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RESPONSE OF

THE REPUBLIC OF SURINAME

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

April 30, 2003

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- IACtHR, OC-9/87 supra, para. 24.

- IACtHR Advisory Opinion OC 11/90, August, 10, 1990.

III GENERAL STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF SURINAME

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The Republic of Suriname acknowledges as stated in the Preamble of its Constitution: 'We the People of Suriname, inspired by the love for this Country and the belief in the power of the Almighty and guided by the age-long struggle of our People against colonialism, which was terminated by the establishment of the Republic of Suriname on 25 November 1975, considering the coup d'état of 25 February 1980 and the consequences thereof,

conscious of our duty to combat and prevent every form of foreign domination,

resolved to defend and protect the national sovereignty, independence and integrity,

conscious of the will to determine our own economic, social and cultural development in full freedom,

convinced of our duty to honor and guarantee the principle of freedom, equality and democracy as well as the fundamental rights and freedoms of man,

inspired by a civic spirit and by the participation in the establishment, expansion and maintenance of a society that is socially just,

determined to collaborate with one another and with all peoples of the world on the basis of freedom, equality, peaceful co-existence and international solidarity,

SOLEMNLY DECLARE TO ACCEPT, AS A RESULT OF THE PLEBISCITE HELD, THE CONSTITUTION.

The State of Suriname emphasizes that in putting forward this defense it in no way attempts to justify human rights violations committed, if any.

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

Human rights violations committed on its territory are not only deemed an insult to the persons involved, but also an insult to the entire State, the territory, the people and the Constitution, which will not be tolerated by the State.

IV REPRESENTATION

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Article 146, section 2 of the Surinamese Constitution states: "The Attorney-General represents the State of Suriname in legal issues. He is the head of the Public Prosecutor's Office and is also charged with the judicial police task. He is authorized to give those instructions which he deems necessary to those civil servants who are charged with police tasks to prevent, detect and investigate criminal acts[1].

Pursuant to the Surinamese constitution[2], the **Attorney-General with the High Court of Justice** is the official who **will act as the legal representative of the Republic of Suriname** in case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname*** before your Honorable Court. At this point in time, Mr. Subhaschandre Punwasi, Solicitor-General, serves as Attorney-General. His deputy is Solicitor-General, Mr. Armand van der San.

So herewith the Republic of Suriname states that Mr. Subhaschandre Punwasi and Mr. Armand van der San are its legal representatives in said case (agent and sub-agent). This was officially stated in the government's letter dated February 17, 2003, addressed to your Honorable Court.

By Presidential Decree of September 24, 2002, no. 6899/02, the President of the Republic of Suriname established the ***Commission of Legal Experts in Human Rights***. This Commission has the task to assist the government to adequately handle judicial processes on an international level (regionally and globally). Taking into account its task, this Commission of Legal Experts in Human Rights will provide the necessary

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[1] Annex 1, Constitution of the Republic of Surname, Article 146.
[2] Ibidem.

support to the Agents of the State in this specific case. Said commission is composed of the following persons[3]:

1. The Attorney-General with the High Court of Justice, Mr. Subhaschandre Punwasi, LL.M., acting Attorney-General with the High Court of Justice on behalf of the Public Prosecutor's office, as chairman and member;
2. A Solicitor-General with the High Court of Justice, Mr. Armand van der San, LL.M., on behalf of the Public Prosecutor's Office, as substitute chairman, and member
3. Mrs. Lydia C. Ravenberg, LL.M., Public Prosecutor and Human Rights expert, as member;
4. Mrs. Margo M. Waterval, LL.M., Human Rights Expert, employed at the Ministry of Education and lecturer at the Anton de Kom University of Suriname, as member
5. Mr. Eric P. Rudge, LL.M., Human Rights Expert, substitute member of the High Court of Justice and lecturer at the Anton de Kom University of Suriname, as member

By establishing this commission, the State has indicated that it propagates the full enjoyment of human rights in Suriname.

The State of Suriname informed your Honorable Court that the members of said Commission, namely Mr. Eric P. Rudge, LL.M, Mrs. Margo M. Waterval, LL.M and Mrs. Lydia C. Ravenberg, LL.M., will assist the agent and sub-agent of the Republic of Suriname, Mr. Subhaschande Punwasi, LL.M. and Mr. Armand van der San, LL.M., in the handling of case no. 11.821, ***Stefano Ajintoena et al vs the Republic of Suriname*** before your Honorable Court.

[3] Annex 2, Presidential Decree no. 6899/02, dated September, 24, 2002.

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V QUESTIONS PRESENTED

In case no. 11.821, ***Stefano Ajintoena et al vs the Republic of Suriname,*** the questions presented to your Honorable Court are:

1. Whether the Inter-American Court of Human Rights is competent to hear case no. 11.821, ***Stefano Ajintoena et al vs the Republic of Suriname?***

2. Whether the Inter-American Court of Human Rights has jurisdiction to hear case no. 11.821, ***Stefano Ajintoena et al vs the Republic of Suriname?***

3. Whether the Stefano Ajintoena et al case is admissible before the Inter American Court of Human Rights?

4. To what extent has the Republic of Suriname violated the Articles 1(1), 8 and 25 of the American Convention of Human Rights?

5. To what extent has the 'continuous human rights violation' as presented by the Inter-American Commission on Human Rights been codified in the American Convention on Human Rights and other instruments of the Inter-American Human Rights System?

6. Is it possible to declare a state which is not a party to the American Convention, liable through an ex-post facto application of the American Convention?

VI STATEMENT OF REQUESTS OF THE REPUBLIC OF SURINAME

The Republic of Suriname requests the following from your Honorable Court:

A. That the Court declares itself not competent to consider case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname*** as presented to her on the basis of Articles 1 and 2 of the Statute of the Inter-American Court of Human Rights.

If your Honorable Court does not concur in the request under A;

B. That the Court declares case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname*** presented by the Commission inadmissible, pursuant to Article 1 of the Statute of the Inter-American Court of Human Rights juncto Article 46(1) juncto Article 31 and Article 41(b) juncto Article 31 of Commission's Regulations.

If your esteemed Court does not concur in the request under A and B;

C. That the Court rejects the claims that were submitted by the Inter-American Commission on Human Rights on the grounds that the State did not violate the rights safeguarded in Articles 1(1), 8 and 25 of the American Convention on Human Rights.

If your Honorable Court does not concur in the request under A, B and C;

D. That the Court rejects the claims that were submitted by the Inter-American Commission on Human Rights on the grounds that the State did not violate the rights safeguarded in Articles 1(1), 8 and 25 of the American Convention on Human Rights, because petitioner has no interest in what was requested, since there is an investigation in this subject matter .

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If your Honorable Court does not concur in the request under A, B, C and D;

E. That the claim of the Commission of payment of legal costs and fees be denied, based on the fact that legal costs of this nature 'bears no relationship to prevailing conditions in the Inter-American system'[4] and has no legal basis within this system. Moreover the Republic of Suriname has not violated Articles 25, 8 and 1(1) of the American Convention.

If your Honorable Court does not concur in the request under A, B, C, D and E;

F. That the claim of the Commission for reparations be denied based on the fact that:

1. The State has not violated Articles 25, 8 and 1(1) of the Convention.
2. The method applied by the Commission to determine the individuals who would be entitled to reparations, as well as the level of the reparations, is not justified by law.

[4] See Aloeboetoe et al vs. The Republic of Suriname, para 30.

VII FACTS

The Republic of Suriname is a democratic state, based on the sovereignty of the people, and on respect for and the guarantee of fundamental rights and liberties.[5] Suriname consists of the territory on the South-American continent which has been historically determined as such.[6]

The Republic of Suriname has an ethnically highly diverse population, of which the greater part lives in the coastal area in cities. The original inhabitants of Suriname are Amerindians who mostly live in the interior in their own traditional way. The Surinamese interior is also inhabited by Maroons, descendants of African slaves, who fled the plantations of the colonial masters to freedom and have settled in the interior. Some parts of the interior are populated by both Amerindians and Maroons.[7]

Suriname is a reasonably young nation, which gained independence from the Netherlands on November 25, 1975, and became a Republic with a parliamentary democracy, which was confirmed in its Constitution.[8]

I Political History

Barely five years after gaining its political independence, Suriname was introduced to a totalitarian regime under leadership of Sergeant D.D. Bouterse and a few other soldiers. The democratic government of the young Republic was deposed by brute force on 25 February 1980 by a group of army officers. This take-over, in which blood was shed, ushered in a period of systematic violations of rights of individuals.[9]

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[5] Supra note 1, Article 1(1).
[6] Supra note 1 Article 2(1).
[7] Annex 18, Map of Suriname, from which the spreading of the population could be read
[8] Supra note 1, Chapter IX.
[9] See Aloeboetoe case and Gangaram Panday case

During this period, the 1975 Constitution was suspended, and Parliament disbanded. The actual power was in the hands of the military, and the police were restricted in their tasks. There was no democracy, nor a constitutional state The people grew discontent. There were even some attempts for coup d'etats.

Around 1982, former army commander Bouterse was opposed by the unions and the University of Suriname. In that period, there was social unrest with union demonstrations and mass-meetings organized by the unions. This resulted in the arrest of 16 people, among which union leaders, university lecturers, journalists and lawyers (in short, Bouterse's political adversaries), on the suspicion of planning a counter-coup d'etat against the military authorities. On December 8, 1982, 15 of these detainees were shot dead in the army compound Fort Zeelandia. There was fear and discontent among the population.

In July of 1986, a few Maroon youth, calling themselves "Jungle Commando" under leadership of former soldier Ronny Brunswijk, started an offensive against the military dictatorship, by executing armed attacks on military strongholds. Nationally, this was called the internal war. During the conflicts which occurred hereafter, 76 soldiers perished,[10] according to the statistics of the National Army, while the number of casualties on the side of the "Jungle Commando" is not known. This war was mainly fought in the interior (the forest and military bases in the interior).

During the internal war, a change of situation took place with regard to the relationship between the Amerindians and Maroons, who, up to then, had co-existed peacefully.

[10] Annex 19, Statement National Army

Due to the fighting which regularly took place in the interior at locations where Maroons lived, there was an unsafe situation in four districts, namely Marowijne and Commewijne, as well as in areas which were further away from the coast, namely the districts of Sipaliwini and Brokopondo.The Amerindian population who was confronted with this, was not happy with the Maroon presence in their living areas. They felt that their living area was made unsafe by the presence of Maroons. This resulted in the military recruiting a number of Amerindians for their "people's militia", who assisted the soldiers during the conflicts in the interior, also as guides. Also, groups of Amerindians, known as "Amazonia Tucajana" were armed by the military, and they started to fight against "Jungle Commando". This caused a very explosive situation in various parts of the interior in Suriname.

In November 1987, elections were held, due to national and international pressure, and the Republic of Suriname again had a democratically elected government after seven years of military rule. A start was made with the process of democratization. Prior to the election a referendum was held and the new Surinamese Constitution was accepted by the Surinamese people. In order to respect and safeguard the fundamental rights and liberties as well as possible, Suriname became a party to the Convention on November 12, 1987, and on that date accepted the contentious jurisdiction of the Court.

After the 25 November 1987 elections, the democratically elected government that came into power was confronted with an immense task. This task was to be fulfilled with the military, who had secured a position in vital sectors of society. The military had meanwhile founded a political party, and although they were resolutely rejected by the people in the 1987 elections, their influence in various sectors of Surinamese society had not diminished. How fragile democracy was in Suriname during the

post military period, is apparent from the fact that in December 1990, the military once again seized power, this time in a very simple manner – by way of a telephone call.

In the elections of 1991, the military were once more rejected by the people. Through a systematic approach of the first Venetiaan Administration, efforts were put forth to restore democracy and the balance between the powers in the country. This was absolutely essential, because the military had installed themselves, by means of legislation and regulations, in bodies, *casu quo* sectors in which they in fact did not belong.

Also in this period, democracy appeared to be fragile and at many occasions capable leadership ensured that the country was not thrown back considerably in that transitional phase. The first Venetiaan Administration set priorities which were dealt with in a systematic manner. Under this Administration, the State of Suriname accepted the responsibility in the case ***Aloeboetoe et.al***. The State of Suriname thus clearly showed its democratic quality, respect for the rights of individuals and its responsibility as an OAS Member State.

Elections were held again in 1996. The political party chaired by former military commander Mr. D.D. Bouterse participated in this election. His party lost the elections, but managed to convince part of the then elected members of parliament through manipulation, to join his party, so that his political combination won the majority in parliament, and came into power, which was another set-back for the Surinamese parliamentary democracy. The people once again rebelled, which resulted in the then-parliament holding some sort of impeachment meeting, in which they asked the President to resign. Early elections were held, which the political party of former military commander Bouterse, lost. After a period of a government

dominated by military powers, a democratically elected government, namely the second Venetiaan Administration, assumed power in Suriname in August 2000. The priorities set under the first Venetiaan Administration were still valid, be it that many other things inherited from the previous government had to be dealt with immediately, so as to halt the deterioration that had begun in many areas.

Based on the information presented above, it is evident that post-authoritarian government faces huge challenges to find the right balance between restoring democracy, the prosecution of human rights violations, and bringing peace, stability and economic growth to the nation. It must be said that the current democratic elected government has proven to take responsibility for human rights violations and addresses these adequately, given the circumstances of the time. The State of Suriname may inform your Honorable Court that there is no ill-will on the part of the State of Suriname. The State has explicitly mentioned this in all its correspondence to the Commission.

On the contrary; the government of the Republic of Suriname is full of good will to take corrective measures as regards to all matters in which rights of individuals in Suriname have been violated. In the case of the village of Moiwana, the State of Suriname deems it necessary to have a thorough investigation into the facts and circumstances. Just as in other alleged human rights violations which occurred in the eighties under the military regime and which are now ready for a serious detailed investigation, which at present is held by the competent authorities. The government started its investigation in the matter relating to the events that took place in the village of Moiwana. Enclosed are several confidential documents pertaining to the investigation.[11]

[11] Annex 20, confidential report and investigation-plan of the criminal investigation of Moiwana.

In this framework, the government will in the near future establish a Commission which will contact with the petitioner in case No. 11.821. If it appears from the investigation that the offenders of the alleged human rights violation can be identified, the government will not hesitate to engage the judicial authorities concerned for the prosecution and trial of these persons.

The State of Suriname is fully aware of its responsibility towards all individuals on its territory and does not shirk its responsibilities. National laws and regulations will be complied with under all circumstances. Any international instrument (treaties, declarations, resolutions, etc.) and standards to which Suriname, as a member of the international community, has committed itself, will be observed. The State is of the opinion that she acted accordingly.

