[redacted]

OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO THE PRELIMINARY OBJECTIONS PROPOSED BY THE STATE OF SURINAME

CASE 12.338
12 SARAMAKA CLANS

0000481

BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

I. INTRODUCTION

1. On January 29, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "the Commission", or "the IACHR") received from the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," or "the Court,") the response of the State of Suriname to the application in the instant case. In its response, the State objected to the admissibility of the application filed by the Commission on four grounds:

a) lack of standing;

b) lack of exhaustion of domestic remedies;

c) duplication of procedures; and

d) procedural violations in the processing of the case by the Inter-American Commission.

2. The Commission avails itself of this opportunity to respond to the preliminary objections submitted by the State as provided for by Article 37.4 of the Court's Rules of Procedure. As the IACHR will demonstrate, the application filed in the present case is admissible and the preliminary objections should be dismissed.

3. Furthermore, the Commission reiterates that the admissibility analysis in the present case was carried out according to the American Convention and the IACHR's Rules of Procedure.

II. FIRST PRELIMINARY OBJECTION: LACK OF STANDING

4. In its response to the application, the Surinamese State argued that

> neither the Association [of Saramaka Authorities] nor the twelve captains [of the Saramaka Tribe] have standing to file a petition to the Commission on behalf of the Saramaka Tribe in the State of Suriname.[1]
> [...]
> [the NGO] Forrest [sic] Peoples Program can not be classified as the legal representative of the entity lodging the petition.[2]

[1] State's response, para. 115.

[...]
this individuals [Association of Saramaka Authorities] or group of persons do not have the authority to petition the C [sic] Commission on behalf of the Saramaka community as a whole, thereby purposely denying any involvement of the Gaa'man.[3]
[...]
when the application was filed in 2000 with the Commission [...] the local authority of the Saramaka people, Gaa'man Songo Aboikoni, did not consented [sic] to do so.[4]

CU00462

5. Furthermore, the State contended that

giving individual standing before your Honorable Court is in violation of the principle concept of the Convention [...] the State strongly apposes the fact that individuals are given standing before your Honorable Court an [sic] equal footage as the State.[5]

A. ***Legitimatio ad causam*** **in the proceedings before the Commission**

6. The Commission observes that Article 44 of the American Convention establishes that

[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

7. Further, Article 26(1) of the Rules of Procedure of the Commission in effect at the time the petition was filed, stated that

[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the member states of the Organization may submit petitions to the Commission, in accordance with these Regulations, on one's own behalf or on behalf of third persons, with regard to alleged violations of a human right recognized, as the case may be, in the American Convention on Human Rights or in the American Declaration of the Rights and Duties of Man.

8. These provisions demonstrate that, unlike other systems for protecting human rights, the inter-American system admits that different categories of petitioners may lodge complaints in the victims' name. The drafting of Article 44 is, in effect, broad. For a petition to be lodged that contains denunciations of violations of the Convention by a state party, unlike the practice established in the European system or in the United Nations Human Rights Committee, it is not necessary for the petitioners to be the actual victims. The inter-American system does not require that the petitioners have a direct or indirect personal interest in the finding on the petition, nor does it require to have issued a power of attorney or other legal authorization for the petition to be filed.[6]

---

[2] State's response, para. 121.

[3] State's response, para. 123.

[4] State's response, para. 150.

[5] State's response, para. 127.

[6] See IACHR, Case 1954, Report 59/81, IACHR Annual Report, and IACHR Case 2141, Resolution 28/81, IACHR 1980-1981 Annual Report quoted in Monica Pinto, Petition before the Inter-American Commission of Human Rights (Editorial del Puerto, 1993), page 35; see also, Tom Zwart, The admissibility of human rights petitions, the case of the European Convention on Human Rights and the Commission on Human Rights (Dordrecht, Boston: M. Nijhoff, 1994, page 50 and following.

9. The *travaux préparatoires* of the American Convention on Human Rights[7] suggest that the designers of the Inter-American Human Rights System, when drafting Article 44, had the intention to set a *legitimatio ad causam* so broad that it is not even necessary to give notice to the victim, much less obtain his/her consent or authorization to file a petition and activate the protection mechanism.

0000453

10. Therefore, to initiate a procedure before the Commission under the individual petitions system set forth in the American Convention, the petitioner does not have to be the victim or his/her legal representative. Furthermore, during the processing of a case by the Commission several victims or groups of victims can participate separately or through different representatives.

