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**CASE OF MOIWANA VILLAGE (STEFANO AJINTOENA ET AL.)****OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
IN RESPONSE TO THE PRELIMINARY OBJECTIONS PRESENTED BY  
THE REPUBLIC OF SURINAME****I. INTRODUCTION**

The Inter-American Commission on Human Rights (hereinafter "Commission") submitted the case of Moiwana Village to the Inter-American Court of Human Rights (hereinafter "Honorable Court") to remedy a denial of justice for which the Republic of Suriname (hereinafter "Suriname" or "State") bears responsibility under the American Convention on Human Rights (hereinafter "American Convention" or "Convention"). The case is circumscribed to the violations that comprise that denial of justice, namely the State's failure to respect and ensure the rights set forth in Articles 25 and 8 of the American Convention, in conjunction with its general obligations under Article 1(1). Because the State has failed to act with due diligence to investigate, prosecute and punish the violations committed in connection with the attack and killings at Moiwana Village, and has failed to provide any form of reparation, the survivors and the family members of those killed have been left with their rights unprotected and dignity disrespected.

The attack on Moiwana Village is one of the emblematic cases of human rights violations in Suriname. While the importance of the case and the impunity in which it remains are widely known, both nationally and internationally, the State has failed to respond with due diligence. The fact that the violations have gone unclarified and unpunished has profound consequences for the survivors and the families of those killed. Those consequences range from the fact that they don't know where the remains of their loved ones are and have therefore been unable to provide a proper burial, an obligation of great importance in Ndjuka Maroon culture, to their continued displacement from their traditional lands. The survivors and the families of those killed have expressed that they feel that because they have been denied justice, they have also been denied recognition of their dignity as human beings.<sup>1</sup>

The Commission submits the present observations to respond to the preliminary objections interposed by the State of Suriname in its Answer to the Commission's Application. The observations are accordingly limited to issues of jurisdiction and admissibility. As set forth below, the Commission considers that the Court has full jurisdiction to examine the merits of the present case, and that it meets all requirements of admissibility. The objections presented by the State lack any foundation as a matter of law or fact, and the Commission respectfully requests that they be dismissed.

With respect to the question of jurisdiction generally, the Commission reaffirms that, as set forth in its Application, the Honorable Court is competent to rule on the present case as submitted with respect to violations of Articles 25, 8 and 1(1) of the American Convention on Human Rights. Suriname acceded to the American Convention and accepted the contentious jurisdiction of the Honorable Court on November 12, 1987. The claims before the Honorable Court concern the failure of the State to provide effective judicial protection and guarantees as from November 12, 1987. Case 11.821 was properly admitted and decided by the Commission in accordance with the applicable rules and procedures, and duly submitted to the Honorable Court. Accordingly, it meets the requirements of admissibility.

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<sup>1</sup> See Statement of the Petitioners, submitted as Annex 1 to the Commission's Application, paras. 9-21.

The Commission wishes to note that, while the victims' representatives have not presented their own memorials in the present case, the Commission has been in consultation with them since the preparation of its Application, and consulted them with respect to this memorial. Their participation in this context comprises an important element of the Commission's presentation of this case.

## II. SUMMARY OF THE OBJECTIONS PRESENTED

For the sake of clarity, given that the State addressed certain exceptions in various sections of its response, the Commission has summarized them as indicated, followed by its response:

- A. The Honorable Court lacks jurisdiction *ratione temporis* because the American Convention "does not apply to the Republic of Suriname in the present case."
  - 1. The Commission erred in declaring the case admissible because the "State ratified the Convention on November 12, 1987, while the occurrences were supposed to have taken place a year before that on November 29, 1986."
  - 2. The Commission erred in declaring the case admissible because the petitioners presented no evidence of violations of the American Convention.
  - 3. "The Court is not competent to hear the case, because on November 29, 1986 Suriname was not a State party" to the American Convention and had not accepted the Honorable Court's contentious jurisdiction.
- B. The Commission erred in declaring the case admissible because the petitioners failed to exhaust domestic remedies as required by the American Convention and applicable Regulations.
- C. The jurisdiction of the Court "is barred" due to the "untimely" submission of the case before the Court under the terms of Article 51(1) of the American Convention.
- D. In its Report N° 35/02 on the Merits, the Commission "concluded other violations than those for which the case was admitted."
- E. The Court has no jurisdiction over the matter, because of the fact that the Commission has neglected to send all pertinent parts of the petition to the State, as intended in Article 42 of its Regulations."

The Commission considers that the objections presented are unsupported as a matter of fact and law, as set forth in the considerations that follow, and respectfully petitions that the Honorable Court reject them and proceed to examine the merits of the Case of Moiwana Village.

### III. THE RESPONSE OF THE COMMISSION TO THE OBJECTIONS

- A. **Response to the first objection:** The Honorable Court is competent *ratione temporis* to examine the violations of Articles 25, 8 and 1(1) presented in the Commission's Application; the terms of the American Convention apply to the acts and omissions of the State that comprise the denial of justice in the present case.
1. **The Commission properly admitted the claims raised before it in Case 11.821.**

The State contends that the Commission erred when it declared the petition filed in case 11.821 admissible. The State argues that the concept of continuing violation utilized with respect to violations of the American Convention is unacceptable, and that, even assuming it were valid, the case should have been processed differently.<sup>2</sup>

In summary, the Commission considers that this objection is extemporaneous. Should the Court decide to examine it, the Commission indicates that it admitted allegations of fact and law under Articles 25, 8 and 1(1) of the American Convention with respect to State conduct subsequent to November 12, 1987, the date as from which the State committed itself to observe those guarantees, and the date from which the Commission was competent to evaluate the State's compliance.

With respect to this objection to admissibility, the Commission first wishes to note that it is extemporaneous. The petition initially transmitted to the State of Suriname on October 30, 1997 contained allegations of State responsibility under both the American Declaration and the American Convention. The State did not respond to the Commission's initial request for information, or to two subsequent reiterations of that request, and thus never contested the admissibility of the claims under the Convention prior to the Commission's adoption of Admissibility Report 26/00. It may be noted that the only provisions of the Convention admitted in that Report were Articles 25, 8 and 1(1) concerning the denial of judicial protection and guarantees. Nor did the State present any arguments as to why the facts alleged did not constitute violations of those Articles during the merits phase of the proceedings. It was not until after the Commission's adoption of Merits Report 35/02 that the State contested the application of the American Convention in the present case.

The objectives sought to be served in proceedings of this kind require that both parties have the full opportunity to be heard and to respond to each other's allegations. In the present case, the State had a full opportunity to respond to the petitioners' allegations, but opted not to utilize the procedural opportunities provided. Because the State raised its challenges to the admissibility and application of allegations under the American Convention outside the procedural opportunities provided to the parties, the petitioners had no opportunity to respond within the context of those proceedings. To admit such arguments at this stage would be to enable the State to defeat the purpose of the procedural balance built into the petition system.

Independently of the foregoing considerations, should the Honorable Court wish to examine this objection, the Commission notes that it has two aspects. First, the State asserts that the Commission had no basis to admit or examine any alleged violations under the American Convention, and that the concept of continuing violation referred to by the Commission was not applicable. The nature of the violations admitted and examined by the Commission under the American Convention, and now pending before the Honorable Court

<sup>2</sup> See State's Answer to the Application, pp. 31-32.

is examined at length below, in section III.A.3. For reasons of brevity, the Commission simply notes here that it is not asking the Honorable Court to utilize a retroactive application of law or jurisdiction, and that it maintains that the Court has full jurisdiction over all acts and omissions subsequent to November 12, 1987.

Second, the State asserts that, even if the concept of continuing violation were applicable, the Commission erred in its processing of the petition. This objection is somewhat difficult to understand. In its Answer to the Application the State indicates, on the one hand, that the violations under the Declaration and Convention "should have been processed separately," evidently arguing that the Commission processed the two categories in a way that failed to preserve the differences between them. On the other hand, the State indicates that the Commission in fact "drew a distinction between two categories of rights, one under the Declaration, and the other under the Convention."<sup>3</sup> The position is somewhat contradictory -- the State indicates that the Commission should have maintained a greater separation between the two categories of claims, but at the same time recognizes that the Commission did in fact distinguish between the categories in its treatment of the case.

If the State is arguing that the Commission should have adopted two separate sets of admissibility and merits reports for this purpose, one concerning claims under the Declaration and the other concerning claims under the Convention, it cites no legal support for such a position. The Commission notes that neither the Convention itself, nor its Statute or Rules require this, and the principle of procedural economy weighs against it.<sup>4</sup>

The Commission notes that, in both Admissibility Report 26/00 and Merits Report 35/02, it drew a clear distinction between the violations addressed under the American Declaration, Articles I (right to life, liberty and personal security), VII (protection of mothers and children), IX (inviolability of the home) and XXIII (property), and those addressed under the American Convention, namely Articles 25 (judicial protection), 8 (judicial guarantees) and 1(1) (obligation to respect and ensure rights). While the State contends that it has effectively been treated as a State Party to the Convention with respect to the entirety of the claims presented in Case 11.821,<sup>5</sup> the texts of both the Admissibility and Merits Report demonstrate that only claims relating to ongoing denial of justice were addressed under the American Convention. The claims related to the attack, executions, and related violations completed on November 29, 1986 were dealt with only under the American Declaration.

**2. The Commission demonstrated the denial of justice presented in its Application, and any issues of law and fact the State wishes to raise should be dealt with at the merits stage.**

In its Answer to the Application, the State argues that the Commission should have declared the petition presented in Case 11.821 inadmissible, at least insofar as the American Convention is concerned, because the petitioners presented no evidence of violations under that instrument. This objection is, in terms of the way it is presented, merely a variant of the State's argument that, since it had not acceded to the American Convention on the date of the attack on Moiwana Village, the terms of that treaty did not apply:

<sup>3</sup> State's Answer to the Application, p. 31.