It is very important to conclude that since the first elections in 1987, after the coup d'etat of 1980, the process of democratization was started.
Despite the great opposition, such as the second coup d'etat by the military in 1990 and what happened after the elections of 1996 whereby a pro-military government remained in power up to the May 2000 elections through manipulation of democracy, this process cannot be stopped.

The State of Suriname herewith takes the liberty to request your esteemed Court to permit that it can present more background information which it deems important for consideration of said case at a later stage.

II. Processing of the case before the Inter-American Commission on Human Rights

In October of 1997, the State received parts of a petition filed against the State of Suriname by a human rights organization.

- The original petitioner claims that Suriname was responsible for violating several articles of the American Declaration and the American Convention because of actions committed by the Surinamese military on or around November 29, 1986 in the Maroon village of Moiwana.
- On March 7, 2000, the Commission issued Report no. 26/00 and declared the case admissible (referred to by the Commission as Admissibility Report no. 26/00).

  The Commission declared the case admissible in relation to alleged violation of:

  - Article I, right to life, liberty and personal security
  - Article VII, right to protection for mothers and children
  - Article IX, inviolability of the home, and

  of the American Declaration of the Rights and Duties of Man and

  - Article 25(2), right to judicial protection,
  - Article 8(1), right to a fair trial, and
  - Article 1(1), obligation to respect and ensure rights

  of the American Convention.
- By letter dated August 4 , 2000[12], the State of Suriname indicated that it was ***'committed to the pacific settlement of the case'***. Since general elections were held in Suriname and a new government (Venetiaan II) was ready to assume power, the State requested the Commission ***'....patience..... as it makes its efforts towards this objective'***.
- September 24, 2002, the State established a Commission of Legal Experts in Human Rights [13]. This Commission began its work in February 2002, advising the government in human right issues.
- On February 28, 2002, the Commission issued a report, which it named Confidential Report no. 35/02 (on the merits). This report is in

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[12] Annex 3, letter from the interim Representative of the Permanent Mission of the Republic of Suriname to the Organization of American States, Ms. Natasha Halfhuid to the Executive Secretary of the Inter-American Commission on Human Rights, August 04, 2000.
[13] Annex 2, Presidential Decree no. 6899/02, dated September. 24, 2002.

violation of all applicable regulations of the Inter-American Human Rights System.

- In May of 2002 the State submitted its observations , clearly stating that the reports issued by the Commission have no just legal basis and are null and void.[14] In the section analysis, the State will address this issue in more detail.
- In its letter dated June 14, 2002, the State of Suriname indicated that it is of good will and that it will take corrective measures to investigate and conduct a serious and detailed investigation in the matter giving rise to the case. The Government of Suriname stated unambiguously that if the alleged human rights violators are identified, it will not hesitate to engage the judicial authorities charged with the prosecution and trial of these individuals[15].
- In the same communication dated **June 14, 2002**, the Republic of Suriname stated that since Suriname was a Declaration State when the alleged human rights violations occurred, the State did not reply to a report which was issued by the Commission based on Article 50 of the Convention. The State also pointed out that the Commission will not be competent to issue an Article 51 Report.
- The attorney in charge of Suriname at the secretariat of the Commission, mailed a sample letter to the State, which it could use to request a waiver. This sample letter was mailed to the state, because Suriname's representative at the OAS in Washington DC indicated that this issue had the attention of the government of Suriname, but that additional time was needed;[16]

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[14] Annex 7, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to The Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, May 20, 2002; Position Republic of Suriname.

[15] Annex 8, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to The Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, June 14, 2002 and brief Attorney-General to Moiwana'86 Human rights organization Suriname dated 24 July 2002.

[16] Annex 21, copy of the first e-mail of the Commission's attorney

- The state of Suriname responded in its communication dated **June 14, 2002**.[17]
- The attorney in charge of Suriname at the Secretariat of the Commission, replied to the States communication dated **June 14, 2002**, indicating that the letter (so called 'waiver request') 'from the Republic of Suriname just not went far enough. A second sample letter was enclosed in the attorney's communication of **June 20, 2002**,[18] referring to the time frame in which the communication was sent to the State. This second sample letter was modified by the State and subsequently sent to the Commission the same day; **June 20, 2002** [19].
- In its petition to the Honorable Court, the Commission correctly stated that the State was seriously interested in settling this matter. What the Commission does not clarify is that the State unambiguously indicated that the request for additional time is made by the State pursuant to its position mentioned in its previous communications of **May 20, 2002; PG no.88** and **June 14, 2002, PG no. 1052**. In its June 14, 2002 letter, the State stated that it preserved all its rights mentioned in previous communications, while requesting the additional time <u>not to comply with recommendations of the commission, but to continue its investigation of the matter</u>.
- In its communication dated **June 20, 2002** to the commission the State of Suriname reiterated its position mentioned in previous communications, and requested "...<u>a two-month extension to continue its investigation in this matter</u>..."[20]

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[17] Annex 10, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, 14 June 2002.
[18] Annex 11, 2nd e-mail of the Commission's attorney, dated June 20, 2002
[19] Annex 9, Communication Acting attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, June 20, 2002.
[20] Ibidem

- In all its communications dating from **August 4, 2000** up to **June 2002**, the Republic of Suriname has reiterated its position: investigation of the matter concerned.
- In this environment the meeting between the State and a delegation of petitioners, took place in July 2002. When the representative of the State asked petitioner to give an indication as to what was desired from the government, petitioner stated that it was up to the next of kin, present at the July 2002 meeting, of the victims. A representative of the next of kin stated that before giving that indication, he would first have to speak to those whom he represented. Up to **December 24, 2002** the Government had not received a response to its inquiry.[21]
- The acting Attorney-General and the Solicitor-General assisted by the Commission of Legal Experts in Human Rights contacted the petitioner, in order to discuss this issue.[22] After the July 2002 meeting with the petitioner, the State received a communication, in which, contrary to all agreements, various demands were made, before the petitioner would agree to continue discussing said issue.[23] Copy of this communication was sent to the Commission. The State strongly believes that the petitioner was uncooperative, moreover petitioner was unwilling to come to a solution in said issue.
- In its letter of **August 16, 2002**, the State requested an additional 4-month extension from the Commission.[24] This partly because of the fact that August and September are vacation months in Suriname. In its **August 16th 2002** letter the State of Suriname stated clearly: " ..... ***expressly state that this extension will primarily be used to continue with the***

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[21] Annex 14, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, December 24, 2002.
[22] Annex 4, notes of the informal meeting of Moiwana and the Attorney-General and the Commission of Legal Experts on Human Rights, dated July 5, 2002.
[23] Annex 5, Letter dated July 9, 2002 signed by Maureen Silos, Director of Moiwana '86 Human Rights Organization in Suriname.
[24] Annex 12, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to The Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, August 16, 2002.

detailed investigation of the matter giving rise to case no. 11.821, and will not necessarily serve to comply with the recommendations given by the Commission in its communication named 'article 50 report' since the government of Suriname does not accept this communication as legally correct. As stated in earlier communication to you, we are convinced that in the additional time frame given by the Commission to the Republic of Suriname, certain suggestion made by the former will be among the actions taken by Suriname's government, based on its highly valued believes regarding the protection of human rights".

- By letter dated **August 20, 2002**, the Commission informed the State that the request for the four-month extension had been granted, and that the extension would expire on **December 20, 2002.**[25]
- On December 16, 2002, the State sent copies of the Presidential Decree by which the Commission of Legal Experts in Human Rights was established, to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.[26]
- In the communication of the State to the Commission, dated **December 24, 2002**, Suriname reported to the Commission on the progress made in case no 11.821 Suriname Village of Moiwana. The State also informed the Commission that the Attorney-General had given the order for a criminal investigation into the facts which took place in the village of Moiwana, which order had been executed, and the investigation begun. The State noted that it was still prepared to discuss this issue with petitioner.
- On December 24, 2002 the State learned out of the local newspapers that the Commission has forwarded case no. 11.821 to your Honorable Court on December 20, 2002, the final day the State was able to respond.[27]

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[25] Annex 13, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, August 20, 2002.
[26] Supra note 3
[27] newspaper-article 'De Ware Tijd' dated December 24, 2002

- The State refrained from giving any comments in public with regard to this particular issue. On January 20, 2003 the State asked the Commission additional information regarding the publication in local newspapers[28].
- The Commission responded by letter dated January 27, 2003 indicating that the case was indeed referred to your Honorable Court on December 20. 2002.[29]

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[28] Annex 22, communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to The Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, January 20, 2003.

[29] Annex 6, communication of the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, January 27, 2003 to the acting Attorney General with the High Court of Justice in Suriname, Mr. S. Punwasi.

VIII COMPETENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The competence of the Inter-American Court of Human Rights to hear case no. 11.821, ***Stefano Ajintoena et al vs. the Republic of Suriname***, is at issue. However, in order to interpret the application of the American Convention on Human Rights (hereafter 'American Convention' or 'Convention') to allegations against protection of the rights preserved by the Convention, from November 12, 1987 on this Court has jurisdiction with respect to cases regarding alleged violations , pursuant to articles 50, 61.1, 61.2 and 62 of the Convention.

The Republic of Suriname is of the opinion that your Honorable Court is not competent to hear case no. 11.821, ***Stefano Ajintoena et al vs. the Republic of Suriname***. Suriname became a member of the Organization of American States on June 8, 1977. On November 12, 1987, Suriname became a party to the American Convention and on that same date, Suriname accepted the contentious jurisdiction of the Inter-American Court of Human Rights.

The alleged human rights violations as stated in the petition, of which the Republic of Suriname has been accused, took place on November 29, 1986, so before Suriname had accepted the Court's jurisdiction. The Court is not competent to consider case no. 11.821 ***Stefano Ajintoena et al vs. the Republic of Suriname***. Said case should have been handled entirely by the Inter-American Commission on Human Rights, pursuant to the applicable regulations and other instruments.

IX LEGAL ANALYSIS

For a better understanding of the position of the State of Suriname, we hereby define our understanding of the terms "Declaration State" and "Convention State". This clarification is considered of paramount importance in this matter.

A **Declaration State** is a member state of the Organization of American States (OAS) that is not a party to one of the treaties within the Inter-American Human Rights System, or that is a party to one or more of the treaties within the Inter-American Human Rights System other than the American Convention on Human Rights. In respect of human rights violations committed within such states, the American Declaration of the Rights and Duties of Man is applicable as the normative instrument.

A **Convention State** is a member state of the OAS that is a party to the American Convention on Human Rights. In respect of human rights violations committed in such states, the said Convention is the normative instrument.

I. Competence of the Inter-American Court

On the basis of the following, the State is of the opinion that the Inter-American Court of Human Rights (hereinafter to be referred to as the "Inter-American Court" or "Court") is not competent to hear case No. 11. 821 ***Stefano Ajintoena et al vs. the Republic of Suriname***:

A. This Court is not competent to hear this case, because on November 29, 1986 Suriname was not a State party pursuant to Article 74(2) juncto Article 61 of the Convention and had not (yet)

accepted the contentious jurisdiction of the Court pursuant to Article 62(1) of the Convention, Article 2 of the Statute of the Court and Article 50(1) of the Regulation of the Inter-American Commission

The Inter-American Court of Human Rights is not competent to hear case No. 11. 821 ***Stefano Ajintoena et al vs the Republic of Suriname***. For, in this case the Republic of Suriname had not accepted the jurisdiction of the Court and was not a party to the Convention, wherefore the Convention cannot apply to Suriname.

Article 62(1) of the Convention states: ***'A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.'***

Article 62(3) of the Convention states: ***'The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.'***

Article 2 of the Statute of the Inter-American Court of Human Rights states: ***'The Court shall exercise adjudicatory and advisory jurisdiction:***

1. Its adjudicatory jurisdiction shall be governed by the provisions of articles 61, 62 and 63 of the Convention.....'

Article 50(1) of the Regulation of the Inter-American Commission on Human Rights states: ***'If a State Party to the convention has accepted the Court's jurisdiction in accordance with Article 62 of the Convention, the Commission may refer the case to the Court, subsequent to transmittal of the report referred to in Article 46 of these Regulations to the government of the State in question.'***

Pursuant to Article 2 of the Statute of the Inter-American Court of Human Rights and Article 62(1) of the Convention, acceptance of the contentious jurisdiction of the Court applies exclusively to cases that occurred after the date on which the declaration of acceptance was deposited with the secretariat of the Organization of American States (hereafter OAS). Suriname became a member of the OAS on 8 June 1977 by accession to the Charter of this Organization.

Suriname ratified the Convention and also accepted the contentious jurisdiction of the Inter-American Court on November 12, 1987.

The alleged human rights violations have occurred on or about November 29, 1986 in the maroon village of Moiwana in the interior of Suriname. Suriname became a party to the Convention longer than one year after the incidents in the village of Moiwana. At the time the alleged human rights violations were committed, Suriname was neither a State Party to the Convention nor had it accepted the contentious jurisdiction of the Court. The logical consequence of the above is that until November 12, 1987 the American Declaration on the Rights and Duties of Man was the only normative instrument that is applicable to Suriname in respect to alleged human rights violations in the State. Up to the moment of its accession to the Convention, Suriname must be considered a Declaration State and must be treated as such.

B. The petition was barred for admissibility, as referred to in Article 41(b) of Commission's Regulations; the Commission erroneously declared the petition admissible

At the time when the occurrences which form the basis for the alleged violations stated by the original petitioner took place, the State was not a party to the Convention. The Sate ratified the Convention on November 12, 1987, while the occurrences were supposed to have taken place a

year before that on November 29, 1986. At that time, the state was not a party to the Convention, which results in the petition having to be judged on the grounds of Articles 52 juncto 26(1) of the Commission's Regulations for the admissibility. The Commission failed to do so and erroneously declared the petition admissible.

The State of Suriname has come to the conclusion that in said case, the Commission has made a distinction between two categories of human rights violations:

a. alleged violations which took place before November 12, 1987, when Suriname was a Declaration State. The violations presented by the Commission regard the Articles I, VII, IX, XXIII of the Declaration;
b. Alleged violations after Suriname became a party to the Convention, namely the Articles 1, 8 and 25 of said Convention.

The violations named under b. have been formulated by the Commission as being of a "continuous nature"; or facts that constitute violations or continuous denegation of justice. The Commission stated that the State violated Articles 8 and 25 in conjunction with article 1 (1) of the Convention. The Commission is of the opinion that for the second category of violations, the Convention is applicable now that the state has become a party to the Convention.

