly adopted a communication as an Article 50 Report. Based on said article 61 section 2 of the Convention, this wrongly adopted "Article 50 Report" serves as the bases to file the petition to your Honorable Court,

6. The State must conclude that your Honorable Court did not analyze the status or quality of said communication - the Article 50 Report - that was filed by the Commission as the basis for its petition to the Court in the issue at hand. Since the Convention explicitly demands that the procedures mentioned in Articles 48 and 50 of the Convention must be completed, as a *conditio sine qua non* for your Honorable Court to exercise jurisdiction over a particular case, the State is of the opinion that your Honorable Court must carefully review the procedures to determine whether the requirements mentioned in Articles 48 and 50 of the Convention are met by the Commission. Only after this analysis based on facts of law, it can be indicated that said requirements of the Convention are met by the Commission to file this case to the Court. Only then this will give your Honorable Court the right as laid down in article 61 section 2 of the Convention to hear this particular case.

The State is of the opinion that this analysis is mandated because of the necessary explanation that must be given by this Honorable Court based on Article 66 section 1 of the Convention

7. In several communications the State opined that the Esteemed Commission wrongfully adopted a Report labeled as an Article 50 Report in the Case of Moiwana Village. The State has stated that it strongly disagrees with the determination of the Commission that said report must be labeled as an Article 50 Report. The State argued that the Commission wrongly incorporated several acts of State actors as falling under the Convention, while the State is of the opinion that if the violations occurred, they must be reviewed under the American Declaration of the Rights and Duties of Man (the Declaration), and not the American Convention on Human Rights.

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Based on the above-mentioned facts the State believes that it is mandatory that your Honorable Court must first analyze whether the Commission properly followed the procedures laid down in the Convention (Articles 48 and 50), before the Court can take charge to hear the case based on article 61 section 2 of the Convention. The State respectfully points out that in its several communications, it has stated that the Esteemed Commission has intermingled possible violations of the Declaration with possible violation of the Convention.

In general this would not be problematic. However, Suriname was not a Convention-state on 29 November 1986, when the occurrences regrettably took place in the Village of Moiwana. As a member state of the OAS, the Declaration applies to these particular occurrences.

Due to the clear distinct status between Declaration States and Convention States, the State is of the opinion that in addressing State parties with regard to jurisdictional issues and human rights instruments that are applicable, the distinction between Declaration States and Convention States must be strictly maintained at all times.

3. In addition, the State also argues that the communication labeled as an Article 51 Report by the Esteemed Commission, was not properly taken in conformity with the articles of the Convention, to serve as the prerequisite to petition your Honorable Court in this particular case.

An explanation of your Honorable Court with regard to these two communications is not included in your judgment, and is tremendously important for the State. The State respectfully requests your Honorable Court's interpretation/explanation on this matter.

9. The Republic of Suriname acknowledges the authority of your Honorable Court as the only judicial organ in the Western Hemisphere in charge of supervising the States compliance with the human rights instruments applicable in the region. The Court's teleological interpretation of the provisions of the American Convention is understandable and certainly highly commendable. The

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Republic of Suriname however, is of the opinion that the guiding principle is laid down in the Convention, meaning that this document adopted by the States of this Western Hemisphere, must be the leading principle in the matters at hand.

10. In addition to Article 61 of the Convention, Article 57 of the Convention states: "***The Commission shall appear in all cases before the Court***".

Based on the provision of the Convention it is clear that the only parties that may legitimately appear as an individual party before your Honorable Court, are the Commission on behalf of the victim or its representatives and the States parties. Although the Republic of Suriname de facto does not have a problem by giving individuals the opportunity to address your Honorable Court to provide useful information as to facts and testimonies in a case, this can take place only through the Commission, because the Commission is the only party mentioned in the Convention that have locus standi before the Court on behalf of the victim or his or her representatives.

11. The State is of the opinion that since the Convention takes precedents over internal regulations and or statutes of the Esteemed Commission and the Honorable Court, no provisions against the text of the Convention can be adopted in these internal regulations and statutes. The State therefore argues that individuals can not be given locus standi as an individual party in the proceedings before your Honorable Court.

12. Due to the developments in international law and or international human rights law, it might be appropriate in the near future to consider revising provisions of the Convention on this particular issue; until that moment however, the provisions of the Conventions must be abide by. The State respectfully points out that the state parties to European Human Rights System revised the Treaty in order to give individuals standing before the European Court. The State furthermore brings to your Honorable Court's attention that it acknowledges the important role of jurisprudence as the source of law in common law legal

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systems, but with its civil law legal system the main source of law in the State is statute law.

International judicial tribunals are often guided by principles of the principal legal systems in the world, or systems they encompasses based on the States that accepted the jurisdiction of the tribunal. In the Western Hemisphere the civil law legal system and the common law legal system are the two main legal systems serving your Honorable Court in complying with your mandate to supervise the implementation of human rights instruments applicable in this Western Hemisphere, as laid down in the provisions of the Convention. As an international tribunal your Honorable Court will use concepts of both civil and common law, combined with international principles and norms to review cases within your jurisdiction.

