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POSITION OF

THE REPUBLIC OF SURINAME

at

HEARING INTER AMERICAN COURT ON

HUMAN RIGHTS

Submitted to the Inter-American Court of Human Rights

in response to the allegation of the Inter-American

Commission on Human Rights

Case No. 11.826

Stefano Ajintoena et al

vs

The Republic of Suriname

October 11, 2004

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Final arguments of the Republic of Suriname in response to the observations of the Inter - American Commission on Human Rights and the hearing of the Inter- American Court of Human Rights.

GENERAL STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF SURINAME

1. Before dealing with the matters that have been brought forward in the hearing concerning the petition submitted in respect of case no. 11.821 Village of Moiwana to the Inter-American Commission of Human Rights and subsequently in the case Stefano Ajintoena et al brought before the Inter-American Court of Human Rights, the Republic of Suriname wishes to bring the following to the attention of this Honorable Court:

2. The Republic of Suriname with its still young democratic system respects the fundamental human rights and freedoms and safeguards these.
   Contrary to the impression, which the petition of case no. 11.821, Stefano Ajintoena et al (Moiwana case), may evoke, Suriname is a constitutional state in the sense that through its bodies it ensures that the rule of law is enjoyed by everyone residing on its territory. This was therefore the starting point of the State when it committed itself as Member State to the Convention without any reservations, as well as in the acceptance of the jurisdiction of the Inter-American Court for Human Rights.
   As Member State of the Convention the State in its present composition has committed itself to fulfil the objective of the Convention by observing it.

3. The State of Suriname does not address this Honorable Court here to defend alleged violations of the rights of individuals. On the basis of the rules in respect of the enjoyment of rights of individuals, i.c. human rights, that have been laid down and adopted by the Nations of the Western Hemisphere, the

State wishes, however, to indicate what has been an incorrect procedure according to it in the course of proceedings of case no. 11.821, Stefano Ajintoena et al (Moiwana case) vs the Republic of Suriname up till the moment that the Commission in respect of this case has addressed your Honorable Court.

4. The Government of the Republic of Suriname, an OAS Member State, regrets the events that took place on the 29th of November 1986 on its territory. For that reason, said date is therefore considered to be one of the black pages in the history of the young republic. A republic that acceded to the American Convention on Human Rights on the 12th of November 1987 and unconditionally accepted the contentious jurisdiction of this Honorable Court on that same date.

5. The State of Suriname is of the opinion, on the basis of its national legislation; the Constitution and other national legislative products as well as international treaties to which it is a party, that the individual and collective enjoyment of rights of individuals is a pillar of the orderly constitutional state. On the basis of its profound understanding of the human rights, the State bears the full responsibility for any violations that may occur within its territory; all this in accordance with the procedures and provisions as laid down nationally and internationally by respectively its legislative bodies, and the Member States as united in the Organisation of American States.

6. Irrespective of Suriname's accession to the American Convention on Human Rights and the acceptance of the jurisdiction of your Honorable Court on the 12th of November 1987, the Government of the Republic of Suriname is of the opinion that human rights violations that occurred prior to the aforementioned date of accession and acceptance, do not discharge the State of its obligation to observe prevailing national and international standards and values. All this should, however, take place in accordance with the procedures and

provisions as laid down in its national legislation and as internationally agreed. The foregoing has been incorporated by the Nations of the Western Hemisphere in the Declaration, the American Convention, the Statute of the Inter-American Commission on Human Rights, the Regulations of the Inter-American Commission on Human Rights, the Statute of the Inter-American Court of Human Rights and the Regulations of the Inter-American Court of Human Rights.

Against this background the State of Suriname wishes to refer to the investigation into the death of 15 prominent Surinamers on the 8th of December 1982. Recently the Examining Judge stated that the investigation is in the final stages. The State wishes to emphasize that it is not unwillingness on its part to investigate other alleged human rights violations, to prosecute the alleged perpetrators and to enforce the judgment arising therefrom. However, due to circumstances – such as the lack of processing capacity, lack of a sufficient number of qualified staff, lack of certain technical possibilities on a national level – the State is having difficulties to investigate these kinds of mega-cases simultaneously. Within this context we wish to bring to your attention the recent initiative of the State to extend the statute of limitation for murder especially in view of the Moiwana events. The law to regulate has been currently passed the Council of Ministers and the procedure for adoption by the National Assembly has also been started. Said law will become effective before the 28th of November 2004.

7. The State of Suriname is of the opinion that your Honorable Court is not competent to hear this specific case as it has been brought forward in its current form by the Inter-American Commission on Human Rights, as a judgment is asked in principle in respect of events that took place prior to the 12th of November 1987, that is before the State had accepted the jurisdiction of your Honorable Court.

8. The State of Suriname is of the opinion that *the statements of the witnesses and expert witnesses,* that appeared before your Honorable Court in this case on the 9th of September 2004, and the avidavits submitted, can only be allowed by your Honorable Court, if and insofar as these concern alleged human rights violations, safeguarded in the American Convention on Human Rights and that took place after the 12th of November 1987, being the date on which Suriname became a party to the Convention and accepted the jurisdiction of your Honorable Court. The State requests your Honorable Court to reject all other statements as to be irrelevant, that is to say not to consider them in your judgment of this case.

I INTRODUCTION

9. The Republic of Suriname has indicated in its reaction to the Court in respect of the petition of the Commission in respect of case no. 11.821, Stefano Ajintoena et al of the 30th of April 2003 what its standpoint is in this matter. During the hearing of the 9th of September 2004 the State – after hearing the witness statements, followed by the standpoints of respectively the Commission and of the representatives of the original petitioners – reacted in outline to the petition of the Commission and to what has been put forward in the hearing and it has further explained its standpoint.
   By means of this communication to your Honorable Court the State wishes to persist in what it has brought forward earlier in this case and it will deal further with was has been brought forward by parties in case 11.821, Stefano Ajintoena et al.

10. From the 'Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the case of Stefano Ajintoena et al' and 'the observations of the Inter-American Commission on Human Rights in response to the Preliminary Objections presented by the Republic of Suriname' as well as the pleadings of respectively the Commission and the representatives of the original petitioners it can be distilled that 'denial of justice' is the thread that runs through their pleas.

11. The Commission's standpoint with regard *to the jurisdiction of the Court and the admissibility of the case at the Commission* is based for an important part on what it calls 'denial of justice' in respect of the original petitioners. When taking in a standpoint in respect of the merits of the case, the Commission uses the same argument: 'denial of justice'. The Commission is basing its case on facts that occurred in the period prior to Suriname's accession to the Convention and prior to its acceptance of the jurisdiction of your Honorable Court – so facts that are not relevant to this case – and builds its legal plea on

that arriving at the conclusion that 'denial of justice' is involved and violation by the State of respectively Articles 25 and 8 in conjunction with Article 1 Paragraph 1 of the Convention.

The State wishes to state explicitly here that in this case there has not been any 'denial of justice'. The legal aspects and the relevant facts are further elaborated in this plea.

12. The Republic of Suriname is of the opinion that :

a) The Commission – as events are concerned that occurred prior to Suriname's acceptance of the jurisdiction of the Court – should not have addressed your Honorable Court, on the basis of which the State requests your Honorable Court to declare itself incompetent in this case.
b) case no. 11.821 Village of Moiwana should have been declared inadmissible by the Commission and requests your Honorable Court to declare the Commission not admissible on the basis of this in its petition to your Honorable Court.
c) The State has not been guilty of 'denial of justice' to the original petitioners and on the basis whereof it has not violated Articles 25 and 8 in conjunction with Article 1 Paragraph 1 of the Convention, on the basis of which the State requests your Honorable Court to reject the petition of the Commission.
d) The claim of the Commission for financial compensation is unfounded, because the compensation is not proportionate to the 'denial of justice', if any, assuming that in instant case there is indeed a denial of justice involved, *quod non*. If petitioners right to legal assistance has been violated ('denial of justice') the State will immediately have to ensure that this violation is corrected and that petitioners have access to all valid rights. For this reason the State requests your Honorable Court – if you may arrive at another opinion for as far as items a) to c) are concerned –

to reject the requested or proposed compensation by the Commission and to arrive at compensation determined by you, if any.

13. The purpose of the protection of human rights

With regard to the main purpose of the protection of human rights, the State respectfully refers to several human rights instruments, e.g. the American Convention on Human Rights, and the view of several international human rights scholars that "International human rights treaties generally require that the States parties afford an effective remedy to the victim of a human rights violation. Failure to provide a remedy constitutes a separate breach of the treaty, additional to the original violation".

The State is of the opinion that the main purpose of the protection of human rights is to ensure that individuals must enjoy the rights and freedoms safeguarded in the different human rights instruments. If appropriate, an established Tribunal or competent international judicial authority, can rule that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. This indicates that reparations are not the main objective for the enjoyment of human rights. This is indeed understandable since the payment of high sums of reparations does not indicate that states have the right to violate rights safeguarded in the different human rights instruments.

The State is of the opinion that petitioners in the case Stefano Ajintoena et. al. focus primarily on the payment of reparations. The arguments given by the petitioners for their request for reparations are to some extent fabricated. The State is of the opinion that safeguarding the enjoyment of human rights is far more important than the payment of reparations, which is at issue in said case.[1]

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[1] See Dinah Shelton: Reparations in the Inter-American System, in The Inter-American System of Human Rights, edited by David Harris and Stephen Livingstone, Clarendon Press Oxford 1998

14. The State explicitly states here, that in addition to this communication, it still stands fully behind matters brought forward in its previous communications, letters, memorandums, etc. Where the State does not enter at length into matters, it refers to earlier communications and other correspondence sent by the State to your Honorable Court in respect thereof.

The State therefor persists for all other matters in its earlier reactions in response to the petitions of the original petitioners and the Commission in respect of case no. 11.821 Village of Moiwana and in what it has brought forward by it during the hearing on the 9th of September 2004 before your Honorable Court.

II. PRELIMINARY OBJECTIONS

15. The State wishes to bring forward the following preliminary objections to your Honorable Court:

A. THE STATE HAS THE RIGHT TO REPEAT ITS PRELIMINARY OBJECTIONS BEFORE THE COURT

16. It is good to mention that the State has not forfeited its rights to repeat its preliminary objections before the Court. The extensive jurisprudence of the Court in this matter states that a State has forfeited its right to bring forward preliminary objections, if such preliminary objections are raised for the first before the Court and has never raised said preliminary objections in the phase before the Commission.

17. The Commission, in its remarks with regard to Suriname's reaction to the petition of the Court of the 25th of May 2004 unjustly assumes that the State has forfeited its rights to raise preliminary objections before the Court as the State of Suriname did not react in time. Almost 9 months before the case was referred to your Honorable Court in December 2002, the State had already in April of 2002 raised its Preliminary Objections with the Commission.

The jurisprudence of your Honorable Court on this matter implies that a State has forfeited its right to raise Preliminary Objections, if these Preliminary Objections have never been raised in the proceedings before the Commission by the State. The State refers within this framework to the judgment of your Honorable Court in the Castillo Petruzzi case, prelimininary objections of the 4th of September 1998, Paragraph 56 "***The court also indicates that the State did not allege the failure to exhaust domestic remedies before the Commission. By not doing so it waived a means of defense that the Convention established in its favor and made a tacit admission of the non-existence of such remedies or their timely exhaustion....***"

18. In this case, the State of Suriname did indicate, in contrast to the facts and circumstances in the Petruzzi case, that the domestic remedies had not been exhausted. The State has shortly after communication no. 35/02 of the 28th of February 2002 reacted to communication no. 26/00 of the 7th of March 2000 and to communication no. 35/02. In its reaction of April 2002 to the Commission the State has clearly indicated the legal grounds and facts on the basis of which it is of the opinion that the case should have been declared inadmissable. As the case was still being treated by the Commission, the State is of the opinion that it has not forfeited its rights to raise these objections again before the Court.

19. In addition to the foregoing, it could be said that the State has responded immediately after the publication of communication no. 35/02, thereby indicating why the preliminary objections were raised at that time. The State is of the opinion that since communications no. 26/00 and 35/02 were not accepted as legally valid in accordance with the Regulations of the Commission, the response of the State after publication of communication 35/02 does not constitute a waiver of the State's right to institute Preliminary Objections before the Commission and later in the proceedings before your Honorable Court. The State has neither waived its right implicitly nor explicitly. Now that the State has put forward plausible arguments for filing its Preliminary Objections after the publication of communication no. 35/02 and this document was not drawn up in conformity with the Commission's Regulation, it is procedurally unfair, if next to applying Article 42 of the Commission's Regulations the State would be estopped to raise the Preliminary Objection before the Commission and to reiteriate those before your Honorable Court. The State is therefore of the opinion that the principle of estoppel is not applicable in this case and is incorrectly used by the Commission.

