INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME

CIDH 50 años en defensa de los DERECHOS HUMANOS

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 USA

January 20, 2012

RE.: Case 12.608
Liakat Ali Alibux
Suriname

Mr. Secretary,

On behalf of the Inter-American Commission on Human Rights, I am pleased to address you in order to submit to the jurisdiction of the Inter-American Court of Human Rights the case 12.608 *Liakat Ali Alibux* against the Republic of Suriname (hereinafter "the State" or "Suriname"), related to the investigation of and criminal proceedings against Mr. Liakat Ali Alibux - former Minister of Finance and former Minister of Natural Resources - who was sentenced on November 5, 2003 for the crime of forgery, in accordance with the procedures provide for in the Indictment of Political Officials Act. In its report on the merits, the Commission concluded that within the framework of that process the State of Suriname is internationally responsible for violating the rights to a fair trial, to judicial protection, to freedom from ex post facto laws, and to freedom of movement and residence, as set forth in Articles 8, 25, 9, and 22 of the American Convention on Human Rights. Specifically, the Commission found that Mr. Alibux did not have a remedy to appeal his conviction; that he did not have access to the courts to challenge the constitutionality of the Act under which he was tried; that said Act was applied ex post facto; and that the restriction on his ability to leave the country was disproportionate.

The State deposited its instrument of accession to the American Convention, and accepted the Court's jurisdiction, on November 12, 1987.

The Commission appoints Commissioner Dinah Shelton and Executive Secretary Santiago A. Canton as the delegates in this case; and Deputy Executive Secretary Elizabeth Abi-Mershed, and Specialists Silvia Serrano Guzmán, Mario López-Garelli, and Hilaire Sobers, as legal advisors.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

Enclosures

Pursuant to Article 35 of the Rules of Procedure of the Court, the Commission encloses herewith a copy of report 101/11 prepared under Article 50 of the Convention, together with a copy of the entire record of the proceedings before the Inter-American Commission (Appendix I) and the annexes used in the preparation of report 101/11 (Annexes). The State of Suriname was notified of the above report on the merits by means of a communication dated October 20, 2011 (sent on October 21, 2011), wherein it was given two months to report on steps taken to implement the recommendations. The State of Suriname did not furnish the report requested by the Inter-American Commission. Accordingly, the Commission submits the instant case to the jurisdiction of the Inter-American Court in view of the need to obtain justice for the victim, in light of the failure to carry out the recommendations.

The Inter-American Commission submits to the jurisdiction of the Court all of the facts and human rights violations described in the merits report 101/11 and requests that the Court find and declare that the State of Suriname bears international responsibility for violation of the rights to a fair trial, freedom from ex post facto laws, freedom of movement and residence, and judicial protection, enshrined in Articles 8, 9, 22, and 25 of the American Convention on Human Rights, taken in conjunction with the obligations set forth in Articles 1(1) and 2 of that treaty, to the detriment of Mr. Liakat Ali Alibux.

Therefore, the Commission requests that Inter-American Court order the following reparation measures:

1. Take the measures necessary to nullify the criminal process and conviction imposed on Mr. Alibux.

2. Grant adequate reparation to Mr. Alibux for the violations declared in the report.

3. Take the non-repetition measures necessary so that high officers prosecuted and convicted for acts performed in their official capacity may have access to an effective remedy to request the review of such convictions. Also, adopt legislative or other measures that may be necessary to guarantee an effective mechanism of review of constitutional matters.

Besides the need to secure justice for the victim, the IACHR notes that this case includes issues of inter-American public order.

Firstly, the case raises a new aspect of law in terms of the scope of the provision on freedom from ex post facto laws, established in Article 9 of the American Convention with regard to procedural rules which may have substantive effects. The case represents an opportunity for the Court to rule on the foreseeability of criminal prosecution under the American Convention. In addition, as noted in the report on the merits, the violations of the right to a fair trial and judicial protection stemmed from enforcement of the rule establishing the prosecution of senior officials in a single instance and the failure to implement the constitutional norms governing constitutional control and providing for the creation of a Constitutional Court. Although the first aspect was amended in 2007, a mechanism to provide for constitutional control has still not been established. In

that sense, an Inter-American Court ruling on this case could promote access to justice in Suriname, specifically with regard to constitutional control.

In view of the foregoing, pursuant to Article 35.1 f) of the Rules of Procedure of the Inter-American Court the Commission would like to offer the following expert testimony:

1. Héctor Olasolo Alonso, who will testify about the scope of the principle of non ex post facto application of criminal law under international human rights law. The expert witness will provide the Inter-American Court with elements to rule on this principle with regard to a variety of norms, including procedural rules that could substantially affect the exercise of punitive power by the state. The expert witness will analyze how this issue has been handled in other human rights protection systems, as well as the application of the foreseeability test in criminal prosecution.

The *curriculum vitae* of the expert proposed will be included in the annexes to report on merits 101/11.

The Commission wishes to advise the Court that Mr. Liakat Ali Errol Alibux has represented himself in the instant case. The contact information in the possession of the Commission is as follows:

[redacted]

Please accept the renewed assurances of my highest regards.

(Spanish version signed)
Santiago A. Canton
Executive Secretary

INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME

ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 0 6 EEUU

20 de enero de 2012

Ref.: Caso No. 12.608
Liakat Ali Alibux
Surinam

Señor Secretario:

Tengo el agrado de dirigirme a usted en nombre de la Comisión Interamericana de Derechos Humanos con el objeto de someter a la jurisdicción de la Honorable Corte Interamericana de Derechos Humanos, el caso No. 12.608 *Liakat Ali Alibux* respecto del Estado de Surinam (en adelante "el Estado" o "Surinam"), relacionado con la investigación y proceso penal seguidos contra el señor Liakat Ali Alibux – Ex Ministro de Finanzas y Ex Ministro de Recursos Naturales – quien fue condenado el 5 de noviembre de 2003 por el delito de falsificación, de conformidad con el procedimiento establecido en la Ley sobre Acusación de Funcionarios con Responsabilidad Política. En su informe de fondo la Comisión concluyó que en el marco de dicho proceso el Estado de Surinam incurrió en responsabilidad internacional por la violación a los derechos a las garantías judiciales y protección judicial, el principio de legalidad y no retroactividad y la libertad de circulación y residencia, establecidos en los artículos 8, 25, 9 y 22 de la Convención Americana sobre Derechos Humanos. Específicamente, la Comisión consideró que el señor Alibux no contó con un recurso de apelación para impugnar su condena, que no contó con acceso a la justicia para impugnar la constitucionalidad de la Ley con base en la cual fue procesado, que dicha Ley fue aplicada de manera retroactiva y que la restricción de salir del país fue desproporcionada.

El Estado de Surinam se adhirió a la Convención Americana sobre Derechos Humanos el 12 de noviembre de 1987 y aceptó la competencia contenciosa de la Corte Interamericana en la misma fecha.

La Comisión ha designado a la Comisionada Dinah Shelton y al Secretario Ejecutivo de la CIDH Santiago A. Canton, como sus delegados. Asimismo, Elizabeth Abi-Mershed, Secretaria Ejecutiva Adjunta, y Silvia Serrano Guzmán, Mario López-Garelli y Hilaire Sobers, abogados de la Secretaría Ejecutiva de la CIDH, actuarán como asesores legales.

[redacted]

Anexos

De conformidad con el artículo 35 del Reglamento de la Corte Interamericana, la Comisión adjunta copia del informe 101/11 elaborado en observancia del artículo 50 de la Convención, así como copia de la totalidad del expediente ante la Comisión Interamericana (Apéndice I) y los anexos utilizados en la elaboración del informe 101/11 (Anexos). Dicho informe de fondo fue notificado al Estado de Surinam mediante comunicación de fecha 20 de octubre de 2011, remitida el 21 de octubre de 2011, otorgándole un plazo de dos meses para informar sobre el cumplimiento de las recomendaciones. El Estado de Surinam no presentó el informe solicitado por la Comisión Interamericana. En consecuencia, la Comisión somete el presente caso a la jurisdicción de la Corte Interamericana por la necesidad de obtención de justicia para la víctima ante la falta de cumplimiento de las recomendaciones.

La Comisión Interamericana somete a la jurisdicción de la Corte la totalidad de los hechos y violaciones de derechos humanos descritos en el informe de fondo 101/11 y solicita a la Corte que concluya y declare la responsabilidad internacional del Estado de Surinam por la violación de los derechos a las garantías judiciales, principio de legalidad e irretroactividad, libertad de circulación y residencia y protección judicial, consagrados en los artículos 8, 9, 22 y 25, en relación con las obligaciones establecidas en los artículos 1.1 y 2 del mismo instrumento, en perjuicio del señor Liakat Ali Alibux.

En consecuencia, la Comisión solicita a la Corte Interamericana que disponga las siguientes medidas de reparación:

1. Disponer las medidas necesarias para dejar sin efecto el proceso penal y condena impuesta al señor Alibux.

2. Disponer una reparación adecuada a favor del señor Alibux por las violaciones declaradas en el informe.

3. Disponer las medidas de no repetición necesarias para que los altos funcionarios procesados por hechos cometidos en su capacidad oficial, cuenten con un recurso efectivo para impugnar las condenas. Asimismo, disponer las medidas legislativas o de otra índole que sean necesarias para asegurar que exista un mecanismo efectivo de revisión de cuestiones de naturaleza constitucional.

Además de la necesidad de obtención de justicia para la víctima, la CIDH destaca que el presente caso incorpora cuestiones de orden público interamericano.

En primer lugar, el caso plantea un aspecto de derecho novedoso en cuanto al alcance del principio de irretroactividad establecido en el artículo 9 de la Convención Americana cuando se trata de normas de naturaleza procesal pero que pueden tener efectos sustantivos. El caso representa una oportunidad para que la Corte Interamericana se pronuncie sobre la previsibilidad de la persecución penal a la luz de la Convención Americana. Además, tal como se analiza en el informe de fondo, las violaciones a las garantías judiciales y protección judicial ocurrieron como consecuencia de la vigencia de la norma que establecía el juzgamiento de altos funcionarios en única instancia, así como de la falta de implementación de las normas constitucionales que regulan el control constitucional y que contemplan la creación de una Corte Constitucional. Si bien el primer punto habría sido enmendado en 2007, el segundo persistiría hasta la fecha. En ese sentido, un pronunciamiento de la Corte Interamericana al respecto podría favorecer el acceso a la justicia en Surinam, específicamente en materia de control constitucional.

En virtud de lo anterior, de conformidad con el artículo 35.1 f) del Reglamento de la Corte Interamericana, la Comisión se permite ofrecer la siguiente declaración pericial:

Héctor Olasolo Alonso, quien declarará sobre el alcance del principio de irretroactividad de normas penales en el derecho internacional de los derechos humanos. El perito ofrecerá a la Corte Interamericana elementos para pronunciarse sobre este principio frente a normas de distinta naturaleza, incluyendo normas de naturaleza procesal que pueden tener efectos sustantivos en el ejercicio del poder punitivo del Estado. El perito analizará el tratamiento que este tema ha recibido en otros sistemas de protección de derechos humanos, y la aplicación del test de previsibilidad de la persecución penal.

El *currículum vitae* del perito propuesto será incluido en los anexos al informe de fondo 101/11.