The State respectfully request your Honorable Court to take notice of this particular issue, since the State believes that without proper argumentation the basics of its civil law legal system is in some respects completely ignored by your Honorable Court, by not addressing specific issues at hand or by simply referring to previous cases decided by your Honorable Court.

13. Furthermore, the State points out that the issue of individual standing before the Court is important to the State, since small economies like Suriname does not have the financial resources, capability and time to hire high profile foreign international human rights attorneys, while the opposing parties are backed by financially strong organizations and institutions, with a variety of not only capital but also human resources. These opposing parties might even construct questionable claims and present those to the organs in the inter-American human rights system, thus placing the State in a difficult always defending position. The State believes that treating the individuals as separate parties before the Court, which is not in conformity with the Convention, further weakened the position of States parties. This is not contemplated in the Convention. The State therefore strongly recommends that if individuals are

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given standing before your Honorable Court, this must take place according to the provisions of the Convention, namely only through the Commission. At the preliminary meeting on 8 September 2004, in San Jose Costa Rica, the State has already brought this particular concern to the attention of your Honorable Court. The State respectfully requests your Honorable Courts explanation on this particular issue.

B. SPECIFIC REMARKS

14. The State respectfully points out that several of the Moiwana villagers never had the intention to return to the land that they traditionally inhabited, particularly those villagers that live in French Guyana. This is also acknowledged by your Honorable Court in paragraph 86(19) ***"Moiwana Village and its surrounding lands have been abandoned since the 1986 attack. Some community members have subsequently visited the area, but without the intention of staying there permanently" [underlined added].***

15. The State indicates that the villagers that adopted French Guyana as their new home, never had the intention to return to Suriname. This conclusion can be drawn from the acts and circumstances of these villagers. The State believes that with the help of a foreign lawyer these villagers made a certain argument and place this before your Honorable Court, indicating that it is the State who does not want to take certain measures regarding their cultural customs and believes, so that they can not return to the lands they inhabited before the occurrences took place in November 1986.

16. The State respectfully points out that as its delegation has stated at the public hearing on 9 September 2004 before your Honorable Court, several cultural activities took place on several locations which were pointed out by villagers of Moiwana to the district-commissioner of the Marowijne district; the district in

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which the Village of Moiwana is located. The State notes that despite all the efforts that it has taken to address this particular issue of the villagers, the State was unpleasantly surprised in Costa Rica when certain demands were made that has never been brought to the attention of the Government of Suriname. The State kindly request your Honorable Court to take notice of these facts when reviewing and analyzing the judgment.

17. In paragraph 97 your Honorable Court argues that "**Furthermore, because of the ongoing impunity for the 1986 raid and the inability of the community members to understand the motives for that attack, they suffer deep apprehension that they could once again confront hostilities if they were to return to their traditional land.**" The State draws your Honorable Court's attention to the fact that it is not correct to state that the community members do not understand the reasons of the occurrences. As stated previously and repeated once again, the State strongly regrets the occurrences that took place in November 1986 in the Village of Moiwana. But during the hostilities members of several villages, actively participated in the hostilities against the military. During the hostilities all parties engaged in acts that are in violations of not only the Geneva Conventions and its additional Protocols on humanitarian law, but also in violation of basic principles of international human rights law. The State does not want to go into detail regarding this issue, since by doing that it will give your Honorable Court the possibility to have jurisdiction over these facts and circumstances, while the State was not a member of the Convention yet. The State furthermore refuses to address this issue in detail since it strongly opposes any indication as if this government agrees with the occurrences that took place during the hostilities, among others those that took place in the Village of Moiwana. The State does not want to end up defending certain situations that it strongly disapproves of. However, based on the legal system applicable in this Western Hemisphere, the State strongly argues that all organs must abide by the rules set out by the framers of the system.

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The State respectfully requests the Court's explanation as to the conclusion that the Villagers do not understand the reasons for the occurrences that took place.

18. In paragraph 39 of the judgment this Honorable Court argues "**According to this principle of non-retroactivity, in the case of a continuing or permanent violation, which begins before the acceptance of the Court's jurisdiction and persists even after that acceptance, the tribunal is competent to examine the actions and omissions occurring subsequent to the recognition of jurisdiction, as well as their respective effects**". This Court indicates that acts and omission that took place after the State's accession to the Convention are within the Courts' competence to examine. Conclusively, the Court indicates that acts that happened prior to the States accession to the Convention are not in its jurisdiction to examine. This is the reason why the State believes it is not necessary to provide facts and circumstances that are not within the jurisdiction of this Court to examine. Facts and circumstances that took place prior to Suriname's accession to the Convention and its acceptance of the jurisdiction of this Honorable Court in November 1987, are out of the jurisdiction of this Honorable Court. The State believes that it can not be punished for not providing information that is clearly out of the jurisdiction of this Tribunal reviewing the case.