11. The Court decided in a previous case that

> it is clear that Article 44 of the Convention permits any group of persons to lodge petitions or complaints of the violation of the rights set forth in the Convention. This broad authority to make a complaint is a characteristic feature of the system for the international protection of human rights. In the present case, the petitioners are a "group of persons," and therefore, for the purpose of legitimacy, they satisfy one of the possibilities set forth in the aforementioned Article 44.[8];

and that

> the application can be lodged by a person who is not the victim. The Court has stated that the formalities that characterize certain branches of domestic law do not apply to international human rights law, whose principal and determining concern is the just and complete protection of those rights.[9]

12. The petitioners, acting as a group of persons lodged a petition on behalf of members of the 12 Saramaka clans. Article 44 does not impose on the petitioners any obligation to obtain authorization from third parties. Therefore, the Commission reiterates that it had the necessary competence *ratione personae* in order to examine the petition in question, in accordance with Article 44 of the Convention.

13. The Commission observes as a point of information that the members of the Association of Saramaka Authorities, original petitioner in the present case, are the captains of the 12 Clans, traditional authorities of the Saramaka People. In this regard the Commission notes that, in traditional Maroon society, a person is not only a member of his own family group, but also a member of the village community and of the tribal group.[10]

B. ***Locus standi in iudicio*** in the proceedings before the Court

---

[7] *Conferencia Especializada Interamericana sobre Derechos Humanos: Actas y Documentos*, OEA/Ser.K/XVI/1.2, pages 43, 47, 342 to 344, 373, and 454.

[8] I/A Court H.R., *Castillo Petruzzi Case. Preliminary Objections.* Judgment of September 4, 1998. Series C No. 41, para. 77.

[9] I/A Court H. R., *Case of Yatama.* Judgment of June 23, 2005. Series C No. 127, para. 83.

[10] I/A Court H.R., *Aloeboetoe et al. Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 19.

14. The Commission also wishes to briefly refer to the State's arguments concerning the standing of the victims' representatives to participate in the proceedings before the Court. In this regard, the Commission recalls that Article 61 of the American Convention sets forth that the competence to invoke the contentious jurisdiction of the Court rests with either the Commission or the States Parties. Once that jurisdiction is invoked and the proceedings initiated, the Rules of the Court set forth the manner in which the victims or their representatives would then be heard. The nature of human rights litigation requires that the victims be duly heard in the processes carried out with respect to their rights.

15. In this regard, the Court has expressed that

> [the victims] are the holders of all of the rights enshrined in the Convention; thus, preventing them from advancing their own legal arguments would be an undue restriction upon their right of access to justice, which derives from their condition as subjects of international human rights law.[11]

16. In the "Mapiripán Massacre" case, the Court added that

> [a]t the current stage of the evolution of the Inter-American system for the protection of human rights, the empowerment of the alleged victims, their next of kin or representatives to submit requests, arguments and evidence autonomously must be interpreted in accordance with their situation of titleholders of the rights embodied in the Convention and beneficiaries of the protection offered by the system, without thereby adversely affecting the limits to their participation established in the Convention or the exercise of the Court's jurisdiction. Once the Commission has initiated the proceedings, the possibility of presenting requests and arguments autonomously before the Court includes that of alleging the violation of other articles of the Convention that were not contained in the application, based on the facts set out in the latter.[12]

17. The possibility of submitting requests and arguments autonomously to the Court, based on the facts set out in the application, does not infringe the right to defense of the State, given that it is able to respond to the allegations of the Commission and the representatives at all stages of the proceedings.

18. For the abovementioned reasons the Commission requests the dismissal of the first preliminary objection.

III. SECOND PRELIMINARY OBJECTION: LACK OF EXHAUSTION OF DOMESTIC REMEDIES

19. The State objected to the admissibility of the application filed by the Commission on the basis that certain domestic remedies have not been exhausted.

20. The State affirms that[13]

---

[11] I/A Court H. R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 91.

[12] I/A Court H. R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 58.

[13] See, State's response, paras. 139-147.

0000485

- although specific remedies that apply to this case exist in Suriname, the petitioners have neglected to invoke and/or exhaust them. Furthermore, the petitioners have the burden of proof to show that specific remedies were exhausted or that they fall within the exceptions set forth in Article 46(2) of the Convention;
- adequate and effective local remedies are provided for in the State's Civil Code and its Code of Civil Procedure; the petitioners had the opportunity to commence a civil action on the basis of the alleged violations with a "fair chance of success";
- pursuant to Articles 1386 to 1393 of the Civil Code, the State can be sued for damages caused by its wrongful acts. This would have been the most effective legal remedy in Suriname to obtain redress; however, the petitioners did not litigate under Article 1386;
- there is also a public office, 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 action;
- the fact that the petitioners wrote to the President was an administrative appeal within the Forest Management Act; the fact that they did not receive a reaction from the President indicated that they should have gone a step further; and
- no claim for damages has been lodged at the office of the Attorney - General of Suriname.

