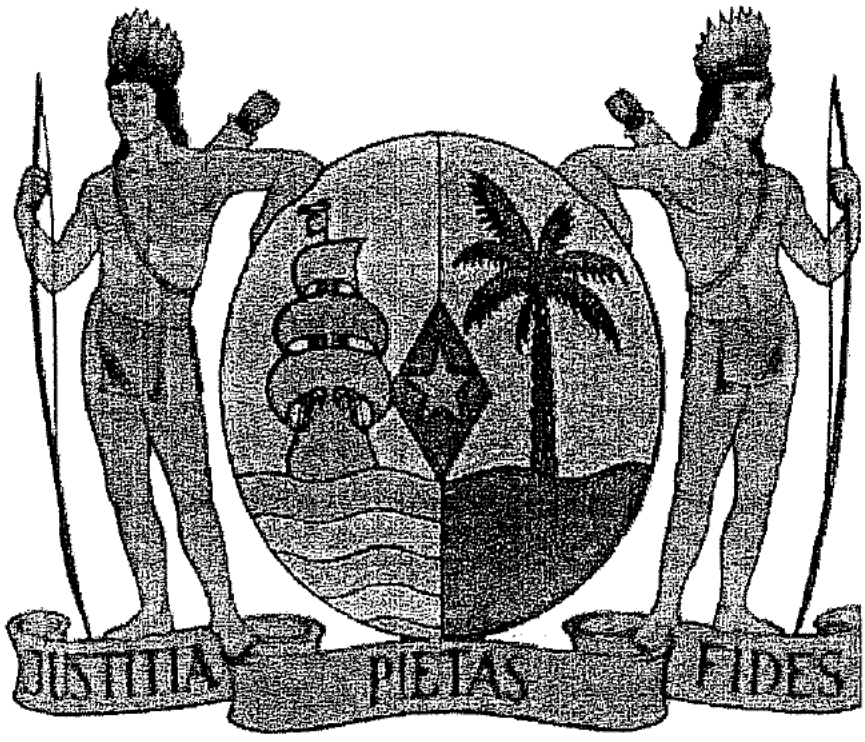

OFFICIAL RESPONSE

OF THE STATE OF SURINAME IN CASE NO. 12.338

TWELVE SARAMAKA CLANS VS SURINAME

SUBMITTED TO THE INTER-AMERICAN

COURT OF HUMAN RIGHTS

[redacted] **JANUARY 12, 2007**

Errata

Official Response of Suriname in case no. 12.338 Twelve Saramaka Clans vs Suriname submitted to the Inter-American Court of Human Rights

General errors in the text

	Old text	New text
	commission	Commission
	commissions	Commissions
	state	State

Errors

	Old text	New text
page 3 line 8	is	its
Page 4 line 1	...Suriname has acceded...	...Suriname acceded...
Page 4 line 2	...and has accepted...	...and accepted...
Page 4 line 5	...submitted this report...	...submitted its report...
Page 4 line 20	...Suriname has violated...	...Suriname had violated...
Page 4 line 23	...violated...	...violate...

Page 5 line 22	...the State consists...	...the State to these alleged violations stated by the Commission consist...
Page 6 line 1	...chapter 2, the general statements where in	...chapter 2, the State emphasizes on the general statements wherein...
Page 6 line 3	...agreement; will...	...agreement; The State will...
Page 6 line 4	...will so...	...will also...
Page 6 line 8	...about...	...on...
Page 7 line 8	...Constitution...	...Convention...
Page 7 line 20	...State...	...States...
Page 8 line 16	...not only theirs...	...not only inhabited by them...
Page 9 line 23	...al...	...all...
Page 10 line 10	...with...	...and with...
Page 10 line 12	...have such...	...have, such ...
Page 10 line 13	...etc)	...etc.
Page 10 line 15	...not itself...	...not in itself...
Page 10 line 22	Instead the...	Instead, the...
Page 10 line 28	...tradition...	...traditions...
Page 11 line 10	27..	2.7.
Page 14 line 2	...en masse ...	..."en masse "...
Page 14 line 19	...years...	...centuries...
Page 15 line 15	...august...	...August...
Page 16 line 7	2,2,	2.2.
Page 17 line 24	app.....(%)....	...a certain number of the...
Page 18 line 4	... are ...	...fall ...
Page 18 footnote 17	...Cantonial ...	...Cantonal...
Page 18 footnote 18	See article...of ILO Convention 169....	See ILO Convention 169.
Page 19 line 6	...prior elaborating ...	...prior to elaborating...
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Page 23 line 28	...Right...	...Rights...
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1. INTRODUCTION

1. The substantive guarantee of the Inter –American system for the protection of human rights is the American Declaration of the rights and duties of man of 1948 and the American Convention on Human Rights of 1968. These are the two overlapping instruments with the jurisdiction of the Inter- American Commission on Human Rights over states depending upon whether they are parties to the Convention or not and the Court having jurisdiction in contentious cases only over Convention parties[1].

2. Article 17 of the Charter states:

"Each state has the right to develop is cultural, political and economic life freely and naturally. In his free development, the state shall respect the rights of the individual and the principles of universal morality".

In Advisory opinion no 10, the Inter- American Court of Human Rights stated that "the declaration is the text that defines the human rights referred into the Charter"[2]. The function of the commission and the Court is to look for breaches of the Convention, either of the right to a fair trial in the way that the national Court has functioned or of other Convention rights in the decision that the national Court has taken.[3]

3. On the 18th of July 2006 the Republic of Suriname (hereinafter "the State" or "Suriname") received an application, submitted by the inter-American Commission (hereinafter "the Commission") from the Inter-American Court of Human Rights (hereinafter "the Court") regarding case no 12.338, Twelve Saramaka Clans against the Republic of Suriname.