La Comisión pone en conocimiento de la Corte que el señor Liakat Ali Errol Alibux ejerce su propia representación en el presente caso. Los datos de contacto con que cuenta la Comisión son:

[redacted]

Aprovecho la oportunidad para saludar a usted muy atentamente,

Santiago A. Canton
Secretario Ejecutivo

Organization of American States

IACHR 50 years defending HUMAN RIGHTS

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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REPORT No. 101/11
PETITION 12.608
MERITS
LIAKAT ALI ALIBUX
SURINAME

Approved by the Commission at its session N° 1879
held on July 22, 2011

REPORT No. 101/11
CASE 12.608
LIAKAT ALI ALIBUX
MERITS
SURINAME
July 22, 2011

I. SUMMARY

1. On August 22, 2003, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition from Mr. Liakat Ali Alibux ("the petitioner" or "Mr. Alibux"), a former Cabinet Minister of the Government of the Republic of Suriname ("Suriname" or "the State").

2. According to the petitioner, he served as Minister of Finance and Minister of Natural Resources between 1996 and 2000. The Petitioner claims that in his capacity as Minister of Finance, he implemented a July 2000 decision of the Suriname government to purchase a complex of buildings to house various government ministries and departments. The petitioner indicates that he was indicted in January 2002 by the Government of Ronald Venetiaan, pursuant to Suriname's Indictment of Political Office Holders' Act ("the Act") for certain criminal offenses arising out of the purchase of the complex of buildings. According to the petitioner, the Act was passed in October 2001 and applied retroactively to him.

3. The petitioner contends that the criminal proceedings against him were conducted in violation of the American Convention on Human Rights ("the American Convention"). More particularly, the petitioner argues that these proceedings violated the following rights: to humane treatment (Article 5.1); personal liberty (Article 7); fair trial (Article 8); freedom from ex post facto laws (Article 9); privacy (Article 11); freedom of movement (Article 22.2); equal protection before the law (Article 24); and judicial protection (Article 25).

4. The State acknowledges that the petitioner was prosecuted, but denies that it violated the rights as alleged. According to the State, the Act did not create any *ex post facto* criminal offenses, and that ensuing criminal proceedings against the petitioner were conducted in full conformity with the American Convention.

5. In Report 34/07, adopted on March 09, 2007 during its 127th period of sessions, the IACHR decided to admit the petitioner's claims with respect to Articles 5, 7, 8, 9, 11, 22, and 25 of the American Convention, but not with respect to Article 24 therein. The Inter-American Commission also decided to continue with the analysis of the merits of his case. As set forth in the present report, having examined the information and arguments concerning the merits of the petition, the IACHR concludes that the State violated the American Convention by depriving the petitioner of the right to appeal his conviction and of recourse to the Constitutional Court as recognized by Articles 8 and 25 (right to fair trial and judicial protection); and that the State violated Article 22 of the American Convention with respect to the petitioner's right to freedom of movement. The IACHR also concludes that the State violated the right recognized in Article 9 of the American Convention. Finally, the Inter-American Commission concludes that the State did not violate Article 11 (right to privacy) with respect to pre-trial public statements and publicity.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT N° 34/07

6. The Inter-American Commission transmitted admissibility report N° 34/07 to the parties by letters of June 27, 2007. The IACHR also placed itself at the disposal of the parties with a view to reaching a friendly settlement pursuant to Article 48(1)(f) of the American Convention.

Between August 2007 and May of 2008, the Inter-American Commission received submissions from the petitioner on the merits, together with other further observations from the parties.[1]

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner was the Minister of Natural Resources and Minister of Finance of Suriname between 1996 and 2000, under the administration of President Jules Wijdenbosch. He claims that in this capacity, he implemented a July 2000 decision of the Suriname Government to purchase a complex of buildings to house various government ministries and departments.

8. Further, the petitioner submits that he was investigated by the Surinamese police between March/April 2001 and September 2001 --after demitting office-- for possible criminal offenses arising out of this July 2000 transaction of the Surinamese government. In January 2002, following this investigation, the petitioner states that he was indicted under Suriname's Indictment of Political Office Holders' Act based on the allegations that he had purchased the building complex at an excessive price and without obtaining the approval of the Council of Ministers; and that he had violated Surinamese foreign currency laws by paying a portion of the purchase price in foreign currency. The petitioner demitted office in August 2000, when Ronald Venetiaan replaced Jules Wijdenbosch as President of Suriname.

9. According to the record, the petitioner was indicted for the following offenses:

a) Two counts of forgery, pursuant to Article 278 of Suriname's Penal Code;

b) One count of fraud, pursuant to Article 386 of Suriname's Penal Code;

c) Violation of Suriname's Foreign Exchange Law 1947 in conjunction with Article 14 of the Act on Economic Offenses.

10. The petitioner adds that, following the indictment, a preliminary inquiry in the Cantonal Courts was held between January 2002 and October 2002. According to the petitioner, the examining judge of the preliminary inquiry committed him to stand trial in the High Court of Justice of Suriname. The petitioner was thereafter tried before the High Court of Justice between April 2003 and November 2003. He was convicted of the offenses and sentenced to one year's imprisonment, which he has already completed. The petitioner was also banned from holding office as a cabinet minister for a period of three years.

11. According to the petitioner, the Indictment of Political Office Holders' Act was passed in October 2001 by Suriname's National Assembly in order to implement Article 140 of the 1987 Suriname Constitution. This Article prescribes that political officials may be prosecuted for 'punishable acts' committed in the discharge of their duties.

12. The petitioner complains that the Act has been applied retroactively and therefore that he has been accused of offenses that did not exist at the time of their alleged commission. On this basis, during his trial the petitioner launched multiple interlocutory objections (November 11, 2002; April 16, 2003; and June 12, 2003) to the High Court of Justice holding that it lacked the

[1] Petitioner's submission on the merits of August 24, 2007; response of the State of November 30, 2007; further observations from the petitioner of December 10 and 11, 2007; additional observations from the State of March 11, 2008; further observations from the petitioner of April 12, 2008; and additional observations of the State of May 05, 2008.

legal or constitutional jurisdiction to try him. According to the petitioner, these objections were dismissed.

13. The petitioner contends that his right to a fair trial was unduly prejudiced by adverse public comments made by the President of Suriname at a public meeting in 2001; by members of that country's National Assembly; and by adverse media coverage of his indictment and court proceedings. He further claims that his "criminal file" was published in the local newspapers, and was the subject of repeated negative commentary by politicians belonging to the ruling coalition of political parties, as well as elsewhere in the electronic mass media. The petitioner claims that the President declared at the public meeting words to the effect that "...because I must not hear that this man [Mr. Alibux] could not be punished because there were no regulations". According to the petitioner, this presidential statement amounted to a prejudicial declaration of his guilt in advance of his trial. Mr. Alibux complains that much of the coverage of his criminal proceedings contained distortions, inaccuracies, and misrepresentations. In summary, the petitioner alleges that these actions violated his rights to the presumption of innocence and to privacy under Articles 8 and 11 of the American Convention.

14. The petitioner also made multiple objections to the High Court of Justice that this adverse publicity prejudiced his right to a fair trial while at the same time violating his right to reputation and dignity.

15. According to Mr. Alibux, the High Court of Justice dismissed all these preliminary objections and ultimately convicted and sentenced him of the offenses for which he had been charged. The petitioner submits that the Surinamese legal system lacks any judicial mechanism for appealing his conviction or sentence. He rejects the State's contention that he failed to avail himself of an appeal of his conviction and sentence, after the Indictment of Political Office Holders' Act was amended in 2007 to provide for such recourse.[2] The petitioner contends that the verdict of the Court against him was "irrevocable" and "unimpeachable" at the time that it was delivered, and that this status could not be altered by the subsequent amendment to the Act. In consequence of the *res judicata* status of his conviction and sentence, the petitioner contends that the State was obliged to carry out his term of imprisonment, and did so. Having been obliged to comply with the Court's verdict, the petitioner argues that having a right to appeal *ex post facto* is inherently ineffectual.

16. The petitioner points out that Article 144 of Suriname's Constitution prescribes the creation of a Constitutional Court, but that this body has not yet been established. Therefore, he claims that there are no further national judicial remedies available to him. In response to the State's contention that he could have invoked Article 137 of the Suriname Constitution to challenge his conviction, the petitioner contends that Article 137 may only be invoked before the Constitutional Court, which is not yet in operation. The petitioner claims that upon the dismissal of his interlocutory objections, he effectively exhausted domestic remedies as there were no other available means by which he could contest the jurisdiction of the High Court of Justice to prosecute and ultimately convict him. The petitioner contends that the absence of the Constitutional Court is a violation of his rights under Article 25 of the American Convention.

17. The petitioner also complains that he was prohibited from traveling out of Suriname on January 3, 2003 by that country's Military Police, without legal justification, in violation of his right to freedom of movement. He states that during the preceding year he had frequently traveled

[2] According to both parties, the National Assembly of Suriname amended the Act in 2007 to authorize a separate chamber of the High Court of Justice comprising at least five judges to hear appeals from the chamber of three judges that exercised original jurisdiction in the trial and conviction of a political office holder (past or present).

outside of Suriname for medical treatment and had always returned. On January 3, 2003, while he was about to board a flight to St. Maarten for a four-day trip, Mr. Alibux was advised by an immigration official from the Military Police that the Acting Procurator-General had given instructions for the petitioner to be prohibited from traveling out of Suriname (while criminal proceedings were still pending). Mr. Alibux alleges that the official did not have a letter to confirm these instructions.[3]

18. Further, the petitioner submits that there were unwarranted delays during the stages of the criminal proceedings against him; and contends that such delays are in violation of Articles 7(5), 7(6), 8(1) and 25 of the American Convention. In this regard, Mr. Alibux holds that there was an unwarranted delay in the disposition of preliminary objections that he filed on April 16, 2003 before the High Court of Justice of Suriname. He claims that Surinamese law obliges the judiciary to rule on preliminary objections within 21 days. The petitioner asserts that the hearing on his preliminary objections was completed on May 07, 2003, but that the High Court of Justice of Suriname took 35 days to deliver its ruling on June 12, 2003. More generally, Mr. Alibux complains of the 27 months that had elapsed between his first police interrogation in March / April 2001 and the interlocutory judgment on his preliminary objections on June 12, 2003.

19. According to the petitioner, only one other political office holder has been indicted under the Indictment of Political Office Holders' Act. He states that in 2005, the National Assembly indicted Dewanand Balesar, a former Minister of Public Works under the regime of President Ronald Venetiaan.[4]

20. The allegations of the petition may be summarized as follows:

a) Prosecution for offenses which were not defined as crimes at the time that they were committed;

b) Lack of judicial recourse to challenge the constitutionality of the legislation creating the offenses (in the absence of the Constitutional Court).

c) Undue delay by the State in completing the petitioner's trial;

d) Violation of his right to fair trial by reason of adverse public statements and commentaries from major political figures and the media; and

e) Restriction from leaving Suriname, in violation of his right to freedom of movement.

B. The State

21. The State acknowledges that the petitioner was indicted, tried, and convicted of offenses committed in his capacity as a Minister of Government in a previous administration. The State confirms that the petitioner was indicted under the Act on Indictment of Political Office Holders for forgery, fraud under the Penal Code, and for the violation of the Foreign Exchange Act,[5] in conjunction with the Act on Economic Offenses. The State submits that these "punishable acts"

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[3] See petitioner's petition, page 9 and petitioner's submission of September 05, 2005, page 60-61.

[4] At page 22 of his submission of September 05, 2005, the petitioner states: "Now only after years of long pressure from the community which became greater and more unbearable, the Public Prosecutor had to finally decide to proceed to criminal investigation of only one political supporter. Eventually on 25 August 2005 the newly elected National Assembly has taken necessary actions for the indictment of the political office holder, Mr. Balesar."