The Republic of Suriname strongly contends this argument from the Commission. The State is of the opinion that the concept of 'continuous violations' is in this case extreme, exceptional and against general accepted principles of international law, since this is against the basic principle regarding the binding nature of international agreements for states. With this concept, states that are not bound by an international treaty, can be confronted with exactly the same effects by provisions of

the treaty as if they were a party, while the acts took place during the time the State was not a party to the treaty. The State strongly believes that even if the concept of 'continuous violations' is accepted, the processing of this present case should be executed on a two-folded track, namely

(a) alleged violations based on the Declaration;
(b) alleged violations of a 'continuous nature' based on the Convention.

These alleged violations should have been processed separately since we are dealing with two clearly distinctive categories of alleged violations. The State believes that following the reasoning of the Commission, the admissibility should have been examined two-folded namely, for the alleged violations contributed to the Declaration State and the alleged violations contributed to the Convention State.

The procedure stated in the Regulations of the Commission should have been followed for the alleged violations mentioned under category a. The Regulations of the Commission (Article 26) allow for the moto proprio considerations of information that it considers pertinent, and which may include the necessary factors to begin processing a case which in its opinion fulfills the requirements for this purpose. Article 41 of the Commission's Regulations states ***'the requirement before the Commission shall declare a case admissible'***. The Commission should have reviewed the original petition with regard to the category (a) violations, based on above mentioned Articles of its Regulations. The Commission did not determine the admissibility of the alleged category (a) violation, based on the proper applicable norms and Regulations of the Inter-American Human Rights system. Moreover, Article 47(b) of the Convention states that ***'the Commission shall consider inadmissible any petition or communication submitted under articles 44 or 45 if:... does not state the facts that tend to establish a violation of the rights guaranteed by this Convention'***.[30] Article 35(c) of the

[30] American Convention on Human Rights, Article 47(b).

Regulations orders the Commission to consider ***'whether grounds for the petition exists or subsists and if not, to order the file closed'***. Moiwana'86 Human Rights Organization Suriname, the original petitioner in this case, did not present the Commission with evidence of violations of the Convention because the facts presented by her, which were supposed to have taken place on the State's territory, effecting natural persons under Suriname's jurisdiction and which would constitute a violation of the Convention, took place before Suriname became a 'State party', and could therefore impossibly constitute a violation of the Convention.

For the alleged 'continuous violations' under category (b), the applicable procedure in the Convention and Regulations should have been followed. The Commission did not follow this procedure, idles for the alleged category (b) violations; both positions of the State (Declaration and Convention) are entangled.

The State believes that the Commission wrongly treated Suriname as a Convention State for the entire case. The Commission should in fact have handled the alleged violations which took place before November 12, 1987, pursuant to the relevant stipulations of the Regulations.

Article 53 of the Regulations reads:

1. ***In addition to the facts and conclusions, the Commission's final decision shall include any recommendations the Commission deems advisable and a deadline for their implementation;***
2. ***That decision shall be transmitted to the State in question or to the petitioner;***
3. ***If the State does not adopt the measures recommended by the Commission within the deadline referred to in paragraphs 1 or 3, the Commission may publish its decision;***
4. ***The decision referred to in the preceding paragraph may be published in the Annual Report to be presented by the Commission to the General Assembly of the Organization or in any other manner the Commission may see fit.***[31]

[31] Regulations of the Inter-American Commission on Human Rights.

Article 54 states the request for reconsideration, and section 5 of this Article reads : ***'If the State does not adopt the measures recommended by the Commission within the deadline referred to in paragraph 1, the Commission may publish its decision in conformity with Articles 48(2) and 53(4) of the present Regulations'.***

The State of Suriname is of the opinion that with regard to the handling of this case with regard to the alleged violations of articles I, VII, IX, XXIII of the Declaration, the Commission should have made a final report pursuant to Articles 53 and 54 juncto Article 48 of its Regulations. This did not happen, which is why the State of Suriname is of the opinion that Report 26/00 lacks the proper legal basis.

With regard to the second category of alleged violations according to the idea of 'continuous violation' - supposing that this will be accepted, which the State of Suriname doubts - the following can be stated: The handling of this case by the Commission would have to take place according to the procedures set forth in the Convention and Regulations of the Court, which has not happened. The State of Suriname is of the opinion that in the handling of case no. 11.821 ***Stefano Ajintoena et al vs. the State of Suriname***, the Commission introduced two categories of alleged human rights violations but has not distinguished in the handling of the above stated categories of alleged violations. The commission has handled the entire case as if Suriname were a Convention State. This choice is obvious from the standpoint of the Commission, but legally incorrect. The Commission wants to establish State's accountability under the Convention, for alleged acts that took place prior to the State's accession to the Convention.

According to our analysis, the Commission should have drafted separate reports or one joint report clearly distinguishing the separate alleged human rights violations contributed to Suriname. Moreover the separate status of the State of Suriname should have been taken into account.
One report should have been drafted in accordance with Article 46 of the Regulations of the Commission. If within three months the matter has not been settled, the Commission must adopt a confidential report in accordance with Article 47(2) of its Regulations. The State must be offered the opportunity to take the necessary steps to implement the Commission's recommendations, if any, contained in the confidential report mentioned.
The second report should have been drafted according to the provisions of the Convention and the Regulations of the Commission, where applicable.
The State of Suriname is of the opinion that the Commission has never drafted the report as prescribed under Articles 46 and 47 of its Regulations, and the report prescribed under the provisions of the Commission's Regulations and the Convention.

1. **Based on the fact that petitioner primarily reproaches Suriname with having violated the rights safeguarded under the Convention, Report 26/00 has no legal basis**

In view of the fact that report 26/00 is dated March 7, 2000, the Regulations of the Inter-American Commission on Human Rights are applicable.
In Report 26/00, the Commission argued that she is competent to take cognizance of alleged violations of the Convention if there is a continuous disregard of rights safeguarded under the Convention. As stated above, the Commission erroneously treated Suriname as a Convention State instead of a Declaration State. In other sections of this document the State will further indicate in more detail where the Commission

erroneously treated Suriname as a Convention State. In the present case, the Commission has reproached the State of Suriname with being guilty of a continuous disregard of such rights as safeguarded under the Convention, more in particular the rights contained in Articles 8 and 25 in relation to Article 1 of the Convention.

Article 1 : obligation to respect rights
Article 8 : right to a fair trial
Article 25 : right to judicial protection

It is noted in its petition to the Commission that the original petitioner primarily reproaches Suriname with having violated the rights safeguarded under the Convention. The State is of the opinion that the Declaration is only included in petitioner's analysis to underscore the arguments that rights codified in the Convention are violated. The State respectfully refers to Section A ***'Violations of the American Declaration'*** in the petition of the Human Rights Organization Moiwana '86.[32] The Commission adopted petitioner's view that the American Convention is the recognized authority for interpreting the meaning and scope of the American Declaration's protections, and issued reports based on this assumption that was created by the Commission itself in its Report on the Status of Human Rights in Chile [OEA/Ser.L/V/II. 34 doc.21 corr.I (1974)]

Suriname is reproached with having violated the following rights, which are contained in the Declaration.

Article I : Right to life, liberty and personal security
Article VII : Right to protection for mothers and children
Article IX : Right to inviolability of the home
Article XXIII : Right to property

[32] See application of Inter-American Commission on Human Rights to the Court, Case no. 11.821. (Village of Moiwana) Suriname. annex I Statement of the Petitioner.

In Report 26/00 of 07 March 2000, the Commission deems the matter admissible in relation to the alleged violations of human rights as contained in Articles I, VII, IX of the Declaration, and Articles 1(1), 8(1) and 25(2) of the Convention.

2. Non-exhaustion of local remedies pursuant to Article 52 juncto Article 35(a) and 37(1) of the Commission's Regulations

Due to several circumstances the State of Suriname presented its observations regarding Report No. 26/00 and Report No. 35/02 extensively in one single communication dated May 20, 2002.
The State of Suriname is of the opinion that;

a. Petition no. 11.821 regarding the village of Moiwana should not have been declared admissible by the Commission. This on the basis of the fact that the remedies under domestic law have not been exhausted. In its Report No. 26/00 drafted 7 March 2000, the Commission, availing herself of the possibilities offered to her under Article 46 of the Convention, declared the matter admissible. The State of Suriname is surprised at it that the Commission has never applied its Regulations when assessing the admissibility of the petition lodged by the Human Rights Organization Moiwana '86. This, while Suriname was a "Declaration State" and she should have assessed the case on the basis of the applicable articles of its Regulations.
In its Report No. 26/00[33] under section B ***'other requirements for the admissibility of the petition'***, par. 24, the Commission states: ***'Article 46 of the Convention stipulates...'***. The Commission continues, '***However, the Convention provides for exceptions to this requirement when the domestic law does not provide de facto or de jure remedies.....***' It is evidently that the admissibility of the petition has been assessed by the Commission based

on the provisions of the Convention, while to the opinion of the State Article 52 jo. Article 37 of the Commission's Regulations should have been used to determine if the case was admissible or not. The State believes that even though the norms/rules mentioned in both, Article 37 of the Regulations and Article 46 of the Convention are similar, the Commission should have assessed the admissibility of the petition against the Declaration State Suriname by using Article 37 of its Regulation.

The State of Suriname respectfully points out that the Commission declared the petition admissible in relation to inter alia Articles I, VII and IX of the Declaration.

Article 1 : right to life

Article VII : right to protection for mother and children

Article IX : right to inviolability of the home

All these alleged violations took place prior to Suriname's accession to the Convention.

If the Commission wanted to use the exceptions regarding the exhaustion of the remedies under domestic law, she should have done so pursuant to Articles 37(2)(a), 37(2)(b) and/or 37(2)(c) of its Regulations and not on the basis of the corresponding articles of the Convention. Thus the Commission has treated Suriname as a Convention State and not as a Declaration State. From the analysis, motivation and decision of the Commission it appears that the legal basis for its decision is the Convention and not the Declaration. The State of Suriname therefore concludes that Report no. 26/00 has no just legal basis.

b. One of the legal questions which should have been put in processing Report No. 26/00 was the extent to which the remedies under domestic law had been exhausted pursuant to Article 37(1), or if the

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[33] See application of Inter-American Commission on Human Rights to the Court, Case no. 11.821, (Village of Moiwana) Suriname. Annex 2 Report no. 26/00 dated March 7, 2000.

petitioner could be exempted there from on the basis of Article 37(2) of the Commission's Regulations. The State of Suriname is of the opinion that petitioner has neglected to invoke and/or exhaust the, available remedies under domestic law.

Before a petition can be admissible, the Commission declares the remedies under domestic law must have been invoked and exhausted in accordance with general principles of international law.[34] Exceptions to this rule are provided in Article 37(2) of the Commission's Regulations:

(a) the domestic legislation of the state concerned does not afford due process of law for the protection of the rights that have allegedly been violated;

(b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them;

(c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

This rule of State's responsibility, requiring prior exhaustion of local remedies *'is designed for the benefit of the state, for that rule seeks to excuse the State from having to respond to charges before an international body for acts which have been imputed to it before it has had the opportunity to remedy them by internal means'*.[35] Moreover, Suriname has not waived its rights to bring the issue of non-exhaustion of domestic remedies as ground for inadmissibility. The State reacted timely in May 2002. In any case, this did not imply any waiver of the State's right to non-exhaustion. The Commission declared the case admissible on the basis of facts presented by the petitioner pursuant to Article 42 of its Regulations. For states that have not waived their non-exhaustion of domestic remedies, the Court's policy has been to place the burden of proof on that state 'to proof that domestic remedies remain to be exhausted and that they are effective'[36] In Suriname there exists specific remedies which apply to this case.

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[34] Article 37(1) of Commission's Regulations.
[35] Article.....

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The State of Suriname disposes of adequate and effective local remedies in its Civil Code and its Code of Civil Procedure as well as is Code of Criminal Procedure. However, the petitioner does have the burden of proof to show that the specific remedies the State alleged were not exhausted[37] or that they fell within the non-applicability of Article 37(2) of the Commission's Regulations.

With regard to the protection of the right to property, the State of Suriname refers to its Civil Code, Third Title, First Part, General Provisions, Articles 625-638.

Furthermore, Article 1386 of the Civil Code reads as follows:
'Any wrongful act which causes damage to another person shall impose an obligation on he by whose fault the damage was caused to compensate it.'
"He" includes the Surinamese Government. It is also referred to as "the unlawful Government act" and within the Surinamese legal system the government can be sued at law for such acts.

The Suriname Code of Civil Procedure indicates the matter in which this right may be enforced. Any petition against the State of Suriname on the ground of an unlawful government act (a civil action) shall in first instance be filed with the District Courts Registry. The procedure has never been discontinued, *de facto* or *de jure*, and hence was at all times at the disposal of the petitioner.

All local remedies are adequate, effective and compatible with the norms of due process and the applicable rights outlined in the Convention. Further, the domestic legislation of Suriname afforded due process of law for protection of the rights that have allegedly been violated.[38]

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[36] Velasquez Rodriquez case, preliminary objections, Judgment of June 26, 1987, para. 88.
[37] Supra note 34, para. 88
[38] See Article 37.2 Regulations and the Suriname Civil Code and the Suriname Code of Civil Procedure.

Petitioner's protection under the law is safeguarded by;

1. the Constitution of the Republic of Suriname: Article 11 states: ***'No one may be kept against his will from the judge whom the law assigns to him'***. Article 12 states: ***'1. Everyone has the right to legal assistance*** (in casu a lawsuit on the basis of Article 1386 Civil Code) ***before the court. 2. The law shall provide regulations with regard to legal aid for the financially weak'***. Surinamese law, provides rules regarding legal representation to individuals that can not afford the costs of legal representation. By order of the Minister of Justice and Police dated 28 May 1991, No. 2470[39], providing for the establishment of the *Bureau Rechtshulp* (Legal Aid Office), the Legal Assistance Bureau and the Legal Aid Division existing at that time were integrated, and as of then, the Government has coordinated the provision of legal aid from one point. In practice, this Office, which provides legal aid to many citizens, is active in the sphere of both private law and penal law.
2. The Civil Code; art. 1386 ff.;
3. The Code of Civil Procedures.

In the present case, petitioner therefore had the possibility to commence criminal proceedings *and* a civil action as regards to the aforesaid alleged violations.

On the basis of the facts mentioned by the petitioners in the petition, making use of alleged "evidence", petitioners could have filed a claim for unlawful government act to the District Court and demanded damages. This would have been the most effective legal remedy to obtain compensation in Suriname. They did not make use of this possibility and only opted for the application of another legal remedy, that is criminal prosecution of those responsible.

[39] Regulation by the Minister of Justice and Police dated May 28, 1991, no. 2470,regarding the institutionalization of the Legal Aid Office, official gazette of the Republic Suriname, no. 40.