B. LACK OF JURISDICTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

20. The State wishes to bring forward the following Preliminary Objections to your Honorable Court:

The State is of the opinion that your Honorable Court is not competent to hear the case no. 11.821 Stefano Ajintoena et al vs the Republic of Suriname Village of Moiwana, as it has been submitted by the Commission presently, because your Honorable Court lacks jurisdiction in this case.
The State bases its standpoint on the following:

a. The Convention Articles in this case against the State have been applied ex post facto

21.

a) In Article 1 of the Statute of the Inter-American Court of Human Rights, which deals with the Nature and Legal Organization of your Honorable Court provides ***"The Inter-American Court of Human Rights ..... whose purpose is the application and interpretation of the American Convention on Human Rights. The Court Exercises its functions in accordance with the provisions of aforementioned Convention and the present Statute."***[2]

Article 2 Paragraph 1 of said Statute states that ***"Its adjudicatory jurisdiction shall be governed by the provisions of Articles 61, 62 and 63 of the Convention."***.[3]

This implies that your Honorable Court is not competent to give judgments in respect of cases that occurred prior to the accession of a State to the Convention. In addition, it is necessary to remark that this case was referred to your Honorable Court by the Commission in 2002.

22. The Court is not competent to hear this case as this case occurred before Suriname accepted the jurisdiction of the Court.

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[2] See Article 1 of the Statute of the Inter-American Court of Human Rights.
[3] Idem.

The Republic of Suriname acceded to the American Convention on the 12th of November 1987 and it accepted on the same date the jurisdiction of your Honorable Court. Your Honorable court considered after all in the Cantos vs. Argentina case for the Preliminary Objections: ***"the Court considers that the principle of non-retroactivity of international norms embodied in the Vienna Convention on the Law of Treaties and in general international law should be applied, respecting the terms in which Argentina became a party to the American Convention"***[4]. On the basis of this opinion of your Honorable Court, the *ex post facto* application of the American Convention on Human Rights and the acceptance of the jurisdiction of the Inter-American Court of Human Rights in November 1987 by the Republic of Suriname cannot apply for the events described in the petition that took place in November 1986.

Denial of Justice as applied *ex post facto*

23. In its response of the 25th of May 2004 to the Preliminary Objections of the State the Commission itself indicates: ***".....the Commission simply notes here that it is not asking the Honorable Court to utilize a retroactive application of law or jurisdiction, and....."***[5]. But then the commission goes on making statements like: ***"...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....."***[6] and: ***".....Rather, the Application is submitted to address the series of acts and omissions subsequent to State's accession that comprise the continued impossibility of the survivors and the families of those killed to obtain justice..."***[7] as well as: ***".....what is placed at issue before the Honorable Court is the series of acts and omissions that continue to deny justice to the victims of the attack on Moiwana Village...."***[8]. From this it appears that the Commission describes "acts and omissions", that consist of: ***"The denial of***

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[4] IACtHR, Cantos vs Argentina case, Judgment of September 7, 2001, Preliminary Objections, para. 37
[5] 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, page 4, first paragraph.
[6] Idem, page 6 second paragraph.
[7] Idem, page 6 in the fourth paragraph.
[8] Idem, page 7 in the third paragraph.

judicial protection and guarantees attributable to the State under Articles 25, 8 and 1(1) of the Convention....."[9] and *".....reiterated and ongoing denial of justice..... the civilian police did not even attempt to initiate an investigation into the attack on Moiwana Village until 1989,.....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 impunity.* A further example .....*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."*[10] And classifies these under the violation of Articles 25, 8 and 1 of the Convention. The commission assumes that from the 12th of November 1987 a Convention obligation has arisen for the State to investigate the Moiwana case. However, according to the State that Convention obligation – and in case this obligation is not met a Convention violation – is only applicable to events that occurred on or since that date. The State hastens to state indeed that within its policy and pursuant to its legal system human rights violations that were committed within its territory are investigated or will be investigated, so that justice will prevail. In the meritorious defense in respect of this case, this shall be dealt with extensively.

24. The 'acts and omissions', as described by the Commission, related to the events of the 29th of November 1986, which is also clear from the Commissions plea in its communications. This also appears from the "Analysis of the merits" of report 35/02 of the Commission: *"The Obligation for the State to investigate, prosecute and punish those responsible for the Moiwana violations began at the time of the massacre itself, under the provisions of the Declaration in November 1986. Since the State of Suriname ratified the Convention on November 12, 1987, and the lack of investigation is on-going and continuous, complainants allege a violation of the right to a fair trial and to judicial protection established in articles 8 (1) and 25 (2) of the Convention, which grant the individual,*

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[9] Idem, page 8 second paragraph.
[10] Idem, page 10 in the third and fourth paragraph.

when his rights have been violated, the right of access to a competent tribunal and to be heard therein within a reasonable time, with due guarantees."[11]

25. The Commission further refers to Article 14 of the Articles on State Responsibility of the International Law Commission. Although this document is not binding, the State wishes to remark the following: In Paragraph 1 as well as Paragraph 2 of the aforementioned document "an international obligation" is mentioned, while it is not indicated whether this "obligation" relates to the facts that arose or existed prior to or after the source (legal ground) of that "obligation". Moreover, the *ex post facto* application of the law is in violation of the principles of a good course of proceedings in international law. Article 28 of the Vienna Convention on the Law of Treaties provides: ***"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty, with respect to that party."*** [12] The Commission has not been able in instant case to show on the basis of 'law and facts' that 'a different intention appears'. Article 15 Paragraph 1 of these same Articles on State Responsibility of the International Law Commission provides: ***"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."***[13]. The State is of the Opinion that alleged 'acts and omissions', that occurred on or around the 29th of November 1986, falll under the competence of the American Declaration and should be dealt with in accordance with this human rights instrument. The Commission brings the State before your Honorable Court for the violation of Articles 8 and 25 in conjunction with Article 1 and wishes to apply the International Law Commission's "Articles on State Responsibility "- which is for that matter not an internationally binding instrument for the State of Suriname – for which alleged 'acts and omissions' that occurred when

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[11] Report 35/02, case 11.821 Village of Moiwana Suriname, February 28, 2002, para. 68.
[12] Vienna Convention on the Law of Treaties, May 23, 1969, Art. 28.
[13] 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, page 9.

Suriname was still a Declaration State, are used to construe a violation of the American Convention. The State is also of the opinion that the Commission is requesting your Honorable Court to apply the Convention *ex post facto*. Continuing its plea the Commission quotes one of the members of the International Law Commission: ***"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".***[14] Here as well the Commission tries to apply the Convention *ex post facto*, as earlier indicated by the State. The State wishes to emphasize that the subject of "acts and omissions" as intended by the Commission dates from a period prior to the commitment of the State to the Convention, which has as a consequence that the Convention is not applicable to this. The Commission refers in this respect also to the writer Crawford, who gives his interpretation in respect of this: ***"in 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 purpose of State responsibility will be the first occurring after the obligation came into existence"***

and continues its plea

'..the fact that an obligation enters into force after a series of acts and omissions 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...)"[15]. The State of Suriname is of the opinion that the arguments brought forward by the writer Crawford do not apply in instant case. The events that occurred on or around the 29th of November 1986 began and ended before Suriname became a party to the Convention. Within the Inter-American Human Rights system there are bodies and human rights instruments on the basis of which the alleged violations (acts and omissions) have to be dealt with. The State explicitly points out that the declaration is the only normative instrument under which the alleged violations should be dealt with that occurred on or around the 29th of November 1986 in Suriname and that the Commission – which is currently addressing your Court – is the only

[14] Idem, page 9, third paragraph with note.
[15] Idem, page 9, fourth paragraph.

body that is competent, pursuant to the Declaration to supervise the observance of human rights in our hemisphere. The State further indicates that for violations of Member States of the Convention another jurisdiction is applicable. The normative instrument is the Convention and the two bodies that are charged with the supervision and the observance of human rights in this hemisphere according to the instruments of the system are the Commission and your Honorable Court. Of these two bodies your Honorable Court is the only institution that administers justice and can by law interpret the Convention. The State emphasizes that two well-functioning systems exist next to each other within the Inter-American Human Rights System, more in particular

a) the system of the Declaration with the Commission as the supervisory body; and

b) The system of the Convention with the Commission and your Honorable Court as supervisory body. On the basis of the foregoing, the State is of the opinion that the view of Crawford does not apply in this case. If we would agree to this view it would not only mean an *ex post facto* application of the Convention, but more in particular the undermining of the Inter-American Human Rights system. In this case the system to which the Declaration States are subjected.

26.

b) The events, that are central in almost all communications of the Commission[16] and which in addition were emphasized by the Commission and the Original Petitioners during the hearing before the Court of the 9th of September 2004 when hearing the witnesses, occurred on or around the 29th of November 1986, almost a year before the State of Suriname became a party to the Convention and accepted the jurisdiction of the Court. The State refers for this matter to the first sentence in said Communication 26/00, in

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[16] Communication of 7 March 2000, report 26/00 and communication of 28 February 2002, report no. 35/02.

which the Commission states: ***".....concerns the extra judicial execution of more than 40 residents of "Moiwana.....".***[17] In addition the Commission also states in the same communication: ***"....The petition states with the respect to the massacre and destruction at the Village of Moiwana, which is the principle subject of the petition..."***[18]. Aforementioned quotations are used by the Commission as one of the most important legal grounds to refer this case to your Honorable Court. This clearly indicates that the events that occurred prior to Suriname's accession to the Convention are the most important focus of the Commission. As a Declaration State for as far as this specific case is concerned, Suriname does not fall under the jurisdiction of your Honorable Court.

27.

c) The State wishes to indicate that in the Genie Lacayo case (Preliminary Objections of January 27, 1995), the Honorable Court arrives at the conclusion that it was competent to hear the case, despite the fact that the State of Nicaragua was not a party to the Convention. The Court came to this conclusion because Nicaragua had explicitly accepted the jurisdiction of your Honorable Court in that specific case[19]. In the present case, that was submitted to your Honorable Court against the State of Suriname, the State – contrary to Nicaragua – has not accepted the jurisdiction of your Honorable Court, neither with regard to this case, nor with regard to any other case of which the events occurred prior to the 12th of November 1987, indicating for that matter that your Honorable Court is not competent to hear this case against the State of Suriname.

28. Furthermore the State refers to Paragraph 38 of the Cantos vs Argentina Case, preliminary objections, Judgment of September 7, 2001,[20] in which your Honorable Court argues that: ***"the facts included in these two groups occurred before the entry into effect of the Convention for Argentina, therefore, do not***

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[17] Report 26/00, case 11.821, Village of Moiwana Suriname, March 7, 2000. para 1.
[18] Idem, para 5.
[19] Inter-American Court of Human Rights, Genie Lacayo case, preliminary objections judgment of January 27, 1995

fall within the Court's Jurisdiction". The Court accepted this Preliminary Objection on lack of competence.