[5] At times referred to by the State in its submissions as "the Foreign Exchange Law," "the Foreign Currency Act", or "the Foreign Exchange Regulation."

have been offenses in Suriname for many decades, in some cases up to almost 100 years.[6] The Act on Indictment of Political Office Holders was passed in 2001 to implement Article 140 of the Suriname Constitution. The aforementioned article provides for the prosecution of current or past holders of political office for "punishable acts" committed in the discharge of their official duties. Article 140 provides that those who hold political office shall be liable to trial before the Court of Justice, even after their retirement, for punishable acts committed in the discharge of their official duties. Under that provision, proceedings are initiated against them by the Procurator-General after they have been indicted by the National Assembly in a manner to be laid down by law. It can be determined by law that members of the High Councils of State and other officials shall be liable to trial for punishable acts committed in the exercise of their functions before the Court.[7]

22. As explained by the State, the Procurator-General is always able to indict ordinary citizens for criminal offenses; however, indictments against former political officers may only be laid with the permission of the National Assembly of Suriname pursuant to Article 140 of the Constitution and the Act on Indictment of Political Office Holders. The State further confirms that the latter legal instrument became effective on October 18, 2001, after it was passed by the National Assembly. This organ subsequently indicted the petitioner on January 17, 2002 at the request of the Procurator-General, following a criminal investigation that commenced in April 2001. A preliminary inquiry ensued between January 2002 and October 2002, following which the petitioner was tried in the High Court of Justice between April 16, 2003 and November 05, 2003, and then convicted and sentenced.

23. The State contends that the Act does not create any new offenses, but merely provides a mechanism by which current or past political office holders might be indicted for pre-existing offenses under Suriname law. In this regard, the State emphasizes that Article 140 applies not to the nature of the crime committed, but to the rank of the person accused of committing such a crime. The State further submits that the prosecution of the petitioner was in keeping with its international obligations under the Inter-American Convention Against Corruption. Suriname points out that it ratified this international instrument on March 29, 1996, well before the petitioner was prosecuted for what might considered acts of corruption.

24. Further, the State submits that the prosecution of the petitioner occurred strictly in accordance with the constitutionally mandated procedure for indicting a former political office-holder. The State also contends that in prosecuting Mr. Alibux, it observed the 'legality principle' enshrined in its Code of Criminal Procedure. Article 1 of this Code provides that "criminal procedure only takes place in the manner provided by law." Thus, the State argues that the prosecution of the petitioner took place "in the manner provided by law." The State acknowledges that while it is true that the punishable acts were committed before the passage of the Act, the indictment and prosecution of Mr. Alibux occurred after it became a law. The State also contends that the Act is only a regulatory mechanism for the prosecution of 'punishable acts' and, accordingly, rejects the claim of the petitioner that it was applied in an *ex post facto* manner. Further, the State alleges that the petitioner, as a Cabinet Minister, had voluntarily taken a constitutionally prescribed oath to "...affirm obedience to the Constitution of Suriname and all other legal regulations." According to the State, Article 140 was part of Suriname's Constitution at the time that Mr. Alibux took his ministerial oath and that therefore the petitioner had waived his right to object to this provision or its application to him. The State points out that at his trial before the High Court of Justice, the

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[6] According to the State, the Penal Code dates back to 1910, while the Act on Economic Offenses and the Foreign Exchange Act date back to 1986 and 1947 respectively.

[7] State's response, para. 26, page 10.

petitioner raised a preliminary objection with respect to the alleged *ex post facto* application of the Act, which was rejected by the Court.[8]

25. The State concedes that "the petitioner lacked the forum of a higher court to appeal his conviction" but contends that since he "was convicted in the first instance by the highest court of the country, the guarantee set out in [Article 8(2)(h) of the American Convention] did not apply."[9] According to the State, trials of ordinary citizens take place in the District Courts of Suriname, and that the decisions of these tribunals can be appealed to the High Court of Justice of that country. It also submits that had the petitioner been accused of crimes unrelated to his political office, he would have been tried in the District Courts. The State contends that in the case of the petitioner, "the absence of review by a higher court is offset by the fact of being tried in the highest court."[10] The State points out that the Act was amended in 2007 to allow for appeals from conviction and sentence (to a differently constituted chamber of the High Court of Justice). This amendment allowed for appeals to be lodged within three months of a judgment delivered at first instance and includes judgments given prior to the amendment coming into force. In the circumstances, the State argues that the petitioner is *estopped* from claiming a violation of Article 8(2)(h) because he has never resorted to this newly available appeal he was entitled to.

26. Also, the State acknowledges the absence of a functioning Constitutional Court as alleged by the petitioner. However, it argues that Article 144 of the Suriname Constitution does not grant any power to the Court to "act as an instance of appeal in respect of judgments of another judicial body." According to the State, "the tasks" of the Constitutional Court are limited as follows:

a) to verify the purport of Acts or parts thereof against the Constitution, and against applicable agreements concluded with other states and with international organizations;

b) to assess the consistency of decisions of governmental institutions with one or more of the constitutional rights mentioned in Chapter V.

27. Based on these prescribed tasks, the State submits that the Constitutional Court, even if it existed, would lack the authority to review the judgment of the High Court of Justice of Suriname. Accordingly, the State rejects the petitioner's claim that the absence of the Constitutional Court deprived him of a judicial mechanism to contest the jurisdiction of the High Court of Justice to prosecute and ultimately convict him; or that the absence of such a Court constitutes a violation of the petitioner's rights under Article 25 of the American Convention.

28. The State denies the petitioner's claim that his right to freedom of movement under Article 22 of the American Convention was violated. It contends that after serving the petitioner with a 'memorandum of prosecution,' it came to the attention of State prosecutors that the petitioner was "making preparations to leave the country." Based on this information, the Public Prosecutions Department of Suriname ordered the petitioner not to leave the country. In January 2003 the petitioner attempted to travel but --pursuant to this order-- was not permitted to leave the country. The State contends that the American Convention recognizes limitations on freedom of movement in the interest of "public order, public morals, and to prevent crime." In the circumstances, the State contends that it was justified in this action to prevent the petitioner from evading criminal proceedings against him.

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[8] See English translation of Court Order 2003 No 2, dated June 12, 2003 (Appendix 12 of the State's submission of October 31, 2005.

[9] See State's submission of November 30, 2007, para. 11.

[10] Ibid.

29. It is the position of Suriname that the petitioner's right to a fair trial was not prejudiced by adverse public comments by the President of the country; by members of its National Assembly; or by adverse media coverage of his indictment and court proceedings. Further, the State confirms that the President addressed a public meeting in the district of Commewijne in August 2001, in which he mentioned that the Public Prosecution Department was seeking to indict the petitioner. The State adds that the President called for the National Assembly to pass the necessary legislation to enable indictment, prosecution, and conviction of persons guilty of offenses.[11] The State observes that members of the National Assembly made similar comments, but it emphasizes that none of these comments amounted to a prejudicial declaration of guilt on the part of the petitioner prior to his trial. It points out that Mr. Alibux was a public figure in Suriname, and that media coverage and pubic commentary on his indictment would invariably occur in the context of a democratic society that must balance the right to privacy and reputation with the right to information and freedom of expression. More specifically, the State denies that the petitioner's "criminal file", which contained "hundreds of pages", was ever divulged to the media, as claimed by the petitioner, and challenges the petitioner to identify any Suriname newspaper in which such document was published.

30. The State rejects the petitioner's claim that the trial proceedings were unduly delayed, and holds that the petitioner himself was "summoned several times and he did not appear in court or could not be reached." It further contends that the petitioner "reported ill more often (sic) at the Trial", and that the "lawyers also have reported ill from time to time and asked for postponement of the Trial." Essentially, the State contends that the length of the proceedings is attributable to the conduct of the petitioner, and not to the State.[12] Suriname also points out that, at the time the petition was lodged with the IACHR (July 20, 2003), the criminal trial had been ongoing for only three months, and that a final judgment was still pending. In the circumstances, the State asserts that "one cannot speak of an unwarranted delay."[13] Ultimately, the State asserts that the proceedings lasted only 22 months "from the first act of prosecution with the Examining Judge to the final judgment of the High Court of Justice."[14] The State adds that the proceedings were also prolonged because of preliminary objections lodged by the petitioner, which had to be adjudicated before continuing with the proceedings.

31. The State confirms that former Minister of Public Works, Dewanand Balesar was, in 2005, indicted under the Indictment of Political Office Holders' Act. According to the State, Mr. Balesar was a Cabinet Minister in the administration of President Ronald Venetiaan between 2000 and 2005.[15] According to the State,

> ....within the context of the Balesar case, who as Minister of Public Works was forced to lay down his function as a result of the corruption scandal, there are 23 suspects who have been or were detained, of which part is now in preventive custody. In any case, the case is currently before the District Courts in the Second and Third Districts. The criminal

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[11] News article from *De Ware Tijd* of August 13, 2001 (translated from Dutch to English) submitted by the State, as Annex II of its submission of November 30, 2007.

[12] In its submission of March 03, 2006, the State asserts, inter alia, that the petitioner was absent on three days from his trial (July 31, 2003, August 8, 2003 and August 12, 2003) which necessitated adjournments. The State further contends that the petitioner was often absent from the preliminary proceedings before an Examining Judge. The State also points to numerous adjournments on account of the illness or absence of a member of the Petitioner's legal defense team.

[13] See para. 97 of the State's submission of March 03, 2006.

[14] Ibid. para. 97.

[15] President Venetiaan succeeded President Jules Albert Wijdenbosch in 2000; Mr. Alibux served under the administration of President Wijdenbosch.

investigation has not yet resulted in the prosecution of the (ex) political office holder Balesar, because at the moment the procedure to indict him through the National Assembly is still being processed.[16]

IV. ANALYSIS

A. Established facts

32. Article 140 of the Constitution of Suriname of 1987 provides

> Those who hold political office shall be liable to trial before the High Court, even after their retirement, for indictable acts committed in discharging their official duties. Proceedings are initiated against them by the Attorney-General after they have been indicted by the National Assembly in a manner to be determined by law. It may be determined by law that members of the High Boards of State and other officials shall be liable to trial for punishable acts committed in the exercise of their functions.[17]

33. The Commission notes the background of Article 140 of Suriname's Constitution as explained by the State:

> The background of Article 140 of the Constitution of the Republic of Suriname of 1987 reaches further than the year 1987. This article is comparable with Article 144 of the Constitution of 1975 which was suspended by the Military Dictatorship. As a result of the concordance principle[18] this article is almost identical to Article 119 of the Constitution of the Netherlands. The rationale behind this article was that only high office holders would have this forum privilegiatum. Already in the Constitution of 1887 of the Kingdom of the Netherlands it was provided that members of the States General (sic) and heads of Ministerial Departments and other high office holders for all punishable acts perpetrated during the performance of their duties, are tried before the Supreme Court of the Netherlands, after the meeting of the States General have explicitly given permission thereto."[19]

34. In October of 2001, Suriname enacted the Indictment of Political Office Holders Act ("IPOHA" or "the Act") for the express purpose of giving expression to Article 140 of the Constitution of Suriname; and more particularly "to lay down rules for indicting those who hold a political office, even after their retirement, for punishable acts committed by them in the discharge of their official duties."[20] The Public Prosecutions Department – under the direction of the

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[16] State's observations of February 28, 2006, para.76. According to a news report of January 10, 2009, Mr. Balesar was convicted and sentenced to a term of imprisonment. The report states (inter alia):

"On December 30, 2008 the former official was slapped with a two year's jail term for, amongst offences, forgery, fraud and conspiracy to commit theft. Additionally he was barred from holding a public office for a period of five years. See http://www.caribbeannewsnow.com/caribnet/archivelist.php?news_id=13443&pageaction=showdetail&news_id=13443&areyear=2009&arcmonth=1&arcday=10=&ty= (accessed on March 27, 2011)

[17] See State's submission of February 28, 2006, para. 11; also State's observations of July 18, 2005, para. 26.