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[1] The Inter –American system of Human Rights, David Harris and Stephen Livingstone p.1

[2] Id. Page 5

[3] Resolution 29(88) .Case 9260(Jamaica), I.A.C.H.R. annual report 1987-8, 154, at 161

4 In 1987 the Republic of Suriname has acceded to the American Convention on Human Rights (hereinafter "the Convention") and has accepted the jurisdiction of the Court unconditionally, so the Court has jurisdiction to hear this instant case

5. The Commission submitted this report to the Court alleging Suriname has violated some human rights of the Saramaka people and its members, by not adopting effective measures to recognize their communal property right to the lands they have traditionally occupied and used, by violating the right to property (article 21 of the Convention), the right to judicial protection (article 25 of the Convention), in conjunction with the non-compliance with article 1(1) and 2 of the American Convention.

6. In June 2003 the Commission placed itself at the disposal of the parties to facilitate a friendly settlement. Due to the impossible requirements of the petitioners the process of a friendly settlement came to an end.

7. In March 2004 a hearing was held before the commission whereby the State had notified the commission that it could not attend the hearing due to other obligations[4]. In September 2004 the State requested a hearing before the Commission which was granted.

8. On March 02, 2006 the Commission issued an article 50 report[5] in which it is alleged that the State of Suriname has violated the rights established in the Convention (articles 1, 2, 8, 21, 23, and 25) and the American Declaration (articles XXIV and XIII)

9. The Republic of Suriname emphasizes that it did not violated these rights of the Saramaka communities nor does it violate the rights of its citizens. Current

[4] In February 2004 the state had to present the country report in Geneva and in March a country report at the UN headquarters in New York

[5] Report No 9/06 Admissibility and Merits, case 12.338, The Twelve Saramaka Clans

legislation is in the process of solving the issue of land rights adequately. There has been a presidential commission installed especially to serve this purpose integrally. The sole purpose of this commission is namely giving the maroons and indigenous certain rights and or privileges so that they be able to continue their enjoyment of the use of the land as an integral part of their culture, traditions and customs. The state does recognize that the land is a necessity for the tribal communities living in the interior, which is linked with the existence of the tribal community as a whole.

10. The recommendations set forth in the report that was sent by the commission to the State, were incorporated in to a plan of action and were carefully designed to be implemented.
Recently the State has sent to the Court, a letter indicating the recommendations that already have been executed and which are still in the process of action and implementation.

11 As the government strongly believes that all its citizens must be enabled to enjoy their human rights to their fullest extend, it has tried and is still trying to achieve this goal under the circumstances, which exists in the Republic of Suriname.
The state believes in an open and transparent policy, in which the enjoyment of human rights of all its citizens is a main priority and aims to guaranteeing human rights as funded down in different international documents, and to punishing violations of these rights.

12. The response of the State consists of a report. The report gives first of all an introduction on the petition no. 12.338, secondly it states the general statements. Thirdly, the preliminary objections are discussed and challenged. Fourthly, the merits will be thoroughly discussed and lastly the State will point out their conclusion.

In chapter 2, the General statements where in the statement of facts will be given, the general facts on the history of the country, the several historic agreements, will challenge the involvement of the legal representatives of the petitioners and will so discuss the original petitioners.

13. In chapter 3, the state will discuss the preliminary objections including the jurisdiction of the Court, the competence of the petitioners, requirements for admissibility relevant to this case.
In chapter 4, the state will give a substantive legal analysis about the merits of the case including the analysis of the application of the commission, the request for reparations and costs, the analysis of the representatives of the victims and will give also comments on the credibility of the expert witnesses.

14. In chapter 5, the state will point out the witnesses on behalf of the State and their input with regard to the said case.
At last in chapter 6, the state will state their conclusion and discuss the prayer for relief.

1.1. Statement of facts

Background

15. As indicated above, the present application is submitted to the Honorable Court for its determination as to the responsibility of the State failing to adopt effective measures to recognize their communal property right to the lands the Saramaka community have traditionally occupied and used, by violating the right to property (article 21 of the Convention), the right to judicial protection (article 25 of the Convention), in conjunction with the non-compliance of article 1(1) and 2 of the American Convention.

16. The State would like to point to your Honorable Court the following:

- Suriname has a highly diversified population, where all its citizens enjoy all civil and political rights that are impeded in the Constitution.

The Republic of Suriname is a democratic state, based on the sovereignty of the people and on the respect for and the guarantee of fundamental rights and liberties. The State shall determine in full freedom its economic social and cultural development.

17. Article 1 of the Constitution states: '*the states parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religions, political or other opinion, national or social origin, economic status, birth or any other social condition*'.

18. The State has an obligation to 'respect' and 'ensure' and not to discriminate the Convention rights. As to the duty to 'respect', the state has the duty to respect the rights and freedoms and as to the duty to 'ensure' the state has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal; to use all the structures through which public power is exercised, so that they are capable of juridical ensuring the free and full enjoyment of human rights.[6] Based on article 2 of the Convention, the State must adopt in accordance with their constitutional process, the incorporations of its provisions into national law, but is not self executing.[7]

19. The Constitution of the Republic of Suriname states in article 2 (2). '*the state shall not alienate any territory or sovereign right, which it exercises over its territory*'. 'All

[6] See Velasquez Rodriquez I/A Court H.R. Series C No.4, Para 174 (1988), 9 HRLJ 212

[7] The Inter –American system of Human Rights, David Harris and Stephen Livingstone p.1

Surinamese citizens shall be eligible for appointment to any public office without discrimination '.[8]

With reference to the nature of case no 12.338, 12 Saramaka lös, the Constitution of the State foresees in the chapters 1, 2, 3 of the Fourth Section the codification of State and Society, Economic Objectives and Social Objectives.