Upon inquiry at the District Courts Registry it has not appeared that petitioner has made an application to the District Judge in respect of any of the alleged violations mentioned in the petition. An investigation at the Office of the Attorney-General, who in legal proceedings is the representative of the State of Suriname, did not yield any result either. The Attorney-General has not received, by bailiff's notification or otherwise, any summons indicating that an action has been brought against the State of Suriname before the District Court, for violation of one of the provisions contained in the Civil Code.[40] (For example 'unlawful government act' and violation of the rights with respect to 'the right to property'.)

Besides, the Commission has neglected to indicate the legal remedies available in Suriname. The Commission only states that petitioners have demanded criminal investigation and criminal action against those responsible. Furthermore, it appeared that petitioners have not even indicated if they wished to apply this remedy of criminal investigation whether or not so as to seize the possibility offered by Article 316 of the Code of Criminal Procedure[41]. It is not likely that they wanted to make use of this possibility, for this option offers them only few possibilities to recover the damage, if any.

Article 316 of the Suriname Code of Criminal Procedure reads:

1. ***As regards his claim for damages, the plaintiff claiming damages may join as a party to the case relating to the criminal action in first instance.***
2. ***The joinder in session by a specification of the contents of the claim, at the latest before the prosecuting official submits his demand pursuant to Article 297.***

This implies that the petitioners, applying the criminal procedure, may only recover the damage from persons who are the convicted perpetrators. If

[40] Annex 16, Statement from the Head of Extrajudicial Division, Office of the Attorney-General dated April 25, 2003.

the latter are unable to pay the damages, this means that the loss will not be compensated because the principle of nebis in idem opposes them to appear before the civil court for the same case while already having had a criminal court judgment awarding damages.

The most obvious legal remedy would hence be the civil action for unlawful government act, whereby the government is sued for the unlawful act committed by government bodies or persons for whom it is liable.

The Commission has not indicated that the remedy of a civil action was available, at any rate was not applied. It has not motivated either that this remedy was not effective. ***'The petitioners statement of facts will be accepted if it satisfies the criterion of specificity, consistency and credibility'.***[42] In order to meet these criteria, the Commission had had to indicate which remedies were still available, whether they had been applied, or why the requirement to take recourse to such remedies had not been satisfied.

Petitioner can therefore not argue that she has been denied access to the national judicial authorities *casu quo* that she has exhausted all domestic remedies. A delay in the course of justice cannot be alleged either, since the petitioner did not make use of the national legal remedies available.

An example of human rights violation, whereby the injured party has taken recourse to the legal remedies available to him in a proper manner involves the case of Martosemito, Roy Soekarlan versus the State of Suriname[43]. In this matter, the State was ordered to release the plaintiff Martosemito, who had been deprived of his freedom and falsely imprisoned, within 1 x 24 hours following the pertinent judgment. The

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[41] Ibidem

[42] The Inter American System of Human Rights; Veronica Gomez, The interaction between the political actors of the OAS, the Commission and the Court, Claredon Press-Oxford 1998, p. 179

[43] Annex 17, Martosemito v. The Republic of Suriname. Judgment of August 20, 1998, A.R. No. 98/3652.

State was also ordered to pay a penal sum of SRG 5,000,000 per hour to the said plaintiff in the event that the State would be in default.
The State did not forthwith enforce the judgment and a penal sum of approximately SRG 70,000,000 (seventy million Suriname Guilder) had to be paid to Martosemito. The Surinamese Government has paid this amount to Martosemito.

In this connection, the State of Suriname refers to *Report No. 19/92, decision of the Commission as to the admissibility of case No. 10.865 Africa/Move Organization, October 1, 1992* against the Declaration State U.S.A.[44], whereby the Commission now petitioning your Honorable Court, declared the case inadmissible because of the fact that the petitioner did not exhaust the remedies under domestic law.

Under "Analysis (a)" the Commission gives the following motivation in its Admissibility Report in Case No.10.865 Africa/Move;

"ARTICLE 37(1) OF THE COMMISSION'S REGULATIONS SHOULD BE GIVEN A LITERAL INTERPRETATION TO INCLUDE BOTH CIVIL AND CRIMINAL REMEDIES."

It is hereby important to mention that Article 37 of the Commission's Regulations does not in any way distinguish between civil and/or criminal remedies.
The Regulations simply require exhaustion of all remedies under domestic law, not only those selected remedies preferred and deemed adequate by the petitioner. The fact that the petitioner apparently advocates the criminal remedies is not important with regard to the requirement of exhaustion of the remedies under domestic law.
It is therefore important to further examine the Commission's substantiation contained in the Admissibility Report concerning case No.

10.865 Africa/Move. Under paragraphs 3, 4, 5 and 6 of the analysis of this Report, the Commission argues as follows:

> ' 3 ***Article 37(1) of the Commission's Regulations provide "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.***
>
> ***4 Upon reading Article 37(1) of the Commission's Regulations it appears that the intent of the framers of the article meant it to be read literally to mean that "remedies" available under domestic jurisdiction should have been invoked and exhausted.***
>
> ***5 So that if the domestic jurisdiction in a state provided only criminal remedies, then criminal remedies should be invoked and exhausted. If however, a state provided only civil remedies then the civil remedies in that state should be invoked and exhausted. But a state providing both civil and criminal remedies, for the same alleged violation, then the petitioner would be required to invoke and exhaust both type of remedies.***'

It has appeared that in Suriname both civil and criminal remedies were available to the petitioner and are still available in relation to the alleged human rights violations mentioned in their petition. The above quoted reasoning of the Commission is therefore also applicable in respect of the admissibility of case No. 11.821 , the village of Moiwana.

Quite rightly the Commission further argues under paragraph 6 of the Report on case No. 10.865:

> ' 6 ***The framers made no distinction when drafting the section between civil and criminal remedies, because if they had decided that the section was intended to refer only "criminal" and not civil or other remedies they would have delineated the same.***'

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[4] Report No. 19/92, decision of the Commission as to the admissibility of case No. 10.865 Africa/Move Organization, October 1, 1992

In its reasoning, the Commission was supported by Advisory Opinion OC-11/90 of 10 August 1990, of your honorable Court, as to how the term "remedies" as intended in Article 46(1)(2) of the Convention is to be construed. The said Advisory Opinion indicates that Article 46(1)(a) and Article 46(2)(a)(b)(c) of the Convention as regards to the exhaustion remedies under domestic law, express the same matters as Article 37(1)(2) of the Commission's Regulations.

The Commission further argues in its Report on case No. 10.865:

> *9 The Court in addressing those issues considered Article 1, obligation to respect rights, Article 24, right to equal protection, Article 8, right to a fair trial, of the American Convention on Human Rights. The Court construed remedies as rights of persons guaranteed by the Convention, whether of a criminal, civil, labor, fiscal, or any other nature.*
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> *11 In paragraph 28, the Court stated, "that for cases which concern the determination of a person's "rights and obligations of a civil, labor, fiscal or any other nature", Article 8 does not specify any "minimum guarantees" similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for "due guarantees" consequently, the individual here also has the right to the fair hearing provided for in criminal cases.*
>
> *12 Thus, since the petitioner has acquired "rights" (as per alleged facts contained in petition) because of the alleged violations of her human rights under the American Declaration of the Rights and Duties of Man, than she has also acquired "remedies", whether they be of a civil or criminal nature, or both. Having acquired these remedies she must invoke and exhaust them, ...'*

The Commission should analogously have applied its arguments followed in the case Africa/Move in respect of the assessment of the admissibility of the petition, to case No. 11.821 Village of Moiwana. By reason of the above, case No. 11.821 should not have been admitted. The civil

remedies under domestic law were available to the petitioner, but were not invoked. Therefore, the petitioner has not exhausted the available remedies under domestic law as mandated by the Regulations.

The above once again implies that in this matter, the petitioner wrongly invoked the exceptions under Article 46(2) of the Convention instead of Article 37(2)(a)(b) of the Commission's Regulations. Now that the Commission has applied these exceptions in its assessment of the admissibility of case No. 11.821 as contained in its Report No. 26/00, this implies that the Commission wrongly declared the case admissible. The State respectfully requests that your Honorable Court remedy this miscarriage of justice.

With respect to the alleged violations of provisions of the Convention, according to the concept of 'continuous violations', as argued by the Commission, the State puts forward that the Commission should have departed from the Declaration Status of the Republic Suriname, since the alleged human rights violations have arisen prior to Suriname's becoming a party to the Convention. Assuming that there could be 'continuous violations', it does not automatically follow that the State of Suriname should be treated as a Convention State, but it could solely mean that only the 'continuous violations' referred to, should have been dealt with in conformity with the provisions of the Convention. This has not happened. Based on the authority of your Honorable Court as the only judicial organ in the Inter-American Human Rights system, that is charged with the promotion and supervision of the observation of human rights in the western hemisphere; the State of Suriname is of the opinion that the Court should remedy the situation and declare the petition inadmissible.[45]

[45] In the Cayara Case vs Peru, Preliminary Objections, Judgment of February 3, 1993, Inter-Am.Ct.H.R.(Ser.C) No. 14 (1994), the Court declared the case inadmissible even though the Commission had erroneously admitted the case.

C. Jurisdiction of this Court is barred for untimely submitting of the case to the Court pursuant to Article 51(1) of the Convention

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With respect to the alleged human rights violations referred to in category (b) as discussed in this document and brought forward by the Commission in its petition, it may be stated that, if applicable, the prevailing provisions of the Convention had not been observed.

The Commission did not submit the petition to the Court in accordance with the Convention provisions that are applicable in this matter. Although Suriname takes the view that in casu the Convention does not apply to it, because the facts on which the petition is based have taken place when Suriname was a Declaration State, it is nonetheless important to note that if and insofar as the distinguished members of the Court might treat Suriname as a Convention State for category (b) alleged human rights violations, the Commission has not timely submitted the petition to the Court. Awarding the State of Suriname the same treatment as a Convention State in respect of any and all alleged human rights violations charged would, as earlier indicated, contravene the international legal system in force.

Article 50 of the Convention reads: ***'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 Commission or by the state concerned to the Court.....'***

The State assumes that Report 35/02 does not concern a report within the meaning of Article 50. Because the articles of the Convention does not apply, the State emphasizes that even if the Commission's communication, 'Report 35/02', would be an Article 50 Report, the prevailing provisions of the Convention in this matter have not been observed. For, the Commission issued its communication, 'Report 35/02', on 28 February 2002, and on 20 December 2002 it refers the case on to the Court. In accordance with the provisions of the Convention, with

regard to the alleged violations which, according to the Commission, must be settled pursuant to the Convention, the Commission should have drafted an Article 50 Report. Assuming that Report No. 35/02 is the confidential report as prescribed by the Convention, the Commission made certain proposals and recommendations to the State. However, Article 51 (1) of the Convention states: ***'If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.'***[46] The Commission should have adopted an Article 51 report. This report should have been presented to the State if appropriate containing pertinent recommendations of the Commission. Based on the correspondence between the State and the Commission after the issuing of Report 35/02, the Commission should have issued a report to determine whether the State has taken adequate measure. Instead, the Commission decided to submit the case to the Court on the final date, namely December 20, 2002, that the State was given to respond. The State of Suriname notes that in its communications of June 14, 2002 the State has stated that it does not regard Report 35/02 as an Article 50 report. The State pointed out in its communications of June 14, 2002. ***'The Government of Suriname asserts that publishing an Article 51 report will be premature, since Suriname was a Declaration State with regards to this particular case, which indicates that the Convention does not apply to Suriname in this particular case'.***

The State requested additional time to continue its investigation of the case. In aforementioned letter the State of Suriname reiterated its position: ***'Should the Commission be of the opinion that Suriname is a Convention State - an opinion the Republic of Suriname disagree with - , we would recommend that the Commission does not draw an Article 51 report, but gives the Government of Suriname the possibility to response within a time frame of two months in this***

[46] Inter-American Convention on Human Rights, Article 51(1).

particular case'. On June 20, 2002 the State wrote a second letter to the Commission regarding the issue of extension. In this letter the State explicitly stated ***'Referring to Suriname's opinion as stated in its above mentioned communication dated June 14, 2002, with regard to the presentation of case no 11.821 to the Court...'*** The State reserved its rights and requested a two month extension in June 2002. An additional four months was requested by the State to continue its investigation into the subject-matter, by its letter of August 16, 2002. The State respectfully refers to its statements made under Facts, section II Processing of the case before the Inter-American Commission on Human Rights of this document. This request was granted by the Commission in August 20, 2002. If the Commission is of the opinion that it has duly presented case no. 11.821 Village of Moiwana, to the Court, based on the Convention, the Government of Suriname disagrees with this view. Since the six months extension granted to the State after the issuance of Report no.35/02 is not in compliance with the provisions of the Convention (e.g.Article 51). Moreover the State has clearly stated that the Convention was not applicable in the particular circumstances of this case.

The State therefore believes that the procedures as mentioned in the Convention are not properly followed. In de Velasquez Rodriguez case the Court stated, that the purpose of exercising full jurisdiction, including fact-finding, over contentious cases, was not only to afford greater protection to the rights guaranteed, but also to assure state parties that all of the rules established in the Convention would be strictly observed.[47] If your Honorable Court considers Suriname as a Convention State, based on the above-mentioned view, the State believes that the Honorable Court must declare the petition inadmissible because the procedures as mandated by the Convention are not followed.

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[47] Supra note 34, para 29 .

From the above it appeared that the Commission clearly has exceeded the time limit of 3 months indicated in the Convention and has not timely submitted the petition to the Court. The State of Suriname requested deferment relating to the last communication received from the Commission, Report No. 35/02, but thereby plainly took the position that:

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a) it does not consider the communication as an Article 50 Report;
b) the Commission cannot issue an Article 51 Report in this matter;
c) deferment is requested for the continuation of the inquiry commenced in the present matter and not for the issue of an Article 51 Report;
d) that the State knows its responsibility for which reason it needs additional time for the inquiry.

'The Commission cannot be permitted to apply time limits in arbitrary fashion, particularly when these are spelled out in the Convention.....To 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'.[48]

The democratic Republic of Suriname is sensitive to issues surrounding human rights. Shortly after its independence, Suriname became a party to the Organization of American States. Though Suriname has had a military dictatorship, the basic rights that are recognized in the American Declaration have survived and are embodied in the current Constitution. While the State admits there have been egregious cases of human rights in the time of the military dictatorship, it stresses that this is history. In its human rights policy the State takes all possible preventative measures in an attempt to improve and ensure the basic human rights and peaceful security as envisioned by the supervisory organs in the Inter-American Human Rights system. The State respects and feels very strongly about human rights; if matters have gone awry, the State wishes to correct them

[48] Cayara Case vs Peru, Preliminary Objections, Judgment of February 3, 1993, Inter-Am.Ct.H.R.(Ser.C) No. 14 (1994), para 38 and 63.

and let justice prevail. That is why the State is investigating, whether or not with the help of the Commission, what has happened in the Moiwana Village. The State is of the opinion that in view of the policy now pursued, human rights violations as those which have occurred in the past will not ever again be committed in the Republic of Suriname.