[18] At page 7, footnote 5 of its observations on February 28, 2006, the State explains that "Pursuant to the concordance principle the colonies of the Kingdom of the Netherlands had the obligation of taking over all laws of the Kingdom."

[19] State's observations of February 28, 2006, para. 15.

[20] Preamble to Indictment of Political Holders Act (enclosure 19 of the petitioner's submission of November 08, 2004; see also State's submission of July 18, 2005, paras. 26, et seq. where it confirms the purpose and intent of the Indictment of Political Officer Holders Act, as implementing Article 140 of the Constitution of Suriname. See the petitioner's submission of September 05, 2005, page 10; see also State's observations of July 18, 2005, para. 26.

Procurator General – has exclusive authority for the investigation and prosecution of punishable acts.[21]

35. The IPOHA provides for the indictment of current and former POHs. POHs are defined under Article 1 of the IPOHA as including the President of the Republic of Suriname, the Vice-President of the Republic of Suriname, Ministers, Under-Ministers, and "persons who by or pursuant to the Electoral Act are members of the representative bodies, established as such or pursuant to the Constitution." Article 2 gives the Procurator General the authority to present a "legal demand" to the National Assembly for the indictment of current or former POHS – for "punishable acts." Within a period of 90 days, the National Assembly is required to deliberate on the request, after conducting such further inquiries as it determines is required, as well as give the current or former POH the opportunity to be heard.[22]

36. The explanatory notes to the IPOHA indicate, *inter alia*:

> Pursuant to Article 140 of the Constitution, Political Office Holders shall be tried before the High Court of Justice in respect of punishable acts committed in the discharge of their duties. In principle each person should be tried before the judicial body laid down by law in general in that respect, as explicitly provided for in Article 11 of the Constitution. That would entail any political office holder would have to be tried before the District Court, as indicated in the Act on the Organization and Composition of the Surinamese judiciary and the Code of Penal Procedure.[23]
>
> ...The deviation from Article 11 of the Constitution in the provision of Article 140 relates to a very special situation, more in particular, that it is not the nature of the crime committed, but the rank of the office the perpetrator of the crime committed holds or held within the framework of the institutionalization of the power and authority of the government within the composition and organization of the State. That rank, after all, determines also the acceptance and effectiveness of the authority connected to that office by society. That means, however, that it can only involve office holders who hold the highest positions of State power and furthermore that it can only involve crimes, in which the office or position is abused in the exercise thereof within the allocation of State power, including crimes under international law, because if it were otherwise, the equality of citizens would come short, as explicitly laid down in Article 8 of the Constitution.[24]

37. Between 1996 and 2000, the petitioner served as Minister of Finance and Minister of Natural Resources in the administration of President Jules Wijdenbosch. In July 2000, the petitioner, on behalf of the government of Suriname, purchased a complex of buildings to house various government ministries and departments. The petitioner demitted ministerial office in August 2000, when President Venetiaan replaced President Wijdenbosch.

38. The petitioner was investigated by the Surinamese police between March/April 2001 and September 2001 for possible criminal offenses arising out of purchase of the complex of buildings.[25]The petitioner was later indicted on January 17, 2002[26] for the following offenses:

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[21] See State's observations of February 28, 2006, para. 43.

[22] See Articles 4-8 of IPOHA.

[23] Id. Para. 40, Annex 9.

[24] Id.

[25] See petition, page 12; submission of the State of July 18, 2005, para. 12; verdict/judgment of High Court of Justice (translated from Dutch to English), November 05, 2003, pages 4 and 6.

[26] See letter from Speaker of National Assembly to Acting Procurator-General of January 21, 2002, Annex 11 of State's submission of July 18, 2005.

- two counts of forgery, pursuant to Article 278 of Suriname's Penal Code[27];
- one count of fraud, pursuant to Article 386 of Suriname's Penal Code[28]; and,
- a violation of Suriname's Foreign Exchange Law of 1947 in conjunction with Article 14 of the Act on Economic Offenses[29].

39. With respect to the judicial proceedings against the petitioner, the Commission further notes that, following indictment by the National Assembly, a preliminary inquiry was conducted in the Cantonal Courts by a single examining judge. This inquiry took place between January 2002 and October 2002, following which the examining judge committed the petitioner to stand trial in the High Court of Justice of Suriname. The petitioner was thereafter tried before a panel of three judges of the High Court of Justice between April 2003 and November 2003.

40. Prosecution of the petitioner commenced on January 28, 2002 with an order[30] for a preliminary inquiry, which ended on October 08, 2002[31]. The petitioner was committed to full trial before the High Court of Justice of Suriname, which commenced on April 16, 2003[32].During the criminal proceedings, the petitioner raised preliminary objections to the High Court of Justice, to the effect that the Act was being applied retroactively to him; and that, as a consequence, he was being accused of offenses that had not been codified as such at the time of their alleged commission. The petitioner's preliminary objections were rejected by the High Court of Justice.[33]

41. In January 2003, while criminal proceedings were ongoing, the petitioner was prevented by the State from travelling from Suriname to Saint-Maarten on a four-day trip for health purposes.[34] As confirmed by the State, the petitioner was not permitted to travel again outside of Suriname while criminal proceedings were still pending.

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[27] See "Legal Demand for Hearing", issued by Acting Procurator-General, LL.M. S. Punwasi, dated January 28, 2002, Enclosure 13 of petitioner's submission of November 08, 2004; See also submission of the State of July 18, 2005, para. 81.

[28] *Idem.*

[29] *Ibidem.*

[30] See *Order for Preliminary Inquiry*, Annex 3 of State's submission of July 18, 2005. See also observations of the petitioner of November 08, 2004, page 4.

[31] See submission of the State of July 18, 2005, para.20. See also observations of the petitioner of November 08, 2004, page 4.

[32] *Idem.*

[33] Ruling of High Court of Justice of Suriname of December 27, 2002; Annex 8 of State's submission of State's submission of July 18, 2005; also final judgment/verdict of High Court of Justice of November 05, 2003; Interlocutory judgment of High Court of Justice of Suriname of June 12, 2003 dismissing certain procedural and jurisdictional objections raised by the petitioner during the course of the criminal trial; Annex 12 of State's submission of July 18, 2005; See also petitioner's observations of September 05, 2005, page 36.

[34] See petition, page 9; and also para. 108 of the State's submission of July 18, 2005, where it states that "After the memorandum of continued prosecution was served upon the defendant the prosecutions department heard that the Petitioner was making preparations to leave the country", and as a result, "the Public Prosecutions Department, in charge of prosecution of punishable acts in Suriname, informed him that he was not allowed to leave the country".

42. The Constitution of Suriname provides for a Constitutional Court, but this Court has not been brought into operation.[35] The State acknowledges the absence of a functioning Constitutional Court as alleged by the petitioner.[36]

43. The trial ended on November 5, 2003 with the conviction of the petitioner on one count of forgery (pursuant to Article 278 of Suriname's Penal Code; he was also sentenced to one year of imprisonment (which he served) and banned from holding public officer for a period of three years. The petitioner served his sentence at the Santo Boma prison[37], and was subsequently released on August 14, 2004.[38] The High Court of Justice ruled that it had no jurisdiction to consider or rule on the other offenses in the indictment against the petitioner.[39] In this regard, the Court upheld the submission of the petitioner's counsel that the summons served on the petitioner failed to state that the petitioner had committed the particular offences in his official capacity.[40] These offences excluded by the Court were (a) a count of forgery (under Article 278 of the Penal Code); (b) one count of fraud under Article 386 of the Penal Code; and (c) one count of violating the Foreign Exchange Law.

44. At the time of the petitioner's conviction, there was no process of appeal available; such a process was subsequently established in 2007 by way of amendment[41] to the Act on

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[35] See petitioner's petition, pages 8-9, 16; also State's observations of February 28, 2006, para. 14.

[36] The State however, argues that Article 144 of the Suriname Constitution does not grant any power to the Court to "act as an instance of appeal in respect of judgments of another judicial body; and that the Constitutional Court, even if it existed, would lack the authority to review the judgment of the High Court of Justice of Suriname.

[37] See request for petitioner's release by his lawyer I.D. Kanhai (letter of March 17, 2004 to Minister of Justice of the Police - enclosure 2 of submission of petitioner of November 08, 2004).

[38] See letter from Minister of Justice and the Police dated August 12, 2004, to petitioner's lawyer (enclosure 3 of submission of petitioner of November 08, 2004).

[39] See final judgment/verdict of the High Court of Justice of Suriname of November 05, 2003.

[40] Ibid. At page 40, the High Court of Justice ruled: : "...Considering that the counsellor further argued in his plea as defence that in none of the subdivisions of the summons the required capacity of the accused as political office holder is stated, according to Article 140 of the Constitution of the Republic of Suriname and the provisions of the Law on the indictment and that on the basis hereof, the summons must be declared invalid; Considering that the Court of Justice considers the defense of the counsellor regarding the subdivisions 1, II, and IV of the summons is justified, and that on the basis hereof, the Court of Justice is of the opinion that is has no jurisdiction to "examine the facts stated therein"."

[41] The amendment to the Indictment of Political Office Holders, which was passed on August 27, 2007, added the following provisions relating to appeals:

(Article I of the amendment provides for the insertion of the following provisions)

Article 12 a

Political office holders or former political officer holders who have been indicted for punishable acts committed in the discharge of their official duties as intended in Article 140 of the Constitution are in the first instance, as well as for an appeal brought before the High Court of Justice by the Procurator-General, irrespective of where the acts were committed or where the political officer holder or former political officer holder resides or is found.

The High Court of Justice decides in the first instance with three judges.

On appeal, the High Court of Justice shall decide with an odd number of judges, however, at least with five and at most with nine.

Article 12 b

The provisions of the Code of Criminal Procedure in respect of the hearing of criminal cases shall be equally applicable to the proceedings of the criminal case in the first instance and on appeal of a political office holder or a former political office holder. Article II of the amendment provides:

An appeal can be lodged in accordance with the provisions of the Code of Criminal Procedure within three months after the coming into force of this Act against a judgment given by the High Court of Justice prior to the coming into force of

Continues...

Indictment of Political Officers; Mr. Alibux never invoked this amendment to appeal his conviction and sentence.[42] In this regard, the Commission notes the State's concession that "the petitioner lacked the forum of a higher court to appeal his conviction".[43] The Commission further notes the State's submission that the trials of ordinary citizens take place in the District Courts of Suriname, with a right to appeal to High Court of Justice; but this was not available to the petitioner, given that he was tried in the High Court of Justice itself.

45. In connection with the application of the IPOHA, it may be noted that one other person has been prosecuted in addition to Mr. Alibux. Dewanand Balesar, a former cabinet minister under the administration of President Ronald Venetiaan was indicted in 2005 under the Indictment of Political Office Holders' Act.[44]

46. It is uncontested between the parties that, prior to the Indictment of Political Office Holders' Act (the "IPOHA" or "the Act"), no current or former political office holder ("POH" or "ex-POH") was prosecuted for "punishable acts" committed in their *official* capacity under the laws of Suriname.