<sup>4</sup> As a matter of practice, the Commission has in quite a few instances adopted one report exercising jurisdiction over one set of claims under the American Declaration, and another under the American Convention, in accordance with the terms of its temporal competence. See, e.g., IACHR, Report N° 40/03, Case 10.301, Merits, 42nd Police District, Parque São Lucas, Brazil, Oct. 8, 2003, paras. 9-17; Report N° 82/01, Case 12.000, Admissibility, Miranda, Paraguay, Oct. 10, 2001, para. 14; Report N° 83/03, P 12.358, Admissibility, González Acosta, Oct. 22, 2003, para. 19.

<sup>5</sup> State's Answer to the Application, p. 34.

Events in Moiwana took place on 29 November 1986 when Suriname was not a Convention State. Hence, the events of Moiwana – if proved – do not constitute violations of the standards of the Convention, but perhaps a violation of the standards laid down in the Declaration. Since no Convention standards have been violated, the deductive reasoning of the Commission that there is a continuation of the violations is not valid because there can be no continued violations if no standards were violated.<sup>6</sup>

The State maintains that it would consequently have been impossible for the petitioners to present evidence of any violation under that treaty. The Government therefore contends that the Commission should have dismissed the petition for failing to state facts tending to establish a violation under the Convention, as required under Article 47(b) of the Convention, and 35(c) of the Commission's Rules of Procedure.

In response, the Commission notes that it has addressed its own temporal jurisdiction to admit the claims now before the Honorable Court in the preceding section, and addresses the temporal jurisdiction of the Honorable Court in the section that follows. Apart from its arguments concerning temporal jurisdiction, the State has laid no further factual or legal foundation for this objection, nor has it indicated how the factual and legal foundation proffered by the petitioners failed to meet the threshold for admissibility. To the extent the State wishes to controvert the factual and legal basis upon which the Commission grounded its Merits Report 35/02, and its subsequent Application before the Honorable Court, those are issues that should properly be dealt with at the merits phase of proceedings.<sup>7</sup> In this regard, in order for the Honorable Court to determine whether the facts and arguments presented characterize violations of the American Convention, it would necessarily have to examine the merits of the dispute and evidence presented.

**3. The Honorable Court is competent *ratione temporis* to examine the violations of Articles 25, 8 and 1(1) presented in the Commission's Application.**

With respect to this objection, the State maintains that the entirety of the human rights violations comprehended in the present case took place on or about November 29, 1986 in the Village of Moiwana in the interior of Suriname.<sup>8</sup> The State argues that, given that it did not accede to the Convention until over one year later:

"[a]t the time the alleged human rights violations were committed, Suriname was neither a State Party to the Convention nor had it accepted the contentious jurisdiction of the Court. The logical consequence of the above is that until November 12, 1987 the American Declaration o[f] the Rights and Duties of Man was the only normative instrument that is applicable to Suriname in respect to alleged human rights violations in the State."<sup>9</sup>

The State maintains that the Honorable Court accordingly lacks the temporal jurisdiction necessary to examine the merits of the case placed before it.<sup>10</sup> Further, the State questions

<sup>6</sup> State's Answer to the Application, p. 53.

<sup>7</sup> See generally, I/A Court H.R., Blake Case. Preliminary Objections. Judgment of July 2, 1996. Ser. C No. 27, paras. 43, 45 (dismissing challenges on legal and evidentiary grounds as not preliminary in nature).

<sup>8</sup> State's Answer to the Application, p. 30.

<sup>9</sup> *Id.* p. 30.

<sup>10</sup> *Id.*, pp. 30-31.

the validity of the concept of "continuing violation, and argues that the Commission "used extensive and anticipatory interpretation of the Convention, which is contrary to the Vienna Convention on the Law of Treaties," and "used ex post facto application of the Convention, which is contrary to the rules of international law."<sup>11</sup>

The Commission emphasizes that the present case was submitted before the Honorable Court to examine the conformity of acts and omissions of the State with its obligations under the American Convention as from the date it accepted to be bound by that treaty, and subject to the Court's contentious jurisdiction. The human rights violations at issue are those set forth in the Commission's Application concerning the denial of judicial protection and guarantees under Articles 25, 8 and 1(1) of the Convention. The claims presented concern the ongoing failure of the State to provide justice relative to the attack on the residents of Moiwana Village, the extrajudicial executions that ensued and the destruction of the Village. The events comprising the attack, executions and destruction of the village are not themselves before the Court. As the Commission indicated in its Application, it:

does not seek or require the retroactive application of the obligations of the Convention to events that predated Suriname's accession. Rather, the Application seeks to invoke the Honorable Court's jurisdiction with respect to the denial of justice that existed at the time of Suriname's accession to the Convention, and that persists unabated to the present day. This Application is submitted with the specific objective that Suriname meet its obligations under the Convention as from 1987 forward to provide judicial protection and guarantees to those seeking justice for the crimes committed in Moiwana village on November 29, 1986.<sup>12</sup>

While the State argues that the events giving rise to the present case all took place on a single date prior to its accession to the Convention, the Commission notes that it has not submitted the Application with respect to a single measure or decision taken by the authorities of the State. Rather, the Application is submitted to address the series of acts and omissions subsequent to the State's accession that comprise the continued impossibility of the survivors and the families of those killed to obtain justice.

The scope of the Honorable Court's jurisdiction is set forth in the Convention itself. Article 62(3) provides that:

The jurisdiction of the Court shall comprise all cases concerning the interpretation and Application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

As the Honorable Court has indicated, its contentious jurisdiction in respect of a State party to the Convention comprises all cases concerning the interpretation and application of the Convention with respect to events and acts transpiring after the date of deposit of a state's instrument of ratification or accession to the Convention and declaration of acceptance of such jurisdiction.<sup>13</sup> Suriname became a Party to the American Convention on November 12,

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<sup>11</sup> *Id.*, pp. 53-60.

<sup>12</sup> Commission's Application, p. 11.

<sup>13</sup> See I/A Court H.R., Cantos Case, Preliminary Objections, Judgment of September 7, 2001, Ser. C No. 85, para. 36.

1987, and on that same date presented an instrument recognizing the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention. That recognition was made absent any of the conditions permitted under Article 62(2) of the Convention.

The Commission agrees that general principles of international law, including Article 28 of the Vienna Convention as well as Article 13 of the more recently codified Articles on State Responsibility of the International Law Commission, indicate that treaty obligations apply only once a State has become a Party to the instrument in question. The present case was submitted to the Honorable Court in order for it to examine and pronounce upon the nonconformity of the acts and omissions of the State with the obligations imposed under the American Convention as from the date it became a Party to that treaty. "From the critical date onwards all the State's acts and omissions not only must conform to the Convention but are also undoubtedly subject to review by the Convention institutions."<sup>14</sup> The Commission is not seeking the retroactive application of the American Convention, nor would such application be necessary to decide upon the claims presented.<sup>15</sup>

There are different ways in which a state may violate its obligations under the American Convention. There are circumstances in which conduct attributable to a state may be carried out and completed almost instantaneously. The Honorable Court has characterized an extrajudicial execution attributable to a state as such an example.<sup>16</sup> The State, in its Answer to the Application, attempts to characterize any and all violations raised in connection with the attack on Moiwana Village as instantaneous in nature, thus having been completed on November 29, 1986. The State argues that the case "concern[s] the alleged murders and alleged arson, in any case facts which would have occurred only once .... The latter facts were not committed over and over again until Suriname became a State Party."<sup>17</sup> In fact, however, the Commission has placed no claims with respect to the deprivation of life, liberty or security, or the destruction of property before the Honorable Court in the present case. Nor is the Commission challenging a single act or decision; rather, what is placed at issue before the Honorable Court is the series of acts and omission that continue to deny justice to the victims of the attack on Moiwana Village.

With respect to the rights to judicial protection and guarantees specifically, the State indicates that the Commission's application of fair trial rights is invalid, because "[t]he same alleged human rights violations committed prior to Suriname's accession to the Convention may never be dealt with under the Convention when the Declaration is the only normative instrument applicable."<sup>18</sup> In this regard, the Commission reiterates that the alleged violations placed before the Honorable Court are those attributable to the State for acts or omissions subsequent to November 12, 1987 concerning the right to judicial protection and guarantees. In fact, the State itself recognizes that there could be a valid basis to examine the rights of surviving family members under this heading:

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<sup>14</sup> Eur. Ct. H.R., *Yagci and Sargin v. Turkey*, Judgment of 23 May 1995, para. 40.

<sup>15</sup> With respect to the State's affirmation that the Commission utilized "extensive and anticipatory interpretation of the Convention," contrary to the principles of the Vienna Convention on the Law of Treaties, namely "normal meaning" and "good faith" (Answer to the Application, p. 58), it must be noted that, as an interpretive exercise, treaty interpretation may lend itself to different arguments. However, the Commission finds the suggestion that it "should have acted in good faith" in making its interpretation to be unacceptable. The Commission's factual and legal propositions are grounded in both inter-American and international law and jurisprudence.

<sup>16</sup> I/A Court H.R., *Blake Case*, Preliminary Objections, *supra*, para. 33.

<sup>17</sup> State's Answer to the Application, p. 56.

<sup>18</sup> *Id.*, p. 57.