29. The Commission states that the events comprising the attack, executions and destruction of the village are not themselves before the Court. However, in its petition the Commission requests that the State of Suriname is required to effectuate the following measures of monetary compensation: The payment of reasonable and justified material and moral damages related to the denial of justice suffered by the victims. The State further affirms that the statements made by the witnesses during the public hearing of 2004 clearly indicate that the events of November 1986 are the basis for their demand for financial compensation.
With this request the Commission relates back to events that took place prior to 12 November 1987, the date of acceptance of the Court's jurisdiction, in order to try to award monetary compensation to victims, thus trying to award ex post facto jurisdiction to this court in said case. This is against the applicable human rights norms in the Inter-American System.

b. The case has not been referred to your Honorable Court according to the proper procedure

30.

a) Pursuant to Article 51 of the Convention and Article 23 of the Statute of the Inter-American Commission a case can only be referred to this Court, after the Commission has drawn up an Article 50 report. In the case of Moiwana the Commission, however, has not drawn up an Article 50 Convention report, but a report pursuant to Article 47 Paragraph 2 of the Regulations of the Commission. The Commission has drawn up a report no. 35/02 in which the Commission arrives at the conclusion that the State has violated the following

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[20] Inter-American court of Human Rights Cantos vs Argentina case preliminary objections, judgment of September 7, 2001, para 38.

articles of the Declaration: Articles I, VII, IX, XXIII, VI, VIII, XI and XXII[21]. In addition, the State was a Declaration State at the moment of the alleged violations. The State considered Report no. 35/02 as being a report drawn up in accordance with Article 47 Paragraph 2 of the Commission's Regulations. In aforementioned report it was also indicated, that Articles 1(1), 8(1), 25(2) of the Convention were violated[22]. In said Report no. 35/02 it was indicated that the alleged violations as intended commenced under the Declaration as well as under the Convention on the 29th of November 1986, that is to say on the basis of the aforementioned Paragraphs of aforementioned Report 35/02 can be deduced that this is meant by the Commission. After all, on the basis of the motivation of the alleged violations of the Declaration and of the Convention indicated in said report it can be assumed that alleged violations date from the day on which the acts where perpetrated.[23] In addition, the Commission indicates in its communications 26/00, 35/02 and its reaction to the Preliminary Objections of the State with the Court, that the 'denial of justice' in the sense of 'continuous violations' took place or takes place. Now that the Commission in the alleged violations of the Declaration indicated by it – violations of the Declaration were at the time applicable to the State – Article XVIII (Right to a Fair Trial) and Article XXVI (Right to Due Process of Law), being the analogous articles of Articles 8 and 25 of the Convention, has not listed or indicated them, implies that the Commission with its Report no. 35/02 and the referral to your Honorable Court has or had all the time the intention to accuse the State for violations of Articles 25 and 8 of the Convention with regard to events that took place, or that started from the 29th of November 1986. The State arrives at this conclusion, also considering the the Commission's analysis and portrayal of facts in aforementioned Report no. 35/02, in which the emphasis is on the fact that the violations started on the day of the events of the 29th of November 1986 in Moiwana.[24]

21Supra note 11, under item VII. para. 90.
[22] Idem, under item IV., A.1 the Paragraphs 54, 55, 57, 58, 60, 61, 63, 68 and 75.
[23] Idem, para 54
[24] Supra note 11.

In Paragraphs 64 until 67 the Commission makes far-reaching statements that are incorrect. The State was then as mentioned earlier a Declaration State, so the Convention could for that reason not be applied to it. Considering the fact that the Convention could not be applied to the State, Report no. 35/02 can never be an Article 50 Convention Report by law, irrespective of whether it is given this name, if any, by the Commission. As a result the requirements of Article 51 of the Convention and Article 23 of the Statute of the Commission were not met. This implies also that the so-called continued violations as brought forward by the Commission, do not exist, because legally they never started; not on the basis of the Declaration and not on the basis of the Convention.

31.

b) The State further wishes to emphasize that there cannot be any 'continous violations' as the events of Moiwana occurred on or around the 29th of November 1986 and also ended on the same date. In the Preliminary Objections of the Blake case your Honorable Court states: ***"The Court is of the view that the acts of deprivation of Mr. Blake's liberty and his murder were indeed completed in March, 1985 - the murder on March 29, according to the death certificate, as Guatemala maintains - and that those events cannot be considered per se to be continuous. The Court therefore lacks competence to rule on the Government's liability. This is the only aspect of the preliminary objection which the Court considers to be well founded."***[25] Your Honorable Court then unanimously decided that the above-mentioned part of the objection is founded and declares itself incompetent to decide on ***"Guatemala's alleged responsibility for the detention and death of Mr. Nicholas Chapman Blake."*** [26]

In the Blake case the Commission clearly indicated the start of the violations of the Convention. In case no. 11.821 Stefano Ajintoena et al the Commission and the Original Petitioners each time indicated, in their petition as well as in Report no. 26/00, Report no. 35/02 , and during the hearing before your

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[25] Blake Case, Preliminary Objections, Judgment of July 2, 1996, punt VIII, para. 33.
[26] Idem under item XI (Court decides) sub. 1.

Honorable Court of the 9th of September 2004, that the facts on which these violations are based, took place and/or started on the 29th of November 1986, while they link these facts amongst other things to violations of the Convention. The State wishes to point out that the Commission, by means of a detour, brings the alleged violations of the Declaration, which it bases on 'denial of justice', under violations of the Convention and wrongfully omits to apply the Declaration articles. However, the Commission itself states: ***"The obligation for the State to investigate, prosecute and punish those responsible for the Moiwana violations began at the time of the massacre itself, under the provisions of the Declaration in November 1986".*** [27] Still, at its conclusion it does not mention the violation of the applicable articles of the Declaration.[28] This implies that the Commision in principle applies violation of the Convention, despite its own statements to the contrary. The violations indicated by the Commission, that are based on 'denial of justice', were not brought by the Commission under the Declaration, but under the Convention and it referred it subsequently to your Honorable Court and placed said 'denial of justice' under the name of 'continuous violation', that subsequently is brought under alleged violation of Articles 8 and 25 of the Convention. In the Blake case the acts that later lead to the violations started prior to the accession of Guatemala to the Convention. Those acts on which the violations were based continued in the same constellation as when Guatamala acceded to the Convention. Mr. Blake disappeared and remained so. For that reason what your Honorable Court understands by 'continuous violations' in the Blake case not applicable to case no. 11.821 Stefano Ajintoena et al.

32.

The difference between the Blake case and case no. 11.821 appears clearly from the considerations of the Court. In the Preliminary Objections of the Blake case your Honorable Court argues:

"37. Articles 17 (1) of the United Nations Declaration states that: ex constituting

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[27] Supra note 11 para 68.
[28] Idem, onder punt VII Conclusion.

enforced disappearance shall be considered a continuing offence as long as its perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and as long as these facts remain unclarified.

Article III of the aforementioned Inter-American Convention provides that: The State Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not determined.

38. *In Addition, in Guatemala's domestic legislation, Article 201 TER of the Penal Code - amending decree no. 33-96 of the Congress of the Republic approved on May 22, 1996 - stipulates in the pertinent part that the crime of forced disappearance -'shall be deemed to be continuing until such time as the victim is freed. -.*
39. *.....forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements – even though some may have been completed as in the instant case – may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.*
40. *In the light of the above, as Mr. Blake fate or whereabouts were not known to his family until June 14, 1992, that is, after the date on which Guatemala accepted the contentious jurisdiction of this Court, the preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions."* [29]

It can then be concluded that the Commission's approach of this case with respect to the 'continuous violation', which also differs from the Blake case, is based on the fact that in case 11.821, Stefano Ajintoena et al it is not about 'enforced disappearances', which by your Honorable Court, as appears from the above, is indicated as a continues violation. In the case, however, an event is involved that ended before November 1987 and that has not been brought under an applicable violation of the Declaration, but is presented as a contrived 'continuous violation' under analogous articles of the Convention by

[29] Supra note 25, para 37 t/m 40

the Commission. Your Honorable Court has in the Blake case accepted the-'enforced disappearances' as a 'continuous violation' pursuant to the treaty provisions in respect thereof. This contrary to the Commission, who in violation of the applicable treaty provisions in case no. 11.821 Stefano Ajintoena et al presents the concept of 'continuous violation'.

c. Report 35/02 case no. 11.821 Suriname has an ambiguous nature.

33.

a) The State of Suriname is of the view that the procedure followed by the Commission is ambiguous. The Commission states in its report no. 35/02 that the State of Suriname is responsible for violations of the provisions of the Declaration and provisions of the Convention, without drawing clear lines in respect of the procedure that needs to be followed in dealing with the violations of the provisions indicated by it, that are safeguarded in the Declaration and the violations that are safeguarded in the Convention. In said report recommendations have been made in respect of the violations determined therein. It is not clear to which violations these recommendations relate; to the Declaration or to the Convention. As a result the following points of law arise:

- On which Human Rights instrument within the framework of the commitments of the State is the report based?
- How should this report be characterized?
- Is it an Article 47 Regulations of the Commission report based on the Declaration?
- Is it an Article 47 Regulations of the Commission report based on the Convention?
- Is it an Article 47 Regulations of the Commission report based on the Declaration and the Convention?
- Or is it an Article 50 Convention report?

The Commission indicates for that matter in its communications and during the hearing before your Honorable Court of the 9th of September 2004 that

report no. 35/02 is an Article 50 report, but fails in those communications as well as in aforementioned report no. 35/02 and during the hearing to indicate on the basis whereof it calls said report an Article 50 Convention report and not a Declaration report. The Commission chooses consciously to treat the alleged violations of the Declaration as well as of the Convention on the basis of the Convention and thus treat the State of Suriname incorrectly as a Convention State in the procedure before your Honorable Court. As a result of the intertwining of provisions from both the Declaration and the Convention in report no. 35/02 the phenomenon of 'obscure libel' arises.

34.

b) The plea of the Commission that it has only referred the case to your Honorable Court in respect of the violations of Articles 8 and 25 in conjunction with Article 1(1)[30] does not tally with the issuing of Communication 26/00 of the 7th of March 2000 by the Commission, in which it declares the case admissible and Communication 35/02 of the 28th of February 2002, in which it concludes which violations are committed by the State. Both Communications are based on both the Convention and the Declaration. The State is of the opinion that in principle alleged violations of the Declaration are submitted for judgment to your Honorable Court by a roundabout way which is in contravention of the foundation of the Inter-American Human Rights system, now that Suriname as a Declaration State does not fall under the jurisdiction of the Court. As a result the State has been harmed in its defense during the proceedings. After all when an extension was requested so that an investigation could be started into the acts that led to the present case and compensation to the injured parties, as well as arriving at a friendly settlement, the State assumed that report no. 35/02 was an Article 47 Commission's Regulations report, on the basis of the fact that the events of the 29th of November 1986 could only produce violations of the Declaration. The State is of the opinion that the Court should declare itself incompetent to hear the

[30] supra noot 13, page 6 Chapter III under A 3 en hearing Hof d.d. 9 september 2004.

case as it has been submitted by the Commission. If the Commission had drawn clear procedural lines, for example by means of separate reports on the basis of;

(a) The Declaration juncto the then valid Regulations of the Commission for alleged violation of the provisions of the Declaration; and

(b) The Convention juncto the then valid Regulations of the Commission and the then applicable rules of procedure of your Honorable Court for alleged violations of the Convention, then this would meet the objectives and the scope of the provisions of the Inter-American Human Rights system and the requirements of integrity of intentions and the issue of legal certainty.

35.

c) In the case of Caballero Delgado and Santana, Preliminary Objections of the 21st of January 1994, your Honorable Court states that the Inter-American Commission should follow the procedural rules that apply within the system. The Court further states that ***"...although it is true that the object and purpose of the Convention can never be sacrificed to procedure, the latter is, in the interests of legal certainty, binding on the Commission".***[31] In the Cayarra case your Honorable Court also underscores that: ***"the Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of the alleged victims in the face of manifest violations of the procedural norms established by the Convention itself would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights."***[32] This implies that the Commission is bound to strictly follow the procedures laid down to safeguard the foundations of this system.

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[31] Inter-American Court of Human Rights, Caballero Delgado and Santana case, Preliminary objections, judgment of January 21, 1994.

[32] Inter-American Court of Human Rights, Cayarra case, Preliminary objections, judgment of February 3, 1993, para 63.

36.

d) The Commission concludes in communication 35/02 on the one hand that Articles 8 and 25 of the Convention have been violated and construes these as 'continuous violations'. On the other hand the Commission concludes that Articles I, VII, IX, XXIII, VI, VIII, XI and XXII of the Declaration have been violated[33]. Now, this conclusion builds not completely on the Convention and creates confusion with regard to the character of the report. Within this framework the State also refers to the email message sent by one of the lawyers of the Commission, in which she also indicates: ***"There seems to be some misunderstanding about what the case is going to the Court on, whether the Declaration or the Convention."***[34]

37.

e) Going further into the aforementioned conclusion of the Commission in report no. 35/02 it should be mentioned that there are also provisions in the Declaration that can be placed under the denominator 'denial of justice' such as Articles XVIII and XXVI. The Commission has not mentioned these two provisions in its communications no. 26/00 and no. 35/02, but it does mention the analogous provisions of the Convention.