20. The Republic of Suriname has a highly ethnic diverse population.

In Suriname we have several cultural and ethnic groups that live in harmony with each other. They also retain their own cultural identity in an environment in which respect for each other culture is maintained. The greater part of the population lives in the coastal area and along the riverbank in the cities and villages. The original inhabitants of Suriname are Amerindians, who mostly live in the interior based on their own tradition and customs. Maroons are also inhabited in the interior; they are the descendants of African slaves, who fled from the plantations of the colonial masters to freedom. The Saramaka clans (lö's), referred to in the said case are located at the upper side of the Suriname and Saramaka river. The area of the land, which the Saramaka clans (lö's) are claiming is not only theirs, but are also inhabited by the Amerindians. Both of these groups are inhabited within these areas.

21. The enjoyment of civil rights

Article 1 of the first title of the Suriname civil code states: ***'the enjoyment of civil rights is independent of the political rights, which can only be achieved pursuant to the act on Government organization of Suriname'***

Article 2: '- 1. All those on Surinamese territory are entitled to the enjoyment of civil rights. -2. Slavery and all other forms of servitude of whatever nature under whatever name, are not tolerated in Suriname'.

[8] Constitution of the Republic of Suriname article 2

22. The State adheres to these legal provisions.
'Everybody has the right to a fair and public hearing of his grievances within a reasonable time by an independent and impartial judge, should his rights and liberties be infringed upon'.[9]
If a citizen feels that his or her rights have been infringed upon, he may file a civil suit. This implies that the option is also open to the petitioners. In above mentioned case, the petitioners never used this remedy offered by the judicial system in Suriname.

23. No racial discrimination is tolerated by the state of Suriname.
Based upon the Criminal Code (see article 175-176)[10] racial discrimination is made punishable and it is forbidden by the Constitution of the State.
Suriname political democracy is characterized by the representation and participation of the citizens of Suriname. The participation is expressed via general free and fair elections so that they can choose their democratic political system and as well through the participation in legislation and administration.
The participation and representation of the Saramaka maroons in the national parliament is evident. They are also part of the government and represent the government at all levels of administration such as the district council and resort councils.

24. There is no separate legislation for the maroons based on their traditions and customs.
There are several verdicts[11] sentencing maroons, who have committed crimes, which fall under the jurisdiction of the Surinamese Al these verdicts were accepted and practice has shown that the Saramaka people themselves cooperated in handing the perpetrators to the police for prosecution. The maroons also give notice of newly born and deceased at the several civil registry

[9] See the Surinamese Civil Code article 10

[10] See the Suriname code if Criminal procedures

[11] See Annexes no 24-33 AND Annex 52

offices in their districts in compliance with the laws and regulations applicable for the entire state. This indicates that the maroons do recognize and respect the authority of the central government, while the State on the other hand recognizes and respect the culture of the maroons.

25. The participation of the Saramaka maroon in the decision making process in regard to the granting of concessions is part of the domestic legislation. (See Forestry Management Act of Suriname).[12]

The Saramaka maroons have the possibility to actively participate in the decision-making process. The highest ranking authority is the Gaa'man for the Saramaka maroons, who is the representative with whom the government deals regarding decisions that relates to their community or land. The Saramaka maroons enjoy all social benefits as other citizens in the state have such as health insurance, retirement stipends etc). The State would like to point out that respect for the cultural heritage and respect for the sovereignty of the Saramaka people to enjoy their cultural life freely does not itself demonstrate a separate entity.

26. The acceptance of the leadership of the Gaa'man by the Saramaka community.

The State would like to bring the following under the attention of your Honorable Court: in the petitioners first application they have mentioned that the highest authority lies with the Gaa'man. No where in any of the documents presented shows nor does it indicate that the Gaa'man has authorized the twelve Saramaka to act on behalf of the Saramaka community. Instead the representative of the petitioners argues that it is not of importance that the Gaa'man should be granted that authority. Before communicating with the community or outside the community the Gaa'man must be consulted, because he has to give permission and should be aware of the activities which are being undertaken concerning his community according to their century old tradition. As indicated in previous

[12] See Annex 8 of the Commission Application

communications of the state, the petitioners have never mentioned the Gaa'man one single time as being the authority supporting their action on behalf on their community. It can be concluded that the petitioners did not observe their own customs and traditions, and there is a possibility that the Gaa'man does not support the petition.

The acceptance of the leadership of the Gaa'man by the members of the Saramaka community is part of a problem within the maroon culture.

2. GENERAL STATEMENTS

2.1. Facts about Suriname

27. The State is of the opinion that it is very important to provide facts about the Republic of Suriname, since the core issue at hand is tremendously important for the existence of the State.

a. Geographical Location and Demographic Data

28. The Western coast of the Guyana's, of which Suriname is part, was discovered in the late fifteenth century. The original inhabitants were Amerindians. After different colonization attempts by the English and the French had failed, the Dutch captured Suriname in 1667. The colony's plantation economy was based on cheap labor with slaves from Africa. After slavery was abolished in 1863, indentured laborers were recruited from India, Indonesia and China. The descendants of these immigrants now form the larger part of the population of Suriname.

29. Suriname lies on the north-eastern part of the continent of South America, between 2° and 6° North latitude and 54° and 56° longitude West. It borders on the Atlantic Ocean in the North, Guyana in the West, French Guyana in the East

and Brazil in the South. Suriname is divided into ten administrative districts. Its capital city is Paramaribo.