If the rights of family members or surviv[ing] victims as codified in Article 8(1) of the Convention, are violated after Suriname's accession to the Convention, these alleged violations should be dealt with separately under the Convention. .... [T]he State of Suriname wants to make clear that she has started with an investigation in the matter. This happened at several moments after the occurrences took place. The fragile democracy was under heavy siege and survived several difficult situations. If the State can prove that she offered adequate judicial protection after its accession to the Convention, there is no violation of Article 25 of the Convention, assuming that this Honorable Court accept[s] the argument of 'continuous violation'....<sup>19</sup>

The denial of judicial protection and guarantees attributable to the State under Articles 25, 8 and 1(1) of the Convention consists of a series of acts and omissions that have occurred from November 12, 1987 through the date of the present memorial. These acts and omissions demonstrate that the State has not applied due diligence to investigate, prosecute, punish or repair the violations in question. The specific acts and omissions identified in the Commission's Application (and which are briefly reviewed below), provide a way of visualizing or concretizing how the State has failed to bring its conduct into conformity with its obligations. As a result, the State is in the situation of continuous nonconformity with its obligations under the American Convention.

In the present case, the denial of judicial protection and guarantees under Articles 25, 8 and 1(1) is manifest, in the sense that it has been amply demonstrated. At the same time, the denial of justice has yet to cease. It must be noted that the application of the concept of continuing violation is neither new nor "extreme" as characterized by the State. In international law generally, it has been dated back to Triepel and the late 19<sup>th</sup> century.<sup>20</sup> While the concept has been most closely linked to the violation of forced disappearances in the inter-American human rights system, its general application is much broader.<sup>21</sup> The concept is also reflected in different ways in national legal systems.

With respect to state responsibility in general terms, the distinction between an instantaneous breach and the continuing violation of an obligation has been concisely codified in Article 14 of the Articles on State Responsibility of the International Law Commission, which provides in pertinent part:

*Extension in time of the breach of an international obligation*

1. The breach of an international obligation by an act of a State not having a continuous character occurs at the moment when the act is performed, even if its effects continue.
2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

<sup>19</sup> State's Answer to the Application, pp. 57-58.

<sup>20</sup> James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge Univ. Press 2002) p. 137.

<sup>21</sup> See, I/A Court H.R., *Blake Case*. Merits. Judgment of January 24, 1998. Ser. C No. 36, Separate Opinion of Judge A. A. Cançado Trindade, para. 11: "Long before the typification of the forced disappearance of person in the International Law of Human Rights, the notion of 'continuing situation' found support in the international case-law in the domain of human rights. Thus, already in the *De Becker versus Belgium* case (1960), the European Commission of Human Rights, for example, recognized the existence of a 'continuing situation' (*situatlon continue/situación continuada*) [citation omitted]." The notion has since remained present in the case law of the European system, and has been regarded in certain instances as an aggravating factor. *Id.*



Article 15 further specifies:

*Breach consisting of a composite act*

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

As one of the members of the International Law Commission expressed in commenting on the scope of this Article, "Composite acts give rise to continuing breaches, which extend in time from the first of the actions or omissions in the series of acts making up the wrongful conduct."<sup>22</sup>

For the purposes of the present case, it must be underlined that, "[i]n cases where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the 'first' of the actions or omissions of the series for the purposes of State responsibility will be the first occurring after the obligation came into existence."<sup>23</sup> The Commission wishes to reiterate in this regard that the case presented before the Honorable Court concerns the acts and omissions of the State as from November 12, 1987, when its obligations under the American Convention came into force. It is important to note that the fact that an obligation enters into force after a series of acts and missions has been initiated does "not prevent a court from taking into account earlier actions or omissions for other purposes (e.g. in order to establish a factual basis for the later breaches ...)." <sup>24</sup>

The Commission notes that there is a growing body of case law within the European human rights system dealing with questions of due process in judicial proceedings, where the proceedings originated prior to the entry into force of the State's obligations under the European Convention but continued subsequent to the entry into force of those obligations. The European Court of Human Rights has indicated that, while it lacks temporal jurisdiction to pronounce upon events predating its jurisdiction, it may examine ongoing situations or connected events that have occurred since the entry into force of its jurisdiction. In the Case of Veeber v. Estonia, for example, the European Court concluded that the search and seizure of certain documents were instantaneous facts, realized and completed prior to the State having recognized its jurisdiction. However, the European Court exercised its jurisdiction over connected events subsequent to the State's recognition of its competence, and determined that the State had failed to provide the victim effective judicial recourse to challenge the search and seizure of his documents.<sup>25</sup> In certain cases concerning claims of undue delay in criminal or civil proceedings, the European Court has divided the case into two parts, declining jurisdiction over aspects predating acceptance of its jurisdiction, and

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<sup>22</sup> Crawford, *supra*, p. 141.

<sup>23</sup> *Id.*, p. 144.

<sup>24</sup> *Id.*

<sup>25</sup> Eur. Ct. H.R., *Veeber v. Estonia*, Merits. App. 37571/97, 7 Nov. 2002, paras. 52-55, 70-74. Cases from the European system referred to in the present memorial are cited to <http://hudoc.echr.coe.int/hudoc>.

affirming jurisdiction over related aspects occurring subsequent to acceptance. In a number of such cases, the European Court has affirmed that it may be appropriate and necessary to take into account the prior or originating facts in order to understand and issue a determination over those subsequent facts within its jurisdiction.<sup>26</sup>

The use of the concept of continuing violation in the present case is not intended to imply an application of jurisdiction that would be in some way retroactive, or require the Honorable Court to reach outside its temporal jurisdiction to decide the case. Rather, it is simply the way of understanding when the breach begins (November 12, 1987) and ends (in fact it has yet to end -- the State remains out of conformity as of the date of this memorial) for the purposes of the present case. Nor is the Commission referring to the indirect or secondary effects of already completed violations.<sup>27</sup> What is at issue in the present case is a series of acts and omissions directly attributable to the State that have denied and continue to deny the named victims their right to judicial protection and guarantees under the American Convention and thereby constitute violations of the State's independent obligations under Articles 25, 8 and 1(1) of the American Convention.

The acts and omissions at issue in the present case comprise a reiterated and ongoing denial of justice. To highlight only a few of the acts and omissions for the purposes of illustration, the Commission would first underline that the civilian police did not even attempt to initiate an investigation into the attack on Moiwana Village until 1989. When the civilian police authorities arrested a number of soldiers in connection with those nascent efforts, Commander-in-Chief Bouterse directed a squad of military police to besiege the installation where the soldiers were being detained and free them.<sup>28</sup> In 1990, the Police Inspector in charge of that investigation, Herman E. Gooding, was killed under circumstances that have never been duly investigated or clarified. The investigation into the attack on Moiwana Village was then suspended.<sup>29</sup> The adoption of the Amnesty Law in 1992 was widely interpreted as a further indication that crimes such as the attack on Moiwana Village were to be left in impunity.

A further example is the fact that the families of those who were killed do not even know where the remains of their loved ones are located. When the petitioners discovered what appeared to be human remains near the site of Moiwana Village in 1993, and requested that the competent authorities take action, the State sent personnel from the civilian and military police to the site that had been identified. The remains were examined only to the point that the authorities indicated that they corresponded to 5-7 adults and 2-3 children. The authorities took no steps to identify the remains, nor did they carry out a reasonable, comprehensive search for further remains. Because the State has failed to respond to the attack at Moiwana Village with due diligence, the families of those killed have been unable to bury the remains in accordance with their wishes and the norms of their culture.

Following the discovery of these remains, the petitioners filed three written requests for investigation with the Procurator General of Suriname, but received no response

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<sup>26</sup> See, e.g., Eur. Ct. H.R., *Nevmerzhitsky v. Ukraine*, Final Decision on Admissibility, App. No. 4825/00, 25 Nov. 2003, section "the law" 1(a); *Broniowski v. Poland*, Admissibility, App. 31443/96, 19 Dec. 2002, paras. 74-76; *Lukanov. v. Bulgaria*, Merits, App. 25/1996/644/829, 20 Feb. 1997, paras. 40-45.

<sup>27</sup> See *id.*, p. 136. "An act does not have a continuing character merely because its effects or consequences extend in time. It must be the wrongful act as such which continues." *Id.*

<sup>28</sup> See Commission's Application, p. 20, and Annexes 18, 25 and 27.

<sup>29</sup> Commission's Application, p. 20.

whatsoever.<sup>30</sup> In 1995, the National Parliament adopted a motion urging the authorities to undertake an immediate investigation of the attack on Moiwana Village and other human rights violations committed during the military regime.<sup>31</sup> The petitioners followed this motion with further efforts to insist on investigation, including a written request filed with the President of the Court of Justice of Suriname. The response to these efforts was a request for information directed by the President of the Court to the Procurator General. The Procurator General never responded and no further action was taken.<sup>32</sup>

While many years have passed since the attack on Moiwana Village, the survivors and the families of those killed have not received justice. While the State itself indicates having initiated various efforts toward investigation, none has been brought to an effective conclusion. No one has been brought to justice, and those affected by the attack have received no reparation. The State itself essentially acknowledges in its Answer to the Application that conditions were not in place in Suriname to ensure due judicial protection and guarantees for those affected by the attack.

The acts and omissions described have all taken place subsequent to Suriname's accession to the American Convention and acceptance of the jurisdiction of the Honorable Court. The general principles of international law and the law and practice of the supervisory organs in the area of human rights indicate that the fact that a claim originates in relation to a circumstance prior to the acceptance of contentious jurisdiction does not operate to invalidate the exercise of such jurisdiction once in effect over related acts and omissions that occur subsequent to such acceptance. States are responsible for their acts and omissions relating to rights guaranteed by the Convention after the date of ratification, even where those acts and omissions are extensions of previously existing situations.<sup>33</sup> The Genie,<sup>34</sup> Blake and Cantos cases may be cited in the inter-American system, along with rapidly expanding line of cases in the European human rights system, as well as examples such as the Lovelace and other cases before the UN Human Rights Committee.