21. The Commission observes that in accordance with international law and the interpretation of the Inter-American Court regarding exhaustion of domestic remedies, the State invoking this rule not only has to state what domestic remedies remain to be exhausted but must also show, in view of their suitability, that these remedies are appropriate and effective. By way of illustration, the Inter-American court has established in its case law on this issue that

> it is not enough for remedies to exist formally, they must give results or responses to violations of human rights if these rights are to be considered effective. In other words, everyone must have access to a simple and rapid remedy before the competent judges or courts, to protect them against acts which violate their fundamental rights[14]. This guarantee "is one of the basic mainstays, not only of the American Convention, but also of the Rule of Law in a democratic society, in the sense set forth in the Convention."[15]

---

[14] I/A Court H. R., *"Juan Humberto Sánchez" Case*. Judgment of 7 June, 2003. Series C No. 99, para. 121; I/A Court H. R., *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C No. 98, para. 126. See also: I/A Court H. R., *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 1; I/A Court H. R., *Fairén Garbi and Solís Corrales Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 2; I/A Court H. R., *Godínez Cruz Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 3; I/A Court H. R., *Gangaram Panday Case. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12; I/A Court H. R., *Neira Alegría et al. Case. Preliminary Objections*. Judgment of December 11, 1991. Series C No. 13; I/A Court H. R., *Caballero Delgado and Santana Case. Preliminary Objections*. Judgment of January 21, 1994. Series C No. 17; I/A Court H. R., *Castillo Páez Case. Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24; I/A Court H. R., *Loayza Tamayo Case. Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25; I/A Court H. R., *Cantoral Benavides Case. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40; I/A Court H. R., *Castillo Petruzzi et al. Case. Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41; I/A Court H. R., *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50; I/A Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66; I/A Court H. R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71 and I/A Court H. R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90.

[15] I/A Court H. R., *"Juan Humberto Sánchez" Case*. Judgment of 7 June, 2003. Series C No. 99, para. 121; I/A Court H. R., *Cantos Case*. Judgment of November 28, 2002. Series C No. 97, para. 52 and I/A

> [a]dequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[16]

22. In the present case, the Commission maintains that, having fully considered the arguments of the respective parties, it determined in the appropriate stage that the State had failed to demonstrate that there were available and effective remedies the petitioners had failed to exhaust with respect to the specific rights they alleged to have been violated. The Commission further notes that certain aspects of the arguments the State has presented before the Court correspond not to a preliminary objection, but rather to the Commission's conclusions with respect to the merits of the claims decided.

A. The Issue of exhaustion of domestic remedies was already decided by the Commission and there is no reason to reopen the discussion on this regard

23. Articles 46 and 47 of the American Convention state that it is up to the Commission to determine the admissibility or otherwise of a petition, and therefore objections to the exhaustion of domestic resources should be lodged with the IACHR and not be reviewed by the Inter-American Court.[17]

24. Applying the principles set forth above, the Commission noted in Report No. 09/06, adopted on March 2, 2006, that

> 126. The State here invokes Article 46 of the Convention in order to affirm that the Commission should not admit the petition on the grounds that all remedies available under domestic law have not been exhausted, and that the exceptions described in this provision are not applicable to this case because the petitioners did

---

Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 7, para. 112. See also: I/A Court H. R., *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 1; I/A Court H. R., *Fairén Garbi and Solís Corrales Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 2; I/A Court H. R., *Godínez Cruz Case. Preliminary Objections*. Judgment of 26 June, 1987. Series C No. 3; I/A Court H. R., *Gangaram Panday Case. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12; I/A Court H. R., *Neira Alegría et al. Case. Preliminary Objections*. Judgment of December 11, 1991. Series C No. 13; I/A Court H. R., *Caballero Delgado and Santana Case. Preliminary Objections*. Judgment of January 21, 1994. Series C No. 17; I/A Court H. R., *Castillo Páez Case. Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24; I/A Court H. R., *Loayza Tamayo Case. Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25; I/A Court H. R., *Cantoral Benavides Case. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40; I/A Court H. R., *Castillo Petruzzi et al. Case. Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41 and I/A Court H. R., *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50.

[16] I/A Court H. R., *Velásquez Rodríguez Case, Judgment of July 29, 1988*. Series C No. 4, paras. 63-64; I/A Court H. R., *Godínez Cruz Case, Judgment of January 20, 1989*, Series C No. 5, paras. 66-67; I/A Court H. R., *Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989*. Series C No. 6, paras. 87-88.

[17] The basis for this is the procedural principle of preclusion, whereby the stages of the proceedings take place successively and each is definitively closed before the next begins, so that there can be no return to stages and points in the proceedings that have been completed and extinguished. Preclusion is the extinction, termination or expiration of the right to carry out a procedural act because the opportunity to do so has passed.

CU00467

not bring legal proceedings for compensation as provided for by the Suriname Civil Code.

127. The petitioners, for their part, argue that they should be exempted from the requirement to exhaust the remedies available under domestic law, by virtue of Article 46(2) of the Convention, because the State has not provided effective remedies to be exhausted, which argument by the petitioners is linked to their claim that the State has not afforded either adequate protection under the law nor access to justice in this case.