30. The country, which is largely covered by tropical rainforest, has a surface area of about 166.820 square kilometers. About 90% of the population lives in the coastal area, while 72% of the population lives in and around a 30 km radius of capital city Paramaribo.
The population (2004) was estimated at 492.829 inhabitants. The population under 19 was estimated at 192.897.

31. About 10% of the population lives in the Northwestern area in and around New Nickerie, the capital and main town of the District of Nickerie, while 8% is found spread out in the coastal areas to the East and West of the agglomeration of Paramaribo. ***More or less 10% of the population lives in the area South of the coastal area, most of them Amerindians and Maroons, who live in tribes along the upper courses of the larger rivers.***

32. The economically active population consists of 127.000 persons and the number of economically active people who are employed is estimated at 100.000.
Suriname has a multi-ethnic population which consists of Amerindians (4%), Maroons (15%), Creoles (18%), Indian (27%), Javanese (15%), Chinese (2%), Lebanese and European descendants (1%).
There are an estimated 200.744 Christians, 98.240 Hindus, 66.307 Muslims and 50.334 persons with other religious convictions (among whom the Amerindians, Maroons and Jews).

33. The enormous cultural diversity characterizes Suriname as a fascinating society with different ethnic groups each with their own language. At least fifteen different languages are spoken among which:

- Two Western languages: Dutch and English.

- One Creole language. Sranan Tongo;
- Three Asian languages: Sarnami Hindi, Surinamese Javanese and Haka Chinese;
- ***Two maroon languages: Auka, Saramaka;***
- ***Six Amerindian languages: Akurio, Carib, Trio, Wayana, Warao and Arowak;***

This means that there is a large number of more or less established languages spoken in a relative small population, while in the variety that was mentioned the Arabic spoken exclusively by the Lebanese and Muslims and the Urdu spoken by older Indian people, have not been included.

34. Dutch is the official language and Sranan Tongo is the *lingua franca*. Although English is not officially a second language, it is widely spoken. English is a mandatory course in the curricula of the middle school and high school in Suriname. That is the reason why a huge number of Surinamese citizens speak English. It is said that a large number of persons in Suriname are bilingual or multilingual.

b. General Political structure

35. Suriname became a colony of the Kingdom of the Netherlands in 1667 and stayed a colony till the 20th century. The first political parties were founded shortly after the Second World War and the first general elections were held in 1949. In 1954 Suriname acquired autonomy within the Kingdom of the Netherlands and on November 25th 1975 it gained independence in a peaceful manner. The government before and after the independence consisted of coalitions of different political parties, organized for the larger part on an ethnic basis. On February 25th, 1980 a military coup d'etat took place, which removed the legitimate elected civil government.

36. When the first general elections after de coup d'etat were held the constituents voted en masse for the return to a democratic government; clearly indicating the preference for a democratic rule of law Even though a democratic government returned to power after the November 25th 1987 elections, the military leaders still retained significant power in political, social and economic life of the state.

37. In 1986 an internal armed conflicted erupted, instigated by a former bodyguard of the military ruler Bouterse, Ronny Brunswijk, a maroon from the Ndjuka tribe. In this conflict, dominantly maroons took up arms against the military rulers. The result was a total destruction of several parts of the interior and a devastating effect on the economy of the State. The cumulative effect, Mackay argues was a macro-economic crisis in Suriname.[13]

38. The participation of the maroons in this internal armed conflict was undeniable. A sudden change in the conflict was instigated by the former military rulers, who created armed groups among the Amerindians and channeled the armed conflict in a maroon versus Amerindian direction, placing the State in a never before experienced and very awkward position: two ethnic groups taking up arms and confronting one another. Awkward is this position since both the maroons and the Amerindians have lived closely together in the interior for years and never took up arms against one another.

39. It is the main duty of the State to protect all its citizens and not to condone acts that might lead to racial uprising or some other ethnic disruptions. With this in mind the issue at hand has always been dealt with in a very precarious manner by the State. The information the State provides now to your Honorable Court, was also included in the several communications of the State to the Commission during the proceedings before the latter organ of the OAS. What the State experienced during the 1986 – 1992 internal armed conflict was

[13] Ref. The Rights of Indigenous and Maroons in Suriname by Ellen-Rose Kambel and Fergus MacKay, IWGIA Document No. 96, Copenhagen 1999, ISBN: 87-90730-17-8/ISSN: 0105-4503, page 13.

devastating and not in the interest of no one living in Suriname. It is up to the State to avoid those occurrences to reappear in Suriname. The State will do it utmost to avoid such events from dismantling the stability of the State.

40. On December 24, 1990 the military once again staged a coup d'etat and removed the first elected democratic government after seven years of military rule, herewith destroying the fragile democracy the Republic of Suriname has just returned to in 1987.
On May 25, 1991, general elections were held and the constituents once again voted for the return to democracy in the State. The Venetiaan I government was installed and assumed power in the State. General elections were subsequently held in 1996 and the National Democratic Party (NDP) headed by former military ruler Mr. D.D. Bouterse managed to establish a government headed by Mr. Jules Wijdenbosch. Due to an uprising of the population, general elections were held earlier than scheduled and in May 2000 the coalition parties of Mr. Venetiaan won the elections and the Venetiaan II Government assumed power in august 2000. Just recently, in September 2005, the Venetiaan III Administration came into power, after winning the elections in May 2005. It is noteworthy that the coalition parties in the current government also compose of a group of parties representing the people living in the interior.