While the obligation to provide judicial protection and guarantees in the present case is necessarily related to violations of the rights to life and personal integrity, among others – violations which are beyond the scope of the temporal application of the Convention and jurisdiction of the Honorable Court – the obligations under Articles 25, 8 and 1(1) of the Convention stand as independent requirements for the State.

The scope of Article 62 of the Convention includes jurisdiction *ratione temporis* concerning acts and omissions that are continuing in nature and have effects subsequent to a state's acceptance of the Court's contentious jurisdiction, even where the incidents giving rise to the continuing events or effects occurred prior to that acceptance of jurisdiction.<sup>35</sup>

<sup>30</sup> Letters from Moiwana '86 to the Procurator General of Suriname, dated May 24, June 28 and August 23, 1993, Application of the Commission, Annex 24.

<sup>31</sup> Parliamentary Motion, Application of the Commission, Annex 23.

<sup>32</sup> See letters from the President of the Court of Justice of Suriname, Application of the Commission, Annex 26.

<sup>33</sup> See Eur. Ct. H.R., Yagci and Sargin, *supra*; Almeida Garrett, Mascarenhas Falcao and others v. Portugal, Judgement of 1 Nov. 2000, para. 43.

<sup>34</sup> The Honorable Court indicated in the Genie Case, for example, that Nicholas Blake's disappearance marked "the beginning of a continuing situation" so that it would examine and pronounce upon the "actions and effects subsequent" to Guatemala's acceptance of its competence. I/A Court H.R., Blake Case, Preliminary Objections, *supra*, para. 67.

<sup>35</sup> I/A Court H.R., Blake Case, Preliminary Objections, *supra*, paras. 39-40 and 46. See *similarly* Eur. Court H.R., Papamichalopoulos et al. v. Greece, June 24, 1993, Ser. A N° 260-B, pp. 69-70, paras. 40, 45-46.

The denial of justice presented by the Commission in this Application is continuing in nature and has had effects after Suriname's accession to the American Convention and its acceptance of the Honorable Court's contentious jurisdiction. The Court is therefore properly seized of jurisdiction in this matter.

As the petitioners have characterized it, the essence of the present case is the ongoing failure of the State to do justice:

[T]he State has at no time conducted a serious investigation of the massacre; it has not acted to determine the responsibility or liability of the intellectual authors and others involved in the massacre; it has not taken any steps to prosecute and punish those responsible; nor has it assessed or provided any form of reparations to the victims of the massacre or their next of kin and dependents. As with other unresolved human rights violations from the military era, the intellectual authors and perpetrators of the massacre enjoy complete impunity.<sup>36</sup>

The denial of justice and resulting impunity in this case remain very present concerns not just for the petitioners, but for Surinamese society and for the international community as well. Both the United Nations Human Rights Committee<sup>37</sup> and the United Nations Committee on the Elimination of All Forms of Racial Discrimination<sup>38</sup> recently examined the situation of human rights in Suriname. Both bodies highlighted the pressing need for the attack and killings at Moiwana Village to be duly investigated so that those responsible would be prosecuted and punished, and those affected would receive just reparation.

**B. Response to the second objection: Having filed no exceptions to admissibility at the permissible procedural opportunity, the State must be deemed estopped from doing so extemporaneously.**

In its Answer to the Application, the State argues that the petition concerning the Case of Moiwana Village should never have been admitted by the Commission because "remedies under domestic law have not been exhausted."<sup>39</sup> In this regard, the State presents two grounds. As a preliminary matter, the State maintains that the Commission erred when it applied the terms of Article 46 of the American Convention in its analysis of the admissibility of the petition, because the Convention was not applicable to the petition. The State then argues that the petition should not have been deemed admissible because the petitioners failed to invoke and exhaust remedies under domestic law in accordance with general principles of international law.

<sup>36</sup> Statement of the Petitioners, Application, Annex 1, para. 9.

<sup>37</sup> See "Concluding observations of the Human Rights Committee - Suriname, CCPR/CO/80/SUR, 80th session, Human Rights Committee, [unedited version], para. 7; UN Human Rights Committee, Press Release HR/CT/648, "Human Rights Committee Begins Review of Suriname's Report, Hearing of 'Steady Progress' In Investigation of Violations under Previous Regime: But Committee Experts Concerned at Lack of Concrete Results Regarding Murder Investigations," 18 March 2004, particularly the introductory section, and the summary of the observations of Experts Rivas Posada, Solari-Yrigoyen and Ando; Press Release HR/CT/649, 19 March 2004, particularly the observations of Expert Solari-Yrigoyen; Second Periodic Report - Suriname, CCPR/C/SUR/2003/2, 4 July 2003, paras. 132 - 33, 136-37.

<sup>38</sup> "Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding observations of the UN Committee on the Elimination of Racial Discrimination, -- Suriname," CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 20,

<sup>39</sup> State's Answer to the Application, p. 37; see generally, pages 37-47.

In the present section, the Commission indicates that the preliminary point raised by the State with respect to the Application of Article 46 of the American Convention lacks any validity. As to the second point, concerning the requirements of that Article, the Commission emphasizes that the State filed no exceptions to the admissibility of the present case during the admissibility stage, and must be deemed estopped from raising such exceptions before the Honorable Court. For the sake of providing a comprehensive response, and given the linkage between the impossibility of exhausting domestic remedies and the denial of justice that lies at the heart of the Case of Molwana Village, the Commission then addresses the State's arguments concerning the requirement of exhaustion of remedies.

- 1. The Commission acted in conformity with the applicable norms, including Article 46 of the American Convention, in analyzing the admissibility of the claims presented in Case 11.821.**

The State alleges that the Commission erred in admitting the present case pursuant to an analysis under the terms of Article 46 of the American Convention. The Commission considers that this argument lacks any basis in law. The Commission properly applied the requirements set forth in Article 46 in determining the admissibility of the claims under the American Convention presently placed before the Honorable Court.

It must be underlined that the Commission examined the admissibility of the present case in the absence of any State response to its multiple requests for information. In its Admissibility Report N° 26/00, the Commission expressly indicated that it was addressing the claims in two segments, corresponding, on the one hand, to claims cognizable under the American Declaration of the Rights and Duties of Man, and, on the other, to claims cognizable under the American Convention.<sup>40</sup> In its Report, the Commission reviewed and affirmed its competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*; determined that the requirement that domestic remedies be exhausted was excused, taking into account the absence of arguments to the contrary; that the petition was timely filed; and that it did not duplicate a matter previously examined.

With respect to the requirement of exhaustion of domestic remedies more specifically, the Commission cited the terms of Article 46 of the American Convention in determining that the petitioners had alleged that domestic remedies were unavailable and ineffective, and that the State had never controverted those claims. Given that the Commission had determined that a number of the claims raised in the petition fell within the temporal application of the American Convention, the Commission was not only authorized but required to apply the terms of Article 46 of the Convention in analyzing the admissibility of those claims. It must be emphasized that it is only the claims admitted and later examined under the terms of the American Convention that are submitted before the Honorable Court.

The State suggests that the present case should never have been admitted because the requirement that domestic remedies be invoked and exhausted was not properly applied with respect to the claims under the American Declaration. Insofar as those claims are concerned – claims not at issue before the Honorable Court – the Commission first notes that the State has provided no argumentation as to why the point it raises in this regard would affect the admissibility of the claims under the American Convention that are presently pending before the Honorable Court. Accordingly, the Commission considers that this point should be dismissed as irrelevant.

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<sup>40</sup> See Admissibility Report N° 26/00, particularly paras. 1, 16-18.

In any case, in order to be comprehensive in its observations, the Commission wishes to note that its admissibility analysis complied with the applicable norms. Article 20 of the Commission's Statute requires that, when examining the admissibility of petitions filed against a member state not Party to the Convention, the Commission verify whether domestic legal remedies have been duly invoked and applied. Article 52 of the Regulations applicable in 2000 when the Admissibility Report was adopted specifies that the procedure to be followed for such petitions is that set forth in Articles 25-30 and 32-43 of those Regulations. Among those is Article 37 of the then-applicable Regulations, setting forth the requirement that, in order for a petition to be admitted, domestic remedies have been exhausted, or that the grounds for an exception have been demonstrated. The requirements and the exceptions set forth in Article 37 of the Regulations repeat precisely the terms of Article 46(1)(a) and 46(2)(a)-(c) of the American Convention. The Commission's analysis of the terms under the Convention necessarily covered the same elements as set forth in the Regulations with respect to the Declaration.

Accordingly, the legal basis for the Commission's analysis of the exceptions to the requirement of exhaustion of remedies was clear. Its analysis was equally valid under the terms of Article 46 of the Convention and the textually identical terms of Article 37 of the Commission's Regulations. The State has provided no argumentation to the contrary.

**2. The State waived its right to file objections to admissibility before the Commission, and must be deemed estopped from doing so before the Honorable Court.**

While the State filed no challenges to the admissibility of this case during the relevant procedural stage for doing so, it now comes before the Honorable Court seeking to change its position. Its Answer to the Application includes a series of arguments to the effect that the petitioners failed to invoke and exhaust the applicable remedies under Surinamese law. The Commission considers that the State had the full opportunity to file objections to admissibility at the permissible procedural opportunity. Having declined to exercise that defense in a timely manner, the State waived its right to interpose it, and must be deemed estopped from doing so extemporaneously.

Article 46(1)(a) of the Convention establishes that, in order for a petition or communication presented to the Inter-American Commission to be admitted, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with the general principles of international law. In accordance with these principles and international practice, the rule concerning prior exhaustion of remedies under domestic law is designed for the benefit of the State, "for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."<sup>41</sup>

The requirement has accordingly been considered a means of defense, and as such, may be waived, either expressly or implicitly, by the State having the right to invoke it.<sup>42</sup> "A waiver, once effected, is irrevocable."<sup>43</sup> Once a State has waived its right to interpose this

<sup>41</sup> I/A Court H.R., *In the matter of Viviana Gallardo et al.* Series A No.G 101/81, para. 26.