The Commission, however, failed in the preliminary phase of these proceedings to hold the State of Suriname liable for violating these rights in accordance with the analogous provisions of the Declaration. After all in the period of the 29th of November 1986 to the 12th of November 1987 Suriname as a Declaration State was also reponsible for the proper enjoyment of human rights within its territory, but then on the basis of the Declaration and not of the Convention. The State is of the opinion that the Commission should have held Suriname liable for alleged violations of these rights on the basis of the Declaration. In apparent failures of the State to meet the safeguarding of the rights that have been laid down in the Convention after Suriname's

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[33] Supra note 11

[34] See Attachment 21 of the communication from the state of the 30th of April 2003, being a copy of the emails of the 10th of June and the 20th of June 2002, from Mrs. Relinda Eddy, lawyer of the Commission. (second email lawyer).

accession, the Commission should have regarded these violations by Suriname as continued violations, and should have held Suriname liable on the basis thereof. As the nature of the events that occurred on the 29th of November 1986 in Moiwana is of a non-recurrent nature, one cannot speak with regard to these violations of continued violations, in respect of the failure to investigate, the failure to provide legal protection and the failure to observe the provisions of the Convention. One can only speak of a continued violation if the Commission had clearly indicated that Suriname committed these violations on the basis of the Declaration in the phase between the 29th of November 1986 until the 12th of November 1987 and that these violations are continued on the basis of the Convention, after Suriname became a party. As the Commission has not made such an analysis one cannot speak of a continued violation of human rights in instant case.

38. If the Commission for the alleged 'denial of justice' had used first the provisions of XVIII and XXVI of the Declaration as having been violated in 1986 and then the same provisions from the Convention, more in particular Articles 8 and 25 for violations after 1987 as alleged 'continuous violations', then these so-called 'continuous violations' as indicated by the Commission could have made some sense. The 'denial of justice' on which the Commission wrongly bases the violations of the Convention prior to the 12th of November 1987 and brings these under 'continuous violations' after the 12th of November 1987 were wittingly not brought under the Declaration but under the Convention by the Commission. This is completely in violation with the applicable provisions within the Inter-American Human Rights system. The State finds the reasoning of the Commission incorrect and labels it as invalid and request your Honorable Court to declare itself incompetent on the basis thereof.

d. The Commission has not referred the case to the Court within the term set

39. In addition to what the State has brought forward before the Court in response to the Commission's petition, the State wishes to give the following account in respect of the untimely referral by the Commission to your Honorable Court to the Court.

40.

a) The Commission indicates in its reaction to the Preliminary Objections that the Republic of Suriname has put forward, that "***The Commission, for its part, confirms that the case was submitted in accordance with the applicable norms and practices. While the State requested extension of time in which to pursue a possible friendly settlement and investigate the violation at issue, and the Commission granted those request 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 except a benefit and than invoke it as a procedural violation.***"[35]

41. In response to this the State wishes to bring to the attention of your Honorable Court, that the applicable treaty provisions have not been used by the Commission. It has not submitted the petition in accordance with the applicable treaty provisions in the instant case to your Honorable Court. If and insofar your Honorable Court may treat the State as a Convention State for alleged human rights violations, the State is of the opinion that the Commission has not submitted its petition to the Court within the term set.

42. Article 51 Paragraph 1 of the Convention reads as follows: ***"If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the***

[35] Supra noot 13, onder C pagina 23.

Commission or by the state concerned to the Court .....".[36]

As a result of the unclear character of communication 35/02 as indicated earlier under Chapter II under A item 3, doubt has arisen about the significance that should be attributed to this report. The point of law that is brought forward here is what are the scope and the legal consequences of communication no. 35/02. As a result of the manner in which this report has been drafted, in which the Commission states that the Articles of the Declaration and the Convention have been violated, it is not clear whether this is an Article 47 Regulations of the Commission report or an Article 50 Convention report. The State, after receiving communication no. 35/02 promptly responded. In its letter of the 20th of May 2002 the State explicityly states that it does not consider this an Article 50 report. The State asked the Commission by letter of the 14th of June 2002 to provide it with the opportunity to begin an extensive investigation into the facts that have lead to said events. In this letter the State explicitly stated that it makes this request as a Declaration State.

The Commission granted this request by letter of the 21st of June 2002. Upon the granting of this extension the Commission failed to explicitly state that it does not agree with the opinion of Suriname in respect of its views of being a Declaration State, on the basis of which it requested extra time to investigate the events that took place at Moiwana. The State was and is still of the opinion that the extension that was granted by the Commission within the framework of the report drafted in accordance with Article 47 of the Commission's Regulations.

Also as a result of this, the State only addressed in its plea in a later stage of these proceedings the issue of the requirements of Article 50 of the Convention with regard to the term within which the Commission could refer the case to your Honorable Court. The State has during the full proceedings stated overtly clear to the Commission that it considers to be a Declaration State. That is why the State has taken it as a basic assumption that the State

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[36] American Convention on Human Rights, art. 51.

had the right to assume that the instant report was published on the basis of Article 47 of the Regulations of the Commission. This is also one of the reasons that the State does not deem the alleged violations of Articles 8 and 25 in conjunction with 1 of the Convention incorrect. In addition, the Commission has only in its 'observations' in its response to the plea of the State during the proceedings before your Honorable Court clearly stated that the instant case deals with 'denial of justice', which according to it produces the violation of the aforementioned articles of the Convention. The State has for that reason in the proceedings not taken into account the fact that exceeding the set term pursuant to Article 51 Paragraph 1 of the Convention would mean that the State could not call upon the untimely submission of the petition by the Commission to the Court. The State is of the opinion that in this instant case it can call upon the untimely submission of the petition by the Commission to the Court, as it did not request an extension on the basis of the Convention, but because extra time was requested on the basis of the Declaration.

43.

b) Creating even more confusion, the lawyer of the Commission in charge of Suriname informed the State several times by telephone and email that a 'waiver regarding case no. 11.821 Moiwana Village' had to be sent to the Commission to obtain an extension for doing the investigation. In these email messages a 'sample waiver' was attached as appendix.[37]

44. Reacting to the first email message, the State, acting in good faith, made the request to have extra time to do an investigation in the instant case. The State indicated explicitly in this matter that the request was done within the framework of the Declaration.[38]

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[37] See Response of the Republic of Suriname, April 30, 2003, attachment 11 being a copy of aforementioned 'waiver'

[38] See Response of the Republic of Suriname, April 30, 2003, attachment 12 being a request from the State for an extension.

45. Within a few days the State received an email message in which it was noted that the request of the State for extra time did not comply and therefor could not be granted. The State was informed that the Commission needed another letter in which a specific request for extension would be done and for suspension of Article 51 of the Convention. A model waiver was again provided as attachment. The lawyer of the Commission urged the State to make haste and to urgently, within 24 hours, draft and submit the request for extension according to the model waiver sent by it and submit it to the Commission, because the Commission had not accepted the previous letter of the State with regard to extra time for an investigation. In her second email message the lawyer also mentioned: ***"There seems to be some misunderstanding about what the case is going to the Court on, whether the Declaration or the Convention."***[39]

This is a clear indication that even in the ranks of the Commission it was clear that the published communication 35/02 was unclear and vague. All communications published by the Commission need to be unambiguous to all parties.

46.

c) The above has made that the State complied with the request from the Commission. The initiative, which even gave the impression of insisting to send the so-called 'waiver' intended, was in this instant case not from the State as the Commission has one believe, but from the Commission itself, which has as a consequence that the Commission can now not state that the State cannot appeal to the fact that the case was not submitted to your Honorable Court in accordance with the provisions of Article 51 of the Convention. The jurisprudence of your Honorable Court shows that a party that takes the initiative for an extension cannot call on exceeding a deadline to obtain a disproportionate advantage. As the initiative for extension on the basis of the Convention in this case was not the initiative of the State, the

[39] Idem (second e-mail Relinda)

State can justifiably call on the fact that the Commission in violation of the provisions of Article 51 Paragraph 1 of the Convention submitted this case to your Honorable Court.

47. The State is of the opinion that on the basis of the above the Commission did not refer the case in time to your Honorable Court and on the basis of that requests your Honorable Court to declare the Commission inadmissible in the instant case.

C PETITIONER IN CASE NO. 11.821 STEFANO AJINTOENA ET AL IS INADMISSIBLE

48. The State is of the opinion that Communication no. 26/00 in which petition no. 11.821 was declared admissible is incorrect. The Commission should have declared this petition inadmissible on the basis of its Regulations. On the basis of the above, the State is of the opinion that the Inter-American Court of Human Rights should declare petitioner in case no. 11.821 inadmissible. The Republic of Suriname wishes to bring the following to your attention:

a. Non-exhaustion of domestic remedies

49. The State wishes to note that the petitioner have failed to invoke and exhaust domestic remedies. The State is of the opinion that petitioner cannot appeal to one of the exceptions as included in Article 37 Paragraph 2 of the applicable Regulations of the Commission. When the Commission published Communication no. 26/00 in the year 2000 Article 37 Paragraph 1 of the then valid Regulations of the Commission read as follows: ***"For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law."***[40] Although the Convention was not applicable to the Republic of Suriname in 1986 during the events of Moiwana, the State wishes to remark that Article 46 Paragraph 1 under a of the Convention lays down the following: ***"Admission by the Commission of a petition or Communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;"***[41] The fact that the original petitioners have appealed to the aforementioned exceptions implies already that they did not exhaust the local remedies.

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[40] Regulations of the Inter-American Commission on Human Rights last modified May 3, 1996.
[41] American Convention on Human Rights.

b. Wrongful appeal to exhaustion of domestic remedies

50. In its report no. 26/00 the Commission indicates: ***".....it emerges from what is documented by the petitioner.....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"***[A2]. Continuing its plea the Commission further states : ***"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 unjustified delay in the proceedings..... The Commission concludes that the requirement in relation with the exhaustion of domestic remedies has been satisfied in the instant case."***[A3] It should be noted here, that as will appear from the plea of the State, that criminal proceedings are not, that is to say are not the basis for invoking remedies, but reporting to investigating or prosecuting agents as an injured party is. From the aforementioned quotes it appears that the Commission has applied the exceptions to the requirement of exhaustion of domestic remedies in instant case as intended in the valid text of Article 37 Paragraph 2 of its Regulations and Article 46 Paragraph 2 of the Convention on the basis of the following assumptions:

a) Non-existence of effective remedies;

b) The fact that petitioners were refused access to remedies and were obstructed in exhausting them; and

c) Wrongful delay in the proceedings.

One of the most important facts on which the Commission bases the application of Article 37 Paragraph 2 of the then valid Regulations and Article 46 Paragraph 2 of the Convention appears also from the fact that the original petitioners as well as the Commission in all stages of the proceedings of the instant case within the framework of the Inter-American Human Rights system have indicated that Mr. Stanley Rensch, that is to say the Human Rights

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[42] Zie Rapport 26/00 van de Inter American Commission on Human Rights, 7 maart 2000, para. 22.
[43] Idem, para 24

Organisation Moiwana 86 Suriname, have requested the then President of the Court of Justice in Suriname pursuant to Article 4 of the Code of Criminal Procedure for a Criminal Investigation and Prosecution in respect of the punishable acts perpetrated within the framework of the event in Moiwana in 1986. They also declared that the Procurator General has been asked at different moments to conduct a criminal investigation in this case.[44]
Within this framework the State wishes to show that the non-existence of an effective remedy is untrue.

51.

a) In general by domestic remedy is meant a means to enforce the law. It also is a provision to be used by law against a (later) court ruling or administrative action, for which such a provision is accessible. In the civil procedure a distinction is made between: common remedies (that suspend the implementation of a judgment: such as an appeal, objection and review) and extraordinary remedies (that do not suspend the implementation: third party objection and review). In criminal procedure these remedies are also known with the exception of third-party objection.
Only after a court ruling in first instance the remedies are accessible to the litigants, in the sense that they can only be used after a court ruling.
To investigate whether the domestic remedies are effective, in this instant case it should be looked into, which possibilities the injured parties have available in case of a punishable act and the petitioners in particular on a domestic level to obtain compensation or restoration to the old situation. The injured parties or petitioners have pursuant to Article 155 of the Surinamese Code of Criminal Procedure the possibility to report themselves as injured parties or have themselves reported by an attorney with a criminal investigator. This article reads as follows: ***"Any person who has incurred damages***

[44] See Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the case of Stefano Ajintoena et al v. The Republic of Suriname (11.821), December 20, 2002, Paragraph V. Statements of Facts under B sub a., page 19 and 20 with notes 44 to 47 as well as the statements of the Commission during the hearing before the Court on the 9th of September 2004.

as a result of the offence of another party may report himself as a plaintiff claiming damages. In respect of such report Article 151 first to fourth paragraph shall be equally applicable. The investigating officers shall be obligated to receive such report."