B. The Right to Freedom from Ex Post Facto Laws (Article 9 of the American Convention)

47. Article 9 of the American Convention provides that:

> No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

48. The Inter-American Court has held that under the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is concerned.[45] Furthermore, it has also stressed the point that in a democratic system, precautions must be taken to ensure that punitive measures are adopted with absolute respect for the basic rights of the individual and subject to careful verification of whether or not unlawful behavior exists.[46]

...continuation
this Act in respect of punishable acts committed by a political office holder or former political office holder in the discharge of his official duties as intended in Article 140 of the Constitution.

[42] See the State's submission of November 30, 2007, para. 11. See also petitioner's observations of January 10, 2008, page 4.

[43] See State's submission of November 30, 2007, para. 11.

[44] See State's observations of February 28, 2006, para.76.

[45] I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 30, 2004. Series C No. 111, paragraph 177; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 107; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 80; .I/A Court H.R., *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, paragraph 90; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 187.

[46] I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001, Series C No. 72, paragraph 106; Citing, inter alia, Eur. Court H.R. *Ezelin* judgment of 26 April 1991, Series A no. 202, para. 45; and Eur. Court H.R. *Müller and Others*, judgment of 24 May 1988, Series A no. 133, para. 29. See also: I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 81; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 189.

49. This provision reflects the *nullum crimen sine lege* and *nulla poena sine lege* principles, often referred to jointly as the principle of legality, which prohibit States from prosecuting or punishing persons for acts or omissions that did not constitute criminal offenses, under applicable law, at the time they were committed[47].

50. The Court has also observed that

> According to the principle of the non-retroactivity of the unfavorable penal norm, the State is prevented from exercising its punitive power in the sense of applying retroactively penal laws that increase sanctions, establish aggravating circumstances or create aggravated types of offenses. It is also designed to prevent a person being penalized for an act that, when it was committed, was not an offense or could not be punished or prosecuted.[48]

51. In this case, the petitioner alleges the retroactive application of the Act on Indictment of Political Office Holders, when he was accused of offenses allegedly committed while he was a Cabinet Minister. The State contends that the Act created no new offenses, and was simply a means of implementing Article 140 of Suriname's Constitution, to allow for prosecution of political office holders. There is no dispute that the Act was passed and applied to the petitioner after he had demitted office.

52. The Commission observes that the criminal offenses, for which the petitioner was prosecuted, pre-dated the Act on Indictment of Political Office Holders and, indeed, his own appointment as a Cabinet Minister. The Supreme Court of Justice of Suriname considered this issue when the petitioner raised the principle of legality as a preliminary objection during the criminal proceedings. The Supreme Court dismissed the petitioner's objection, and noted that he had been indicted for offenses that predated the Act; and that this was a procedural law "containing a regulation on the manner of prosecution of the criminal offenses committed by political office holders in the discharge of the official duties".[49]

53. This being so, the debate in the instant case regards whether the application of the Act on Indictment of Political Office Holders, to prosecute of Mr. Alibux for crimes committed before its entry into force, but which were already considered offenses at the time, constituted a violation to the principle of criminal law regarding non-retroactivity of an unfavorable law, in the terms of Article 9 of the American Convention.

54. Firstly, the Commission recalls that one of the main aspects of the norm contained in Article 9 of the American Convention is the predictability of the punitive response by the State in face of certain conduct.

55. In the words of the Inter-American Court,

> the definition of an act as an unlawful act and the determination of its legal effects must precede the conduct of the individual who is alleged to have violated it; because, before a behavior is defined as a crime, it is not unlawful for penal effects. If this were not so,

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[47] IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225.

[48] I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 30, 2004. Series C No. 111, para. 175. See also: *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, para. 106; and *Case of Castillo-Petruzzi et al v. Peru*, Judgment of May 30, 1999. Series C No. 52, para. 120.

[49] Court Order 2003 No.2, Suriname High Court of Justice, June 12, 2003.

> individuals would not be able to adjust their behavior according to the laws in force, which express social reproach and its consequences. These are the grounds for the principle of the non-retroactivity of an unfavorable punitive norm[60].

56. In a similar sense, the European Court has recently reiterated that in order to comply with the object and purpose of the norm contemplated in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is imperative to analyze if the existing legal framework complies with the requirements of forseeability and accessibility. According to what this Tribunal indicated, from Article 7 of the European Convention it follows that "an offence must be clearly defined in law. This requirement is satisfied where the individual can know from the wording of the relevant provision (...) what acts and omissions will make him criminally liable." Furthermore, the European Court indicated that when referring to the term "law", Article 7 refers to a concept that incorporates the qualitative requirements, namely, "accessibility and foreseeability"[61].

57. This being so, for example, in cases in which the criminal norms have been gradually clarified at the national level through judicial interpretation, the main point taken into consideration by the European Court is whether the development is consistent with the essence of the crime and could have reasonably been forseen[62]. The European Court has indicated that it must be examined if the offenses were defined by the law with sufficient accessibility and forseeability, in such a way that the petitioner could know which acts and omissions would make him criminally liable so as to be able to regulate his conduct according to that knowledge[63].

58. The text of Article 9 of the American Convention, together with the cited jurisprudence, reflect that the objective of the principles of legality and non-retroactivity of the least favorable criminal norm apply, in principle, to the substantive norms that define criminal offenses. Nonetheless, the Commission considers that certain circumstances may occur in which the application of procedural norms can have substantive effects relevant to the analysis of Article 9 of the American Convention. In such circumstances, it is for the petitioner to argue in which way the retroactive application of procedural norms had substantive effects on the forseeability of an eventual exercise of the State's punitive power.

59. The Human Rights Committee of the ICCPR has ruled on allegations related to the *ex post facto* application of a norm with procedural effects. Specifically, in the case *Rodríguez Orejuela vs. Colombia*, the petitioner argued that his prosecution by authorities that did not exist at the time of commission of the facts, constituted a violation of his rights. When analyzing such arguments, the said Committee indicated that the petitioner "ha[d] not demonstrated how the entry into force of new procedural rules and the fact that these are applicable from the time of their entry into force constitute in themselves a violation" of the ICCPR[64].

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[60] *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, para. 104. *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 106. Citing *cfr., Inter alia, Eur. Court H.R. Ezelin judgment of 26 April 1991, Series A no. 202*, para. 45; and *Eur. Court H.R. Müller and Others judgment of 24 May 1988, Serie A no. 133*, para. 29.

[61] ECHR. *Case of Kononov v. Latvia*. Application No. 36376/04. May 17, 2010. Para. 185.

[62] *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 50, ECHR 2001-II; *K.-H.W. v. Germany* [GC], no. 37201/97, § 85, ECHR 2001-II (extracts); *Jorgic v. Germany*, no. 74613/01, §§ 101-109, 12 July 2007; and *Korbely v. Hungary* [GC], no. 9174/02, §§ 69-71, 19 September 2008

[63] ECHR. *Case of Kononov v. Latvia*. Application No. 36376/04. May 17, 2010. Para. 187. Citing *Streletz, Kessler and Krenz*, § 51; *K.-H. W. v. Germany*, § 46; and *Korbely v. Hungary*, § 73.

[64] Human Rights Committee. *Rodríguez Orejuela v. Colombia*. Communication No. 848/1999. 23 July 2002 CCPR/C/75/D/848/1999. Para. 7.2.

60. As previously indicated, in the instant case, the offenses for which Mr. Alibux was prosecuted were defined in the criminal norms of Suriname prior to the facts which motivated the criminal proceeding. Furthermore, the Commission notes that although a constitutional limitation to prosecuting high-ranking officials existed, said limitation was modified through Article 140 of the Constitution of Suriname, prior to the facts which motivated the criminal proceeding. Said norm establishes that:

> Those who hold political office shall be liable to trial before the Court of Justice even after their retirement, for punishable acts committed in the discharge of their official duties.
>
> Proceedings are initiated against them by the Procurator-General after they have been indicted by the National Assembly in a manner to be laid down by law. It can be determined that members of the High Councils of State, and other officials shall be liable to trial for punishable acts committed in the exercise of their functions before the Court.

61. In October 2001, the National Assembly of Suriname passed the Indictment of Political Office Holders Act[55] to provide a procedural mechanism to regulate Article 140 of the Constitution of Suriname upon the accusation by the National Assembly. The National Assembly is, thus, responsible for deciding whether the "subject" of the law suit by the Attorney General may be indicted or not[56]. It was under this legal framework that the petitioner was ultimately indicted for "criminal acts" allegedly committed, while he was a political office holder.

62. From the information available, it follows that this norm did not incorporate substantive matters on the criminal responsibility of individuals, but that it established the procedural guidelines of the accusation by the National Assembly. However, the IACHR must note that in the time period that elapsed between the 1987 Constitution and the enactment of this law in 2001, no high officer had been prosecuted for crimes committed in their official capacity.

63. That is, even if Article 140 of the 1987 Constitution of Suriname establishes the initial basis for striping high officers of their immunity so they might be held criminally responsible for those crimes that they committed in the discharge of their functions, during 14 years the State of Suriname failed to regulate this constitutional norm so that the possibility of the State exercising criminal actions against high officers could take place. The IACHR observes that Article 140 itself literally establishes that "proceedings are initiated against them by the Attorney-General after they have been indicted by the National Assembly **in a manner to be determined by law**" (emphasis added).

64. Accordingly, the actual possibility that high-ranking officials could be held criminally accountable for crimes committed while in exercise of their duties depended directly on the legal regulation of Article 140 of the Constitution 1987. In fact, as indicated, there is no controversy in the sense that during the years prior to the approval of the Indictment of Political Officer Holders Act, no high officer was prosecuted for crimes committed in their official capacity, and the State has confirmed that the adoption of the law was necessary to prosecute a high official in such capacity.

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[55] See Annex 9 of State's submission of July 18, 2005.

[56] Article 10 of the Indictment of Political Officer Holders Act establishes that "The National Assembly must deliberate and decide on the application for accusation of the current or former political officer..." Article 11(1) indicates that "If evidence is found to sustain the accusation, the National Assembly must then decide if it proceeds with the application of the Attorney General."

65. By virtue of the above, even if the Indictment of Political Officer Holders Act is procedural in nature, it was not a mere change in procedural rules but a norm enacted with the purpose of allowing, for the first time, the prosecution of such officers.

66. In this sense, and in application of the aforementioned standards, the IACHR considers that in the instant case it was not foreseeable for the petitioner that the State could prosecute him before the regulation of Article 140 of the Constitution by means of the Indictment of Political Officer Holders Act. Also, the Inter-American Commission considers that the change that was implemented by the enactment of that law was not only a procedural aspect but rather that it had wider and more substantive effects to the detriment of Mr. Alibux. Accordingly, the IACHR concludes that the application of that norm to events that took place before it entered into force constitute a violation of the right guaranteed in Article 9 of the American Convention.

C. The Rights to a Fair Trial and to Privacy (Articles 8 and 11 of the American Convention)

67. The petitioner alleges that his due process rights before, during, and after his trial were violated by the lack of any appeal process, the absence of a functioning Constitutional Court, the unwarranted delay and the prejudicial media coverage and statements by the President of Suriname and members of the National Assembly of that country. With respect to the allegations on public statements and coverage, he also claims his right to privacy was violated.

1. Undue delay

68. The petitioner complains of undue delay in the criminal proceedings against him, while the State contends that any delays in the proceedings are attributable to the petitioner, specifically caused by his multiple absences. The State points to three occasions on which the Petitioner failed to appear in court (July 31, 2003, August 08, 2003, and August 12, 2003), as well as other occasions in which adjournments were granted owing to the absence of a member of the petitioner's legal team because of illness or otherwise. The State further points to preliminary objections lodged by the petitioner, which contributed to duration of the proceedings. Ultimately, the State asserts that the proceedings lasted only 22 months, a period that cannot be interpreted as reflecting undue delay that prejudices the petitioner's right to due process.