<sup>42</sup> See *id.*; *Velasquez Rodríguez Case*, Judgment of June 26, 1987, para. 88; *Case of Neira Alegría et al.*, Judgment of December 11, 1991, Ser. C N° 13, para. 30; *Castillo Páez Case, Preliminary Objections*, Judgment of January 30, 1996, Ser. C N° 24, para. 40; *Loayza Tamayo Case, Preliminary Objections*, Judgment of January 31, 1996, Ser. C N° 25, para. 40; *The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections*, Judgment of February 1, 2000, Series C No. 66, para. 53.

<sup>43</sup> I/A Court H.R., *In the matter of Viviana Gallardo et al.*, *supra*, para. 26, citing Eur. Court H.R., *De Wilde, Ooms and Versyp Cases ("Vagrancy" Cases)*, judgment of 18th June 1971.

defense, it is estopped from asserting it at a later point.<sup>44</sup> The Honorable Court has further stated that because the issue concerns the requirements for the admissibility of a complaint before the Inter-American Commission, it is up to the latter "in the first place to pass on the matter."<sup>45</sup> Where a State attempts to argue the non-fulfillment of this requirement before the Honorable Court when it could have done so before the Commission but did not, the objection is untimely.<sup>46</sup>

As the Honorable Court has summarized:

... of the generally recognized principles of international law referred to in the rule on exhaustion of domestic remedies, the foremost is that the State defendant may expressly or tacitly waive invocation of this rule (*Castillo Páez Case, Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24, para. 40; *Loayza Tamayo Case, Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25, para. 40). Secondly, in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceeding or, to the contrary, it will be presumed that the interested State has waived its use tacitly (*Castillo Páez Case, Preliminary Objections*. *Ibid*, para. 40; *Loayza Tamayo Case, Preliminary Objections*. *Ibid*, para. 40; *Castillo Petruzzi Case, Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41, para. 56). Thirdly, the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness (*Castillo Páez Case, Preliminary Objections*. *Ibid*, para. 40; *Loayza Tamayo Case, Preliminary Objections*. *Ibid*, para. 40; *Cantoral Benavides Case, Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 31; *Durand and Ugarte Case, Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 33).<sup>47</sup>

In the present case, the State had multiple opportunities to present information and/or objections to admissibility prior to the adoption of Admissibility Report N° 26/00, and declined to do so. As the case file before the Commission reflects, prior to adopting Admissibility Report N° 26/00, the Commission addressed the State on three occasions for the purpose of requesting its response to the petition. The Commission transmitted the pertinent parts of the petition to the State by note of October 30, 1997, with a request for the presentation of all information on both the allegations and the issue of exhaustion of domestic remedies within 90 days. The Commission reiterated that initial request by notes of June 2, 1998 and February 25, 1999. In both of those notes, the Commission expressly informed the State that its failure to respond could result in the Application of the presumption provided for in Article 42 of its then-applicable Regulations, allowing the

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<sup>44</sup> The principle of estoppel prevents a party from adopting a position beneficial to it or detrimental to the other party, and then subsequently adopting the contrary position. I/A Court H.R., *Neira Alegria Case*, *supra*, para. 29.

<sup>45</sup> I/A Court H.R., *In the matter of Viviana Gallardo et al.*, *supra*, para. 27.

<sup>46</sup> I/A Court H.R., *Gangaram Panday Case, Preliminary Objections*, Judgment of December 4, 1991, Ser. C No. 12, para. 40.

<sup>47</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66, para. 53.

Commission to presume that facts denounced to be true in the absence of information leading to a different conclusion. The State declined to respond in any way.

The silence of the State was necessarily taken into account by the Commission in its Admissibility Report 26/00 as an implicit renunciation of its right to interpose objections on this ground:

In the instant case, it emerges from what is documented by the petitioner, and not challenged by the State, that, in practice, the petitioner was denied access to those remedies; that the authorities in charge of pressing forward proceedings failed even to institute them, much less complete them; that the initial investigations, the basis for possible remedies, were obstructed by agents of the State; and that an Amnesty Law was interpreted by the authorities as relieving them of the obligation to prosecute those responsible.

....

Petitioners invoked in their original complaint the exception to the requirement of exhaustion of domestic remedies, based on the inexistence of an effective remedy and in unjustified delay in the proceedings. Consequently, the burden of proof to deny this statement by the petitioners becomes a responsibility of the State. By not answering the repeated requests for comments to the complaint, the State has not controvert[ed] these allegations and [has] renounced its right to oppose this exception.<sup>48</sup>

In fact, as the State itself acknowledges, the first time it questioned the admissibility of the case was not until after the Commission had notified it of the adoption of Merits Report 35/02.<sup>49</sup>

In the present case, given the silence of the State on issues of admissibility until after the written proceedings before the Commission were completed with the adoption of the Merits Report, there can be no doubt that the State waived its right to assert this defense. Although the State argues that its May 2002 presentation of arguments in this regard was timely, and did not imply any waiver,<sup>50</sup> given the silence of the State throughout the proceedings, the Commission had no basis for considering any objections to admissibility during that phase of the proceedings. Accordingly, having declined to present any such arguments at a point when they could have been responded to by the petitioners and taken into consideration by the Commission during the admissibility phase, the State must be deemed estopped from invoking this defense extemporaneously.

3. **Were the Honorable Court to consider any issues relative to domestic remedies, the Commission emphasizes that it was precisely because remedies at the national level were unavailable and ineffective that those affected by the attack on Molwana Village have been denied justice.**

In its Answer to the Application, the State argues that its domestic legislation provides for both civil and criminal remedies that could apply to the claims at issue, all of

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<sup>48</sup> IACHR, Admissibility Report 26/00, paras. 22, 24.

<sup>49</sup> See State's Answer to the Application, p. 37.

<sup>50</sup> State's Answer to the Application, p. 39.



which would be adequate, effective and compatible with the due process requirements of the American Convention.<sup>51</sup>

In response, the Commission underlines that the facts of the case speak for themselves. The attack on Moiwana Village occurred in 1986. The State acceded to the American Convention and accepted the contentious jurisdiction of the Honorable Court in 1987. Notwithstanding the passage of over 17 years since the attack and 16 years since the entry into force of the Convention and the Honorable Court's jurisdiction, no one has been prosecuted or punished, and the survivors and families of those killed have yet to obtain an official accounting of what happened or any form of reparation. The survivors and families have engaged in a long and fruitless struggle for justice, and have been denied at every turn. In its Admissibility Report, the Commission recounted what the proceedings demonstrated: that remedies had been denied, that State agents had obstructed any efforts toward investigation, that those responsible for moving judicial processes forward had failed to initiate, much less complete them, and that the Amnesty Law had been interpreted by the authorities as relieving them of their responsibility to prosecute and punish the perpetrators. These findings were further developed in the Commission's Report on the Merits. While the State has pointed to a series of theoretically available remedies, it has not provided any arguments of law or fact to rebut those findings.

**a. Domestic remedies relative to the present case have proven inadequate and ineffective**

When a State alleges that domestic remedies have not been exhausted, it has the burden of showing which domestic remedies remain to be exhausted that are both adequate and effective.<sup>52</sup> As the Honorable Court has indicated:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable (*Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4, paras. 63-64; Godínez Cruz Case, Judgment of January 20, 1989, Series C No. 5, paras. 66-67; Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989, Series C No. 6, paras. 87-88*).

The Court has indicated that an effective remedy is one that is capable of producing the result for which it was designed.<sup>53</sup>

In its Answer to the Application, the State argues that the Surinamese legal system provides both civil and criminal remedies, and that civil remedies would have been the most effective for obtaining compensation. The State indicates that the petitioners failed to invoke this effective remedy, opting instead to pursue criminal proceedings.<sup>54</sup>

<sup>51</sup> State's Answer to the Application, p. 40.

<sup>52</sup> See, e.g., I/A Court H.R., Cantoral Benavides Case, Preliminary Objections, Judgment of September 3, 1998, Ser. C No. 40, para. 31; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Ser. C No. 25, para. 40; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996m, Ser. C No. 24, para. 40.

<sup>53</sup> I/A Court H.R., *Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4, para. 66*.

<sup>54</sup> State's Answer to the Application, p. 41.

The Commission first wishes to underline that the purpose of the requirement that claimants exhaust domestic remedies is not to impose unjustified procedural obstacles but to ensure that the State is placed on notice of the claims prior to being convoked before an international mechanism of supervision.<sup>55</sup> When it is not possible for claimants to exhaust such remedies as a matter of fact or law, the requirement is consequently and necessarily excused.

In the present case, the remedy suitable to address the infringement of the rights of those subjected to the attack against Moiwana Village is a criminal investigation designed to identify those responsible, and ensure due prosecution and punishment. This kind of investigation, carried out with due diligence, is an indispensable element for the subsequent determination of adequate reparations.

In the present case, the petitioners attempted to seek criminal investigation and prosecution on numerous occasions. As the Commission indicated in Its Application, the nongovernmental organization Moiwana '86, acting on behalf of survivors and the families of those killed, made repeated attempts to insist that the authorities conduct a serious investigation of the attack leading to prosecution and punishment of those responsible, but these produced no effective results. The only concrete steps to initiate a criminal investigation were taken in 1989, when the civilian police began work on the case. That nascent effort was effectively terminated as the result of illegal actions by military authorities, and suspended pursuant to the murder of the police inspector who had been in charge of the investigation.