41. In the eighties the lack of respect for the constitutional state, serious violations of human rights, a devastating war in the hinterland of Suriname and the democratization process, which was officially started when the Shankar administration was installed in January 1988, suffered from the second coup d'etat on December 24th 1990, brought a set back in democracy. As stated above democracy was restored shortly after that when in May 1991, a democratically elected civilian government assumed power in Suriname.

42. The present Constitution of the Republic of Suriname, with its 180 articles, was proclaimed in 1987. This Constitution, which was drawn up during the

military regime, was approved by referendum on September 30th 1987. An amendment of the Constitution took place 1992. According to the Constitution, the Republic of Suriname is a democratic state, based on the sovereignty of the people and respect for and the guaranteeing of fundamental rights and freedoms. The system of government is a presidential system with parliamentary supervision.

2.2. The maroons in Suriname

43. The State will show that the Saramaka people living in Suriname (in the interior and in and around cities such as Paramaribo), are not a tribal community as described by the Commission in its application to your Honorable Court.
The Saramaka community in Suriname does not satisfy certain requirements to be qualified as tribal people.

44. Mac Kay describes maroons as descendants of escaped African slaves who fought for their freedom from the Dutch colonial administration in the 18th century[14]
He argues that the maroons concluded treaties with the Dutch colonial power in the 18th and 19th century to safeguard their freedom from slavery. He further states that the maroons succeeded in establishing viable communities along the major rivers of the rainforest in the interior and that they maintained a distinct culture based upon an amalgamation of African and Amerindian traditions[15].
"Maroons consider themselves, and are perceived to be, culturally distinct from other sectors of Surinamese society and regulate themselves according to their own laws and customs. Consequently, they qualify as tribal peoples according to international definitional criteria and enjoy the

[14] Id, page 16.
[15] Id, page 17.

same rights as indigenous peoples under international law", MacKay states in said publication[16].

45. The State respectfully points out that indeed during slavery several slaves were able to flee from the plantations to freedom. They fled into the interior and have lived there ever since. These groups have several cultural acknowledgments that in some way are distinct from other groups of the multi ethnic, multi religious and multi linguistic peoples of the Republic of Suriname. The State asserts that it is not an accepted fact that the maroon communities in Suriname regulate themselves according to their own laws and customs. Moreover, the State stipulates that the Saramaka community living in Suriname do not regulate themselves by their own laws. Customs and traditions form indeed a significant part of the life of the Saramaka community.

46. The State points out that it can not be argued that the Saramaka people living in Suriname live in complete separation or isolation from the other ethnic groups in Suriname. The Saramaka tribe is indeed a culturally distinct ethnic group In Suriname; however the tribe is NOT regulated by its own laws and regulations.
For the major part the Saramaka people fall under the jurisdiction of the central government, they are governed by the laws of the State.

47. The State respectfully points out that the Saramaka people headed by its Gaa'man (Chief of the people), live in several villages in and around the upper Suriname river in the middle of the interior of the State. The maroons consists of app. 72553 members. However, based on the statistics published by the Bureau of Statistics (A.B.S.) app..... (%) of the Saramaka people live in and around capital city Paramaribo. These Saramaka people live and work in Paramaribo

[16] This definition of tribal people is similar to the definition that is stated in several non binding instruments and in ILO Convention 169, to which Suriname is NOT a party.

attend school in Paramaribo and only visit their native village during special holidays or cultural events.

48. The Saramaka people living in Paramaribo as well as those living in the villages are under the civil and criminal jurisdiction of the State. This means that crimes committed in a Saramaka village falls within the jurisdiction of the police force. The police are also present in the interior and regularly maintain the order and security in the interior sometimes with the assistance of the military. This is a clear example of the fact that the villages are governed by the general law of the land and not by their own "laws", if any and/or by their customs and traditions. Several examples can be given in cases when crimes committed in a village have been prosecuted by the judicial authorities in Suriname[17]. **(Annex 24 through annex 33 and annex 52)**

49. Unless there is a clear definition of whom a maroon is and for the purpose of this particular case, the State asserts that the Saramaka people in Suriname, living in Paramaribo and in the interior, do not satisfy the requirements posted by the Commission, to be qualified as a tribal community. In addition, the State asserts that there is no communes opinio as to what is meant with "tribal people". In ILO Convention 169 a different definition is given for tribal people[18]. In addition other Conventions stipulate that the status of the people in question must be regulated ***wholly or partially*** by their own customs and traditions. No reference is made to a requirement that the community must be regulated by local laws of the tribe, if any[19]. In contradiction, this Convention states that special laws or regulations can be in force regulating the Status of these groups.

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[17] Reference to several decisions taken by the Third Cantonial Courts regarding violations of maroons among which members of the Saramaka tribe, which crimes were committed in the interior.

[18] See Article of ILO Convention 169 ....

[19] See ILO Convention C-107, Indigenous and Tribal Populations Convention, 1957 states in Article 1 section 1: " Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; "defines for the purpose of the Convention, in article 1 section 3, the term "semi-tribal" groups or persons.

This international instrument even introduces a new term **semi-tribal** groups[20]. It is clear that the international community has not reached an agreement in respect of tribal people as such. It is also clear that pursuant to the definition provided by the Commission in its application, the Saramaka people living in Suriname do not satisfy all the requirements.

50. A few important and specific questions must be addressed prior elaborating on this issue, namely:

- Who is considered to be a maroon?
- Who is considered to be Saramaka maroon?

After these questions have been answered it will then be necessary to determine which of the different definitions, as stated in several international non binding instruments, must be applied to determine if the maroons in Suriname satisfy the definition and/or if the Saramaka maroons satisfy the definition. The State asserts that the lack of one international accepted view in this respect complicates the matter at hand. This is one of the reasons for the State to address this issue in a broad perspective and in close collaboration with several stakeholders and authorities in Suriname.