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In conclusion the jurisdiction of this Court is barred for untimely submitting of the case to the Court pursuant to Article 51(1) of the Convention. Moreover, the State still maintains that the petition is inadmissible pursuant to Article 47(a) based on non-satisfaction of article 46(1)(a) and (b). The Commission ought to have settled this case in the manner prescribed in *inter alia* Articles 52 and 53 of the Commission's Regulation, which has not been done. Therefore the State requests – if and insofar as you consider the State in this case a Convention State – this Honorable Court to declare the case not admissible since the correct legal procedure pursuant to the Convention *casu quo* the Commission's Regulations have not been observed.

II. Jurisdiction of this Court is barred for lack of evidence

The Court is not bound by the Commission's improper decision regarding admissibility of the petition and has the opportunity to adhere to the prerequisites of admission as mentioned in the Commission's Regulations. Following the Commission's argument as to the applicability of the case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname***, the State notes the following:

The petition is inadmissible due to lack of evidence that a violation of the Convention occurred.

Not stating facts that tend to establish a violation of the rights guaranteed by this Convention, is inadmissible pursuant to article 47 of the

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

The analysis made by the Commission in this case is in conflict with international law and thus not acceptable.

The Commission requests the Court to convict Suriname on the ground of 'the ongoing failure of the State to provide effective judicial protection and guarantees', which would constitute a violation of Articles 1, 8 and 25 of the Convention. In its Report 26/00 the Commission labeled this the 'continuous nature' of the violations of the Convention. The State of Suriname is of the opinion that this view of the Commission is extreme, exceptional and incorrect. This analysis of the Commission does not hold and, in the opinion of the State of Suriname, is even in flat contradiction to the established and accepted norms and standards under international law.

A. 'Continued' human rights violations. These violations are nowhere to be found in, and not known in the Inter-American Human Rights system

On the ground of the so-called "continued nature" of alleged human rights violations, the Commission has considered itself competent to take up and deal with the violations the original petitioner has charged under the Convention.

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This interpretation of the Commission in fact produces an expansion of human rights violations. For, according to the Commission, human rights violations which have been committed by a Declaration State and are of a 'continued nature' should be treated as violations of the Convention if the state has meanwhile become a Convention State. This exceptional view of the Commission is clearly expressed in the requests for leave, done by the Commission. Those requests for leave are exactly the requests the Commission would have made if Suriname was a Convention State on November 29, 1986, the date the alleged violations took place. Accepting this view of the Commission would be implementing the Convention on Suriname for acts that were committed on its territory prior to November 12, 1987. This ex post facto application of the Commission is contrary to the Convention itself, contrary to general accepted principles of international law, and certainly not the goal of the framers of this regional human rights system. ***'Convention enters into force for a state which ratifies or adheres to it with or without a reservation on the date of the deposit of its instrument of ratification or adherence'.***[49] ***'Convention (treaty) means an international agreement concluded between States in written form and governed by international law.'***[50] The Republic of Suriname believes that the Honorable Court should, based on aforementioned information, deny the requests made by the Commission as not being legally founded in this human rights system.

This conception of the Commission is at odds with the vision of the states which have founded this regional human rights system. The State of Suriname endorses that when rights of individuals are concerned, it is of vital importance that such rights are cherished properly. The State even acknowledges that a teleological interpretation of human rights treaties is acceptable. However, that does not alter the fact, that in safeguarding the rights of any individual, due care must be exercised. The State of

[49] Advisory Opinion OC-2/82 of September 24, 1982, I.A.Ct.H.R. (Ser.A) no. 2 (1982), para 40.

Suriname is of the opinion that in safeguarding such rights, the fundamental principles and standards of international law *casu quo* this regional human rights system may not be contravened. Teleological interpretation of a human right treaty (*in casu the* American Convention) the State is not a party of, while the same norms are safeguarded in another applicable human right instrument (the American Declaration), is not in compliance with international law.

The alleged 'continued human rights violations' which according to the Commission must be dealt with under the Convention, are essentially violations of provisions of the only instrument that is applicable in this case, namely the Declaration. The State of Suriname is therefore of the opinion that the Declaration should be applied as a normative instrument. By indicating that this involves "continued human rights violations" the Commission, as it were, renames the violations under the Declaration in order to deal with them under the Convention and this, because, as it happens, the State of Suriname, viewed within the framework of the present case, has become a party to the Convention. The State of Suriname is of the opinion that in the event that human rights violations have occurred after Suriname's accession to the Convention, these new separate violations must be considered as such and dealt with under the Convention. Violations committed prior to Suriname's accession must be dealt with in accordance with the legal instruments which were of effect in that specific period.

The State respectfully refers to previous statements made in this document regarding this particular issue.

It is obvious that the alleged violations under the Convention (previously referred to as category (b) violations) must be assessed according to the

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[30] Vienna Convention, Article 2(1)(a).

applicable rules, regulations and norms of the Inter-American system, e.g. the issues of admissibility, exhaustion of domestic remedied, etc.
To the State's opinion, the Commission, when assessing the original petition, did not make the distinction as such, hereby violating accepted principles of international law.

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In the Blake vs. Guatemala case[51], the Court has applied the terms 'continued human rights violations' and 'continued nature'. However, the facts and circumstances of the relevant case differ from the facts and circumstances of case No. 11.821 *Stefano Ajintoena et al vs the Republic of Suriname.* In the Blake vs. Guatemala case, the victims had disappeared before Guatemala became a party to the Convention. The fact that they had disappeared would have resulted in a violation of the standards of the Convention, had Guatemala been a State Party. When Guatemala became a party to the Convention, the victims were still missing and this continued for some time. In this specific case, this resulted in the violation of standards by the State of Guatemala which violation became manifest when Guatemala became a party to the Convention and this violation indeed continued because the victims were still missing. In that framework, the Court then indicated that the violation of the standards were of a 'continued nature'.
Case No. 11.821 *Stefano Ajintoena et al vs. the Republic of Suriname* differs from the Blake vs. Guatemala case in that in case No. 11.821 there are one or more alleged facts which would imply a violation of standards if Suriname had been a State Party. It concerned the alleged murders and alleged arson, in any case facts which would have occurred only once and which would have been known to petitioners. The latter facts were not committed over and over again until Suriname became a State Party.

[51] IACtHR, Blake case ,Judgment July 2, 1996

The State of Suriname wishes to bring the following to the attention of your Honorable Court. Article XVIII of the Declaration discusses the right to a fair trial. The Commission is of the opinion that in the present case the State of Suriname has violated the right to a fair trial, but makes a peculiar analysis, by introducing the concept of "continued human rights violation" and linking it to the right to a fair trial as laid down in Article 8 of the Convention. The State of Suriname is of the opinion that this view of the Commission is unacceptable. The same alleged human rights violations committed prior to Suriname's accession to the Convention may never be dealt with under the Convention when the Declaration is the only normative instrument applicable. Moreover, the State of Suriname points out that the introduction of Article 8(1) of the Convention by the Commission, '***Every person has the right ....***' proves the State's main point that the Commission is trying to bring the Honorable Court to ex post facto apply the provisions of the Convention to Suriname, with regard to acts that took place prior to Suriname's accession to the Convention. The events that took place on November 29, 1986 in the maroon Village of Moiwana are according to the State regrettable. But whose right to a fair trial was violated, the victims of the alleged violations in the village of Moiwana or their family members? The victims are dead and their right to life as their right to a fair trial are allegedly violated. Since these alleged violations took place prior to Suriname's accession to the Convention, if they are proven, the Declaration should be applied. If the rights of family members or survived victims as codified in Article 8(1) of the Convention, are violated after Suriname's accession to the Convention, these alleged violations should be dealt with separately under the Convention. The State believes that the 'continuous nature' of the act of disappearance, as mentioned in your Court's decision in the Blake vs Guatamala case[52] is not present in this particular case. In addition, the State of Suriname wants to make clear that she has started with an investigation in the

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[52] ibidem

matter. This happened at several moments after the occurrences took place. The fragile democracy was under heavy siege and survived several difficult situations. If the State can prove that she offered adequate judicial protection after its accession to the Convention, there is no violation of Article 25 of the Convention, assuming that this Honorable Court accept the argument of "continuous violation" in this present case. The State has commenced a criminal investigation which is still going on, and has no intention whatsoever to let an offence committed, if any, go unpunished [53].The State doubts that if the State indeed violated Article 25 of the Convention this would give the Commission the legal possibility to request among others millions of dollars of reparations? The State is of the opinion that this request made by the Commission is in contradiction with the objectives and purpose of the human rights system in its entirety

1. The Commission used extensive and anticipatory interpretation of the Convention, which is contrary to the Vienna Convention on the Law of Treaties.

Article 31(1) of the Vienna Convention on the Law of Treaties reads:

'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

The above indicates that the Commission in dealing with the matter and interpreting the Convention should have acted in good faith, in accordance with the normal meaning of the terms of the Convention.

The State of Suriname opines that in the present case, the Commission has made use of an extensive interpretation of the Convention. The use of an extensive interpretation method is not considered possible *in casu*, in view of the nature of the Convention.

[53] annex confidential documents Moiwana criminal investigation.

Applying the Convention to alleged human rights violations which have occurred when Suriname was not (yet) a party to the Convention must be considered as contrary to the Vienna Convention on the Law of Treaties and the general principles of law which are applied in international law. The latter is patently obvious from the following provisions of the Vienna Convention on Treaties.

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Article 28 of the Vienna Convention on the Law of Treaties reads:

'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.'

Article 5 of the Vienna Convention on the Law of Treaties reads:

'This present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.'

The State of Suriname opines that the Convention cannot be interpreted in such an extensive manner that alleged human rights violations committed when Suriname was not yet a party to the Convention are all of a sudden inserted on the basis of a peculiar analysis *casu quo* application of the Convention by the Commission. The State of Suriname persists that the Declaration is the only instrument that is applicable to alleged human rights violations which have occurred before Suriname became a party to the Convention. In the event that human rights violations occur after Suriname's accession to the Convention, the logical consequence is that such violations must be dealt with separately under the Convention.

An anticipatory interpretation cannot be applied either in the present case since the State of Suriname, prior to its accession on November 12, 1987, in no way has stated any '***consent to be bound***' by the Convention. The State of Suriname did not sign the Convention before 12 November 1987. If that had been the case, pursuant to Article 18 of the Vienna Convention on the Law of Treaties, the State of Suriname would have to refrain from performing acts which would deprive the treaty of its object and purpose. In the matter under consideration, this is not the question.

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2. The Commission used ex post facto application of the Convention, which is contrary to the rules of international law

The State of Suriname is of the opinion that in this case, the Commission has in fact simply applied the Convention ex post facto. This is in conflict with the Vienna Convention on the Law of Treaties, article 9 of this Convention, general principles of law which are of effect in any civilized legal system and with international law. The State of Suriname is therefore of the opinion that the handling of this case under the Convention is contrary to international law and thus cannot and may not so take place. This view was clearly expressed by the State to the Commission in previous communications.

3. Suriname is a Declaration State

In the Commission's view the Convention, not the Declaration, is applicable to alleged violations which have occurred before the effective date of the Convention because it involves "continued human rights violations".

In the extreme event that the Commission's view is accepted as correct (*quod non*), it must be pointed out that the primacy of the case brought against the State of Suriname is the Declaration and not the Convention.

Pursuing the reasoning of the Commission, it would follow from this that in respect of only those two alleged human rights violations which are to the Commission's opinion of a "continued nature", the Convention can be applied.

However, the said analysis by the Commission cannot mean that in case No. 11.821 instituted by the petitioner, the State of Suriname has been transformed in its entirety from a Declaration State into a Convention State. Concurring in this view would be, in the opinion of the State of Suriname, contrary to the Vienna Convention on the Law of Treaties and with the established principles and standards of international law, as well as with the principles on which the Inter-American Human Rights System is founded. As mentioned, a state is not bound by the provisions of a treaty if that state is not a party to the treaty concerned.

If "continued human rights violations" fall under the scope of the Convention, as argued by the Commission, then the Convention can only be applied in those few exceptional cases involving "continued human rights violations". The latter does not make Suriname a Convention State as regards to this petition in its entirety. Suriname is a Declaration State and should be treated as such.

The State of Suriname comments that the Commission in its deliberations and in drafting Report No. 26/00 of 07 March 2000 and Report No. 35/02 of 28 February 2002, has treated Suriname, entirely in conflict with current international law, as a Convention State in respect of petition No. 11.821 concerning the village of Moiwana. And this, while the alleged human rights violations have occurred before Suriname became a party to the Convention.

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4. Normative instrument is the Declaration

By way of illustration of the above, it is noted that the Commission in analyzing the matter so as to ascertain whether the criteria of admissibility had been satisfied, in paragraphs 24 through 29 of Report No. 26/00 has applied the Articles of the Convention to determine whether she – the Commission – could admit this case. This implies that the Commission wrongly has treated Suriname in this case as a Convention State. The State of Suriname takes the view that the Commission should have gone by the only prescribed normative instrument in the Inter-American Human Rights System, namely the Declaration. The application of the Convention as normative instrument is considered unacceptable because it is in conflict with the basic principles of the Inter-American Human Rights System.

5. Application of the appropriate instruments

For the purpose of further illustration, it is noted that in the analysis relating to the exhaustion of the remedies under domestic law by the petitioner, the Commission by quoting primarily from the articles of the Convention has clearly taken this instrument, not the Declaration, as starting point.

For the sake of good order the State of Suriname observes that, in addition to the Declaration, the Commission's Regulations as prevailing before May 01, 2001 should be applied to Suriname as Declaration State. The prevailing Rules of Procedures of the Commission which have entered into force on May 01, 2001 can *in casu* only be applied, subject to the applicable transitional provisions, if Suriname is not maneuvered into a worse position than it was in before 01 May 2001. Indeed, according to accepted standards within any legal system the regulations which are most favorable for the accused party must be applied in the event of

change of legislation (see also Article 9 of the Convention). Since the petitioner accuses the State of Suriname to be responsible for several violations of human rights, the most favorable regulations must be observed for the State of Suriname. 0000281

The application of other instruments that has effect in the Inter-American Human Rights systems, as the Commission has done, resulted, in the opinion of the State of Suriname, in a completely incorrect legal basis for its reports in this case. The State of Suriname respectfully requests your Honorable Court to remedy this miscarriage of justice in this specific case against the State.