The petitioners renewed efforts to seek clarification, prosecution and punishment in 1993, after the discovery of human remains near the site of Moiwana Village. The petitioners were instrumental in bringing the discovery to the attention of the competent authorities, and filed written requests for action before the Procurator General on three different occasions.<sup>56</sup> While the authorities confirmed that the remains found at the site corresponded to 5-7 adults and 2-3 children, they took no steps to proceed with an investigation.<sup>57</sup>

In December of 1995, the Surinamese Parliament adopted a resolution requesting that the competent authorities immediately initiate an investigation into the attack on Moiwana Village and other human rights violations committed during the military regime.<sup>58</sup> The petitioners then attempted to press for action at the domestic level by filing a request for investigation and prosecution with the President of the Supreme Court in 1996.<sup>59</sup> Under Surinamese law, when a private party makes a request found to be justified, the responsible authorities are required to ask the Attorney General to undertake an investigation into the matter in question.<sup>60</sup> While the President of the Supreme Court informed the Petitioners that he had requested information from the Attorney General as well as copies of any police

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<sup>55</sup> See I/A Court H.R., Decision in the Matter of Viviana Gallardo et al., para. 26.

<sup>56</sup> Application, Annex 24 (Letters from Moiwana '86 to the Procurator General dated May 24, June 26 and August 23, 1993).

<sup>57</sup> See Application, Annex 25 ("The Moiwana - Graves").

<sup>58</sup> See Application, Annex 23 (Motion by the Parliament).

<sup>59</sup> See the letters included as Annex 26 to the Application.

<sup>60</sup> See, e.g. Application, Annex 26 (Letter from the President of the Court of Justice of Suriname to the Procurator General, dated August 21, 1996).

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records on the matter,<sup>61</sup> the only follow-up was his subsequent communication indicating that he had not received any response from the Ministry of Justice.<sup>62</sup> The competent authorities took no substantive action.

The State alleges at one point in its Answer to the Application that the original petitioners "failed to commence criminal proceedings (report an offense)."<sup>63</sup> The State provides no further explanation, and the Commission considers that it has been duly explained and documented that the petitioners repeatedly reported the attack on Moiwana Village as a violation of national criminal law as well as international human rights law, and repeatedly petitioned the competent judicial authorities to open and pursue the corresponding judicial investigation.

In fact, the State acknowledges that conditions were not in place to respond to the need for the investigation, prosecution and punishment of the events at Moiwana. The State confirms that the investigation initiated in 1989 resulted in the arrest of a number of individuals, including at least one who confessed to having killed unarmed women and children at Moiwana Village.<sup>64</sup> "However, on 04 August 1990, Inspector Gooding was found dead on a public road in the city center, while the suspect who had confessed died under strange circumstances."<sup>65</sup> "The position of power held by the former military leaders had not yet ended and the democracy was still not stable."<sup>66</sup> With respect to the Parliamentary motion adopted in 1995 to request an immediate investigation, the State indicates that "[t]he political situation of the State had still not been recovered to such an extent that an independent and impartial investigation of the matter could be held."<sup>67</sup> Since that time,

a few attempts have been made by the Public Prosecutions Department to carry out a criminal investigation, both into the events at Moiwana in 1986 and into the murder of Inspector Gooding. This was done under rather difficult circumstances for Suriname. The democratization process was going on, and there was still no climate to carry out as good and objective a criminal investigation as possible.<sup>68</sup>

The State has not only failed to provide justice, its agents have affirmatively obstructed justice in this case. When the civilian police attempted in 1989 to initiate an investigation of the attack on Moiwana Village in 1989, they arrested a number of soldiers implicated in the facts. Reports indicate that Commander-in-Chief Bouterse immediately directed a squad of some 30 military police to besiege the civilian police installation and free the soldiers.<sup>69</sup> Bouterse was widely reported as observing that military operations were not

<sup>61</sup> *Id.*

<sup>62</sup> Annex 26 (Letters from the President of the Court of Justice of Suriname to the Director of Moiwana '86 dated October 2, 1996 and February 26, 1997).

<sup>63</sup> State's Answer to the Application, p. 70.

<sup>64</sup> See generally, State's Answer to the Application, p. 70. See more specifically Annex 20, containing statements of Frits Cornelis Moesel, at pp. 22-29.

<sup>65</sup> State's Answer to the Application, p. 71.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See Application, p. 20, and Annexes 18, 25 and 27.

subject to investigation.<sup>70</sup> As noted, the Police inspector in charge of the investigation, Herman E. Gooding, was killed in 1990, under circumstances that have never been duly investigated or clarified. The investigation into the attack on Moiwana Village was then suspended.<sup>71</sup> The adoption of the Amnesty Law in 1992, irrespective of its specific terms, was widely interpreted as a further indication that crimes such as the attack on Moiwana Village were to be left in impunity,<sup>72</sup> and in fact there was no further investigation.

One of the points raised by the State in its Answer to the Application that requires mention with respect to the requirement of exhaustion of remedies, and would require further review at the eventual merits stage, is the relation of the Amnesty Law to the denial of justice presented in the instant case. Without entering into issues for the merits stage, the Commission wishes to note the ambiguity of the State's position in this regard. On the one hand, the State defends the adoption of the Amnesty Law by suggesting that it served what it characterizes as a legitimate end, its scope was limited, and the drafters "did not envisage impunity of possible perpetrators of events in the Maroon village of Moiwana."<sup>73</sup> (The State's suggestion that the adoption of other amnesty laws in the region validates that passed in Suriname fails to note the extensive jurisprudence of the Commission and the Honorable Court interpreting the incompatibility of a number of those same provisions with inter-American human rights norms.<sup>74</sup>) The State then points out that its Amnesty Law provides an exception for crimes against humanity, but that this exception would not appear to apply to the Case of Moiwana Village.<sup>75</sup> The Commission considers that the ambiguity of the State's Answer in this regard reflects the ambiguity of the Amnesty law itself, which had the effect in practice of indicating that the violations of the regime were to be left in impunity.

Independently of the petitioners' efforts in this regard, the Commission wishes to note that, when a crime is committed that is subject to prosecution at the state's own initiative, *de oficio*, the state is obliged to initiate the criminal justice process and follow it through to its conclusion. In such cases, this is the appropriate way to clarify the facts, prosecute those responsible, and establish the corresponding criminal sanctions, in addition to making possible other forms of pecuniary reparation.<sup>76</sup> In the instant case, the State was in possession of or could obtain access to relevant information and evidence; it is the State that has the jurisdiction and faculties to carry out an effective criminal investigation. The facts at issue in the present case involve the violation of rights which, under domestic law, are crimes subject to prosecution *de oficio*. It is therefore the criminal justice process, pushed forward by the State, that should be considered for the purposes of determining the admissibility of the claims. In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due

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<sup>70</sup> *Id.*, annexes 18 and 25.

<sup>71</sup> Application, p. 20.

<sup>72</sup> See generally, Application, p. 29.

<sup>73</sup> State's Answer to the Application, p. 75.

<sup>74</sup> *Id.*, p. 76.

<sup>75</sup> *Id.*, pp. 76-77. Further contributing to the ambiguity of the State's position is that it suggests that the Amnesty Law would in any case have no effect on civil liability.

<sup>76</sup> See, IACHR, Report N° 72/03, Admissibility, Gabriel Egisto Santillán, Case 12.159, Argentina, Oct. 22, 2003, para. 53, citing, Report N° 52/97, Case 11.218, Argues Sequeira Mangas, Nicaragua, paragraphs 96 and 97; Report No. 57/00, Case 12.050, La Granja - Ituango, Colombia, October 2, 2000, paragraph 40.

diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the Convention.<sup>77</sup>

What the petitioners expressed in their initial petition before the Commission remains equally valid as of the date of the present observations:

As a consequence of Suriname's failure to investigate the Moiwana massacre and prosecute those responsible, the victims and their next of kin have been and continue to be denied access to judicial remedies of fundamental importance to the enjoyment of their right to redress for human rights violations. [Citations omitted.] Moreover, the inaction of the Government of Suriname in this regard "eliminates perhaps the single most effective means of enforcing such rights, the trial and punishment of offenders."<sup>78</sup>

The State affirms in its Answer to the Application that the petitioners should have pursued a civil action for damages arising from a wrongful act, and that this was necessary to have exhausted the relevant domestic remedies. The Commission observes that such an action might be appropriate for a private or civil wrong between two parties, or in certain cases for the breach of a non-contractual obligation by the State. It does not represent an adequate and effective remedy to investigate and obtain the prosecution and punishment of actions that constitute serious crimes under the domestic law of Suriname.

The State points to two cases in its Answer to the Application to support its contentions: the Martosemito Case before the Surinamese courts, and the Africa/Move Case reviewed a number of years ago by the Commission. The Commission finds that neither supports the arguments of the State.

The Martosemito Case concerned a request for an injunction to restore the personal liberty of Mr. Martosemito, who was being held in preventive detention at the time the matter was filed. The presiding court ordered his release, as well as the imposition of a penalty should the State fail to comply in a timely manner. Because the State failed to comply, it was eventually required to pay the penalty established.<sup>79</sup> The nature of an injunctive action is to require a person or entity to take a particular action or undo a particular wrong. As in the present case, it is generally intended to be brief and rapid. What the petitioners are seeking in the instant case is quite different. They are seeking an investigation adequate to clarify facts and criminal responsibility. It is the State that has the information, or the access to information crucial to the clarification of the attack on Moiwana Village, and the State that holds the monopoly on the powers necessary to carry out a full criminal investigation. An adequate criminal investigation designed to establish criminal responsibility is also a crucial basis for seeking other forms of reparation.

Nor does the Africa/Move Case support the State's propositions. In the first place, in contrast to the present case, the State in question actively controverted the admissibility of the case during its first phases. Further, in the Africa/Move Case, the petitioner had exhausted remedies against her criminal conviction, had been unsuccessful in seeking the criminal prosecution of state agents she alleged were responsible for violations, and had

<sup>77</sup> See, for example, IACHR, Report 72/03, *supra*, para. 54; Report 72/01, Case 11.804, Juan Angel Greco, Argentina, Oct. 10, 2001 (Admissibility), para. 51; Report N° 62/00, Case 11.727, *Hernando Osorio Correa*, Colombia (Admissibility), 2000 Annual Report of the IACHR, paragraph 24.