Pursuant to Article 316 of this Code the injured party may intervene in the case in respect of its claim for compensation about the penal procedure in the first instance. In addition the State points out that the criminal adjudication of a case as this present case in the Suriname criminal law system is not appropriate for a party to join in order to claim a compensation for damages ex. Art. 316 Code of Criminal Procedure. This is also deducted out of art. 320 of the Code of Criminal Procedure, by which the plaintiff claiming damages may submit evidence of the damages incurred, the amount thereof, submit documents, but may not present witnesses or experts. Therefore it is a clear cut case that petitioners should have filed a civil suit to receive compensation for material and immaterial damages. It is also clear that civil action for compensation does not depend on criminal prosecution. In conclusion the State points out that to award reparations on the basis of Article 120 of the Code of Criminal Procedure is limited to a very low amount. Article 323 Paragraph 1 of this Code provides that the court rules simultaneously on the claim of the injured party and the penal case. After this there is a possibility to invoke the remedy of appeal. For that matter Articles 316 to 323 of the Surinamese Code of Criminal Procedure – for as far as the proceeding before the court are concerned – apply. *De jure* and *de facto*, however, the criminal court in first instance in respect of the amount of the compensation only gives a ruling up to a maximum amount of 5 Surinamese Dollars. The claim pursuant to Article 323 Paragraph 2 of the Surinamese Code of Criminal Procedure will only be admissible if any punishment or measure is imposed on the defendant. This implies that the claim for compensation can only be instituted against the defendant. A more effective way to obtain compensation by the injured party can be obtained in a civil procedure, also because the ruling of the court does not depend on the sentencing of the defendant. In addition, in the civil court the following can be claimed: the actual damage, consisting of costs, damages and interests. The most important is that in

instant case not only the perpetrator(s), but the central government can be held responsible to give compensation. In addition, there are other circumstances (for example, looking at the size of the damage and the time that has passed it could be possible that the perpetrators cannot pay the damages or are not in the country or do not appear in court or are no longer residents or nationals or have died) that could have a negative influence on the actual compensation proceedings in the criminal suit. After all, one cannot institute proceedings against a deceased person, while the execution of a judgment *in absentia* can be delayed until the defendant is informed of or is served the judgment. It is also very important that on the basis of Article 1988 of the Surinamese Civil Code ***"all legal claims, both in rem as in private, expire after thirty years, without the person that invokes the expiry is obligated to show any statute, or that one can raise any objection, derived from his bad faith".***[45] This while the term of limitation in the criminal proceeding is much shorter. The terms of limitations in criminal law vary from 2 until 18 years.

52.

b) A following step is looking at the course of proceedings of the domestic legal system, both criminal and civil law, until the hearing of the case in court in first instance. After all, only after a court ruling in first instance, as stated earlier, the remedies become available to the litigants, in the sense that they can only be applied after the court ruling. For that matter it should be looked into to what degree the Moiwana case followed that course of proceedings, and whether this course of proceedings was determined by the Surinamese government or by the petitioners. On the basis of this, it can be shown whether the requirements have been met for applying the exception to the requirement of exhaustion of domestic remedies as intended in Article 37 Paragraph 2 of the Commission's Regulations.

53.

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[45] Art. 1988 Surinamese Civil Code.

c) In this instant case the following provisions from the Surinamese Code of Criminal Procedure are relevant:

SECOND BOOK

INVESTIGATION, PRELIMINARY INQUIRY AND DECISIONS

IN RESPECT OF FURTHER PROSECUTION

TITLE I

THE INVESTIGATION

FIRST SECTION

THE OFFICIALS

Article 133

The Procurator General guards the due investigation of offences. For that purpose he gives orders to the other members of the Public Prosecutions Department.

Article 134

1. In charge of the investigation of offences are:

1o The Procurator General and the other members of the Public Prosecutions Department;

2o The District Commissioners;

3o The Police Officers;

4o The Special Policemen, if and insofar as they have been designated thereto by the Minister of Justice and Police.

2. The jurisdiction of the persons mentioned in the previous paragraph under 2o and 4o shall be restricted to the territory for which they have been appointed.

Article 136

1. The Procurator General and the other members of the Public Prosecutions Department shall give orders to the other persons charged with the investigation.

2. The investigating officers have the right in the exercise of their official duties to call in the aid of the public civil and armed forces.

3. These are obligated to immediately meet the order.

Article 138

1. When a member of the Public Prosecutions Department personally carries out the investigation, he shall lay down his findings by procès-verbal drawn up under oath of office.

2. The other investigating officers shall draw up a procès-verbal as soon as possible of the offence investigated by them or of that which they have carried out or found in the investigation. The procès-verbal shall be drawn up by them under oath of office or, insofar as they have not taken such oath, by them sworn in by an assistant prosecuting officer who records a statement in respect thereof on the procès-verbal.

3. The procès-verbaux shall be drawn up, dated and signed personally by the investigating officers; for that purpose they should as much as possible explicitly state the reasons of their knowledge.

Article 139

When the prosecuting officer has taken cognizance of an offence, he shall carry out the necessary investigation and orders, in case there are grounds thereto, to hold a preliminary inquiry.

54. From Articles 133 to 139 of the Surinamese Code of Criminal Procedure appears who is in first instance charged with the criminal investigation in the first instance in the investigative stage.

The State is of the opinion that when only through the media and/or by means of a letter the investigative and/or prosecuting bodies, that is to say the Procurator General – who safeguards pursuant to Article 133 of the Code involved the proper prosecution of punishable acts – are informed of a punishable act, without given any details, such as which were the precise facts and acts from which these punishable acts are proven and/or details concerning the (suspected) perpetrators, then the Procurator General can have an investigation instituted. The question, however, is whether this will at all lead to a satisfying result, that is to say to that relevant information or arriving at that truth, so that deeds of prosecution can be engaged in. After all, in addition to an orientation at the site by investigative and/or prosecuting officers, which in most cases only shows a part of the consequences of the punishable acts, the course of the investigation depends for a large part on the instructions and data provided by witnesses upon making the report. The

results of the investigation in connection with what has actually occurred and catching up with possible other witnesses and running down the alleged perpetrators for prosecution. Summarizing, arriving at the truth depends for an important part on the instructions and statements of the (first) witnesses. In the Moiwana case these very important actors in the investigation or criminal investigation did not report to the investigative and/or prosecuting bodies. Within that framework the petitioners or others who have provided that information to the Commission, have neither provided any useful information for a criminal investigation to the Procurator General, nor to any (other) official charged with prosecution. The video images in the hands of the State do not contain further data that are relevant for the investigation to find out the facts and circumstances that can provide an indication of the direction into which to look for possible suspects. At the hearing of the 9th of September 2004 before your Honorable Court two witnesses stated frankly that they did not wish to approach the local authorities, because they had no faith in these bodies. Witness Rensch stated before your Honorable Court that the Organisation Moiwana 86 (the original petitioners in this case) always had access to jurists, or to reputable attorneys[46]. Following the proper legal procedure to hold the State liable for the alleged violations committed at Moiwana is known to the petitioners or should be known to the petitioners. It is understandable that individual persons who were present during the events at Moiwana (next of kin and other) react emotionally and are not in favor of exhausting domestic remedies. The Human Rights Organisation Moiwana 86 Suriname as filer of the petition, however, should know better.

The State wishes to remark that withholding the information from the investigative or prosecuting bodies has lead, amongst other things, to a very toilsome investigation up till the present, to the extent that it even had been stopped for some time. The State recognizes that during the military regime

[46]The reputable attorney Mr. Stanley Marica is a member of the board of the Human Rights organisation Moiwana 86 and also the attorney in many human rights cases, that are brought against the state by this organisation. The current Director of this organisation is a lawyer and also a lecturer at the University, as well as member of the board of the organisation mentioned. In addition, at least three lawyers are staff members of this organisation.

and afterwards persons and/or organisations have submitted letters to government bodies, in which these events were mentioned. However, never has there any relevant concrete information been provided to the investigative body or any other criminal law authority in Suriname, which could have lead to the indication of anyone as a suspect. Moreover, when the investigation was being conducted many persons within the framework appeared not to be willing to provide any information.

The Public Prosecutions Office has never had the necessary collaboration of petitioners to bring the case before the court in a succesful manner. In fact the petitioners have failed to fulfil their obligation in that respect, in the sense that they have not met the obligation they have to report a crime pursuant to Articles 148 and 150 of the Surinamese Code of Criminal Procedure.

55. This Code provides:

"SECOND SECTION

REPORTS, COMPLAINTS AND STATEMENTS OF PLAINTIFF CLAIMING DAMAGES

Article 148

1. Anyone who has knowledge of one of the criminal offences, described in Articles 128-145a and 149 of the Penal Code, in Title VII of the Second Book of that Code, insofar as lives have been endangered thereby or in Articles 347-359 of that Code, of kidnapping or rape or the intention to commit one of said criminal offences, shall be obligated to immediately report this to an investigating officer.

2. The provisions of the first paragraph shall not be applicable to the person who by reporting should risk to be prosecuted himself or a person for whom he in case of prosecution could claim exemption to testify.

Article 149

Anyone who has knowledge of an offence committed shall be authorized to report that or to lodge a complaint.

Article 150

Public bodies or officials, who in the exercise of their duties gain knowledge of an offence and who are not charged with the investigation of such offence, shall be

obligated to immediately report this, submitting the documents related to the case to the prosecuting officer or one of his assistant prosecuting officers.

56. For as far as the procedure for reporting is concerned this law provides:

"Article 151

1. The reporting of any offence shall be done verbally or in writing to the authorized officer, either by the person reporting it in person, or by another person who has been given a special written power of attorney for that purpose by him.

2. The verbal report shall be taken down by the officer who receives it and after reading out loud by him shall be signed by him and the person reporting the offence. If the latter cannot sign, the reason for not signing shall be mentioned.

3. The written report shall be signed by the person reporting the offence or his proxy.

4. The written power of attorney or if it has been executed in a single copy before a civil-law notary, an officially certified copy thereof, shall be attached to the deed.

5. The investigating officers shall be obligated to receive the reports intended in Articles 148 and 149 and the officers mentioned in Article 150 shall be obligated to receive the reports intended in said article.

6. Article 145 shall be applicable.

57. Article 145 provides as follows:

"Article 145

The assistant prosecuting officers shall immediately submit the procès-verbaux, received or drawn up by them, or the reports or messages in respect of offences, as well as the statement of plaintiff claiming damages, with the objects seized to the prosecuting officer, unless the latter decides otherwise.

58. Considering the above, it is clear that the letter of Mr. Rensch to the then Procurator General and to the President of the Court of Justice in Suriname cannot be considered to have been a report as intended by the law. No indication was given of an offence having been committed with the request for a criminal investigation (as intended in Articles 149 and 151 of the Surinamese Code of Criminal Procedure) and/or prosecution and no other data were given to prosecute such act.

59. It is indeed true that in 1993 when the democracy was not completely restored – in the sense that elements of the military regime were still in function and present on very strategic posts – that Mr. Rensch addressed a letter to the Procurator General in which he indicated that a certain Saroekoe, Leo, also called "Uncle Leo", had discovered graves at Moiwana.[47] The investigative and/or prosecuting bodies immediately reacted to this: as a result of the letter the investigative authorities with the help of "Uncle Leo" and in the presence of Prof. Dr. M.A. Vrede, the pathologist, conducted an investigation which resulted in the exhuming of some mortal remains, which were investigated by the pathologist.[48] The second time, however, Mr. Rensch and "Uncle Leo" (who reported this) – when a delegation of investigative officers and the pathologist went to visit the site – could not point out graves, that is to say indicate any human remains. This investigation did not lead to solving the criminal case.

60. The Surinamese Code of Criminal Procedure further provides:

THIRD SECTION

DECISIONS IN RESPECT OF PROSECUTION

Article 156

1. If as a result of the investigation the public prosecutions department is of the opinion that prosecution should be instituted, it shall take such action as soon as possible.

2. Prosecution can be waived also on the basis of grounds originating in the public interest.

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[47] See Suriname's response to the Court of the 30th of April 2003 Attachment 20, Letter of Human Rights Organisation Moiwana 86 of the 24th of May 1993.