69. The Inter-American Court of Human Rights has established that in determining whether there has been unwarranted delay in proceedings, it is essential to have regard for: (a) the actions of the claimant; (b) the actions of the State; and (c) the complexity of the matter which is the subject of those proceedings.[57]

70. The record before the IACHR shows that criminal proceedings against the petitioner took place in just over two and a half years, between 2001 and 2003. It also shows that Mr. Alibux was the subject of a police investigation between March and April of 2001 and September of 2001. This investigation preceded the passage of the Act on Indictment of Political Office Holders by Suriname's National Assembly, which took place in October 2001. The petitioner was subsequently indicted in January 2002. Consequently, a preliminary inquiry was conducted between January 2002 and October 2002, which resulted in an order for the petitioner to stand trial before the High Court of Justice. The petitioner was one of the first persons to be indicted under

[57] See for example, I/A Court H.R., Case of Serrano-Cruz Sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120; I/A Court H.R., Case of Acosta-Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129; I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192.

the Act, and his trial took place between April and November 2003, resulting in his conviction and sentence. It is a matter of consensus between the parties that the petitioner was not placed in preventive detention for the duration of the criminal proceedings against him.

71. The petitioner has not controverted the State's contention that delays during the proceedings were occasioned by his own absence or that of his legal representatives. The IACHR further notes that the proceedings against Mr. Alibux included the adjudication of multiple preliminary objections. The record available to the Commission manifests no elements to suggest any inexplicable delays or lapses of inactivity during the criminal proceedings that might have served to prejudice the due process rights of the petitioner. Indeed, the IACHR notes that Mr. Alibux was permitted to exercise his right to challenge the applicability of the Act, which was part of the process that he now complains of, as being vitiated by unwarranted delay.

72. Having regard for all these factors in the case under consideration, the IACHR does not find that the petitioner suffered any unwarranted delay such as to prejudice or undermine his right to judicial protection of his due process rights. The Inter-American Commission considers that the State conducted the proceedings against the petitioner with reasonable promptitude. In these circumstances, the IACHR rejects the petitioner's allegations of unwarranted delay in the proceedings against him, and accordingly finds no violation of Article 8(1) of the American Convention.

2. Right to appeal

73. Article 8(2) of the American Convention prescribes the minimum guarantees afforded to a person accused of a criminal offense. One of those guarantees is the right to appeal a judgment to a higher court.

74. In the instant case, the State has conceded that there was no appeal process so that the petitioner could request the review of the conviction against him in the High Court of Justice of Suriname. However, the State denies that this lack of appeal process violated the petitioner's rights, pointing out, *inter alia*, that the Act was later amended in 2007 to provide for such a recourse, but that the petitioner declined to avail himself of it. The petitioner, on the other hand, rejects the amendment as being legally incapable of providing an effective means of requesting the review of his conviction. The Commission notes that the High Court of Justice of Suriname, in its interlocutory judgment of June 12, 2003, held, inter alia, that political officer holders under indictment "are tried in the first and highest instance by the Court of Justice, so that no appeal can be lodged against that judgment."[58]

75. The Inter-American Commission has held in this regard that once an unfavorable decision is rendered at first instance, the right to appeal that judgment to a higher court must also be granted in compliance with fundamental fair trial protections.[59] As the Inter-American Court has established, "the aim of the right to appeal a judgment is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final".[60] The tribunal has specified that, while States may regulate

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[58] Interlocutory judgment of the High Court of Justice of Suriname of June 12, 2003, para. 2.

[59] See, for example, IACHR, Report No. 61/06, Case 12.447, Merits, Derrick Tracey, Jamaica, July 20, 2006, para.27; IACHR, Report on the Situation of Human Rights in Panama (1978), OEA/Ser.L/V/II.44, doc. 38, rev. 1, 22 June 1978, at 116; IACHR, Report on the Situation of Human Rights in Nicaragua (1981), 30 June 1981, OEA/Ser.L/V/II.53, doc. 25, p. 168.

[60] I/A Court H.R., Case of Barreto Leiva v. Venezuela, Judgment of November 17, 2009, para. 88.

> the exercise of that remedy, they may not establish restrictions or requirements inimical to the very essence of the right to appeal a judgment. The State may establish special judicial privileges for the prosecution of high-ranking government authorities and these privileges are compatible, in principle, with the American Convention [...]. However, even in these situations, the State may allow the accused the possibility of appealing a condemnatory judgment. This would happen, for example, if it were decided that the proceedings at first instance would be conducted by the president or of a courtroom of a superior tribunal and the appeal would be heard by the full tribunal, to the exclusion of those who already issued an opinion on the case.[61]

76. By virtue of the preceding considerations, the Inter-American Commission concludes that the State of Suriname violated the right guaranteed in Article 8.2(h) to the prejudice of Mr. Alibux.

3. Pretrial statements and publicity

77. The petitioner complains that pre-trial statements by Suriname's president and other officials, together with other pre-trial publicity, violated his right to the presumption of innocence guaranteed in Article 8 of the American Convention, as well as his right to privacy under Article 11 thereof. The State rejects the petitioner's allegations in this regard. The Inter-American Commission notes that the petitioner's complaints were considered and dismissed by the Suriname High Court of Justice during the criminal proceedings against him.

78. The presumption of innocence does not prohibit pretrial publicity, but the IACHR and the Court have indicated that such publicity may not imply an anticipated determination as to guilt, either directly of indirectly.[62]

79. While these complaints are framed in the context of the right to due process, they may also be considered within the context of the right to freedom of expression. As the Inter-American Commission noted in its 2008 Annual Report[63], the protection of honor, dignity and reputation is a human right guaranteed by Article 11 of the American Convention, which limits the interference of individuals and of the State[64].

80. According to Article 13(2) of the American Convention, the protection of the honor and reputation of others can be a reason to establish restrictions to freedom of expression; that is, it can be a reason for establishing subsequent liability for the abusive exercise of such freedom.[65] The exercise of the right to honor, dignity and reputation must be reconciled with the right to freedom of expression, as it is not a right with a higher level or hierarchy. The honor of individuals must be protected without prejudice to the exercise of freedom of expression or the right to receive information.[66] However, in cases of conflict between freedom of expression and the right of public officials to honor, the balancing exercise must be carried out on the grounds of the *prima facie*

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[61] *Idem*, para. 90.

[62] I/A Court H.R., Case of Lori Berenson-Mejia v. Peru, Judgment of November 25, 2004 (Merits, Reparations and Costs), para. 160.

[63] *See* Chapter III, para. 94, Annual Report of the Inter-American Commission on Human Rights 2008, Volume II, Report of the Office of the Special Rapporteur For Freedom Of Expression; OEA/Ser.L/V/II.134.

[64] I/A Court H.R., Case of Eduardo Kimel v. Argentina, Judgment of May 2, 2008, Series C No. 177, Para. 55.

[65] *See* IACHR, Report No. 11/96, Case No. 11.230, Francisco Martorell, Chile, May 3, 1996, Para. 70.

[66] Chapter III, para. 94, Annual Report of the Inter-American Commission on Human Rights 2008, Volume II, Report of the Office of the Special Rapporteur For Freedom Of Expression;

prevalence of freedom of expression, which acquires a higher balanced weight in these situations, given that it is a specially protected type of speech under the American Convention.[67] The circulation of information or opinions regarding civil servants and authorities, or matters of public interest, is one of those types of speech.

81. There is no dispute between the parties in this case that the investigation and subsequent prosecution of the petitioner attracted significant attention from the press and the Government of Suriname. This is not unexpected, given that the petitioner is a former Minister of Finance, and that he was one of the first persons indicted under the Act. There is no doubt that this was a matter of public interest upon which political figures in Suriname --like the President-- would be expected to comment. As noted by the Inter-American Court, making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities[68].

82. The IACHR also observes that the parties dispute the particulars of the events that led to the petitioner's complaints under Articles 8 and 11 of the American Convention. While the petitioner contends that the President issued what amounted to a prejudicial declaration of guilt before his trial, the State contends that the President merely called for the National Assembly to pass the necessary legislation so as to enable indictment, prosecution, and conviction of persons guilty of offenses. The State also denies the petitioner's allegation that his 'criminal file' was divulged to the Surinamese press, for dissemination. The IACHR notes that the petitioner has not supplied any evidence to corroborate this claim, or of his other claims relating to the nature of the press coverage of the criminal proceedings against him.

83. Based on the record before it, the IACHR considers that there is insufficient evidence to support a finding that while exercising their freedom of expression, State officials acted in a manner prejudicial to the presumption of innocence. Similarly, no evidence in the record shows that official statements served to undermine the independence and autonomy of Surinamese judicial authorities; or that the State failed to adequately balance between freedom of expression and the petitioner's rights under Articles 8 and 11 of the American Convention. In fact, the petitioner's complaints were considered and rejected by the domestic courts of Suriname. There is no evidence before the Commission to find that these domestic courts failed to respect Articles 8 and 11 of the American Convention. Accordingly, the Commission finds no violation of Articles 8 and 11 with respect to the Petitioner's complaints on the matter of pre-trial statements and publicity.

84. The record of this case shows that the petitioner made several objections to the Court that this adverse publicity prejudiced his right to a fair trial while at the same time violating his right to reputation and dignity. However, the analysis of the case file before the IACHR does not show any evidence supplied by the petitioner to establish that the public statements mentioned by him, or the publication of documents pertaining to the trial affected the decision of the Surinamese courts. Moreover, it must be noted that the information relating to Mr. Alibux's activities in the discharge of his official duties as a civil servant are subject to the scrutiny of the media and part of the political process. In this context, it is also the view of the IACHR that Mr. Alibux failed to prove how his right to privacy was violated by statements of Surinamese authorities regarding his public acts.

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[67] Ibid. para. 96

[68] I/A Court H.R., Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Judgment of August 5, 2008. Series C No. 182. para. 131.

85. Accordingly, the Inter-American Commission finds that the matter of pre-trial statements and publicity have caused no violation of the petitioner's rights to due process or to privacy guaranteed, respectively, in Articles 8 and 11 of the American Convention.

D. The Right to Judicial Protection (Article 25 of the American Convention)

86. The American Convention guarantees the right to judicial protection at Article 25 in the following terms:

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States Parties undertake:
>
> a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
>
> b. to develop the possibilities of judicial remedy; and
>
> c. to ensure that the competent authorities shall enforce such remedies when granted.

87. The Inter-American Court has held that States Parties to the American Convention have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process (Article 8(1)), all in relation to the general obligation to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).[69] The Inter-American Court has also stated that the principal purpose of international human rights law is to protect persons from a State's abusive exercise of its power. Hence, "the inexistence of effective domestic remedies places the victim in a situation of defenselessness."[70] Therefore, the absence of an effective remedy to violations of the rights recognized in the American Convention is itself a violation of this instrument.[71] Moreover, the Inter-American Court has repeatedly held that the existence of the guarantee of an effective judicial recourse is one of the basic pillars not only of the American Convention, "but also of the rule of law itself in a democratic society, in the terms of the Convention."[72]

88. An effective judicial remedy is one that is capable of producing the result for which it was designed.[73] To be considered "effective," a judicial remedy does not have to be decided in favor of the party alleging violation of his rights; however, effectiveness does imply that a judicial

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[69] I/A Court H. R., *Palamara Iribarne Case*, para. 163; *Moiwana Community Case*, para. 142; and the *Case of the Serrano Cruz Sisters*, para. 76.