6. The Commission has used the Convention wrongly as primacy

For the purpose of further illustration that the Commission has used the Convention as primacy in Case No. 11.821 against the State of Suriname, the following.

In applying international humanitarian law, the Commission quotes a statement made by the Inter-American Court of Human Rights in the case Bamaca Velasquez. The Commission considers '***...because of similarity between Article 3 common to the 1949 Geneva Convention and the provision of the American Convention...*** *"* ***and "...the Court has already indicated in the Las Palmeras case (2000), that the relevant provisions of the Geneva Conventions may be taken into consideration as elements for the interpretation of the American Convention...***' The Commission wants to indicate with the above that the four 1949 Geneva Conventions are the scope within which the American Convention is to be interpreted.

Here as well it is abundantly clear that the Commission has treated Suriname, the Declaration State, as a Convention State in this case.

7. Report No. 26/00 of March 7, 2000 lacks legal basis *casu quo* has an incorrect legal basis

On the basis of the above the State of Suriname is of the opinion that Report No. 26/00 of 07 March 2000 has no legal basis *casu quo* has an incorrect legal basis. The State of Suriname therefore takes the view that the Commission has not issued a legally acceptable Report in case No. 11.821. The State of Suriname has reached this conclusion because Report No. 26/00 has not been drafted according to or has been drafted contrary to the current provisions of the Inter-American Human Rights System which must be considered applicable to Suriname in respect of the present case e.g. the Regulations. Since this case has not been declared admissible pursuant to a report, determined by the procedures and guiding principles of the Inter-American Human Rights System, the State of Suriname is of the opinion that the Commission therefore cannot issue a report on the merits in this case.

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The State of Suriname observes that the states of the Western Hemisphere have voluntarily decided to accede to this regional system, on the basis of several established and agreed principles and standards which are completely in line with regional and global developments. The values, standards, guidelines and procedures determined by the founders of this system must therefore be upheld at all times, since this safeguards the integrity of the system. On the basis of the above, the State of Suriname is of the opinion that for safeguarding the system, it must be concluded that the reports drafted by the Commission, as one of the two organs responsible for safeguarding and supervising compliance with the rights of individuals on the Western Hemisphere, need to be prepared in accordance with the instruments in force. It should be noted that a good human rights policy is one of the spearheads of the program of the current Government of the State of Suriname. As such, no comments were made on the merits of the alleged human rights violations put forward by the original petitioner to the Commission. The State of Suriname is currently investigating the occurrences in the maroon Village of Moiwana

It is expressly observed that the State of Suriname knows its responsibilities and is not unwilling to institute an inquiry into the matter in order to ascertain exactly what has occurred in the maroon village of Moiwana and which concrete steps must be taken. As a member state of the Organization of American States and as a State which considers the principles of appreciation and respect for the rights of individuals of paramount importance, on proof of violations of the rights of individuals, Suriname will not hesitate to take action in the manner prescribed, *inter alia* by prosecuting and punishing the possible perpetrators.

B. Report No. 35/02 of February 28, 2002 lacks legal basis

For the purpose of further illustration that the Commission has processed the action brought against the State of Suriname by the petitioner in its entirety as a matter to which the Convention is applicable, reference is made to the letter of the esteemed Executive Secretary, under date of March 21, 2002. Enclosed in the letter mentioned, a copy of Report No. 35/02 of February 28, 2002 was sent to the Minister of Foreign Affairs of Suriname. The Commission stated that it has drafted and approved confidential Report no. 35/02 pursuant to Article 50 of the Convention. The Commission further informed the State, that the petitioners have not received copy of the report. These are all paragraphs in the letter from the Commission, the petitioner before your honorable Court. Reference is made as to alleged violations that took place prior to November 12, 1987. The State of Suriname acceded to the Convention and accepted the Honorable Court's jurisdiction on November 12, 1987 and the alleged violations took place prior to this date.

The State of Suriname, on the basis of considerations stated earlier, is of the opinion that *in casu* no report in accordance with Article 50 of the Convention can be drafted.

Since Suriname is a Declaration State in relation to the alleged human rights violations in the case instituted by the petitioner, a report should be drafted in accordance with Article 47 of the Commission's Regulations. It must be assumed therefore, that the report issued by the Commission, that is Report No. 35/02 of 28 February 2002, does not have the proper legal basis and hence must be considered non existent. 000128

An additional reason for not accepting the report mentioned, is the fact that this report has been issued on the basis of Report No. 26/00 of 07 March 2000. As previcusly indicated, Report 26/00 is non existent and hence any report based on this Report is devoid of legal basis.

On our part it should be mentioned that if the contents of Report No. 35/02 is considered, the Commission prudently has made some adjustments. However, this should have been done in the very beginning of the proceedings, because Suriname must be regarded as a Declaration State and not as a Convention State in relation to the charges made by the petitioner.

C. The contents of Report No. 35/02; the Commission concluded other violations than those for which the case was admitted

Although the State of Suriname is of the opinion that Report No. 35/02 of February 28,2002 is non existent and that in fact it is not necessary to go into a full consideration of the contents of the report, it is however considered relevant to comment on the contents of the said report. Apart from the mentioned legal deficiencies in the report, some other gaps have been found as well.

As stated in previous paragraphs in this document, the Commission has admitted the petition brought by the Human Rights Organization Moiwana '86 on certain violations. Strangely enough the Commission concluded in its report 35/02, that the Republic of Suriname has violated other

provisions than those for which the case was admitted. The reasoning pursued by the Commission is deemed unacceptable by the State of Suriname, as explained in the foregoing, since it is contrary to the mechanisms applicable to the State of Suriname within the Inter-American Human Rights System, as well as contrary to international law.

Furthermore, in the analysis contained in Report 35/02, the Commission makes use of Article XVIII of the Declaration in order to be able to insert Article 8(1) of the Convention.
The State of Suriname cannot sufficiently point out that the analysis made by the Commission in this case is in conflict with international law and thus not acceptable.

This expansion also includes rights which are guaranteed under both the Declaration and the Convention. Furthermore, violations which have not been included by the petitioners in their petition casu quo by the Commission in its Report No. 26/00 of 07 March 2000 are added as well. To the opinion of the State of Suriname, such a procedure is not correct. Indeed, a case against a state is admitted on the grounds of a few alleged violations. In the framework of a fair trial, it seems only logical to the State of Suriname that the further investigation should solely focus on those violations on the basis of which the case has been admitted.

D. In the petition addressed to the Inter-American Court relating to case No. 11.821 Stefano Ajintoena et at versus the Republic of Suriname, a number of facts have cited which are not at all true, or not completely true, or divorced from their context

The Republic of Suriname considers human rights of paramount importance in its existing democratic order. Hence these rights are

safeguarded in its Constitution and are further elaborated in various statutory regulations.

The State points out that the occurrences of November 1986 in the Maroon village of Moiwana are not, moreover can not be brought before your Honorable Court. The Commission however, petitioned this Court, presenting several documents containing information regarding said occurrences. The State believes that the Commission wants to picture a certain environment regarding alleged human rights violations that occurred on November 29, 1986, while the legal facts/legal questions this honorable Court is charged to deal with as to the Republic of Suriname, can only begin from November 12, 1987, the date Suriname exceeded to the Convention and accepted the contentious jurisdiction of this Court. In fact, the State of Suriname does not have to address in detail the statements made by the Commission with regard to said occurrences in the village of Moiwana. This once again proves the State's view that the Commission tries to convince this Court to ex post facto apply the Convention. The State has the following remarks as to the statements made by the Commission regarding the occurrences of November 29, 1986.

As to the events in the Maroon Village of Moiwana in 1986, the Commission has added several reports, newspaper articles, and other publications to the petitions. These documents mention a number of data that are not or not completely based on the truth, or are divorced from their context. It is as stated by the Human Rights Organization Amnesty International in paragraph 2.1.4 of its report "Suriname: Violations of Human Rights", dated September 1987: ***'... these killings have not been the subject of a thorough, independent investigation. Particularly considering the disturbing circumstances in which they occurred and the contradictions between the versions given by the police and witnesses and the victims' relatives.'*** It is

therefore of great importance that the State, now that democracy has been restored and the rule of law has been re-established, be given the opportunity to carry out, at the national level, an independent, impartial, thorough and sound investigation into the above.

Only after a thorough and profound investigation can the State issue a statement or take action in the matter. Now that democracy is restored, it has the occasion to do so, and the State has launched an investigation into the events in the Maroon Village of Moiwana in 1986.

1. There is no unwillingness and inability of the State to investigate, prosecute and punish those who allegedly committed the human rights violations against the residents of Moiwana village. Suriname has not refused in the past or in the present to provide justice for the alleged attack, nor did it fail to provide or did it obstruct justice in this case

In its argumentation, under the heading ***'Its unwillingness and inability to investigate, prosecute and punish the human rights violations committed against the residents of Moiwana village'***, the Commission states that Suriname in the past and in the present has refused to provide justice for the alleged attack and not only failed to provide, but obstructed justice in this case. This is far from the truth.

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The State categorically denies to have stated at a press conference that the Moiwana massacre should be considered to fall within the Amnesty Law. If a very important person has said so speaking as a private person, then that is just his opinion but not the view of the State. The State wishes to note that if this and other statements have been made strictly off the record by prominent people, these statements should also be considered in the light of the spirit of the times in which the State found itself. The democratization process that had set in was in a prenatal phase and very

fragile. This is not mentioned as an excuse by the State, but it is raised because of the reality of the State. Your Honorable Court is asked to take these circumstances into consideration. As the situation improved – i.e. further strengthening of the democratization process – the State did not fail to take action in this matter.

It is indeed true, that several times the petitioner has urged the Government to launch an independent criminal investigation. The original petitioner, however, failed to commence criminal proceedings (report an offence) or civil proceedings before the authorities.

With a view to the measures to be taken to avoid the re-occurring of human rights violations in Suriname, the Government of Suriname, with its democratic order based on the constitutional trias politica, not only has the will to conduct a profound investigation but has already launched such. The right moment has been awaited in order to conduct a thorough investigation and to take the appropriate measures and decisions. To that end – contrary to what is stated in the Commission's petition[54] – through the intervention and under the guidance of the Public Prosecutions Department, under the government of R. Shankar, during the arduously commenced democratization process of 1989, the criminal investigation was started, without this being initiated by the victims or petitioner. Inspector Herman Gooding of the Suriname Police Force was charged with conducting the investigation preliminary to prosecution. The purpose of such investigation was, and still is, to prosecute and punish the guilty parties in the event that on the basis of facts and circumstances it becomes apparent from the investigation that any offence has been committed. In connection with the results of the investigation, a few people were arrested, one of which made a full confession, both before the police officers and before the public prosecutor after his arrest, stating that he had killed a number of people at Moiwana. He also stated the motives for

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[54] Supra page 26, second paragraph: '....those headed by Police Chief Gooding.....'

his actions. However, on 04 August 1990, Inspector Gooding was found dead on a public road in the city center, while the suspect who had confessed died under strange circumstances.[55] The position of power held by the former military leaders had not yet ended and the democracy was still not stable. In 1995, the Surinamese Parliament carried a motion, requesting the Government to forthwith have an inquiry conducted into the murders of 1982 and the other human rights violations, including the events at Moiwana. The political situation of the State had still not been recovered to such extent that an independent and impartial investigation of the matter could be held. Afterwards, a few attempts have been made by the Public Prosecutions Department to carry out a criminal investigation, both into the events at Moiwana in 1986 and into the murder of Inspector Gooding. This was done under rather difficult conditions for Suriname. The democratization process was going on, and there was still no climate to carry out as good and objective a criminal investigation as possible. Besides, in conducting the investigation adequate caution had to be exercised to not once again end up in a situation in which people or, worse, population groups would become the victims of violence. According to the statement of the above suspect who had confessed, which statement was made during the preliminary examination, a number of Amerindians (approximately 20) had opened fire on the Moiwana villagers. Like some of the other men detained, who were all of Amerindian origin, he stated that the Amerindians wanted to settle scores with the Maroons, because they prowled around the woods and would rape their women in their presence. According to their statements, one woman had already been raped by the leader of the so-called Jungle Commando[56]. It was also common knowledge that the army under the leadership of Bouterse *inter alia* deployed the People's Militia, which comprised many Surinamese nationals of Amerindian origin, in the struggle against the Jungle

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[55] The man concerned,.died in a shooting incident. A hunter had mistaken him for a buffalo and shot him dead. Also see annex 21, containing copies of the interviews with the hunter.
[56] Annex 21; the documents the Public Prosecutions Department has been able to get hold of in the case.

Commando. Given the fact that in the Surinamese interior often one and the same area is populated by both Amerindians and Maroons, a certain degree of caution has been a decisive factor for the State in respect of the investigation of and approach to the Moiwana case. Meanwhile, the investigation into the events of 1982 is well under way and in an advanced phase.

The political situation in Suriname is at the moment such that the green light has been given for a structured approach to restarted the criminal investigation into the Moiwana case and in respect of other events during the eighties and the beginning of the nineties. A team has been established, consisting of investigating officers, headed by a chief public prosecutor. The Public Prosecutions Department disposed of copies of interviews with individuals who had been arrested in the matter and some witnesses[57]. A detailed investigative plan is being completed[58].

The investigation strategy has been talked through, to identify the perpetrator and the witnesses, and the questioning has started. After this, a case will be prepared and presented to the examining magistrate for a judicial inquiry. It is of importance to note here that the questioning of witnesses is not proceeding smoothly, owing to the fact that witnesses who have been made visible are not always inclined to testify or they withdraw their statements[59]. Therefore, the judicial authorities proceed with great caution, so as not to jeopardize witnesses, victims and other persons. The objective, to find out the truth, so as to bring the perpetrator to trial, is the main driving force for the judicial authorities.

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[57] See annex 22; the documents the Public Prosecutions Department has been able to get hold of in the Moiwana case, investigated by the late Inspector Gooding, include .. official reports of the questioning of suspects who were arrested and statements made by one witness, and annex 25; photocopies of ... autopsy reports drafted by the forensic pathologist Dr. M.A. Vrede.

[58] Annex 23, containing copies of the investigative Plan Moiwana murders.

[59] Annex 24, containing the official report of the interview with the witness Pater Toon, page ... below (underlined).