[...]

130. When deciding whether the petitions lodged by the petitioners should be considered inadmissible because all remedies available under domestic law have not been exhausted, the Commission refers to the basic principles that govern the nature of the remedies that should be exhausted in the inter-American system, that is, whether they are adequate or relevant in addressing an infringement of a legal right, and effective in that they must be capable of producing the result for which they were designed.[18]

131. The Commission shared the opinion of the European Court of Human Rights that the petitioner may be excepted from the requirement to exhaust all domestic remedies if it is clearly evident in the record that the proceedings brought in connection with the petition do not suggest reasonable prospects of success, in view of the prevailing case law of the State's highest legal bodies.[19] The Commission considers that in such circumstances, actions in which complaints of this nature are made would not be considered "effective" in accordance with generally recognized principles of international law.

132. Therefore, the petitioners argue that the domestic law of Suriname does not provide due process to protect the rights that have allegedly been violated, and "does not provide the petitioners with any hope of success under domestic law."[20] In particular, the petitioners argue that neither the laws nor the legal bodies[21] of

---

[18] I/A Court of H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, No. 4, paragraphs 63-66. See also I/A Court of H.R., Exceptions to the exhaustion of domestic remedies (Articles 46(1) (a) and 46(2) (b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, Series A No 11 (1990), paragraphs 34, 36.

[19] See, for example, Case 11.193, Report 51/00, Gary Graham vs. United States (Admissibility), Annual Report of the IACHR 2000, paragraph 60, when the European Court of HR is quoted, De Wilde, Ooms and Versyp Cases. June 10, 1971, Publication of the European Court of HR, Series A, Vol. 12, page 34, paragraphs 37, 62; EUCHR, Avan Oosterwijck vs Belgium, Judgment (Preliminary Objections), November 6, 1980, Case No. 7654/76, paragraph 37. See also Case 11.753, Report 108/00. Ramón Martínez Villareal vs. United States (Admissibility), Annual Report of the IACHR 2000, paragraph 70.

[20] Note from the petitioners lodged with the Commission on March 18, 2003, paragraph 11, page 2.

[21] The petitioners quote a number of cases in this regard. In their notes of July 15, 2003 and May 3, 2004, the petitioners quote the Surinamese legal judgment of Tjang A Sijn vs. Zaalman and others as proof of the inadequacy and ineffectiveness of the Civil Code. In this case, proceedings were brought against a captain (chief) of an indigenous community by a resident of Paramaribo because the former was interfering in the reconstruction of a holiday house located in the neighborhood of the indigenous community. The court found in favor of the plaintiff on the grounds that the plaintiff possessed "real title to the land and the captain had committed an illegitimate act by obstructing the attempts to rebuild the house." The petitioners add that the court rejected the defense of the captain that the land was "traditionally and from time immemorial the property of the Lokono indigenous people..." In their note of May 3, 2004, the petitioners quoted the most recent case, *Celientje Martina Joeroeja-Koewie and others vs. Surina and Suriname & Industries N.V.*, that was the subject of the judgment pronounced in July 2003, which, they argue, provides even more backing for their conclusion that adequate and effective remedies do not exist [copy of the decision is attached as Annex 1]. In

Suriname recognize or protect the right to property claimed by the petitioners; they add that the Civil Code envisages compensation for damage in relation to illegal acts and the acts that are the subject of this petition are not illegal according to the law of Suriname, and that if they had access to a remedy for damages it does not provide effective remedy for the violations of human rights that are alleged.

133. The State claims that the right to private property does not exist under Surinamese law but has not indicated those remedies that could be used by the petitioners to obtain legal recognition of the right to communal property that they seek. Consequently, the Commission concludes that there are no remedies available under domestic law for the petitioners, and for this reason they are exempt from the requirement to demonstrate that they have exhausted all domestic remedies.

25. The State was given ample opportunity by the Commission to contest the admissibility of the petition, from its transmission to the State by communication dated November 21, 2000, to the adoption of the admissibility and merits decision in Report No. 09/06 on March 2, 2006. In that report, the Commission considered the position of both parties and made a decision on admissibility.

26. The State has not argued that the decision issued by the Commission was based on flawed information or taken in a process where the parties did not have the chance to exercise their right to defense or there was no equality of arms.

27. The Commission submits that the State has supplied no juridical basis for the Court to review the decision on admissibility reached by the Commission. In the present case the Commission contends that its decision on admissibility "is completely consistent with the relevant provisions of the Convention".[22] In such circumstances, the Commission notes that the Court has (in previous cases) declined to carry out such review.