[70] I/A Court H. R., *The Constitutional Court Case (Aguirre Roca, Rey Ferry and Revoredo Marsano v. Peru)*. Series C. No. 71, Judgment of January 31, 2001, par. 89.

[71] *Ibidem*.

[72] *Ibid*, para. 90.

[73] See I/A Court H. R., Velásquez *Rodríguez Case*, Honduras, Series C. No. 4, Judgment of July 29, 1988, para. 66.

body has examined the merits of a case.[74] In one case in which a court held that it did not have legal jurisdiction to examine an alleged violation of rights, the Commission concluded that:

> Article 25(2)(a) expressly establishes the right of any person claiming judicial remedy to "have his rights *determined* by the competent authority provided for by the legal system of the state." [25] *To determine* the rights involves making a determination of the facts and the alleged right--with legal force--that will bear on and deal with a specific object. This object is the claimant's specific claim. When in this case the judicial tribunal denied the claim and declared "the matters interposed to be non-justiciable" because "there is no legal jurisdiction with regard to the matters set forth and it is not appropriate to *decide* thereon," it avoided a determination of the petitioner's rights and analyzing his claim's soundness, and as a result prevented him from enjoying the right to a judicial remedy under the terms of Article 25.[75]

89. The mechanism that Article 25 of the American Convention establishes is absolutely vital to the protection of individual rights, and is an essential part of the system of protection established under the Convention. The Inter-American Court has held that judicial guarantees can never be suppressed or rendered ineffective, not even during states of emergency.[76] The Court has also held that "the purpose of international human rights law is to afford the individual with the means of protecting internationally recognized human rights from an abuse of State power."[77]ç

90. Suriname's Constitution provides for the establishment of a Constitutional Court. Article 144 of the Constitution provides:

> 1. There shall be a Constitutional Court which is an independent body composed of a President, Vice-President and three members, who - as well as the three deputy members - shall be appointed for a period of five years at the recommendation of the National Assembly.
>
> 2. The tasks of the Constitutional Court shall be:
>
> a. to verify the purport of Acts or parts thereof against the Constitution, and against applicable agreements concluded with other states and with international organization;
>
> b. to assess the consistency of decisions of government institutions with one or more of the constitutional rights mentioned in Chapter V.
>
> 3. In case the Constitutional Court decides that a contradiction exists with one or more provisions of the Constitution or an agreement as referred to in paragraph 2 sub a, the Act or parts thereof, or those decisions of the government institutions shall not be considered binding.
>
> 4. Further rules and regulations concerning the composition, the organization and procedures of the Court, as well as the legal consequences of the decisions of the Constitutional Court, shall be determined by law.

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[74] IACHR, Report N° 30/97, Case 10.087, Gustavo Carranza (Argentina), September 30, 1997, par. 74.

[75] *Ibid*, para. 77 (emphasis in the original).

[76] I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 25..

[77] I/A Court H. R., *The Case of the Gómez Paquiyauri Brothers,* Judgment of July 8, 2004, Series C No. 110, para. 73.

91. It is a matter of common ground between the parties that the Constitutional Court of Suriname has not yet been established in accordance with Article 144 of that country's Constitution. The petitioner contends that the absence of this Court deprived him of the right to challenge the constitutionality of the Act. The State rejects the petitioner's position, largely on the ground that a challenge to the Act would fall outside of the Constitutional Court's jurisdiction; and that, in any event, the Court has no appellate jurisdiction over decisions of the High Court of Justice.

92. Based on the record before the Commission, it appears that the High Court of Justice itself declined to exercise jurisdiction over the constitutional issues raised by the petitioner. On June 12, 2003, the High Court of Justice ruled on a number of preliminary objections raised by the petitioner, including the constitutionality of the Act on the Indictment of Political Office Holders. On the question of whether the National Assembly had the authority to indict the petitioner, the High Court held:

> That the Constitution has appointed the Procurator-General as the authority to prosecute the political office-holders mentioned in Article 140 of the Constitution of the Republic of Suriname, after they have been indicted by the National Assembly, which, as such was requested by the Procurator-General [78]
>
> Furthermore that, since now a letter from the National Assembly, dated 21 January 2002 No. 38 is enclosed in the file of this suit at law, from which it is evident that the defendant has been indicted, the formal obligations according to the stipulation in Article 140 of the Constitution have been met, and therefore, a further assessment as to whether the or not the Parliament has followed the correct procedure upon the adoption of the document for the indictment, has passed over the High Court since it has no constitutional jurisdiction to assess this procedure.[79]

93. The petitioner alleges that he attempted to challenge the constitutionality of the Indictment of political Office Holders' Act before the High Court, which ruled that it lacked the jurisdiction to consider the claim, and that the absence of a sitting Constitutional Court deprived him of access to that instance of revision. The State has not controverted those claims. Under these circumstances, the Commission considers that it has been established that the victim was unable to secure effective access to the judicial review of his complaint concerning the constitutionality of the Act, in violation of Article 25 of the American Convention.

E. The Right to Freedom of Movement (Article 22 of the American Convention)

94. Article 22 of the American Convention provides *inter alia* that:

> 1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
>
> 2. Every person has the right to leave any country freely, including his own.
>
> 3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

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[78] Court Order 2003 No. 2, June 12, 2003, para. 8. (original order in Dutch).

[79] Ibid.

95. The petitioner complains that he was prevented by the State from leaving Suriname for a four day trip to Saint Maarten. For its part, the State asserts that it was within its power to prevent the petitioner from leaving Suriname during the criminal proceedings against him.

96. While it is clear that a State enjoys a prerogative to impose legal restrictions on the right to freedom of movement in certain circumstances, it is a matter for the IACHR to determine whether the restriction imposed on the petitioner is a legitimate derogation of his rights, in the interest of national security, public safety or other valid ground.[80]

97. As the Inter American Court noted in the Case of Ricardo Canese, "freedom of movement and residence, including the right to leave the country, may be restricted, in accordance with the provisions of Articles 22(3) and 30 of the Convention" but has emphasized that "these restrictions must be expressly established by law, and be designed to prevent criminal offenses or to protect national security, public order or safety, public health or morals, or the rights and freedoms of others, to the extent necessary in a democratic society."[81] That case refers to the electoral debates leading up to the 1993 Paraguayan presidential elections, when candidate Ricardo Canese questioned the suitability and integrity of Juan Carlos Wasmosy, who was also a presidential candidate, which were later the subject of criminal proceedings against Canese. As a result of the criminal proceedings against him, Mr. Canese was subjected to a permanent prohibition to leave the country, which was lifted only under exceptional circumstances and irregularly. This travel restriction had been imposed on Mr. Canese as a 'precautionary measure'. In this case, the Inter American Court considered it necessary to examine in detail whether, by establishing restrictions to Mr. Canese's right to leave the country, the State complied with the requirements of the legality, necessity and proportionality of the restrictions to the extent necessary in a democratic society; these are inferred from Article 22 of the American Convention

98. With respect to the question of legality, the Court emphasized that:

> ....the State should define precisely and clearly by law, the exceptional circumstances under which a measure such as the restriction to leave the country is admissible. The lack of legal regulation prevents such restrictions from being applied, because neither their purpose nor the specific circumstances under which it is necessary to apply the restriction to comply with some of the objectives indicated in Article 22(3) of the Convention have been defined., It also prevents the defendant from submitting any arguments he deems pertinent concerning the imposition of this measure. Yet, when the restriction is established by law, its regulation should lack any ambiguity so that it does not create doubts in those charged with applying the restriction, or the opportunity for them to act arbitrarily and discretionally, interpreting the restriction broadly. This is particularly undesirable in the case of measures that severely affect fundamental attributes, such as freedom.[82]

99. On the question of necessity, the Court stressed that

> ...precautionary measures affecting personal freedom and the freedom of movement of the defendant are of an exceptional nature, because they are limited by the right to presumption of innocence and the principles of necessity and proportionality, essential in a democratic society. International case law and comparative criminal legislation agree that, in order to apply such precautionary measures during criminal proceedings, there must be sufficient

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[80] See, generally, Report on Terrorism And Human Rights OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr.22 October 2002, paras. 51, et seq.

[81] I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 117

[82] Ibid. para. 125.

> evidence to reasonably suppose the guilt of the defendant and the presence of one of the following situations: danger that the defendant will abscond; danger that the defendant will obstruct the investigation; and danger that the defendant will commit an offense – and the latter is currently under discussion.[83]

100. On the question of proportionality, the Court considered that "the restriction of the right to leave the country imposed during criminal proceedings by means of a precautionary measure should be proportionate to the legitimate purpose sought, so that it is only applied when there is no other less restrictive measure and during the time that is strictly necessary to comply with its purpose."[84] Ultimately, the Court found that the State had "applied a restriction to Ricardo Canese's right to leave the country without observing the requirements of legality, necessity and proportionality, necessary in a democratic society; thereby violating Article 22(2) and 22(3) of the American Convention.

101. In reviewing the travel restriction imposed in the instant case, the Commission notes that the petitioner was prevented from leaving Suriname on January 3, 2003, almost two years after the criminal investigation had started, and three months before his trial commenced before the High Court of Justice. Mr. Alibux claims that he had frequently travelled out of Suriname in the preceding year without restriction by the State, and that he had always returned to the country from such trips. The State has not controverted this. Further, the State has not cited any law of Suriname to justify the restriction imposed on the petitioner, but has simply asserted that its Public Prosecutions Department was entitled to unilaterally impose the travel restriction, to prevent the petitioner from evading prosecution. The State has provided no evidence to support its contention that Mr. Alibux was a flight risk. Having regard to the jurisprudence of the Court, the State is obliged to define, in clear, legal terms, the exceptional circumstances that warranted the travel restriction imposed on Mr. Alibux. The State is also obliged to demonstrate that the restriction was necessary to prevent the petitioner from absconding, while criminal proceedings were still pending against him. Finally, the State was obliged to demonstrate that the restriction was proportional; that it was the most appropriate and least restrictive measure applied to ensure that Mr. Alibux did not abscond while the criminal proceedings were still ongoing.

102. As previously noted, the State has not sought to rely on any clearly defined law of Suriname to justify its restriction on Mr. Alibux. Similarly, the State has not substantiated its claim that Mr. Alibux was a flight risk. In the absence of any evidence that (a) Mr. Alibux represented a flight risk, and (b) the travel restriction was imposed by virtue of clearly defined legal provisions, the Commission finds that the State failed to observe the requirements of legality, necessity, and proportionality in preventing Mr. Alibux from travelling out of Suriname on January 03, 2003. Accordingly, the Inter-American Commission finds that the State violated the petitioner's right to movement under Article 22 of the American Convention.

V. CONCLUSION

103. On the basis of the information presented by both parties and its analysis under the American Convention, the IACHR concludes that the State of Suriname is responsible for the violation the petitioner's rights to appeal his conviction, as well as his right to freedom of movement, guaranteed, respectively, in Articles 8, 25 and 22 of the American Convention. The IACHR also finds that the State violated the right protected by Article 9 of the American Convention. Finally, the Inter-American Commission concludes that the State did not violate the right guaranteed by Article 11 of that international instrument.

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[83] Ibid. para. 129.

[84] Ibid. para.133.

VI. RECOMMENDATIONS

104. Based on the analysis and the conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF SURINAME THAT IT:

1. Take the measures necessary to nullify the criminal process and conviction imposed on Mr. Alibux

2. Grant adequate reparation to Mr. Alibux for the violations declared in this report.

3. Take the non-repetition measures necessary so that high officers prosecuted and convicted for acts performed in their official capacity may have access to an effective remedy to request the review of such convictions. Also, adopt legislative or other measures that may be necessary to guarantee an effective mechanism of review of constitutional matters.