51. At one of the several workshops and conferences regarding land rights for indigenous and maroons, it became clear that even among the maroons and the indigenous people living in Suriname there is a disagreement as to the status of both the maroons and the indigenous[21]. The indigenous claim that, as the original inhabitants of the Republic of Suriname, they have a stronger right than other groups in the state, thus also with regard to the maroons.

It is obviously very important to determine who is considered a maroon and in the case of Twelve Saramaka Clan, who is considered to be a member of the

[20] ILO Convention C-107 Indigenous and Tribal Populations Convention, 1957 defines for the purpose of the Convention, in article 1 section 3, the term "semi-tribal" groups or persons.

[21] See Concluding remarks of the Conference regarding land rights for Indigenous and maroons, held in 2003 at Hotel Krasnapolsky in Paramaribo Suriname

Saramaka community This is important to determine the applicability of a definition as to what tribal communities/peoples are.

The State is of the opinion that the petitioners, who brought this case to the Commission, do not satisfy all the requirements mentioned by the Commission to be assumed a tribal community.

2.3. The Historic Agreements

52. The State refers to the statements made by Mr. MacKay regarding the so-called "treaties" the maroons concluded with the Dutch colonial power in the 18th and 19th century, to safeguard those who fled from slavery from being returned to the plantations. MacKay states that these agreements acknowledge the rights to territorial and political autonomy of the maroons.[22]

53. In the Aloeboetoe case[23] this Court has explicitly stated that

> **"The Court does not deem it necessary to investigate whether or not that agreement is an international treaty. Suffice it to say that even if that were the case, the treaty would today be null and void because it contradicts the norms of jus cogens superveniens. In point of fact, under that treaty the Saramakas undertake among other things, capture any slaves that have deserted, take them prisoner and return them to the Governor of Suriname, who will pay from 10 to 50 florins per slave depending on the distance of the place where they were apprehended. Another article empowers the Saramakas to sell to the**

[22] Supra note 1, page 16 "Maroons are the descendants of escaped African slaves who fought for and won their freedom from the Dutch colonial administration in the 18th century Their freedom from slavery and rights to territorial and political autonomy were recognized by treaties concluded with the Dutch in the 18th and 19th centuries and by two centuries of colonial administrative practice."

[23] Aloeboetoe et al Judgment of December 4, 1991, Inter-Am Ct.H.R. (ser.C) no. 11 (1994) and Aloeboetoe et al. case, Reparations (Art. 63(1) American Convention on Human Rights) Judgment of September 10, 1993, Inter-Am. Ct.H.R. (Ser. C) No. 15 (1994).

Dutch any other prisoner they might take, as slaves. No treaty of that nature may be invoked before an international human rights tribunal."[24]

54. This Honorable Court has concluded that these agreements are null and void since they were concluded in gross violation of an established jus cogens norms under public international law, namely the existence of slavery. Since the main objective of these agreements was to deliver other individuals (slaves) who have fled from the plantations in the hands of the colonial powers, thereby instituting the mechanism of slavery. Moreover, the provision in this agreement that the Saramakas can sell other captured individuals, as slaves to the colonial masters, is exactly the same mechanism that was used by the Dutch slave companies to "harvest" individuals as slaves from Africa.
Invoking this or similar agreements or parts of these agreements before any tribunal (national or international) is not permitted, as this Honorable has clearly concluded.

55. This Honorable Court has also stated in para 84 of said Aloeboetoe decision the following:

> ***"....At these proceedings, the Commission has only presented the 1762 treaty. The Court has already expressed its opinion of this so-called [emphasis added] International treaty (cf. supra, para. 57). No other provision of domestic law, either written or customary, has been relied upon to establish the autonomy of the Saramakas."[25]***

[24] See para 57 of the Aloeboetoe et al Judgment of September 10, 1993, Inter-Am.Ct.H.R. (Ser C) no. 15 (1994)
[25] Id, para 84

56. This Honorable Court continues by arguing:

> ***"The Court believes that the racial motive put forward by the Commission has not been duly proved and finds the argument of the unique social structure of the Saramaka tribe to be without merit [emphasis added]. The assumption that a domestic rule on territorial jurisdiction was transgressed in order to violate the right to life does not of itself establish the right to moral damages claimed on behalf of the tribe. The Saramakas could raise this alleged breach of public domestic law before the competent jurisdiction; however, they may not present it as a factor that justifies the payment of moral damages to the whole tribe."***[26]

2.4. The Foreign Attorney Mr. Fergus MacKay

57. Based on its Constitution, the State acknowledges that all persons living in Suriname enjoy the fundamental rights and freedoms, necessary to fully enjoy life as a human being. With this in mind the State does not have any problem with the work of human rights lawyers who are doing Honorable jobs by providing very costly legal services to individuals that are otherwise not able to pay for these services.

58. However, the State is of the opinion that in no way all means necessary are permitted to achieve certain goals. In the case at hand, the State has repeatedly indicated that the foreign attorney, Mr. Fergus Mackay, never had the intention to conclude this case before the Commission. His acts to destabilize efforts to come to an agreement before the Commission are pointed out in the numerous communications the State has submitted to the Commission.

[26] Id, para 84

From including false statements in the petitions and subsequent communications to demanding certain - read impossible - acts of the government of Suriname, e.g. immediate modification of the Constitution of the Republic, before even continuing discussion on reaching a friendly settlement.