The State kindly requests the Court's explanation why in several parts of the judgment, the Court's analysis clearly places the State in a minority position? Maybe because facts and circumstances that are not in the jurisdiction of the Court were not sufficiently submitted to the Honorable Court?

19. To picture the complexity of the particular circumstances in the Republic of Suriname, related to the occurrences that took place prior to Suriname's accession to the Convention and the acceptance of the jurisdiction of this Court, the States points out that the political party headed by Mr. D.D. Bouterse, the former military, is strongly represented in, strangely enough, the interior of the State. In this sense it is very ironic that the State, by doing it utmost to bring the

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perpetrators of this crime to justice, is faced with these circumstances where members of Moiwana Village are directly or indirectly involved in politics with the former military strongman, Mr. Bouterse and his associates.

20. In paragraph 209 of this judgment, this Honorable Court argues: "***In light of its conclusions in the chapter concerning Article 21 of the American Convention (supra paragraph 135), the Court holds that the State shall adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for their use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories.***"

The State is of the opinion that the Court's assessment and conclusion with regard to collective title to traditional territories (see among others paragraphs 209 and others), cannot be based upon the law and facts provided and available to your Honorable Court in this particular case. As the Esteemed Commission argued in its petition to the Honorable Court, this case is primarily focused on the nature of a continuing violation, since the Commission argued that the State failed to investigate the occurrences that happened on 29 November 1986 in the Village of Moiwana in the interior of the State.

The State argues that there are no facts and laws provided in this case to satisfy this Court's conclusion regarding this issue and as stated in this judgment.

21. The State strongly argues that with regard to this particular issue, this Honorable Court can only conclude that the members of the Village of Moiwana are entitled to return on any moment they want to, to the traditional lands that they fled from on 29 November 1986. Furthermore, that the State must guarantee that these villagers are entitled to freely take possession of these lands in a status prior to 29 November 1986.

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As presented at the public hearing in September 2004 by the delegation of the State that appeared before your Honorable Court, the State encouraged the members of the Moiwana villagers to return to the land they traditionally inhabited prior to 29 November 1986. However, at the hearing in September 2004, it was made very clear by members of the Community present at the hearing that several of them who currently live in French Guyana are not willing to return to Suriname despite all the efforts taken by the current government. As this became clear at the hearing, some of these members even became French citizens. The State indicates that it will take measures to ensure that the members of the Moiwana village that want to return to the village can do so at any moment they choose to.

22. However, the State believes that the measures mandated by this Court in said judgment, are maybe based on decision in other cases decided by this court, but can not be applied to this case without an in depth investigation of facts and circumstances related to this specific issue of land rights. Suriname is inhabited by more than 15 different tribal communities, among which maroons and indigenous peoples. All these groups have certain traditional areas in the interior they live on. Members of these tribal communities also live in cities in the coastal area. A decision as to measures regarding demarcation and delimitation can only be taken in the light of a case regarding the particular issue of land rights in Suriname. This case did not provide enough facts and circumstances on the specific issue of land rights to satisfy the Court's conclusion and judgment in this respect.

The State respectfully requests the Court's explanation on this particular matter, because it is convinced that this Court adopted a decision on a matter that was not placed before this Honorable Court and for which not enough facts and circumstances were provided to take a well accepted legally sound decision.

23 Finally, the State reiterates that as a democratic state it abides by all democratic principles and will certainly take the necessary steps to abide by

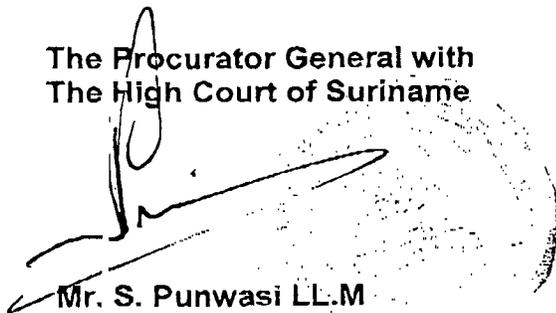
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international commitments. With regard to the decisions of international tribunals, the State believes that the judgments must be taken based on the treaties and other instruments applicable to the hemisphere, and well founded principles of international law and customs in order for these judgments to receive a wide acceptance in the international arena. The State is looking forward to the explanation of your Honorable Court with regard to the issues put forward in this communication.

The State concludes that it will certainly do its utmost to comply with its international commitments, also those implicated in this particular case.

Accept Sir, the renewed assurances of my highest consideration.

**The Procurator General with
The High Court of Suriname**



**Mr. S. Punwasi LL.M
(Chairman of the Commission of Legal Experts on Human Rights)**