28. In summary, having regard to the State's arguments, the Commission contends that

a) the issue was already decided by the Commission and there is no reason to reopen the discussion about it; and

---

this case, the members of the indigenous community of Pierre Kondre opposed the concession and operation of a gravel pit, and affirmed their rights to their communal lands on the grounds of their traditional occupation and use. According to the petitioners, the Court rejected the complaint lodged by the community on the grounds that it was "without any basis in law" and appeared to state that the community and its members lacked legal competence to seek the protection of their rights. According to the petitioners, the Court did not directly address the claim by the indigenous community to have the right to the land and its resources by virtue of their traditional occupation and use of it, or by virtue of the requests from the community for compensation.

The petitioners point out that this case was lodged in accordance with Article 1386 of the Civil Code, the same procedure that the State "repeatedly refers to as proof of the existence of adequate and effective remedies..." In addition, the petitioners argue that in each of the cases quoted, "the courts have rejected the claims of indigenous and tribal peoples for their rights to their traditional lands and resources and their opposition to the concessions granted in these lands, either on the grounds that they lack judicial merit or simply that the right to registered real property issued by the State revokes any right that could be claimed by indigenous or tribal peoples."

[22] I/A Court H. R. *Case of Herrera-Ulloa*, Judgment of July 2, 2004, C Series No. 117, para. 87; I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 55.

b) the arguments presented by the State on this regard are not a preliminary objection; and

Therefore, the Commission requests the dismissal of the second preliminary objection.

B. To the extent they relate to the substantive claims presented, the arguments of the State do not properly constitute a preliminary objection

29. In its application the Commission argued that

> [t]he rights of indigenous and Maroon peoples, such as the Saramaka, to their lands, territories, resources, and cultural identity are not explicitly recognized or guaranteed in the 1987 Constitution and, for that reason, there are no provisions contemplating judicial recourse if they are violated;
>
> and
>
> that there are no effective domestic remedies available to the Saramaka people for the protection of their rights.[23]

30. The Commission contends that this matter, the facts of the case which constitute a violation of the right to judicial protection and the effectiveness of domestic remedies presented by the State as grounds for its second preliminary objections, are central elements of the merits of the claims before the Court.

31. As the Court has indicated, a preliminary objection

> has to show the essential juridical characteristics which gave it its preliminary character in the concrete case, which demonstrate that, in the concrete case, it is a challenge to the jurisdiction of the Court. As the anticipated effect of a judgment on a preliminary objection is to determine whether the proceedings on the merits will or will not be resumed, if the plea does not have that anticipated effect, it will not be a genuine preliminary objection...[T]he plea has to relate to the jurisdiction of the Court on the merits of the case as presented in the application.[24]

32. Therefore, the Commission contends that any argument about the substantive judicial protection of indigenous rights in Suriname mentioned by the State corresponds to the merits of the case. Accordingly, the Commission abstains from further argument on this issue at this stage.

IV. THIRD PRELIMINARY OBJECTION: DUPLICATION OF PROCEDURES

33. The State argues that the subject matter of this case was already decided in other international proceedings[25] because it was examined in May 2004 by the UN Human Rights Committee (CCPR)[26] at the request of Forest People Programme[27]; in March 2004,

---

[23] Application, paras. 171 and 175.

[24] I/A Court H.R., *Las Palmeras Case. Preliminary Objections*. Judgment of February 4, 2000. Series C No. 67, Partially Dissenting Opinion of Judge Oliver Jackman, citing: Shabtai Rosenne (The Law and Practice of the International Court, 1985 at p. 457).

[25] See, State's response, paras. 166-191.

[26] See, UN Doc. CCPR/CO/80/SUR, May 4, 2004.

by the UN Committee on the Elimination of Racial Discrimination (CERD)[28], also at the request of Forest People Programme; and in June 2005 by the Inter-American Court of Human Rights in the context of the *Case of Moiwana Village*.[29]

34. Article 46(1) of the Convention states the following:

> [a]dmission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements :(c) that the subject of the petition or communication is not pending in another international proceeding for settlement.

35. In its turn, Article 47 of the Convention states that

> [t]he Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:
> [...]
> (d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

36. The phrase "substantially the same" signifies that there should be identity between the cases. In order for this identity to exist, international jurisprudence has established that three elements must be present, these are: the victim must be the same, the petition must be based on the same facts, and the legal grounds must be the same.

37. This essentially means that a petitioner cannot file a petition before other international human rights body complaining of the violation of a protected right or rights based on a factual predicate, and then present a complaint before the Inter-American Commission involving identical or integrally related rights and facts which were or could have been raised before the other body.[30]

38. The Commission observes that claims brought regarding the same individual, but concerning facts and guarantees not previously presented and which are not reformulations, do not raise issues with respect to res judicata, and will not in principle be barred by the prohibition of duplication of claims. Expressed in positive terms, newly presented claims not challenging the effect of a previous decision as res judicata would, assuming compliance with other requirements, be admissible.[31]

39. The instances referred to by the State do not imply a duplication of proceedings before the Inter-American System with regard to the present case. The Commission observes that the proceedings referred by the State have to do with revisions by UN human rights bodies of Suriname's periodic reports and not with a measure seeking settlement in international proceedings of the subject that is the basis of this case.