The factual data of the petitioner indicate that in May and June of 1993, a team consisting of the civilian police, the military police, a pathologist and his assistant from the Office of the Attorney General, and delegates of Moiwana '86 Human Rights Organization Suriname, visited the site of the graves and that the team discovered and opened one grave during its first visit on May 28, 1993, where police claimed to have found skeletons of only three or four persons, and that during a second visit the team found more skeletons, where several of the corpses were identified as members of the Moiwana community. The State believes that this information will be reviewed thoroughly during its investigation. The preliminary results of the investigation indicate that the information presented by the Commission is partly correct. Dr. Vrede, pathologist, carried out the autopsies on the skeletons. The results are not mentioned by the petitioner. The pathologist was unable to make any identification. He furthermore was unable to determine when and how the persons concerned have died and whether they had been buried there originally[60]. A further technological investigation, for which the Surinamese authorities will have to call in foreign expertise, is necessary and is under consideration.

From the above it follows that it is absolutely incorrect that Suriname has failed to provide justice and obstructed justice in this case or that it refused to provide justice with regard to events in Moiwana.

2. Through the adoption of the Amnesty Act of 1989, no rights of persons are violated

To enforce and protect *inter alia* the rights referred to in Articles 25 and 8 of the Convention (and the duty of the State as referred to in Article 1(1) of

[60] Annex 25, .. photocopies of the reports on the autopsies performed by the forensic pathologist Dr. M.A. Vrede on the mortal remains found in the excavations.

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the Convention), several states, including Suriname, have made punishable certain acts which imply an infringement of such rights and thus created the possibility to preserve and protect such rights (and the duty of the State) by means of sentencing. The penalization and on that basis sentencing is hence only a means to enforce the above-mentioned rights and duty. Consider, for instance, penalization of the taking of a person's life and maltreatment in many degrees and forms, because they are considered a violation of the most precious rights, namely the right to life and the right to physical and mental integrity. If the State now waives prosecution of certain persons, who have committed acts that held an infringement on certain rights or *in casu* postpones prosecution until an appropriate time, then it would have only postponed or waived the use of a certain means to enforce or protect such rights. In no way whatsoever has the State in so doing infringed on the rights or deprived its citizens of such rights by waiving prosecution as stated above. In respect to the Amnesty Act it may be stated that waiving prosecution as said can be effected by granting amnesty, if there is hardly any possibility to realize prosecution, by waiving prosecution in any individual case as indicated in Article 222 ff. of the Suriname Code of Criminal Procedure[61].

The Government, by virtue of its nature of government and its peacekeeping function derived from such nature, has the right and authority to make postpone or to waive the use of a certain means of law enforcement, at any rate when use of such means (at that time) would seriously damage the protection of other important interests that form part of the government's task, such as bringing about peace, rest and order within the state, which are indeed necessary for establishing and promoting the well-being of its citizens, inherent to which is the ability to enjoy the rights awarded to them. Until the passing of the Amnesty Act 1989, the protection of such important interests have governed.

[61] Annex 26, containing the Suriname Code of Criminal Procedure, Article 222 ff.

For, it is common knowledge that to a serious extent the peaceful existence of society was threatened by the armed actions of one or more groups of rebels who primarily offered resistance to the state's authority. *In casu* the government did have the right and authority to restore peace and order in society by, among other things, granting amnesty. It was clear to the government that the rebel groups would not be willing to submit to the state's authority and integrate normally into society. It should be noted here that in drafting the Amnesty Act 1989 the legislator did not envisage impunity of possible perpetrators of events in the Maroon village of Moiwana.

With regard to the Amnesty Act 1989 it should be mentioned that, first of all, amnesty is granted for a number of serious offences, which in essence are crimes against the safety of the State and against public order. Such an offence is in itself not an offence that from its nature means an infringement of the rights of man granted as such, as indicated in the American Declaration of Rights and Duties of Man, the American Convention on Human Rights, and the Universal Declaration of Human Rights. For this reason, the Amnesty Act 1989 cannot be considered contrary to constitutional provisions or provisions of a Convention relating to human rights.

It is not impossible that a concrete act of any person in a given case would mean an infringement on one of the above rights. In that concrete instance, this Amnesty Act could be tested against the Constitution to consider it nonbinding.

Petitioner indicates that '***the Amnesty Act applies to human rights violations and other specified crimes***'[62].

[62] See the petition of the Commission page 18

The State contradicts that the Amnesty Act is a violation of international law. As Moiwana 86 Human Rights Organization Suriname has not indicated what legal rule of international law it refers to, this statement should be passed over as vague and unfounded. Does it refer to the law of nations as laid down in international public law agreements and international customary law, indicating practices generally pursued by states? If such is the case, then it is clear that the said Amnesty Act is not contrary to international law, given the fact that a number of states, including Uruguay in 1985, Argentina in 1985, El Salvador in 1987, Guatemala in 1987, Colombia in 1982, Angola in 1986 have granted a similar amnesty, with the cooperation of the Organization of American States and of the Organization of African Unity. Consequently it cannot be argued that the Amnesty Act 1989 is in conflict with the law of nations in the sense of the customs and practices of states and international organizations.

Subject to Article 1 of the Convention on the Prevention and Punishment of Genocide. Paris 1948, there is not one convention that explicitly imposes an obligation on states to punish offences which in accordance with international law are considered crimes.
Precisely on the grounds of the above Convention on the Prevention and Punishment of Genocide and on the basis of international law, Suriname has declared that the Amnesty Act 1989 does not apply to crimes against humanity[63].
Not every infringement on the rights granted to man is included in it. It only includes crimes that are committed in the framework of the systematic violation of human rights with the object to destroy or decimate a certain group of people, or at least deprive them of a place within normal society, be it that such a group is identified on the basis of national character, ethnicity, race or religion. Both from the results up to now of the criminal

[63] Annex 27, Amnesty Act 1989, Article

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investigation at the national level and from the petition, is has not appeared that such crimes have been committed as regards Case No. 11.821 Stefano Ajintoena et al vs. the Republic of Suriname. With respect to the Amnesty Act 1989, in conclusion it is stated that this act has no effect on the liability under civil law of those who would be indemnified against criminal prosecution under the Amnesty Act.

3. The State did not bear responsibility and did not fail to uphold the fundamental and interconnected rights set forth in Articles 25, 8 and 1(1) of the American Convention

Petitioner claims that the State of Suriname bears responsibility for having failed to uphold the fundamental and interconnected rights set forth in Articles 25, 8 and 1(1) of the American Convention. This statement is not true.

Petitioner mistakenly assumes that 'the victims and their families were unable to effectively invoke and exercise their right under article 25 to simple, prompt, effective judicial recourse for the protection of their rights' and that 'even the most tentative efforts initiated toward this objective were met with institutional resistance and failed to produce substantive results' stating that 'consequently the surviving victims and the families of those killed have been denied their right to be heard with due guarantees in the substantiation of their right to justice' concluding that 'as a result of the state's failure to provide the effective judicial protection and guarantees required under the Convention, the families have been denied not only their right to an effective investigation.....but also their right to seek reparation for the consequences of those violations'.[64]

[64] See pag. 25, paragraph 4 of the Commission's petition.

The victims and their families had and still have indeed the opportunity to invoke and exercise their right under Article 25 to simple, prompt and effective judicial recourse for the protection of their rights. The Surinamese legislation offers – in accordance with provisions contained in the First Book of the Suriname Code of Civil Procedure[65], "About the manner to litigate before the District Court Judge", under Title One to Nine inclusive, articles 1 to 304 inclusive – everyone the opportunity to commence a civil action in the manner as described in this Book, on the basis of one or more legal provisions indicated in the Suriname Civil Code[66]. Such an action could have been instituted also against the State, which has not been done.

In continuation, a number of articles from the Suriname Civil Code will be cited as example, on the basis of which the relatives of the alleged victims and/or other injured parties could institute actions[67].

- 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. –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,***

[65] Annex 26, containing the Suriname Code of Civil Procedure.
[66] Annex 27, containing the Suriname Civil Code.
[67] ibidem

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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.***

If the alleged victims and their families are convinced that they have suffered damage due to an act or omission by or in the name of the State and on the basis thereof would want their right of return to the status quo ante and/or damages, they may institute, in the manner indicated in the Suriname Code of Civil Procedure, an action against the State which is accountable as a person under private law. In addition, there is a public authority, namely the Legal Aid Office of the Ministry of Justice and Police, which gives legal assistance to persons who are not able or considered unable to retain a lawyer for such an action[68]. The legal provisions are deemed to be known to everyone on Surinamese territory.

The victims and their families have never been deprived of these possibilities. The original petitioner, Moiwana '86 Human Rights Organization Suriname, is aware of the above-described possibility to

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obtain their right to justice, since it has instituted, at the national level, an action against the State for alleged human rights violations in another case[69]. However, from the administration of the Filing Department and the Extrajudicial Division of the Office of the Procurator General[70] it did not appear that a claim for damages has ever been lodged against the State of Suriname before the District Courts, in relation to the events of November 29, 1986 at Moiwana, neither by Moiwana '86 Human Rights Organization Suriname, nor by any other person or persons[71].

The citizen is not only protected by these national statutory provisions, but is especially important to note that practice has shown that such an action has a fair chance of success. If such an action is instituted and the State is convicted, it always complies with the judicial decision and proceeds to pay the damages awarded. The legal remedies that could have been applied are, contrary to the allegations of the Commission, indeed effective as referred to in the examples which have been cited by petitioner[72] The petitioner has failed to use this remedy that, contrary to the Commission's allegations, is not at all "illusory", as appears from that which was brought forward earlier by the State. Moiwana '86 Human Rights Organization Suriname could invoke this remedy irrevocably; whereas it, at any rate the Commission, represents in the petition that criminal investigation, prosecution and enforcement at the national level would be the (only) remedy to repair the damage sustained. However, according to the national legislation this is not at all the case. A criminal investigation serves to maintain the order and safety in the country, including safeguarding the rights of persons. In view of the national

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[69] Annex 28, comprising a copy of bailiff's notification No. ... in which this organization brings an action against the State to have the Amnesty Act declared nonbinding.

[70] The Attorney General by virtue of Article ... of the Constitution is the legal representative of the State in Court. If an action is constituted against the State, the Attorney-General on behalf of the State receives the writ of summons.

[71] Annex 29, containing a statement by the Head of the Extrajudicial Division of the Office of the Attorney General

[72] See Commission's petition to the Court, footnotes 50 and 51

statutory regulations prosecution is but one of the means to safeguard those rights of persons. Article 316 to 323 inclusive of the Suriname Code of Criminal Procedure describe accelerated proceedings under which the injured party in a criminal action may join as a party to the action for damages. In so doing he may not consult suspects and/or witnesses other than in relation to the damage and damages shall be awarded only when any punishment or non-punitive order is imposed on the suspect. So the injured party is not a party to the criminal proceedings. Because of the in practice often complicated and time-consuming procedure to determine the damages, in most cases reference is made to the most obvious method, that is action for damages *in civilibus* pursuant to Article 1386 of the Suriname Civil Code.

The most effective manner to obtain damages and repair is the civil process. For that purpose a civil action may be brought as above described, whereby a court's decision is rendered that is completely independent of ongoing criminal proceedings, if any, in connection with the events that have led to the action for damages. Besides, in a civil action the evidence can be obtained without criminal investigation and it is not by definition that the evidence is absolutely dependent on prior criminal proceedings. Conversely, the evidence obtained during the criminal proceedings can serve as evidence in a civil action. Simply said, the claimant in an action for damages must put forward evidence, whereas the defendant must prove the contrary, if he is of the opinion that it is wrong. Thus, the above allegation of petitioners is not correct. In its petition the Commission also cites the judgment of your Honorable Court, that ***'[a] a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective'***[73] , but from that which the State has brought forward it appears that *in casu* it is not a matter of '***general conditions***

[73] IACtHR, OC-9/87 supra, para. 24

prevailing in the country' or of the ***'particular circumstances'*** to which your Honorable Court referred in the above judgment.

Furthermore, a criminal investigation into the events of the Maroon village of Moiwana on 29 November 1986 had been launched indeed. This investigation, however, had been temporarily suspended, but was resumed in August 2002 and is now being carried out in accordance with the national statutory provisions, for the purpose of prosecuting and punishing the guilty party if it appears that any offences have been committed. Persons have been questioned, including some persons who alleged that they were harmed in the events[74] Having regard to the arduous advancement of democracy in the State of Suriname under rule of law, this investigation had a difficult start and the State has to exercise due care in the investigation. This does not mean, however, that the State's intended purpose shall not be attained. A positive indication is the criminal investigation into the murders of December 8, 1982 when human rights were violated during the military regime. An application has been made already to the Examining Magistrate and the investigation is in an advanced phase. Because of the phase of the prosecution at this moment, it would not be prudent to present confidential documents on the matter. With the permission of this Honorable Court, the State shall submit the relevant evidence at a later stage, if you deem so necessary.

The statement that the surviving victims and the families of those killed have been denied their right to be heard with due guarantees in the substantiation of their right to justice, is not correct and also incorrect is the conclusion drawn by the Commission that they have not only been denied an effective investigation designed to establish the violation and

[74] Annex 30, containing the interview with the witness.

corresponding responsibility, but also their right to seek reparation for the consequences of those violations.

4. There are no reparations and costs owed since no Convention standards have been violated.

In Chapter VII of the petition the Commission demands damages for violation of Articles 25, 8 and 1 of the Convention. It also indicates that the alleged victims and/or their families are not in a position to return to their communities and hence are affected twice.

Now it has become clear that to the State's view, Articles 25, 8, and 1 of the Convention have not been violated, the State is of the opinion that it is not obliged to pay damages for violation of Articles 25, 8 and 1 of the Convention.

Furthermore, the Commission argues that the alleged victims and/or their families have been prevented from returning to their community and to reconstruct their cultural life as a Ndjuka community because of the awareness that the suspects are not punishable and still hold positions of power and influence within the State.

This statement is incorrect and the reason stated in unfounded. For, practice has shown that matters involving the then military leaders have been investigated, for instance the human rights violations committed on December 8, 1982. Several of the suspects have been questioned and the prosecution is on its way. If any offences have been committed by persons, the guilty persons are prosecuted and punished as indicated by law. Family members of the victims of such violations or other persons have been able to make their statements freely and have not been attacked, intimidated or otherwise harmed in any way whatsoever, neither prior to nor during the examination of the witnesses.

With regard to the return of the alleged victims and/or their families, the following should be said. The inhabitants of the village Moiwana subsist on trade and agriculture, just as the Ndjuka in that region. They have never

been an isolated community, that mainly practiced its own culture. Although they mostly have fled to other places, they are regularly in the north-east Marowijne coastal region of Suriname and/or elsewhere in the country, whether or not for longer periods of time. They move freely throughout the country, and a number of them took up residence in the Marowijne region between Moengo and Albina. They have social security, such as child benefit and old-age pension. In the meantime, there is a very busy movement between Albina in Suriname and St.-Laurent-du-Maroni in French Guiana. No communications have thereby ever reached the Suriname Government that the rights of these persons were violated or that they were intimidated. Many of them have squatted houses in Albina and now reside there.