[48] Idem, Attachment 29 of Suriname's response to the Court of the 30th of April 2003, pro justitia visum et repertum of the Pathological Laboratory of the Academic Hospital Paramaribo of the 23rd of June 1993, autopsy reports.

61. To be able to institute a prosecution, however, the court first has to be approached and an individual should be indicated as suspect. After all the Code of Criminal Procedure provides:

"TITLE III

PROCEDURE OF THE PRELIMINARY INQUIRY

FIRST SECTION

THE ACTION OF THE PROSECUTING OFFICER

Article 168

1. If the prosecuting officer in accordance with the provisions of Article 139 considers a preliminary inquiry necessary in respect of an offence, he shall demand that the examining magistrate shall forthwith proceed with said inquiry.

2. In the request the offence shall be described as accurate as possible in this stage of the case.

3. Said request or, in case the suspect becomes known only later, a further request to be submitted immediately, shall designate the suspect.

62. In the Moiwana case witnesses, important actors in the investigation or prosecuting investigation, never reported to the Surinamese investigative or prosecuting bodies. From that side no information, which could lead to the location of the perpetrators, has been provided to the Procurator General or any (other) official charged with the prosecution of punishable acts. This has lead, amongst other things, to the fact that all investigative activities in respect of instant case – with the exception of the report made by Mr. Rensch in respect of the graves mentioned – are only based on the own observations and detective work of the investigative officers, which in the days of the military regime did not lead to the desired results. Petitioners have through the person of Mr. Rensch as well as different human rights organisations[49] several years after the event by letter pressed for a criminal investigation. However, no concrete information has been provided to the investigative authorities. The fact the possible witnesses reside in French Guiana or have no faith in the investigative body is no argument to excuse themselves from

[49] See petition of Commisson to the Court

their obligation to witness, as a report by power of attorney is also possible. The foregoing has as a consequence that until the present insufficient material has been collected by the investigative authorities to bring the case until the present to the court. Like the fact that petitioners never reported as injured parties to the investigative and/or prosecuting bodies, the matters discussed above had as a result that petitioners – if they would intervene as injured parties in the criminal proceedings – have not wanted to invoke or exhaust the available domestic remedies in criminal law. Finally, it should be stated that the criminal prosecution of possible suspects in the Moiwana case has not expired according to the prevailing national legal regulations. It should be mentioned that at the moment a bill has been approved by the Council of Ministers, containing an amendment of the statute of limitation for serious crimes such as murder to 25 years[50]. It is expected that this act will become effective prior to the 29th of November 2004, which implies that there is no danger of limitation of the alleged murders committed at Moiwana in 1986. The State is making every effort to conduct the investigation in such a manner that the results thereof will lead to the succesful sentencing of the persons responsible for the events in Moiwana in 1986.

63. Article 155 of the Surinamese Code of Criminal Procedure provides as follows:

"Article 155

Any person who has incurred damages as a result of the offence of another party may report himself as a plaintiff claiming damages. In respect of such report Article 151 first to fourth paragraph shall be equally applicable. The investigating officers shall be obligated to receive such report."

64. The foregoing shows that within the criminal law system there are indeed effective remedies available on a national level, but petitioners did not *want* to invoke or exhaust these for obtaining compensation and/or restoration to the old situation, prior to submitting their original petition to the Commission. The

[50]See Annex 1, Bill

course of proceedings to obtain compensation within a criminal proceeding – on the basis of the fact that petitioners pursuant to Articles 145 and 155 of the Surinamese Code of Criminal Procedure need to report themselves as injured parties to the investigative or prosecuting officers – is determined by the petitioners. It also appears that – assuming alleged violations of Articles 8 and 25 of the Convention as stated by the Commission – that remedies were not withheld from the petitioners and that it was not the fault of the State that these remedies were not exhausted, that is to say that petitioners were not barred from exhausting these.

On the basis of the foregoing it also appears that petitioner did not invoke the domestic remedies as was explained earlier. This implies that within the criminal framework no commencement was made for invoking or exhausting the domestic remedies. This leads to the conclusion that no delay or wrongful delay has occurred in the proceedings in respect of the events in Moiwana in 1986.

65.

d) With regard to the existence of effective remedies in the civil law system the State wishes to indicate that within its legal system there are indeed effective remedies available. In the first place, it should be mentioned that original petitioners contrary to the statement of the Commission – as appears now – did indeed approach the civil court in respect of the instant case, in the sense that they laid a claim against the State, so that on a national level – according to their statement to prevent that the offenders in the Moiwana events would not be prosecuted or punished – would be prevented that the Amnesty Act would be published. By ruling this claim was rejected in interim injunction proceedings[51]. The original petitioners, however, have resigned themselves to this ruling in the sense that they did not invoke the remedy of appeal. The Commission even states in its communication no. 26/00, that petitioners note in their petition that: ***"In 1992, the Parliament of Suriname adopted a retroactive***

[51] See Suriname's response to the Court of the 30th of April 2003 Attachment 28

Amnesty Law that canceled all proceedings related to human rights violations committed from 1985 to 1991, except for crimes against humanity defined by the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Charter of the Nuremberg Tribunal of 1950 (Nuremberg Principles). According to the petitioners, the foregoing means that the aforesaid Amnesty Law does not apply to the crimes of Moiwana."[52]

66. An important question is which possibilities for compensation or restoration to the original situation petitioners have on a national level within civil proceedings. The provisions included in the Fourth Section First Title of the Third Book of the Surinamese Civil Code, more in particular Articles 1264 and 1265 and in the Third Title of the Third Book of the Surinamese Civil Code, in particular Articles 1386 to 1388 and 1391 to 1396 play an important role in this.

67. These articles quoted from the Surinamese Civil Code read as follows:

"FOURTH SECTION

On the compensation of costs, damages and interests, originating in the non-fulfillment of an obligation

Article 1264

Compensation of costs, damages and interests, originating in the non-fulfillment of an obligation, shall only be due, when the debtor, after having been held liable, continues to fail to fulfill that obligation, or if that which the debtor was obligated to give or do, could only be given or done within a certain period, which he let expire.

Article 1265

The debtor must, if the grounds for that are present, be sentenced to the compensation of costs, damages and interests, as often as he cannot prove, that the non-fulfillment or untimely fulfilment of the obligation is the result of a foreign cause, that cannot be attributed to him, even if no bad faith can be contributed to him.

THIRD TITLE

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[52] Communication no. 26/00 case 11.821 Village of Moiwana Suriname, March 7, 2000, Para 7.

On obligations, that originate in the force of law

Article 1386

Every lawful act which causes damage to another, imposes an obligation on the person through whose fault the damage was caused to compensate such damage.

Article 1387

Everyone shall be responsible not only for the damage he has caused by his act, but also for that which he has caused by his negligence or carelessness.

Article 1388

1. One is not only responsible for the damage caused by one's own act, but also for that which is caused due to acts of persons for whom one is responsible, of by goods one has in one's possession.

2.

3. The principals and those who appoint other persons to represent their affairs, shall be responsible for the damage caused by their servants and employees in the performance of the work for which they have used them.

4. Schoolteachers and supervisors shall be responsible for the damage caused by their pupils and servants during the time that these have been under their supervision.

5. The above responsibility shall end when the parents, guardians, schoolteachers and employers show that they were unable to prevent the act for which they would be responsible.

Article 1391

In the event of deliberate or imprudent homicide, the surviving spouse, the children or parents of the victim, who are supported by his labor, shall have a claim for damages, to be valued in accordance with the mutual position and wealth of the persons and the circumstances.

Article 1392

1. Deliberate or imprudent injury or maiming of any part of the body, entitles the injured party to claim not only compensation of the costs of recovery, but also those of the damage caused by the injury or maiming.

2. These as well shall be valued in accordance with the mutual position and wealth of the persons and the circumstances.

3. This last provision shall in general be applicable in the valuation of the damage arisen from any offence committed against the person.

Article 1393

1. The civil action relating to insult shall be used to compensate the damage and to mend the prejudice to the name or reputation.

2. The judge shall, in valuing this, have regard to the lesser of greater degree of grossness of the insult, as well as on the quality, position and wealth of either party and the circumstances.

Artikel 1394

De beledigde kan bovendien eisen, dat bij hetzelfde vonnis wordt verklaard, dat de gepleegde daad is lasterlijk of beledigend.

Eist hij de verklaring dat de gepleegde daad is lasterlijk, dan gelden de regelen in artikel 270 van het Surinaams Wetboek van Strafrecht voor de strafvordering wegens laster gesteld.

Het vonnis zal, indien de beledigde zulks vordert, ten koste van de veroordeelden, openbaar worden aangeplakt, bij zovele exemplaren als, en daar waar de rechter zulks zal bevelen.

Artikel 1395

Onverminderd haar gehoudenheid tot schadevergoeding, kan de verwerende partij de toewijzing van de vordering, bij het voorgaande artikel vermeld, voorkomen, door het aanbod en de werkelijke aflegging van een openbare verklaring voor de rechter, houdende dat haar de gepleegde daad leed doet, dat zij deswege verschoning vraagt, en de beledigde houdt voor een persoon van eer.

Artikel 1396

De rechtsvorderingen in de drie voorgaande artikelen vermeld, komen ook toe aan echtgenoten, ouders, grootouders, kinderen en kleinkinderen, wegens belediging van hun echtgenoten, kinderen, kleinkinderen, ouders en grootouders, na derzelver overlijden, aangedaan."

68. So it appears that *de jure* the petitioners on the basis of the national legal provisions in civil law, do have possibilities to institute claims against the perpetrators and/or the State on the basis of Articles 1386, 1388, 1391 to

1396. This is also possible *de facto* and the petitioner failed to do so on the basis of the reasons stated by the witnesses before your Honorable Court on the 9th of September 2004. Several similar claims have been lodged against the State with the court and were awarded[53]. The civil proceedings in the first instance can be divided in Interim Injunction Proceedings and so-called Proceedings on the merits. The commencement of proceedings before the First District Court in a civil case is instituted by addressing a petition by the petitioner or his attorney to the First District Court.

69. Article 110 of the Surinamese Code of Civil Procedure reads as follows:

"SECOND SECTION

On the commencement of proceedings, the defence and the completion of the case

110. Any commencement of proceedings before the First District Court starts with a petition addressed to it signed by the litigant or his attorney for that purpose; the First District Court shall deal with it as is instructed in this section.

If the litigant or his attorney cannot write and in any such other cases, as in which in the opinion of the First District Court there are reasons for such, the litigant or his attorney may bring the petition forward verbally before the First District Court, which shall put it in writing or have it put in writing.

This right to bring forward the petition verbally does not apply to the attorney who makes it his profession to grant legal services.

The First District Court shall be authorized to advise and provide assistance to the litigant or his attorney when submitting the petition."

70. The petition must meet the requirements provided in Article 111 of this Code. If these requirements are not met, the petition is returned to the litigant or his attorney and they will be informed of this. They shall be given the reason for improvement or addition. The petition will then not be recorded in the General Register. The remedy of appeal can be invoked when the District Court refuses by ruling to put a verbal petition in writing, if this has to be submitted to another District Court.

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[53] See annex 2 for Case Ramparichan, A.R. No. 995028 of the 10th of December 1999

71. Articles 111 to 113 of the Surinamese Code of Civil Procedure read as follows:

"111. The petition, or the document, drawn up pursuant to the second paragraph of the previous article should contain:

1°. the name, first names and the place of residence of the litigant and, if the petition is made by an attorney, the name, first names and the place of residence of his attorney;

2°. the name, first names and the place of residence of the defendant;

3°. an indication and description of the subject of the claim and what is being claimed; and

4°. the dating of the petition. The litigant who is not residing in the place where the Court holds its sessions has to elect domicile in that place in the petition. If the attorney has signed the petition, the power of attorney has to be submitted with this.

112. Petitions that do not meet the requirements set in the previous article or for which the power of attorney has not been submitted, shall be returned or sent back to the litigant in person or to his attorney with the verbal or written statement of reasons for correction or supplementing or addition of a power of attorney and pending this shall not be recorded in the general register.

The verbal presentation shall only be put in writing after litigant has provided the data to meet the requirements set in the previous article.

Returning by decision stating the reasons shall be done and the recording as intended in the first paragraph shall not be made, if the petition should have been submitted to another District Court. If in this case the petition was submitted verbally, the District Court shall be authorized to refuse to put it in writing by a decision stating the reasons.