---

[27] NGO established in 1990 by World Rainforest Movement.

[28] See, UN Doc. CERD/C/64/CO/9, March 12, 2004.

[29] See, I/A Court H. R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 91.

[30] See, IACHR, Report No 97/98, Case 11.825, Neville Lewis, Jamaica, December 17, 1998, para. 43 and Report No 96/98, Case 11.827, Peter Blaine, Jamaica, December 17, 1998, para. 43.

[31] See, IACHR, Report No 97/98, Case 11.825, Neville Lewis, Jamaica, December 17, 1998, para. 45 and Report No 96/98, Case 11.827, Peter Blaine, Jamaica, December 17, 1998, para. 45.

40. Further, the proceedings before the UN reviewed references to the situation of land rights in Suriname as part of a much broader and more general information. When referring to the concept of "facts", the Court has established that this corresponds "to the behavior or the event that is a violation of some human right".[32] The fact analyzed by CERD in its concluding observations of March 12, 2004, is the general situation of racial discrimination in Suriname. In its turn, the CCPR studied the general situation of human rights in Suriname. The comments submitted to CERD and the CCPR by the Forest People Programme regarding the State's periodic reports were referred to "the acts and omissions of Suriname that have given rise to the present massive and persistent pattern of racial discrimination against indigenous and tribal peoples".[33]

41. There is no identity either as regards the legal grounds, because in the application before the Court, violations of the following articles of the American Convention are alleged: 21 (Right to Property) and 25 (Right to Judicial Protection), in relation to Articles 1(1) and 2. The reports referred to in the concluding observations cited above were submitted by the State of Suriname in accordance with Articles 9 of the International Convention on the Elimination of all Forms of Racial Discrimination and 40 of the International Covenant on Civil and Political Rights. The requests for urgent actions referred to by the State in its response to the application[34] did not claim the violation of any specific right set forth in the International Convention on the Elimination of all Forms of Racial Discrimination, but rather were intended to prevent such violations. As for the presentation before the CCPR cited by the State in paragraph 169 of its response to the application, it was not made under the system of individual communications claiming specific violations of rights established in the Covenant but was "intended to assist the Committee to formulate questions to the State with regard to its compliance with the Covenant"[36] in the context of its periodic reports. Furthermore, the rights protected under Articles 1, 26 and 27 of the Covenant, cited in the above mentioned presentation, do not share identity with the rights protected by Articles 21 and 25 of the American Convention and the obligations imposed by articles 1(1) and 2 of the same treaty.

42. Finally, the nature of the concluding observations issued by the Human Rights Committee and CERD is different from the procedure before the Commission and the judgments delivered by the Inter-American Court. The former are actions specific to an organ of the UN which relate not to cases processed through a petition procedure in order to determine State responsibility *vis a vis* the rights of specific individuals, but rather to general situations or themes dealt with as such. The latter is a judgment that, in the terms of the Convention, is final and not subject to appeal (Article 67) and must be complied with (Article 68(1)).

43. With respect to the assertion of the Surinamese State that the issues at stake in the present case were already addressed by the Inter-American Court, the

---

[32] I/A Court H.R., *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 43.

[33] Comments on Suriname's State Party Report (CERD/C/446/Add.1), available on February 24, 2007 at http://www.forestpeoples.org/documents/law_hr/suriname_cerd3a_jan04_eng.pdf.

[34] State's response, para. 167.

[36] Submission of the Forest Peoples Programme Concerning the Republic of Suriname and its Compliance with the International Covenant on Civil and Political Rights, available on February 24, 2007 at http://www.forestpeoples.org/documents/law_hr/suriname_hrc_ngo_rep_jan02_eng.shtml.

0000492

Commission observes that the subject matter of the *Moiwana Village Case* was the denial of justice for a massacre; while the subject matter in the present case is the lack of recognition of the communal property right to land that the Saramaka People have traditionally occupied and used, and the lack of effective access to justice for the protection of their fundamental rights.

44. Consequently, the Commission reiterates that the subject of the petition before the Court is not pending and was settled in another international procedure and therefore requests the dismissal of the third preliminary objection.