The Commission has been unable to show that indeed "those responsible for the massacre continue in many instances to occupy positions of power and influence in the country." Nor has the Commission been able to show that "the surviving residents and the families of those killed have been prevented from returning to the seat of their Community or have been prevented to reconstruct their cultural life as a Ndjuka community."
Hence the State asks your distinguished Court to pass over this allegation on the grounds that this statement of the Commission is not valid.

Furthermore, in Chapter VII A the Commission states ***'when, as in the present case... to the irreversible nature of certain damages suffered...'***[75] and its note 62 refers to the judgment of your Honorable Court in the Velasquez Rodriguez Case[76] and in note 63 to the Aloeboetoe Case[77]. However, the facts and circumstances of these two cases differ from those of Case No. 11.821 ***Stefano Ajintoena et a vs. the Republic of Suriname***, and do

[75] See Chapter VI, petition of the Commission, page 29.
[76] IACtHR, Velasquez Rodriquez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990, Ser.C. No. 90, para 27.
[77] Aloeboetoe Case, Reparation Judgment of September 10, 1993, Ser.C. No. 15, paras. 47, 49.

therefore not apply to this case. In the first-mentioned judgments of the Court it concerned, among other things, damages arising from a violation of (among other things) the right to life, whereby there is indeed 'irreversible nature'. *In casu*, the Commission has presented to your Honorable Court a case whereby it asks you to pass judgment on the basis of Articles 25, 8 and 1(1) of the Convention. In an infringement of these articles there is no 'irreversible nature' as the Commission would have you believe. Furthermore, the Commission itself refers to your judgment: ***'Such compensation is aimed primarily at remedying the actual damages, both material and moral.'*** Thereby it has not given any concrete indications anywhere in the petition as to what 'the actual material and moral damages' are, which resulted from ***"the failure of the State to provide the effective judicial protection and guarantees required under the Convention."*** The Commission thereby speaks of ***"denial of justice to the families"*** and ***"enabled those responsible to evade any sanctions for their crime".***[78] These are not matters of an 'irreversible nature', reason why the State requests the Court to declare also this argument not valid and pass it over.

The Commission by this reasoning attempts to obtain, in a roundabout way, damages for alleged human rights violations which have occurred prior to 12 November 1987, including violation of the right to life. The Commission, in Chapter VII A, continues its argument[79]: ***'in the present case, it is critical ..... arose as part of a calculated practice of human rights violations against the Maroon population ....'*** This is a radical statement by the Commission. First, the State argues that the situation as it was in 1986 and the current situation are misrepresented. The Commission puts forward this assertion on the basis of a few remarks made by some individuals, in relation to several events which occurred during the so-called civil strife in Suriname, whereby they who made these remarks, had not made any in-depth study of the population composition of and way of

[78] See Chapter VI, petition of the Commission, page 25.

life in Suriname They have therefore been unable to substantiate these remarks.

The events took place at a time when a group that called itself 'the Jungle Commando' rebelled against the then military leaders, as described in the facts.[80] The 'Jungle Commando' consisted mainly, but not entirely, of Maroons. It also comprised persons from other ethnic groups. The fight was waged primarily in the interior at, in, or near military posts, where often Maroons were also present. The logical consequence thereof being that the largest number of victims of this war were Maroons. The fight was at its worst in the area where the rebel leader stayed, and that was the north-east coast of Suriname, in the area of the Ndjukas. However, no villages or tribes have been extirpated. In any case, there was no systematic murdering of members of any specific population group in Suriname. Given the mere fact that ,as petitioner itself [states] in its petition[81], many villagers from Moiwana have fled to villages in the vicinity. Maroons are not from the environments of Moiwana only. The majority lives elsewhere, a number of which has also participated in this civil strife. Nevertheless, no incident has ever occurred which could have given cause for such a radical statement by the Commission.

This accusation is hence unfounded, which motivates the State to request the Court to declare this argument as well invalid.

On the basis of the above, the State requests the Court to dismiss the Commission's request.

The State is well aware of its responsibilities and stands ready to compensate any damage caused by acts committed by or on behalf of government agencies or officials on 29 November 1986, as a result of which human rights as enshrined in its Constitution and in the American

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[79] Ibidem, page 30.
[80] See Chapter VII, Statement of facts, page....
[81] See petition of the Commission, page 25.

Declaration have been violated and/or damage has occurred. But only after an investigation has shown this to be the case.

The Commission indicates in its petition that the persons are entitled to damages due to violation of Articles 1, 8 and 25 of this Convention. The State finds the manner in which this list of persons has been drafted open to question.

The Commission has included a list with the names of the victims and thereby substantial damages for the fact that the State of Suriname would have violated:

(a) right to a fair trial

(b) right to judicial protection, and

(c) the obligation to respect rights.

The Commission has not presented any proof in its petition for the amount of the damages, at any rate for the way in which it arrived at the level of the amounts indicated by it. From the reasoning of the Court in the Velasquez Rodriguez case it appears that the petitioner has to estimate and proof these damages. ***'The Court cannot grant that request in the present case. Though it is theoretically correct that those expenses come within the definition of damages, they cannot be awarded in the instant case because they were not pled or proven up opportunely. No estimate or proof of expenses....*** [82]

In addition, the State does not see the correlation between the alleged violations of the above articles of the Convention and the level of the damages demanded and the manner in which the amounts have been determined.

If the so-called victims of alleged violations of Article 1, 8 and 25 of the Convention did not participate in the family life in Suriname, it would be

[82] Supra note 34, para 42

understandable that the reparations demanded by the Commission and/or petitioners would be honored. In practice the contrary is true. At present, a census is being held and the State requests permission to present the census results as evidence. The Maroons participate in activities under private law: they buy immovable property; they sue, apply for concessions, have the right to vote, enjoy an old-age pension when they are 60 years old and up; and if they meet the general requirements, they are entitled to a card from the Ministry of Social Affairs that gives them access to medical treatment. Parents with children who satisfy the general requirements, are entitled to child benefit. The Maroons are not isolated, but as indicated in the petition, they live along the border, between the bauxite town of Moengo and Albina, at the border with French Guiana. It goes without saying that to realize this, a proper population administration is available, from the above may be ascertained. This, contrary to the information presented to the Court in the Aloeboetoe Case, which information was not complete.

III. The Court has no jurisdiction over the matter, because of the fact that the Commission has neglected to send all pertinent parts of the petition to the State, as intended in Article 42 of its Regulations

Not redundantly, it is noted that in ***case no. 11.821 Stefano Ajintoena et al vs. the Republic of Suriname***, the Commission has submitted a claim against the State with your Honorable Court, which petition is mainly based on alleged "denial of justice".

The Commission also takes its "proof" and "additional proof" from a number of attachments which are part of the petition. The State deems these attachments to be pertinent parts of the petition, which are of the utmost importance in deciding the case which was presented to the Commission. However, during the process, the Commission has never provided the State with these pertinent parts, on which pertinent parts it

desires to react. Furthermore, some facts are stated in these pertinent parts, which are not entirely based on the truth. The aforementioned has resulted in the State being denied the opportunity to counter untruths or further explain issues which were taken out of context. Due to this procedural incorrectness, the State has been injured in its defense. This invalidates the investigation with regard to what happened in the Maroon village of Moiwana in 1986. This also weakens the general framework of the Convention which the Republic of Suriname has acceded to.

In this respect, ***case no. 11.821 Stefano Ajintoena et al vs. the Republic of Suriname,*** shows a great deal of resemblance to a similar situation which took place in the hearing of the Cayara case[83] by the Commission. In its defense at the Court, the State of Peru had stated that ***'the Commission had failed to transmit all of the pertinent parts and attachments of its report to the government, thereby depriving it of its right to defense'***. Based on this, the Government of Peru requested that the Commission makes the appropriate '***procedural correction***', and not submit the case to the Court[84]. Subsequently, the Commission requested permission from the Court to withdraw the case, in order to '***reconsider it and possibly prosecute it again***', in order to ensure that no questions arise as to the correct implication of the proceedings, as well as to protect the interests of both the government and the petitioners[85]. The fact that during the process with the Commission, this Commission has not provided all for Suriname important pertinent parts of the petition, as intended in Article 42 of its Regulations, invalidates the investigation with regard to what happened in the Maroon village of Moiwana in 1986. This also weakens the general framework of the Convention which the Republic of Suriname has acceded to. In the Honduran case, Velasquez Rodriguez,[86] the Court expressed its view that the purpose of exercising full jurisdiction, including

[83] Supra note 42
[84] Supra note 42
[85] Supra note 42, para 27

fact-finding, over contentious cases, was not only to afford greater protection to the rights guaranteed, but also to assure state parties that all of the rules established in the Convention would be strictly observed. Taking into account the serious procedural irregularity pointed out above, this case should be declared inadmissible. In the interest of the legal security of the Inter-American Human Rights system, at least the claim of the Inter-American Commission on Human Rights should be dismissed.

[86] Supra note 34

X CONCLUSIONS AND PRAYER FOR RELIEF

The Commission has filed a petition with the Court in which it requests that the Republic of Suriname be sentenced for violating the rights described in Articles 25 and 8 in conjunction with the violation of the obligation arising from Article 1(1) of the Convention.

As expressed above, the State has proved:

1. that the Convention does not apply to the Republic of Suriname in the present case;
2. that the Court has no jurisdiction over this case as presented by the Commission;
3. that the Commission, through a forced construction of 'violation of a continuous nature' and 'continuing events or effects' attempts to realize an unjust determination of 'continuing denial of justice' by Suriname, thus trying to reason away the inadmissibility of the case. This, while the violation cannot be deduced and thus cannot arise from the provisions of the Convention;
4. that the petition is inadmissible, because the national legal remedies had not been exhausted;
5. that the petition has not been submitted timely to the Court;
6. that the petition has to be dismissed because petitioner has no interest in what was requested, since there is an investigation in the subject matter.
7. that in any case there is no denial of justice.

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This implies that the Republic of Suriname has not violated Articles 25, 8 junto 1(1) of the Convention. For this reason, the State can not bear responsibility therefore and has no obligation to make such reparations. The above leads to the formulation of the following statement of requests:

The Republic of Suriname requests the following from your Honorable Court:

A. That the Court declares itself not competent to consider case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname*** as presented to her on the basis of Articles 1 and 2 of the Statute of the Inter-American Court of Human Rights.

If your Honorable Court does not concur in the request under A;

B. That the Court declares case no. 11.821 ***Stefano Ajintoena et al vs the Republic of Suriname*** presented by the Commission inadmissible, pursuant to Article 1 of the Statute of the Inter-American Court of Human Rights juncto Article 46(1) juncto Article 31 and Article 41(b) juncto Article 31 of Commission's Regulations.

If your esteemed Court does not concur in the request under A and B;

C. That the Court rejects the claims that were submitted by the Inter-American Commission on Human Rights on the grounds that the State did not violate the rights safeguarded in Articles 1(1), 8 and 25 of the American Convention on Human Rights.

If your Honorable Court does not concur in the request under A, B and C;

D. That the Court rejects the claims that were submitted by the Inter-American Commission on Human Rights on the grounds that the State did not violate the rights safeguarded in Articles 1(1), 8 and 25 of the American Convention on Human Rights, because petitioner has no interest in what was requested, since there is an investigation in this subject matter .

If your Honorable Court does not concur in the request under A, B, C and D;

E. That the claim of the Commission of payment of legal costs and fees be denied, based on the fact that legal costs of this nature 'bears no relationship to prevailing conditions in the Inter-American system'[87] and has no legal basis within this system. Moreover the Republic of Suriname has not violated Articles 25, 8 and 1(1) of the American Convention.

If your Honorable Court does not concur in the request under A, B, C, D and E;

G. That the claim of the Commission for reparations be denied based on the fact that:

1. The State has not violated Articles 25, 8 and 1(1) of the Convention.
2. The method applied by the Commission to determine the individuals who would be entitled to reparations, as well as the level of the reparations, is not justified by law.

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[87] See Aloeboetoe et al vs. The Republic of Suriname, para 30.

XI LIST OF ANNEXES

LIST OF ERRATA

behorende bij het response of the Republic of suriname submitted to the Inter-American Court of Human Rights in case no. 1.826 Stefano Ajintoena et al vs The Republic of Suriname, dated April 30, 2003

1. Page 14; the text of footnote 4 must be substituted with: See Aloeboetoe et al vs. The Republic of Suriname, Reparations Judgment of September 10, 1993, Ser.C. no. 15, para 30.
2. Page 19; the text of footnote 11 must be substituted with: Annex 20, the documents the Public Prosecutions Department has been able to get hold of in the Moiwana case, investigated by the late Inspector Gooding, include 2 official reports of the questioning of suspects who were arrested and other confidential documents of the Moiwana criminal investigation. At a later time more information regarding the investigation will be submitted to your Honorable Court.
3. Page 24; the text of footnote 21 must be substituted with: Annex 14, Communication acting Attorney-General with the High Court of Justice of Suriname, Mr. S. Punwasi, to the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, December 24, 2002 and annex 4, notes of the informal meeting of Moiwana and the Attorney-General and the Commission of Legal Experts on Human Rights, dated July 5, 2002.
4. Page 25; the text of footnote 25 must be substituted with t: Annex 13; communication of the Executive Secretary of the Inter-American Commission on Human Rights, Mr. Santiago, A. Canton, August 20, 2002 to the acting Attorney General with the High Court of Justice in Suriname, Mr. S. Punwasi.
5. Page 25; the text of footnote 27 must be substituted with: Annex 15; newspaper-article 'De Ware Tijd' dated December 24, 2002.
6. Page 39; the text of footnote 35 must be substituted with: In the Matter of Viviana Gallardo et al (Costa Rica) I.A.Ct.H.R., In the Matter of Viviana Gallardo, No. G. 101/81 Ser. A & B 2 HRLJ 328, para 26.
7. Page 40; the text of footnote 37 must be substituted with: Supra note 36, para. 88.
8. Page 41; the text of footnote 39 must be substituted with: Annex 25; Regulation by the Minister of Justice and Police dated May 28, 1991, no. 2470,regarding the institutionalization of the Legal Aid Office, official gazette of the Republic Suriname, no. 40.
9. Page 43; the text of footnote 41 must be substituted with: Supra note 32.
10. Page 50; the text of footnote 47 must be substituted with: Supra note 36, para 29.
11. Page 58; the text of footnote 53 must be substituted with: Supra note 11.