The decisions, intended in the previous Paragraph, can be appealed. The decisions recorded pursuant to the third paragraph and the rulings in respect thereof in appeal are recorded in the general register.

113. The clerk of the court shall make a recording in the general register of the petition. On the day this recording was made, the petition shall be considered to have been instituted.

The District Court determines then the day and the hour on which the case shall serve before the court and has the parties called up, so that they shall appear then,

accompanied by the witness, they wish to be heard, and the items of evidence they would like to use.
In the summons of the defendant the bailiff or the person authorized to serve the summons shall also give notice upon serving the signed authentic copy of the original of the claim, that he as he may choose can respond to the document prior to or on the day of the court hearing by document signed by him or his attorney.
The copy of the petition shall serve as an original claim to the person having received it.
Of the decision intended in the second paragraph of this article the clerk of the court makes a recording in the general register as well as on the original of the petition.

72. The petition is instituted when it is recorded in the general register. The hearing of the case in court in the first instance can then take place provided that the defendant needs to be summoned in a proper manner.

73. After a review of the General Register at the Office of the Clerk of the District Courts it does not appear that a civil case for compensation against the State was instituted by the petitioners in respect of the events of Moiwana. In Interim Injunction proceedings a civil case was brought against the State within the context of preventing the Amnesty Act of becoming effective. The remedy of appeal is also possible for the ruling in Interim Injunction Proceedings.

74. Articles 226 and 232 of the Surinamese Code of Civil Procedure dealing with the Interim Injunction Proceedings reads as follows:

"226. In all cases, in which on account of immediate urgency, an immediate provision is required, unless with regard to the execution of a ruling or of an executorial title, either in respect of obligations of civil law notaries in respect of the execution of any legal deed, which cannot be delayed, and furthermore in all cases in which the interests of parties demands any immediate provisions enforceable provisionally, the interested party shall address the district court with a request to give a provisionally enforceable ruling as soon as possible.

Unless the parties have appeared voluntarily the district court order the summoning of the other party on a date and time determined by him; Tenzij de partijen vrijwillig zijn verschenen beveelt de kantonrechter de oproeping van de wederpartij op den door hem bepaalden dag en uur; in very urgent cases including on Sundays.

The district court can even order that the hearing shall be held at his house.

232. Any ruling of the district court in interim injunction proceedings can be appealed."

75. The so-called Proceedings on the merits, not being interim injunction proceedings in civil law in the first instance. Considering the possibilities, that petitioners have in civil law with regard to the claims for compensation in respect of the events at Moiwana, the fact that they have chosen not to institute a claim for compensation for damages incurred *in civilibus*, but did institute a civil action to prevent the Amnesty Act from becoming effective, for which they did not use the remedy to appeal that was available to them against the ruling of the court in the interim injunction proceedings, it should be concluded that petitioners determined the course of proceedings *in civilibus*. They chose to institute a civil claim against the State with regard to preventing the Amnesty Act from becoming effective and consciously chose not to invoke the remedy of appeal. They consciously did not commence proceedings in respect of a claim for compensation with regard to the events at Moiwana[54], for which the legal provisions did offer them room, while it was proven *de facto* that the possibility existed and they were not deprived thereof. The petitioners were not deprived of or obstructed from using the available remedies in civil law. The State did not make it difficult to them to invoke a remedy; there was also no wrongful delay of the proceedings.

76.

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[54] See witness statements of the hearing of the Court of the 9th of September 2004.

e) Another fact on which the Commission based its application of Articles 37 Paragraph 2 of its Regulations and 46 Paragraph 2 of the Convention is the publication or putting into operation of the Amnesty Act. It indicates that the authorities interpret this Act in such a manner, that it dismisses these authorities from the obligation to prosecute. Addressing the issue of the ambiguousness concluded by the Commission of the Amnesty Act in relation to the events of the village Moiwana, it is clear that the Amnesty Act very explicitly excludes crimes against humanity from amnesty. In addition to remarks made earlier by the State with regard to the Amnesty Act, the State wishes to declare the following. If after investigation it appears that the events of Moiwana have to be qualified as a system of terror aimed against the population or parts thereof, then these events are pursuant to the law excluded from amnesty. The Amnesty Act is therefore wrongfully seen as an instrument of denial of justice.

77. From the foregoing plea it can be concluded that the best basis for claiming compensation is civil law and not criminal law as petitioners have one believe. Furthermore it should be concluded that the Commission has wrongfully applied the exceptions to the requirement of exhaustion of domestic remedies in case no. 11.821 Moiwana Village, as intended in the valid text of Article 37 Paragraph 2 of its Regulations and Article 46 Paragraph 2 of the Convention. The statement of the Commission saying that non-existence of an effective remedy, withholding access to remedies and obstructing petitioners from exhausting these and the wrongful delay in the proceedings do not have a legal basis, while the facts brought forward by them in respect thereof are irrelevant.

c. The Commission is not authorized to apply the principle of *iura novit curia*

78. The State is of the opinion that the Commission in its Communication no. 26/00 of the 7th of March 2002, has wrongfully declared petition no. 11.821 admissible for the alleged violations of the Declaration, and more in particular Articles I, VII and X and the violations of the Convention, more in particular Articles 1(1), 8(1) and 25(2). Following on Communication no. 26/00 the Commission publishes communication no. 35/02 of the 28th February 2002. In this communication the Commission concludes that the State of Suriname is responsible for the violation of the following provisions of the Declaration: I, VII, IX, XXIII, IV, VIII, XI, XII and for the violation of the following provisions of the Convention: 1(1), 8(1) and 25(2). The Commission has in violation with procedural law included other violations of the Declaration than for which it declared the case admissible in Communication no. 35/02. The Commission is in contrast to your Honorable Court not an adjudicating body within the Inter-American Human Rights system. The Commission is a quasi-legal body of the OAS having as principal task: ***"...to promote the observance and protection of human rights and to serve as the consultative organ of the organization in these matters..."***[55]. This has been laid down in the Charter of the OAS (Article 106) and Article 1 of the Statute of the Inter-American Commission. The State completely agrees with the statement of the Commission that: ***"a court has the power and the duty to apply the juridical provisions relevant to the proceeding, even when the parties do not expressly invoke them..."***[56] Since the Commission is not an adjudicating body, this provision is not applicable to the Commission, which implies that the Commission is not authorized in instant case to apply the principle of *iura novit curia* as quoted by the Commission itself.

79. In addition, the State asserts that the Commission is obligated to follow the procedure as laid down in the applicable instruments that are valid within the Inter-American Human Rights system, for declaring alleged violations

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[55] Basic documents pertaining to Human Rights in the Inter-American System (updated to July 2003), pag. 233 e.v.

[56] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, punt II onder D, pag. 26.

admissible and for publishing reports in which States are held liable for the violation of provisions of instruments that safeguard the rights of individuals. The Commission does not have the liberty to deviate from the procedure laid down, that guarantees the integrity of the system. If a case has been declared admissible for alleged violations of provisions of the Declaration, then the State is of the opinion that the investigation in respect of the legitimacy of alleged violations, that have been declared admissible, can only be directed at those alleged violations that were declared admissible by the Commission. Another opinion in this matter would violate the principles that are valid within the Inter-American Human Rights system. On the basis of this, the State is of the opinion that the Communications published by the Commission are not based on the standards, that are valid within the Inter-American Human Rights system and that they would therefore not be acceptable. On the basis of this the Court cannot allow the claim of the Commission now that the correct procedures have not been followed, which is stipulated within the Inter-American Human Rights system.

III PLEA ON THE MERITS

80. Before the State brings forward its meritorious defense, it wishes to emphasize again that it is by no means the intention to make things right that went wrong. The State regrets that fact that on the 29th of November 1986 a number of its citizens were killed violently. That the investigation has not been completed up till the present is the result of various factors, of which several have already been put forward in the Preliminary Objections. The State is now engaged in conducted a detailed investigation into this case and if the terms are still present for it, the State will institute criminal proceedings. If it appears after investigation that indeed human rights violations were involved, the State will not shy away from prosecuting and sentencing the culprits and to compensate the injured parties.

    To successfully complete the investigation it is necessary that the petitioners give an optimum cooperation, a requirement which so far has not been met.

81. The State is however of the opinion that the manner in which the events are presented in the instant case, first by the original petitioners and subsequently by the Commission, provide a wrong image of the manner in which the State dealt with the case of Moiwana. Looking at the foregoing from the perspective of the State which is legitimized by the principles of the constitutional state, the separation of powers and the existence of constitutional rights or human rights for which the State should act in accordance with the law, which implies that in principle actions of the government can also be appealed against.

Denial of justice

82. Within this framework the State wished to indicate that in the case 11.821 Stefano Ajintoena et al no 'denial of Justice' is involved.

In its communication as reaction to Suriname's response to your Honorable Court the Commission states that ***"What is at issue in the present case is a series of act 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 en 1(1) of the American Convention. The act and omissions at issue in the present case comprise a reiterated and ongoing denial of justice."***[57] The Commission furthermore discusses as an illustration several of the so-called 'acts and omissions'.

The State wishes to elaborate on these 'acts and omissions'. In earlier mentioned communications the Commission states:

- ***"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.....The investigation was then suspended"***[58].

  The impression that is given that no investigation took place or is taking place is wrong according to the State and this statement should also be seen within the framework of the armed conflict that was ongoing at the time. The investigation was hampered greatly by this. The original petitioners as well as the Commission indicate themselves:

  1. That a police investigation in 1987 was impossible as a result of the state of war that reigned at the time and the presence of soldiers in that area. The State wishes to add to this, that the area involved was the target of attacks related to the domestic war and was only accessible to members of the Jungle Commando and units of the military that were fighting the Jungle Commando. An investigation in the sense of a survey of the local situation and reporting or witness statements were completely impossible at that moment, so that it cannot be excluded that some evidence was lost.

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[57] 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, Chapter III Under A. item 3, page 10.
[58] idem

2. That one year after the events in Moiwana Village the police started the investigation, in which several persons had been identified as suspects. Again the State encountered some practical problems to obtain the necessary statement from the witnesses. Many inhabitants had spread over the country and several had fled to neighboring country of French Guiana. The investigation into the Moiwana events so far is clear and belies the claims of the original petitioners and the Commission that there is a denial of justice. The State is aware that your Honorable Court knows that the post-military period, of any state that suffered a military regime, is a very fragile period. The experiences in countries like Argentina, Chile, Uruguay and others are well-known. It shows an ingrained understanding of the enjoyment of human rights in the State of Suriname, that the then Government already took steps – however careful – to investigate the Moiwana events. The State is of the opinion that petitioners wrongfully quote that the State has continuously failed 'to provide judicial guarantees [to the victims].....
3. That in 1993 again a police investigation was started at a site indicated by the petitioners, where skeletons were found, or that is to say were buried.

89 In the years 2003 and 2004 fact-finding teams of the investigative body have been to the Moiwana area for investigations. This investigation is now still ongoing. To obtain the desired result in the investigation, more in particular obtain sufficient evidence to institute the prosecution, the cooperation of the petitioners is required. This cooperation has so far not been obtained. The State repeats again that it has tried everything and will ensure that the events at Moiwana are sufficiently investigated so that the culprits can be identified and prosecuted. Evidencing the determination of the State a bill has been submitted to the National Assembly to extend the statute of limitation for murder. This will prevent that the objection of the expiry of the right of prosecution cannot be brought forward in instant case after the 29th of

November 2004. The foregoing is applicable without prejudice to the application, if any, of Article 2 of the Amnesty Act in instant case.

84.

- ***"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 impunity."*** The Commission indicates in other communications and during the hearing before your Honorable Court also that the authorities interpret this act in such a manner, that it discharges them of the obligation to prosecute the responsible parties in the instant case. With regard to the ambiguity of the Amnesty Act concluded by the Commission in relation to the events in Moiwana Village it is clear that the Amnesty Act explicitly excludes crimes against humanity from amnesty. The Explanatory Note to this Act in respect of Article 2 is clear: ***Persons having committed a crime against humanity in the sense given thereto in international law shall be excluded from amnesty. It is an elementary, international legal standard not to consider persons who have committed such criminal offences for amnesty, and have them sentenced.....***"[59] If after investigation it becomes clear that the events of Moiwana can be qualified as a system of terror aimed at the Maroon population or parts thereof, then the persons that were guilty of these violations are not eligible for amnesty under this Act. Wrongfully the Amnesty Act is seen by petitioners and the Commission as an instrument of denial of justice.