<sup>78</sup> Petition dated June 27, 1997, section IV, citing with respect to the requirement for criminal prosecution Report 26/92, Case No. 10.287 (El Salvador), IACHR Annual Report 1992, at 86.

<sup>79</sup> State's Answer to the Application, p. 44.

invoked and was actively pursuing remedies under the federal civil rights legislation. The petitioner in that case presented no concrete allegations as to obstacles in her capacity to invoke and exhaust the latter remedies against violations of her constitutionally protected rights. The Commission's determination reflected that, given that the petitioner had invoked and pursued those remedies, her case was not yet admissible. While the scope of the remedy at issue in the Africa/Move Case was the protection of fundamental rights guaranteed under both federal statutory law and the national constitution, the remedy suggested by the State in the present case is merely an action for damages for a non-contractual civil wrong. (There are a number of other distinctions between that case and the one presently under study, among which is that the decision in that case as to whether to subject the state agents to criminal prosecution had been made following multiple levels of criminal investigation, and was made by a grand jury. In the present case, the State has yet to even develop an effective criminal investigation designed to establish criminal responsibility.)

Further, the Commission wishes to underline that the remedies that should have been developed by the State through its criminal justice system have been subject to evident undue delay. As the Honorable Court has reiterated, "[u]njustified delay is an acknowledged exception to prior exhaustion of domestic remedies."<sup>80</sup> "Under international jurisdiction what is essential is to maintain the necessary conditions to avoid diminishing or creating an imbalance in the procedural rights of the parties, and to attain the aims for which the various procedures were designed."<sup>81</sup> As the Commission indicated in its Merits Report, notwithstanding the passage of over 16 years since the State acceded to the American Convention and accepted the contentious jurisdiction of the Honorable Court, no one had been prosecuted or punished for the human rights violations at issue, nor had the victims received any form of reparation. The victims have been denied effective judicial protection and guarantees, and it is precisely this delay and denial of justice that form the basis for the Commission's Application.

In the present case, it is abundantly clear that the exercise of international jurisdiction has in no way deprived the State of its due opportunity to redress the wrongs in question through its domestic remedies. As the Honorable Court has reiterated: "The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective."<sup>82</sup> In addition to the findings of the Inter-American Commission in this regard, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination have expressed grave concern with respect to the inefficacy of domestic remedies in response to the attack on Moiwana Village, and the impunity in which it remains.<sup>83</sup> In its concluding observations just issued in March of 2004, the UN Human Rights Committee specifically indicated that it is:

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<sup>80</sup> I/A Court H.R., Juan Humberto Sánchez Case, Judgment of June 7, 2003, para. In that case, the Honorable Court confirmed a situation of undue delay on the basis that criminal proceedings had been initiated in 1992, but remained pending absent concrete results at the time of its determination.

<sup>81</sup> *Id.*, citing *Baena Ricardo et al. Case. Preliminary Objections*, Judgment of November 18, 1999, Series C No. 61, para. 41; *Case of the "White Van" (Paniagua Morales et al.). Preliminary Objections*, Judgment of January 25, 1996, Series C No. 23, para. 42; and *Gangaram Pandey Case. Preliminary Objections*, Judgment of December 4, 1991, Series C No. 12, para. 18.

<sup>82</sup> I/A Court H.R., *Case of Velázquez Rodríguez, Preliminary Objections*, *supra*, para. 93; *Case of Fairén Garbí and Solís Corrales, Preliminary Objections*, *supra*, para. 92; *Case of Godínez Cruz, Preliminary Objections*, *supra*, para. 95.

<sup>83</sup> "Concluding observations of the Human Rights Committee - Suriname, CCPR/CO/80/SUR, 80th session, Human Rights Committee, [unedited version], para. 7; "Concluding observations of the Committee on the Elimination of Racial Discrimination," CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 20.

concerned by the continued impunity of those responsible for human rights violations committed during the period of military rule. In particular, investigations into the December 1982 killings and the 1986 Moiwana massacre remain pending and have not yet produced concrete results. The information supplied by the delegation that all such cases are still being investigated is disturbing, especially given the lapse of time since their occurrence. The Committee further considers that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3, of the Covenant.<sup>64</sup>

Impunity for human rights violations during the military regime in Suriname was a key point in the Committee's considerations of the present situation of human rights in Suriname. Notwithstanding the State's general assurances that it was moving forward with investigations, the Committee emphasized the absence of any concrete advances or results, not only with respect to the attack on Moiwana Village, but also with respect to the murder of Inspector Herman Gooding, the police official who had attempted to initiate a criminal investigation of the attack.<sup>65</sup>

**C. Response to the third objection: The present case was timely filed before the Honorable Court in accordance with the applicable norms.**

In its Answer to the Application, the State alleges that the "Commission did not submit the petition to the Court in accordance with the Convention provisions that are applicable in this matter."<sup>66</sup> In addition to maintaining generally that Suriname was not subject to the terms of the American Convention in connection with the present case, the State alleges that the case is inadmissible because the Commission submitted it to the Honorable Court extemporaneously.<sup>67</sup> The State indicates that the Commission issued its Merits Report N<sup>o</sup> 35/02 on February 28, 2002, but did not refer the case to the Honorable Court until December 20, 2002.

The Commission, for its part, confirms that the case was submitted in accordance with the applicable norms and practices. While the State requested extensions of time in which to pursue a possible friendly settlement and investigate the violations at issue, and the Commission granted those requests in accordance with the terms in which they were formulated, the State now attempts to come before the Honorable Court claiming that the benefit of additional time it requested and received should operate to deny the admissibility of the case. The State cannot request and accept a benefit and then invoke it as a procedural violation.

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<sup>64</sup> "Concluding observations of the Human Rights Committee - Suriname, CCPR/CO/80/SUR, 80th session, Human Rights Committee, [unedited version], para. 7.

<sup>65</sup> UN Human Rights Committee, Press Release HR/CT/648, "Human Rights Committee Begins Review of Suriname's Report, Hearing of 'Steady Progress' in Investigation of Violations under Previous Regime: But Committee Experts Concerned at Lack of Concrete Results Regarding Murder Investigations," 18 March 2004, particularly the introductory section, and the summary of the observations of Experts Rivas Posada, Solari-Yrigoyen and Ando; Press Release HR/CT/649, 19 March 2004, particularly the observations of Expert Solari-Yrigoyen.

<sup>66</sup> State's Answer to the Application, p. 48.

<sup>67</sup> See *id.* pp. 48-52.

In terms of processing, the Commission recounts that Merits Report N° 35/02 was adopted on February 28, 2002, and transmitted to the State by a note dated March 21, 2002. The State was requested to present information on the measures taken to comply with the recommendations set forth within two months from the date of the note. On May 20, 2002, the State presented a response challenging the admissibility of the case as well as the Commission's findings of fact and law. The State reiterated its position in a note dated June 14, 2002. By note of June 20, 2002, the State addressed the Commission to make the following request:

If the Commission plans to present the case no. 11.821 to the Court with respect to the alleged violations of Articles 1, 8 and 25 of the Convention, the Government of Suriname requests a two-month suspension of the time period set forth in Article 51(1) with regard only to the alleged violations of Articles 1, 8 and 25 of the Convention to achieve certain suggestions made by your honorable Commission in your communication Report no. 35/02.

If applicable, the Convention, in Article 51(1) provides for a three-month time period for the Commission to present the Application to the Court, which is calculated from the date of transmittal of the Article 50 report of the Commission to the State concerned. This three-month period is scheduled to expire on June 21, 2002, but may be suspended in order to reach a settlement of the case. The two-month suspension is requested to begin today, June 20, 2002.

Reserving its rights, the State of Suriname expressly recognizes that if the suspension is granted, that once the two-month suspension has expired and no settlement of the case has been reached, the Commission may decide to submit the case to the Inter-American Court.<sup>68</sup>

The Commission granted the State an additional two months to pursue a possible settlement according to the following terms:

Report no. 35/02 was forwarded by the Commission to the State of Suriname on March 21, 2002. The granting of the two-month suspension revises the calculation of the time period as established in Article 51(1) of the American Convention and will suspend that period from June 20, 2002 until August 20, 2002. As Mr. Punwasi pointed out, "the State of Suriname expressly recognizes that if the suspension is granted, that once the two-month suspension has expired and no settlement of the case has been reached, the Commission may decide to submit the case to the Inter-American Court." Should the Commission eventually decide to submit the case to the Court, the case will be submitted on August 21, 2002.

By note of August 16, 2002, the State requested an additional four months. While the State indicated that it maintained its position questioning the legal validity of Merits Report N° 35/02, it requested the additional time in order to pursue its investigation into the facts denounced, and in so doing expected to be able to implement certain indications given by the Commission. The State reported that it had met with the board of the petitioner Moiwana '86, and preparations for a fact-finding committee were underway as approved by

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<sup>68</sup> Letter to the Executive Secretary of the IACHR, Santiago Canton, signed by the Acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, June 20, 2002, Answer to the Application, Annex 9.



the President of the Republic.<sup>89</sup> By means of a note dated August 20, 2002, the Commission granted the State the additional four months it had requested in order to carry out a serious and detailed investigation of the matter, with the extension stated to expire on December 20, 2002.