V. FOURTH PRELIMINARY OBJECTION: PROCEDURAL VIOLATIONS

45. The State maintains that the Commission did not proceed in accordance with the provisions of the Convention and its Regulations with regard to

a) the timely submission of the application to the Court;

b) the adoption of an article 51 report; and

c) the treatment given to the petitioner *v/s a v/s* the treatment granted to the State

1) the Commission gave the petitioner the latitude to constantly and disproportion ally [sic] submit additional petitions (approximately 11) throughout the proceedings;

2) the Commission gave former Assistant Executive Secretary, Mr. Padilla the possibility to act as advisor and counsel for the petitioners;

3) the Commission did not give the opportunity to the State to attend a hearing on the case during its 119° period of sessions (March 2004) because it only notified the parties about such hearing one month before it;

4) the Commission did not convene a new hearing until its 121° period of sessions (October 2004) despite the urgent request from the State;

5) the Commission was represented only by its president and another member in the October 2004 hearing;

6) the State learned unofficially that the Commission sent a letter to the Gaa'man of the Saramaka People and strangely enough was not informed of this act [...] the State was unable to respond to the statements made at the March 2004 hearing because the Commission did not submit the minutes of such hearing;

7) the Commission did not reply to the submissions of the State after the adoption of the admissibility and Merits report.[36]

A. The application was submitted in a timely manner

46. The State submits that the application was presented extemporaneously,[37] as the Commission notified its report on the admissibility and merits on March 22, 2006, but did not refer the case to the Court until June 23, 2006.

---

[36] See, State's response, paras. 161-164 and 197-203.

[37] See, State's response, para. 197.

47. In this respect, the Commission considers that it suffices to demonstrate that the Report N° 09/06 was transmitted to the State on March 23, 2006. This was the date in which the timeframe established in Article 51(1) of the Convention started[38].

B. **There was no reason or legal obligation to adopt an Article 51 report in the present case**

48. Once a case has been referred to the Court, the provisions of Article 51 of the Convention are not applicable, because the filing of an application is subject to the condition that the report in this article has not been published. If the Commission prepares or publishes the report under Article 51, with a case pending before the Court, it is clear that it has applied the Convention improperly.[39]

C. **Other alleged procedural violations**

1. **The Commission respected the principle of equality of arms**

49. The norms and rules applicable to the individual case system provide both parties due process with ample opportunity to present their positions. If a defense is waived, the organs of protection retain their duty to ensure the consistent study of the conditions of admissibility and the merits of the case.

50. In the present case both parties had ample opportunity to address the Commission both orally and in writing. During the processing of this or any other case, all the information and documentation provided by one party is transmitted to the other and its observations and further information required, in order to have enough elements to issue a decision on the admissibility and later on the merits of a petition.

51. The State has not provided any evidence to demonstrate that the treatment it received *vís a vís* the treatment accorded to the petitioners was different or harmful.

2. **The Commission applied its Rules of Procedure on allowing the former assistant executive secretary to participate in this case and did not give him a preferential treatment**

52. As the State points out in its response to the application, Mr. David Padilla left the Commission on July 2001[40].

53. According to the Commission's file the first intervention by Mr. Padilla as representative of the petitioners in this case was on March 5, 2004, in a hearing convened during the IACHR's 119° period of sessions.

54. The Commission's Rules set forth only one limitation on the role former personnel of its Secretariat, Article 12(3), adopted in October 2003, with respect to the Executive Secretary. Pursuant to Article 12(3) of the Commission's Rules of Procedure,

---

[38] See, Annex 1, copies of the reports of transmittal by fax to the Surinamese Foreign Relations Ministry and Mission before the OAS.

[39] See, I/A Court H.R., *Baena Ricardo et al. Case. Preliminary Objections.* Judgment of November 18, 1999. Series C No. 61, para. 38.

[40] State's response, para. 80.

the Executive Secretary shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions, or individual cases before the IACHR for a period of two years, counted from the time he or she ceases to discharge the functions of Executive Secretary.

55. As indicated, the rule does not refer to the Assistant Executive Secretary. Moreover, in the present case Mr. Padilla started acting as a representative of the petitioners almost three years after he ceased in his functions at the Commission.

56. The State has not provided any foundation or evidence to support its allegation that the treatment granted to this case by the Commission was different because of Mr. Padilla's involvement.

57. The Commission ratifies once again that it has complied with its obligations set forth in the Convention, the Statute and the Rules of Procedure, and has respected the right to defense of both parties, the equality of arms and maintained at all times its impartiality.

3. The Commission gave due notice to both parties about the hearing convened for the 119° period of sessions

58. On February 5, 2004, according to article 62(4) of its Rules of Procedure, the Commission informed the parties that, at the request of the petitioners, a hearing would be held on March 5, 2004, during the 119th regular session of the Commission. On February 11, 2004, the State asked for the hearing to be postponed and stated that one month's notice was insufficient for it to prepare its case.

59. On February 18, 2004, the Commission communicated that due notice having been given to the parties as to the hearing, it would proceed with the hearing in accordance with the above cited Article 62(4) of its Rules and Procedures.