85.

- ***"...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 the 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***

[59] Amnesty Act 1989, Explanatory Note, Article 2.

respond to the attack at Moiwana Village with due diligence, the families of those killed have been unable to burry the remains in accordance with their whishes and the norms of their culture."[60]

The State is of the opinion that this statement is incorrect, as the investigative work done so far has shown that the witness Leo Saroekoe, also called 'Uncle Leo' has stated that the bodies were discovered and buried by a group of people led by him one month after the Moiwana events.[61] This information was never brought to the attention of the investigative or prosecuting bodies in Suriname until the 24th of May 1993[62]. This led amongst other things to evidence being lost, in the sense that the examination of the mortal remains for identification, as well as the investigation at the site of the crime did not produce the desired result. Further the State wishes to mention that the mortal remains have been examined by the pathologist charged with forensic autopsies[63], but this examination did not result in the identification of the mortal remains. It should be further stated that petitioners themselves have indicated in their communications that a large part of the lifeless bodies were transported to the mortuary in Moengo, after which this mortuary burned down. A funeral in accordance with the culture of the petitioners was therefore from the moment of the burning of the bodies and the burial by the group led by Mr. Leo Saroekoe impossible.

86.

- ***"Following the discovery of these remains, the petitioners filed three written requests for investigation with the Procurator-General of Suriname but received no response, whatsoever.*** This information is also incorrect. By letter of the 28th of May 1993 the Acting Procurator General has confirmed the reception of the letter of petitioners of the 24th of May 1993 reference jurid/93 e2403[64], in which was confirmed amongst other things that the due note was taken of the content of

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[60] 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, Chapter III under A. punt 3, page 10

[61] See annex..... first response of the State to the Court

[62] See Chapter VII, annexes no. 2, of the original petition

[63] See annex 29 of the response of the State to the Court

[64] idem annex 19

the letter of the petitioners. Petitioners' letter to the Acting Procurator General was for the Public Prosecutor's Office as prosecuting body the reason to order the police to start an investigation. A combined team of the Judicial Service of the Police Corps of Suriname, members of the Military Police and several experts have participated in the investigation in the month of May at the instruction of witness Leo Saroekoe in the village intended into the presence of the grave intended. At the first site indicated by the witness no grave was found. At the second site indicate by the witness mortal remains were exhumed in the presence of the pathologist as mentioned earlier and the forensic autopsy was performed. As a result of the time that had passed, the autopsy did not yield the desired results, while the technical examination also did not yield any useful material for the investigation. As a result of the time that had passed (almost seven years after the Moiwana events) and on the basis of the fact that Mr. Rensch and others did an investigation at the site at their own initiative before calling in the duly authorized authorities (with their experts), the petitioners have in their zeal done more harm to the desired goal than helped. The Minister of Justice and Police was informed by the Acting Procurator General of this in a letter of the **28th of May 1993,** in which she indicated that what is important in such an investigation is: the expert determination of the vegetation at that moment, the accessibility of the area, the soil composition, the location of the bones, the extent in which the bones have been mixed with soil.

89 In the Paragraphs of Chapter II is already indicated how the Commission came to the conclusion of 'denial of justice', as it characterizes the alleged violations of Articles 8 and 25 and also attributes to them the element of 'on-going' and 'continuous'. The State has already provided evidence in Chapter II under C item 2 that there is no 'denial of justice'.

89 For the sake of procedural economy the State hereby inserts the content of the aforementioned Paragraphs for the plea on the merits of this

communication, so that they will become part of the content of the plea on the merits. The State wishes further to elaborate on several points quoted by the Commission.

89 Article 8 Paragraph 1 of the Convention lays down: ***"Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."*** [65]

This article indicates that petitioners have the right to submit its case to 'a competent, independent and impartial tribunal'. The actions that were taken by petitioners, by which they sent letters to officials in this country (the President of Suriname, the Speaker of the National Assembly and the Procurator General) are not a complaint in accordance with the prevailing legislation of the State. These officials/ bodies cannot be seen as a 'tribunal' in the sense of Article 8 Paragraph 1 of the Convention.

93 The European Court of Human Rights states in its judgment of the 7th of November 2002 in the case of Veeber vs Estonia (No.1): ***"....only an institution that has full jurisdiction, including the power to quach in all respects on questions of fact and law, the challenged decision, merits the description 'tribunal' within the meaning of Art. 6 § 1....".***[66]

Article 6 § 1 of the European Convention corresponds to Article 8 Paragraph 1 of the Convention. The State explicitly points out that petitioners did have the possibility to approach the District Court. This legal body is the institution as intended in Article 8 Paragraph 1 of the Convention and which meets the provisions of the Veeber v. Estonia case.

93 *De jure* and *de facto* no step was taken by the next of kin of the victims of Moiwana and the survivors or petitioners to institute legal proceedings in the sense that the case was not reported and no one has reported to the

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[65] American Convention, art. 8(1)

[66] The European Court of Human Rights, case of Veeber v. Estonia (No.1), Judgment 7 November 2002, Final 7/02/2003, para 70.

investigative body as injured party. The aforementioned letter does not mean that this step was made. For that reason the original petitioners as well as the Commission use this fact as an example of the basis that is formed for the so-called 'denial of justice'.

The same is true in respect of Article 25 Paragraph 2 of the Convention. This Article reads as follows:

"The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State.

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted."[67]

With reference to what has already been stated by the State under Chapter II under C item 2, there has thus not been a violation of Article 25 Paragraph 2 under a, while it has already been maintained and proven that the State has developed the possibility for claims for compensation in its legal system. Practice shows that this possibility is also open *de facto* and *de jure*. Both in cases against the State, legal persons and natural persons. The claims are based on all kinds of obligations laid down by law. The State is of the opinion that the Commission wrongfully asserts:

"In the present case the remedy suitable to address the infringement of the rights 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 reparation."[68]

On-going, continued violation

93 In its observations in response to the preliminary objections presented by the Republic of Suriname, chapter III, the Commission clearly stated that it only

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[67] American Convention, art. 25(2)

[68] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, chapter III under B 2a pag. 18.

addresses 'acts and omissions' of the State, which occurred after the State became a party to the Convention. For that purpose the Commission quotes the judgment of the European Court of Human Rights in the case of Yagci and Sargin v. Turkey (1), Judgment of 23 May 1995, para 40.[69] The statement of the Commission that the violations started on the 29th of November 1986 and were on-going and continuing on the 12th of November 1987 does not hold. The European Court indicates in this judgment:*"The Court considers that it cannot entertain complaints about events which occurred before 22 January 1990 and that its jurisdiction ratione temporis covers only the period after this date."*[70]

The witnesses (in case 11. 821) at the hearing of the 9th of September 2004

93 During the hearing before your Honorable Court on the 9th of September 2004 it became overtly clear from the questions that were asked from the witnesses and the answers they provided that both the Commission and the petitioner emphasized the events of the 29th of November 1986. The expert-witness Bilby gave a presentation about the consequences of the events.

What is at issue here, however, is to what extent we can speak of 'denial of justice'. And not the issue of what the cultural impact was of the events of the 29th of November 1986. This means that what should have been examined was

- whether *de facto* and *de jure* the survivors and the next of kin of the victims or petitioners took steps at the local authorities of the State to establish their rights and duties, by a duly authorized independent tribunal, and whether as a result their case has been heard or whether they were obstructed.
- To what extent their right to a simple and immediate access or any other effective access to a duly authorized court or judicial body for the protection against those deeds that are safeguarded by the constitution and other national legislative products or the Convention rights was denied them.

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[69] Idem, chapter III under A 3 pag. 7.
[70] European Court on Human Rights, Yagci and Sargin v. Turky, Judgment 23 May 1995, para 40.

- Whether the State has not been able to guarantee the petitioners the application of a domestic remedy?
- Whether the State has not developed the possibilities of redress.
- Whether the State has not ensured that the duly authorized authorities were have implemented any attributed redress.

94. These questions were not discussed during the hearing of the witnesses after questions posed by the Commission and the representatives of the original petitioners in the sense that no answer was given to these questions. The State did ask, however, explicitly whether the case was reported and why not? The reporting of the case – a simple legal act – is the first legal and factual step that is taken to be able to invoke a remedy.[71] The State underwrites the remark by the Commission in which it refers to the judgment of your Honorable Court, Decision in de Matter of Viviana Gallardo et al, para 26:*"the purpose of the requirement that claimants exhaust domestic remedies is not to impose unjustified procedural obstacles but to ensure that the State is place on notice of the claims prior to being convoked before an international mechanism of supervision"*[72] However, reporting or registering as injured party with the investigative bodies as laid down in the national legislation and which is of the utmost importance to institute the prosecution successfully in conjunction with a claim for compensation ***'do not impose unjustified procedural obstacle'.*** In addition, the requirements for instituting a civil claim for compensation can also not be characterized as such and is accessible to anyone, as proven earlier by the State. From the witness statements it becomes clear that the case has not been reported and this has not been refuted by either the Original petitioners or the Commission. This implies, also based on what has been stated before by the State, that it should be concluded that on the basis of the fact that petitioner did not take the steps to establish their rights and

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[71] See Paragraph..... of this application

[72] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, chapter III under B 2a pag. 18

duties before a duly authorized, independent tribunal that the commencement of proceedings was not denied to them. In the Veeber vs Estonia case the European Court argues that the remedies do not have to be exhausted, because Veeber invoked at least 5 remedies, in any case took action to do so. In the instant case the original petitioners did not invoke remedies, while the national legislation does provide the possibility of redress. Answering the last question is irrelevant as it now appears that no remedy was invoked.

Considering the foregoing one cannot speak in this instant case of 'denial of justice. This leads to the conclusion that Articles 8, 25 and 1 of the Convention have not been violated.

95 The State, based on its protection of human rights, will continue its investigation in the occurrences that took place in the Village of Moiwana. This will take place based on the notion of the State that the rights of all individuals within its territory must be safeguarded.

96. The State has no objections to issue a public apology to the whole Nation with regard to the occurrences that took place in the Village of Moiwana and to the survivors and family members in particular. As indicated in previous communications these occurrences are marked as one of the darkest pages in the history of this young Nation.

97. The State also has no objections to establish a memorial to point out the occurrences that took place in the Village of Moiwana. This memorial must be a reminder to the whole Nation of what happened and what may not repeat itself in the future.

98. The State has no objections to pay for the reasonable costs of survivors and family to members to commence cultural activities in Suriname, with regard t the occurrences that took place on the 29th of November 1986. Proposals of

this nature have never been submitted to the State by petitioners.

CONCLUSIONS

99. In conclusion, the State points out that even though the Commission has stated several times that Case No. 11.821 was submitted to the Honorable Inter-American Court of Human Rights to remedy a denial of justice, this is not *de facto* nor *de jure* true.

The State has proven that there is no denial of justice in this particular case. The State has shown that concrete efforts were taken to provide justice to the survivors of the attack on Moiwana Village and the families of those that did not survive the attack. The circumstances pertaining to the case and the lack of cooperation of the survivors and family members are a significant obstacle why the investigation of the occurrences in the Village of Moiwana has not yet been concluded.

100. Based on the considerations in its communications, the State respectfully requests the Honorable Court to accept its Preliminary Objections and dismiss the arguments of the Commission that the State's objections are void and/or invalid.

101. With regard to the Preliminary Objections in this case the State reiterates its opinion that this Honorable Court lacks jurisdiction to address this case on the merits, which is among others the reason why at the hearing on the 9th of September 2004 the State did not address issues on the merits in detail before your Honorable Court. Based on the foregoing the State requests the Court to declare itself incompetent to hear said case based on lack of jurisdiction.

102. With regard to the admissibility of the case the State points out that said case is inadmissible and requests your honorable Court to dismiss said case on the grounds that the Commission did not process the case in accordance to the applicable norms and its Regulations.

103. With regard to the merits of the case, if and in so far this case is declared admissible by your Honorable Court to be examined on the merits, on the basis of violation of articles 8, 25 en 1(1) of the Convention, the State requests to dismiss the claims of the Commission on the grounds that the latter failed to prove by law and fact that the State committed a 'denial of justice' in said case.

104. With regards to the content of the compensation the State requests your Honorable Court on the basis of the fact that the claim for financial compensation is unfounded seen against the background of a possible 'denial of justice', to dismiss the proposed claim for compensation laid before you.