As indicated, the State invoked two principal objectives as the basis for its requests for additional time: its commitment to investigate the attack on Moiwana Village, and its interest in pursuing a possible friendly settlement of the matter. The Commission considered that both were reasonable and justified approaches to resolving the violations it had established in its Merits Report N° 35/02, particularly given that due investigation was one of the key recommendations issued in that report. In the absence of substantive developments with respect to the measures of investigation promised by the State, or with respect to a possible settlement under the terms of the American Convention, the Commission presented its Application in the Case of Moiwana Village on December 20, 2002. It may also be noted that, in both instances in which the Commission granted the requested suspension of the three-month period set forth in Article 51 of the Convention, it duly informed the petitioners that this had been done.

In its communications, the Commission was perfectly clear with the State at all times that it would consider the possibility of presenting the case before the Honorable Court upon the expiration of the requested suspension. The State, for its part, expressly recognized that the Commission maintained the possibility to make that determination. There was no misunderstanding as to the terms of the acceptance of the requests for additional time, or as to the possible effects.

As the Honorable Court has indicated in rejecting preliminary objections filed on this ground, "The extension of the time limit for submission of an Application to the Court does not impair the procedural position of the State when the State itself requests an extension."<sup>90</sup> Where such an extension is requested, it benefits the State by providing it with additional time to resolve that matter prior to being submitted before the Court. Under that circumstance, "neither the State's procedural rights nor its opportunity to provide a remedy were in any way diminished."<sup>91</sup>

As the Honorable Court specified in the Neira Alegria Case, "In accordance with elementary principles of good faith that govern all international relations," a State "cannot invoke the expiration of a time-limit that was extended at its own behest."<sup>92</sup> Moreover, as indicated in the Caballero Delgado and Santana Case, "when a party requests something, even if such a request is based on an inapplicable provision, that party cannot later challenge the basis for its request once it has been complied with."<sup>93</sup> In conclusion, the Commission considers that, as held in previous instances, its "submission of the case cannot

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<sup>89</sup> See Letter to the Executive Secretary of the IACHR, Santiago Canton, signed by the Attorney-General with the High Court of Justice of Suriname, Mr. A. Van der San, August 16, 2002, State's Answer to the Application, Annex 12.

<sup>90</sup> I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No 1, para. 70.

<sup>91</sup> *Id.*

<sup>92</sup> I/A Court H.R., Neira Alegria et al. Case, Preliminary Objections, Judgment of December 11, 1991, Series C No. 13, para. 34.

<sup>93</sup> I/A Court H.R., Caballero Delgado and Santana Case, Preliminary Objections, Judgment of January 21, 1994, Series C No. 17, para. 45.

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be deemed to have been untimely; on the contrary, the matter was submitted within the period granted to the Government at its own request."<sup>94</sup>

**D. Response to the fourth objection: The rights and corresponding obligations dealt with in the Commission's Admissibility and Merits Report were addressed in accordance with the applicable norms and procedures.**

In its Answer to the Application, the State argues that, while the Commission admitted the present case with respect to "certain violations" ... it "concluded in its Report 35/02, that the Republic of Suriname has violated other provisions than those for which the case was admitted."<sup>95</sup> The State further objects that the Commission "makes use of Article XVIII of the Declaration in order to be able to insert Article 8(1) of the Convention," and that the Commission adds violations that were not included by the petitioners in their petition.<sup>96</sup> The State affirms that the Commission's actions in this regard were contrary to the requirements of the individual case system, and to international law.

In response, the Commission first recounts that it admitted the claims concerning the denial of judicial protection and guarantees under Articles 25, 8 and 1(1) of the American Convention in Admissibility Report 26/00. The Commission went on to examine these and other violations in its Merits Report 35/02. It is only the violations established under Articles 25, 8 and 1(1) of the Convention that are before the Honorable Court in the present case. The claims before the Honorable Court were admitted and reviewed by the Commission according to the applicable norms and procedure, and the State had a full opportunity to participate in all stages of the proceedings and respond to the claims raised.

The State has presented no argumentation as to why the formulation of violations established by the Commission under the American Declaration would be relevant with respect to the admissibility of the claims before the Honorable Court under the American Convention. For the sake of presenting a comprehensive response, the Commission nonetheless notes that the fact that a petitioner does not specifically allege a particular violation does not preclude either the Commission or the Court from applying it. The principle of *iura novit curia*, on which both the Commission and Court have long relied, and which is recognized in international jurisprudence more generally, provides that "a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them."<sup>97</sup> The principle is particularly pertinent with respect to claims within the sphere of human rights mechanisms, in which it is neither presumed nor required that petitioners must be versed in law in order to seek redress.

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<sup>94</sup> I/A Court H.R., Neira Alegría et al. Case, supra, para. 34, citing Velásquez Rodríguez Case, Preliminary Objections, supra, para. 72; Fioren Garbí and Solís Corrales Case, Preliminary Objections, supra, para 72; and Godínez Cruz Case, Preliminary Objections, para. 75.

<sup>95</sup> State's Answer to the Application, pp. 66-67.

<sup>96</sup> *Id.* p. 67.

<sup>97</sup> I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, para. 163, citing "Lotus", Judgment No. 9, 1927, P.C.I.J., Series A No. 10, p. 31 and Eur. Court H.R., Handyside Case, Judgment of 7 December 1976, Series A No. 24, para. 41. With respect to the Commission's application of the principle, see generally, Report N° 38/96, Case 10.506, X and Y, Argentina, Oct. 15, 1996, para. 49; Report N° 83/01, Case 11.581, Tarazona et al., Peru, Oct. 10, 2001, para. 34.

The Commission accordingly reaffirms that the present case was processed in accordance with the applicable norms and procedures; there was no conflict with international law; and this objection of the State should accordingly be dismissed as unfounded.

**E. Response to the fifth objection: The Commission processed the present case in full accordance with the applicable norms, and the State had a full opportunity to participate and present its position.**

The State alleges generally in its Answer to the Application that the Commission:

takes its 'proof' and 'additional proof' from a number of attachments which are part of the petition. The State deems these attachments to be pertinent parts of the petition, which are of the utmost importance in deciding the case which was presented to the Commission. However, during the process, the Commission has never provided the State with these pertinent parts, on which pertinent parts it desires to react. Furthermore, some facts are stated in these pertinent parts, which are not entirely based on the truth. The aforementioned has resulted in the State being denied the opportunity to counter untruths or further explain issues that were taken out of context. Due to this procedural incorrectness, the State has been injured in its defense. This invalidates the investigation with regard to what happened in the Maroon village of Moiwana in 1986. This also weakens the general framework of the Convention which the Republic of Suriname has acceded to.

The Commission has attempted to provide comprehensive observations with respect to the preliminary objections invoked by the State. However, it finds itself unable to formulate a full response in the present instance because the objection itself is unclear. First, the Commission does not understand which would be the pertinent parts in reference that were not transmitted to the State. Second, given that the State declined to respond to multiple requests for information, and never controverted either the admissibility or the merits of the claims raised until after the Commission adopted its Merits Report Nº 35/02, the Commission fails to see how its right to defense was compromised.

The Commission notes that it prepares its reports on the admissibility and merits of cases before it with reference to information from the parties, and in certain instances, information gathered through its other monitoring processes. In the case of the Commission's reports on the present case, as well as its Application before the Court, the latter type of information included, for example, reports of the Inter-American Commission on Human Rights concerning the situation of human rights in Suriname; reports adopted by United Nations human rights bodies, such as those of the Special Rapporteur of the UN Economic and Social Council, Amos Wako, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination; as well as those of nongovernmental organizations such as Amnesty International, Americas Watch and others. Such documents are within the public domain; most are quickly available through the internet. The utilization of such information is a well-established practice of the Commission, and common to the work of other international human rights bodies.

As the Honorable Court has indicated in general terms, preliminary objections require the invocation of a particular article or some other form of support<sup>99</sup> Article 36 of the Rules of Procedure of the Honorable Court specifically requires that such objections include "the

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<sup>99</sup> See I/A Court H.R., *Genie Lacayo Case. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 35.

facts on which the objection is based, the legal arguments, and the conclusions and supporting documents." The Commission considers that this objection is generic, unclear, unsupported and therefore inadmissible.

#### IV. CONCLUSION

The Case of Moiwana Village was submitted to the Inter-American Court of Human Rights in order to remedy a denial of justice. Notwithstanding the many years that have passed since the attack and the various administrations that have held power since the return to democracy in Suriname, the human rights violations committed in Moiwana remain in impunity.

As the Commission indicated in its Report on the Merits, and its Application before the Honorable Court, there have been no concrete efforts to provide justice to the survivors of the attack on Moiwana Village or the families of those killed. The first steps toward criminal investigation initiated in 1989 were terminated by the illegal actions of military authorities and suspended following the murder of the police investigator in charge. While the State has reported before the Honorable Court and various other fora at the international level that it is investigating the attack, it has yet to report any specific, concrete steps of investigation, much less concrete results. In its Answer to the Application, the State essentially acknowledges that it has yet to process any significant probative information or evidence. The State indicates simply:

If it appears, from the inquiry commenced by the State of Suriname that individuals and/or establishments are guilty of human rights violations, the State shall not hesitate to prosecute and punish the guilty parties within the framework of its statutory regulations. If there are grounds to do so, the State shall also publicly apologize not only to the victims and families, but also to the entire population.

The Commission considers that the information before the Honorable Court provides a sufficient demonstration that it is both proper and necessary that it exercise jurisdiction with respect to this case. The State has had a more than ample opportunity to address the violations that gave rise to the present case. Given its failure to do justice, the precise purpose of the present case is to require that the State act with due diligence to ensure that the individuals responsible for those violations are held accountable before the law, and ensure reparation for those whose rights and dignity have been denied by its failure to do justice.

On the basis of the foregoing considerations of fact and law, the Commission respectfully petitions that:

The Honorable Court reject the preliminary objections filed by the Republic of Suriname; and,

The Honorable Court proceed to examine and pronounce upon the merits of the claims placed before it.