59. In addition, the State holds Mr. MacKay responsible for the devastating effect that his view on the status, position and role of the local authorities has on the individuals within the Saramaka tribe. As discussed in previous communications to the Commission and orally communicated to the Commission during the hearing regarding the petition Twelve Saramaka Clans (Lö's), in October 2004, Mr. MacKay indicated to the Saramaka people that the Gaa'man, the Chief authority, leader of the Saramaka tribe, has nothing to say with regard to acts that are taken by the clans (Lö's) of the Saramaka tribe. Mr. MacKay specifically refers to the issue of land rights for the Saramaka people. Mr. MacKay has reiterated his opinion in meetings with the Attorney General and the presidential Commission of Legal Experts in Human Rights and also before the Commission, stating that the Gaa'man of the Saramaka People does not have any authority with regard to issues of land rights. The State will prove that this statement is unfounded.

60. Because of this opinion the leader of the Saramaka tribe - the Gaa'man - was never consulted with regard to the submission of the application to the Commission. In the petition and in all subsequent additional petitions and communications written by Mr. MacKay on behalf of the petitioners, the name of the Gaa'man, or the chief authority was NEVER mentioned one single time. Mr. MacKay reiterated his position during the 119th Session of the Commission held in March 2004 in Washington, DC and the 120th Session of the Commission in October 2004[27]. The March session was held in the absence of the State since the invitation for the hearing was not submitted timely to the State, and the State has to present its country report at that time to the UN Human Right

[27] The State respectfully refers to the cd-roms of said sessions (annex . .and annex . . .)

Committee. In the October Session, the State has clearly communicated its view on this matter to the Commission.

61. The State vigorously opposes this view of MacKay since the Gaa'man of the maroons and in fact of all the maroon tribes in Suriname are chosen based on the tradition, customs and practices of each tribe. This is part of the culture and customs of the tribes living in Suriname.
The Government has no hand in the selection of the Chief of the tribe. Once the tribe has selected its chief, the Gaa'man, he is introduced to the government who will than take certain measures to acknowledge the authority of the Gaa'man as the Paramount authority of his people.

62. All issues involving the people of a certain tribe must be discussed with or through the Gaa'man. Having individual meetings and/or discussions with parts of the tribe, without the Gaa'man present or without his acknowledgment, would constitute a total disregard of the authority of the Gaa'man as the leader of his people and in fact a disregard of the customs and tradition of the peoples, since they have selected their Gaa'man based on their own customs and traditions. This is exactly the situation with the Saramaka people and their Gaa'man who was presented to the State as the Chief authority of the Saramaka people.

63. The State has clearly communicated this view with the Commission in several communications and at the hearing in October 2004 in Washington, DC. However, the Commission disregarded this very important aspect and admitted the petition submitted to it by secondary authorities of the Saramaka people. MacKay argues in his book[28] that the customs of the maroons is a deciding factor in determining if these people are a tribal community or not. In this publication Mr. MacKay refers to ***"their own laws and customs, as a deciding factor",*** hereby purposely choosing to include the customs of the Maroons, e.g. the Saramaka people to argue that they are a tribal community, while on the other

[28] Supra note 1, page 16

hand refusing to acknowledge the customs of maroons e.g. the Saramaka tribe when it comes to choosing their Gaa'man as their Chief authority. As stated the Gaa'man is chosen based on the customs and traditions of the Saramaka people.

64. The State points out that this opinion of Mr. Fergus Mackay has caused for devastating results in the local Saramaka communities in the interior and also among the huge number of Saramaka people living in and around Paramaribo. Due to this inconsistent, opportunistic view of MacKay, an increasing number of Saramaka people are now convinced that the local authorities (the Gaa'man and as of a consequence also the lower authorities such as the Ede Kap'ten and the Kap'ten) lack full authority to take decisions on behalf of them – the Saramaka people. An increase resistance against the local authorities is the direct consequence of this dangerous view of Mr. Fergus MacKay.

65. In the line of this view among the Saramaka people, particularly among the young maroons, it must be noted that the Gaa'man of the Saramaka people was threatened to be killed, was beaten and even kidnapped by young members of his tribe, who among other things disagree with him. The State hereby submits a copy of a verdict indicating that Mr. Vanthol Aboikoni (a relative of the Gaa'man) was prosecuted and found guilty together with 6 other Saramaka maroons, for kidnapping Mr. Belfon Aboikoni, the Gaa'man. (**Annex 52)** The State argues that this issue of the status of the Gaa'man as the chief authority of the Saramaka people is also related to the view of the State with regard to the admissibility of the petition/case. The admissibility issue will be addressed separately.

66. The flipside of this coin, Honorable Court is that the interior of Suriname is not only a very rich source of biodiversity, since it is part of the Amazon Rainforest, as discussed previously, but also several natural resources are in the soil of the interior.

Several young maroons, among which several Saramaka men and women are working in the goldfields in the interior, mining gold or are active in the timber business. Several of these young maroons claim that they are entitled to be considered part of the Saramaka people and because of this they are entitled to certain rights, e.g. the right to land in the interior. Several of these youngsters do not even live in the village anymore, but in and around Paramaribo. Still they maintain that they are entitled to the land rights in the interior. They base their arguments on the sole fact that they are of Saramaka descent. The fact that they no longer have relations with the interior is in their opinion no obstacle for them be entitled to land rights in the interior.
The State disagrees with this view and with reference to this latest view, once again points to the increasing complexity of the matter at hand.

67. The State is of the opinion that the sole purpose of these members of the Saramaka people, is to have access to the minerals in the soil and not to be part of and enjoy collective rights as a Saramaka community in a village in the interior. They focus on their own private interest.
If individual rights are given, the next argument of these members of the Saramaka community will be that they have the right to bring foreign companies in the interior to explore and exploit the natural resources on their behalf.