Done and signed in the city of Washington, D.C., on the 22nd day of the month of July, 2011. (Signed): Dinah L. Shelton, President; José de Jesús Orozco Henríquez, First Vice-President (partially dissenting opinion follows below); Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía, and María Silvia Guillén Commissioners.

The undersigned, Santiago A. Canton, Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of its Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.

Santiago A. Canton
Executive Secretary

**PARTIALLY DISSENTING OPINION BY COMMISSIONER
JOSÉ DE JESÚS OROZCO HENRÍQUEZ
Case 12.608 "Liakat Ali Alibux v. Surinam"**

1. Fully recognizing the high level of professionalism of my colleagues, I cast this vote to express the reasons for my dissent from the conclusion of the majority of members of the illustrious Inter-American Commission on Human Rights (IACHR) in Case 12.608, "Liakat Ali Alibux," exclusively in relation to the decision to consider Article 9 of the American Convention to have been violated, as established in paragraphs 5, 66, and 103 of this report on the merits.

2. As I see it, in application of the precedents established in the case-law and the standards enunciated pronounced by several organs entrusted with supervising international treaties, such as those indicated at paragraphs 47 to 59, corresponding to section B of the analysis in chapter IV of this report, one must conclude that the guarantee against retroactive application of the law was not impaired to the detriment of Mr. Alibux by Suriname, based on the following considerations:

(a) In substantive terms, the criminal law definitions that were challenged already existed prior to the conduct in question; and,

(b) From a procedural standpoint, Article 140 of the Constitution of Suriname, based on the text approved prior to the commission of the alleged criminal conduct, established the procedural bases and provided sufficient normative coverage to guarantee that it would be foreseeable for Mr. Alibux that if he engaged in the conduct provided for in the respective criminal law provisions, he could be charged, prosecuted, and subject to criminal sanction by the competent authorities provided for, prior to the acts, in the framework established in the Constitution of Suriname. This is because the Law on the Indictment of Officials with Political Responsibility, while approved after the conduct was committed, did no more than regulate that provision more specifically so that the competent authorities could be in a position to conduct the constitutionally established procedure.

3. As for the substantive dimension, as we the plenary of the IACHR concluded in paragraphs 52 and 60 of this report, the crimes for which the petitioner was tried were already codified prior to the conduct in question; indeed, prior to the appointment of Mr. Alibux as a cabinet minister these criminal law definitions were already on the books, and conduct falling under these definitions has been punishable in Suriname for decades, in some cases for almost 100 years.[85] Along these lines, I reiterate my agreement with the majority to the effect that in this substantive dimension there was no retroactivity whatsoever in the application of the criminal law definitions.

4. It is in the procedural aspect that I dissent, for I consider that, in application of the *ratio decidendi* of the precedents invoked in the paragraphs mentioned in this report, the petitioner did not succeed in showing how the Law on Indictment of Officials with Political Responsibility affected the foreseeability of a punitive response by the State in response to certain conduct.

5. According to the standards invoked by the IACHR in this report on the merits, the fundamental element to be weighed for the purpose of determining whether there was retroactivity to the detriment of a person from the procedural standpoint is whether the change in the procedural aspect subsequent to the alleged criminal conduct impacts on the foreseeability on the part of the

[85] According to the State, the Criminal Code was adopted in 1910, while the Law on Economic Crimes and the Law on Foreign Exchange were adopted in 1986 and 1947, respectively.

active subject that the conduct, at the moment it was committed, was or was not susceptible to being criminally prosecuted and punished. As reflected in paragraphs 47 to 59 of the report, the Inter-American Court of Human Rights has established, as one of the objectives of the principle of non-retroactivity of the law, that private persons should be able to guide their conduct by a legal order that is current and certain that expresses what constitutes socially reproachable conduct, and the consequences of such conduct.[86] The European Court of Human Rights has argued that one must examine whether the petitioner was able to know what acts and omissions would make him or her criminally liable[87] and, as the Human Rights Committee of the International Covenant on Civil and Political Rights has noted --specifically in cases of *ex post facto* application of a provision with procedural effects-- the petitioner must show how the entry into force of new procedural rules and the fact of their application as from such entry into force constituted, in themselves, a violation of that international instrument.[88]

6. In the instant case, Article 140 of the 1987 Constitution of Suriname, from its entry into force, established the possibility of high-level officials being subject to prosecution, indicted, and held criminally liable for crimes committed in the performance of their functions. Accordingly, since then the Constitution has provided: "Those who hold political office shall be liable to trial before the High Court, even after their retirement, for indictable acts committed in discharging their official duties. Proceedings are initiated against them by the Attorney-General after they have been indicted by the National Assembly in a manner to be determined by law. It may be determined by law that members of the High Boards of State and other officials shall be liable to trial for punishable acts committed in the exercise of their functions." Along the same lines, Article 54, paragraph 2(e) of the same Constitution of Suriname expressly prescribes: "Those who hold political office shall be liable in civil and criminal law for their acts and omissions." Moreover, as appears from the text transcribed of the 1987 Constitution, even before the facts, it clearly established which authorities were in charge of the indictment and prosecution of high-level officials, namely, the National Assembly, the Attorney General, and the High Court of Justice.

7. The Law on Indictment of Officials with Political Responsibility, approved subsequent to the commission of the alleged criminal conduct by Mr. Alibux, merely regulated the procedural guidelines of the indictment by the National Assembly in the context of the procedure previously delineated in the Constitution, without changing the organs with jurisdiction to try the matter and impose, as the case may be, the punishment legally provided for prior to the facts.

8. In effect, at the moment of committing the conduct that merited the criminal trial of the petitioner, while the way in which the charges would be handed down by the National Assembly was not regulated, the provisions of the Constitution of Suriname did determine the authorities participating in the trial and the express possibility that the offenses committed by public officials in the performance of their function would be subject to criminal sanction, even after public officials left their positions.

9. For the foregoing reasons, it is not possible to conclude, as I see it, that were was a legal indetermination procedural in nature that would affect Mr. Alibux's ability to foresee a possible punitive responsible by the State at the time of the alleged criminal conduct. Based on a systematic

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[86] De La Cruz Flores, Para. 104. Baena. 106. Citing *see, inter alia, Eur. Court H.R. Ezelin judgment of 26 April 1991, Series A no. 202*, para. 45; and *Eur. Court H.R. Müller and Others judgment of 24 May 1988, Series A no. 133*, para. 29.

[87] ECHR. Case of Kononov v. Latvia. Application No. 36376/04. May 17, 2010. Para. 187. Citing, *Streletz, Kessler and Krenz*, § 51; *K.-H. W. v. Germany*, § 46; and *Korbely v. Hungary*, § 73.

[88] Human Rights Committee. Rodríguez Orejuela v. Colombia Communication No. 848/1999 23 July 2002 CCPR/C/75/D/848/1999. Para. 7.2.

interpretation of both the constitutional provisions invoked and the statutory provisions that established the criminal definition applicable to the instant case, it is valid to conclude that sufficient normative coverage was offered to guarantee foreseeability for Mr. Alibux so as to enable him, as the Inter-American Court of Human Rights has required, to orient his conduct in keeping with a legal order that is current and certain, that spelled out the social reproach of certain kinds of conduct and the consequences that can be expected on the part of certain and pre-existing competent authorities.

10. While the consideration by the majority of the plenary of the IACHR is right, in that the regulation of the procedural guidelines as to how the charges by the National Assembly would be handed down, for the Attorney General to then initiate proceedings before the High Court of Justice, as well as the corresponding terms and time frames, it was a requirement for implementing the real possibility that the State would prosecute and try a high-level official for offenses committed in the performance of his or her functions, it did not impact, in any way, the foreseeability of the situation for Mr. Alibux so as to be able to orient his conduct in keeping with a legal order current and certain, which determined, prior to the facts, that certain types of conduct committed by public officials would be susceptible to prosecution by the Attorney General, after an indictment by the National Assembly, and, as the case may be and in due course, criminally sanctioned by the High Court of Justice, as per constitutional mandate.

11. The fact that Article 140 of the Constitution established that the accusation by the National Assembly should be "in the manner established by law" is no impediment to the foregoing, considering that, to reiterate, independent of the peculiarities that might be established by statute, the constitutional provision itself offered the procedural basis, with sufficient normative coverage to guarantee the foreseeability, for high-ranking public officials, of the conduct demanded by the legal order in force and the consequences subject to the reproach of the criminal law, entrusted to the competent authorities, certain and pre-existing, for not ensuring that one's conduct is in keeping therewith.

12. In my opinion, states must offer foreseeability with respect to the procedural guidelines followed in any criminal proceeding, immediately promulgating the relevant provisions; in effect, it is essential that in every criminal proceeding there be a previously established court with jurisdiction, and that during the criminal proceeding the formalities that are part and parcel of due process be adhered to. It can be considered that these requirements have essentially been met when some constitutional provision establishes, prior to the commission of any allegedly criminal conduct, what court has jurisdiction to impose a criminal sanction and what the competent authorities are for bringing the matter before it, which in the instant case is covered by the provision in Article 140 of the Constitution of Suriname, on providing for the jurisdiction of the High Court of Justice and the competence of the National Assembly and the Office of the Attorney General.

13. Accordingly, the application of the Law on Indictment of Officials with Political Responsibility, which entered into force after the alleged criminal conduct with the specific aim of regulating the procedural guidelines that must be observed by certain authorities in a constitutionally established procedure prior to the commission of such conduct, in my view, in no way had substantive effects to the detriment of the petitioner, which is why it is not violative of the guarantee of non-retroactivity provided for in Article 9 of the American Convention on Human Rights, considering that in the specific case it did not affect foreseeability for the accused in the terms indicated above.

14. To the contrary, the conclusion of the majority, consisting of indicating that the Law on Indictment of Officials with Political Responsibility could not be applied to regulate the procedural guidelines of the organs constitutionally authorized to bring criminal charges and to conduct criminal prosecutions --considering that it would be a retroactive application at odds with the Convention--

would have the consequence of fostering impunity for the criminal acts that in effect may have been committed by public officials during the period that preceded the approval of this regulatory statute that supplements the procedural bases provided for in the Constitution.

15. Finally, I put forth, in this vote, the idea that in our Americas many countries have of late made changes to their constitutions and/or procedural laws for the purpose of investigating, prosecuting, and criminally sanctioning persons who previously were protected by procedural legislation that hindered many victims from being able to obtain justice – whether through the persistence of the military jurisdiction for crimes committed by armed forces against civilians, or preserving provisions that granted immunity for committing the most severe human rights violations. While the instant case does not address crimes against the life or integrity of any person whose investigation and punishment of the persons responsible are subject to the highest scrutiny by the organs that oversee international treaties, in order to eradicate the impunity that persists in an accentuated manner in some states, I believe that in cases such as the instant one, where there was a legal provision that characterized the act as illegal , prior to the allegedly criminal acts, and a constitutional provision that contained, in a foreseeable manner, the procedural bases and competent authorities to demand the criminal liability of high-level public officials, one should consider that there was sufficient normative coverage to guarantee the foreseeability required by international standards, so as to harmonize it with the guarantee of justice for society in relation to public officials who in the performance of their functions defraud the trust of the governed and commit some crime. This is a legitimate expectation of citizens and is part and parcel of the democracies that must be addressed by the states, of course safeguarding the conventional rights of the accused.

José de Jesús Orozco Henríquez
Commissioner