60. On March 2, 2004, the State expressed its dissatisfaction with the Commission's decision not to postpone the hearing and claimed that it had not been given even one month's notice, in accordance with Article 62 (4) of the Rules and Procedures. The State claimed that it had been given an "impractical and unrealistic deadline by which to prepare additional documentation and possible expert evidence for the hearing," and requested that a new hearing should be held to enable it to provide "the Commission with new and additional information."

61. On March 5, 2004, the hearing was held before the IACHR, attended by the petitioners. At the hearing, the Commission heard evidence on the effects of the logging concession operating in Saramaka territory from the Saramaka Chief Wanze Eduards, and from geographer Dr. Peter Poole. The petitioners presented arguments to the Commission on the admissibility and merits of the petition.

62. The timeframe for the notification of all the hearings convened for a given period of sessions is the same, there are no distinctions. The procedure followed in this regard was not exceptional or irregular as suggested by the State.

63. In the present case, it may be noted as well that the Commission requested in its application that the testimonies of Mr. Wanze Eduards and Dr. Peter Poole be

received by the Tribunal, thus, the State will have the chance to hear their declarations, interrogate them and present allegations on their testimonies.

4. The hearing requested by the State was convened at the first available opportunity after the request

64. The Commission did not receive a formal petition from the State requesting a hearing until September 22, 2004. By means of letters dated September 23, 2004, the Commission informed the parties that it had agreed to the State's request and that a new hearing would be held on October 27, 2004, during the 121° regular session of the Commission.

65. On October 27, 2004, the Commission held the hearing, attended by representatives of the State and the petitioners.

66. The Commission also wants to note that, from July 16 to 23, 2004, the Commission held its 120° special period of sessions in Mexico at the invitation of the government of that State, did not convene any hearings for that session.

5. The participation of the Commission Members in the hearings before the IACHR

67. According to Article 65 of the Commission's Rules of Procedure "[t]he President of the Commission may form working groups to participate in the program of hearings".

68. The reason for that practice is one of practicality and procedural economy. During each session, the Commission convenes numerous hearings on different matters; therefore it has to divide its workload among the seven members.

69. The arguments presented by the parties in a hearing as well as the testimonies received are recorded so the whole Commission can take notice of them.

70. Thus, the procedure followed during the hearing held on October 27, 2004 with regard to this case was not irregular as suggested by the State.

6. The pertinent parts of all the documentation in the IACHR's file were duly communicated to the State

71. The Commission finds this objection unclear. First, the Commission does not understand which would be the communication sent to the Gae'man by the IACHR or when it was allegedly submitted. This information has not been provided by the State. The Commission has no such communication on record.

72. According to Article 68(2) of the Rules of Procedure of the Commission, the minutes of the hearings are internal working documents of the Commission.

73. As the Court said in the *Genie Lacayo Case*, preliminary objections require the invocation of a particular article or some other form of support[41]. The Rules of

[41] See I/A Court H.R., *Genie Lacayo Case. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 35.

Procedure of the Court require that such objections include "the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents." The Commission considers that these minimum requirements have not been met: the objection is generic, unclear and unsupported, and therefore inadmissible.

7. The Commission did not reply to the State submissions after the adoption of the report 09/06 and before sending the matter to the Court

74. The Commission issued its Report 09/06 on admissibility and the merits and requested that the State report on the measures adopted to comply with the recommendations set forth within the time period indicated. The Commission took fully into account the information provided by the parties during the time period between the issuance of the Article 50 report and its determination that the case should be sent to the Court. In accordance with Article 44(1) of its Rules, in determining whether a given case should be presented before the Court, the Commission necessarily considers whether the State concerned has complied with the recommendations issued. In accordance with Article 44.2, the Commission requests and takes into consideration the views of the petitioner as well. The applicable rules contain no requirement for additional reports by the Commission during this time period. Accordingly, the Commission reiterates that it took fully into account all relevant information presented by the parties, and proceeded in accordance with the applicable rules and procedures.

75. In the present case all the submission by both parties were duly noted, analyzed and taken into account by the Commission in its decisions regarding, admissibility, merits, and the submission of the case to the Inter-American Court.

76. For all the above mentioned reasons the Commission requests the dismissal of the fourth preliminary objection.

VI. CONCLUSIONS

77. The Commission, based on the foregoing considerations of law, requests the Court to conclude that the application filed in the present case is admissible and that the preliminary objections of lack of standing, non-exhaustion of domestic remedies, duplication of procedures and procedural violations must be dismissed. The Commission decided in Report No. 09/06 of March 2, 2006, that the objections presented by the State were unfounded, and this decision should not be reviewed by the Court.

78. Also, as a procedural matter, the Commission requests the Court to hear arguments on the preliminary objections and the merits of the case in a single hearing and to decide them in a single judgment as provided for by Article 37.6 of the Court's Rules of Procedure.

[redacted]
February 28, 2007