68. In previous communications Mr. MacKay has argued that the land rights of the Saramaka people encompasses all rights above and in the soil, meaning that the Saramaka people holds all the rights to explore and exploit the natural resources (gold, bauxite, oil, etc.) in the soil.
The proponents among the Saramaka people regarding individual property rights argue that once the title is granted they have the individual right to engage in exploring and exploiting activities in the interior, either by themselves or by foreigners.

69. Obviously, this view will lead to a total destruction of the customs and traditions of the Saramaka people living in the interior. The State argues that recognizing collective land rights of maroons and indigenous peoples can never serve the purpose of destroying the customs and practices of these peoples.

70. Furthermore the State argues that this concept will lead to a total destruction of the State itself as a subject under international law, since the several tribes will be as autonomous small states within the State. This can never be the aim of acknowledging these rights. Hopefully, it is clear for this Honorable Court that this concept is legally unfounded, it is in violation of the customs and practices of the local people and it is very dangerous for the existence of the State as a member of international community based on public international law. This Court has the duty to administer justice - human rights - in the inter-American system and the Court can never willingly sanctions acts that might lead to violations of the basic social and cultural rights of individuals.
In addition, this Court can not condone the destruction of the existence of the State.

71. Another danger of this concept is that the right to collective property is seriously at stake. Several maroons believe that they are entitled to individual land rights and not collective rights to land. Mr. Martin Misiedjan, a maroon attorney at law, has stated on several occasions that the Saramaka people are entitled to individual rights to land[29].
Mr. Misiedjan has even written to the authorities bringing the issue of individual rights to the attention of among others the Minister of Justice and Police[30].
(Annex 57)

[29] This view was elaborated on a conference on land rights of indigenous and maroons held in theater Unique in late 2005 and organized by Moiwana Human Rights Organization Suriname
[30] See letter by Mr Martin Misiedjan to the minister of Justice and Police regarding individual rights on parts of the Moiwana conglomeration in the district of Marowijne.

72. It is evident that there is not one clear and collective view among the maroons and among the Saramaka people themselves. The State is of the opinion that the Saramaka people must first address the internal problems that hey have and than decide what direction they want to go based on the customs and traditions of each tribe. After the Saramaka people have solve their internal differences, it is advisable to then engage in constructive dialogues with the State with regard to the land rights issue.

73. The State installed a special presidential commission (**annex 50**) with the sole purpose to investigate the land rights issue in the whole country and advise the government as to a general solution of the matter at hand. This issue will not only be addressed on behalf of the maroons, but also for the different Amerindians tribes in Suriname scattered all over the territory of the State. This National Land Rights Commission has already engaged in several meetings with actors that are involved with the issue of land rights. This Commission works closely with the dignitaries of the maroons and the Amerindians to address this issue in its entirety.

74. Based on the history of armed conflicts in the interior involving both the maroons and Amerindians, the State points out that it is crucial to deal with this issue in a constructive and precarious manner. The opportunistic approach taken by the foreign attorney MacKay clearly serves only the private agenda of this attorney. After this case he will certainly find other cases in the Guyana's (since he is also active in this region), but leaving the broken glasses behind for those who remain in Suriname, the Saramaka people, the Amerindian and all other ethnic groups in Suriname.

75. On numerous occasions the State have argued that all citizens of the Republic of Suriname are entitled to hold property, to request individual titles to land in Suriname. With this in mind all citizens are entitled to file for an application to be awarded land in Suriname. Also maroons and indigenous have

the possibility to be awarded a private title to land. The State argues, however that promoting the collective right to land to the Saramaka people, does not go along with the purpose of some maroons, Saramaka people to achieve private title outside their community.

76. The purpose of the collective title to land, is to give these tribes the opportunity to maintain their culture, practices and customs in order to conserve their special cultural diversity. The main reason, as argued by MacKay, is because these tribes have lived for centuries in ce harmony with the environment, the land, and the rainforest. They are dependent on the environment for their existence. With this in mind, how would one explain the fact that several Saramaka people have acquired individual title to land outside their village?[31]
This is not in conformity with the concept of conserving the identity, customs and traditions of peoples that are living in one community together in the interior. Obviously, if these Saramaka people acquire title to land and live on land outside their village - in and around Paramaribo for example - this will not serve the purpose of conserving the identity, cultural heritage, customs and traditions as one tribe, the Saramaka people. This however, is argued by both the commission and petitioners as the basic factor for the Saramaka people in Suriname to be entitled to land rights.

77. The State must conclude that the sole purpose of the foreign attorney is not to bring a solution to the matter at hand, but more to establish a name for himself in the Guyana's with regard to land rights, hereby in total disregard of the social, cultural, economic and other aspects of the same people he argues he is defending.

[31] Include a list of a few members of the Saramaka tribe that have acquired title to land outside their village, based on the current laws in Suriname.

2.5. Former Assistant Executive Secretary as Legal Advisor, Mr. David Padilla

78. The State respectfully questions the role of Mr. David Padilla in these proceedings. This Government is aware of the tremendous achievements of Mr. Padilla during the period of military ruling in Suriname 1980 – 1987 and 1990 – 1991. As Assistant Executive Secretary of the Inter-American Commission on Human Rights of the Organization of American States (OAS), Mr. David Padilla contributed to the increase of the awareness of human rights norms and principles in Suriname. Together with the Commission, Mr. Padilla played an important role in the return and the enjoyment of civil and political rights as well as social and cultural rights for all citizens in the State.
With this outstanding record the State can not understand why Mr. Padilla is involved in this case, and why in this stage of the proceedings.

79. As stated previously, Mr. MacKay has proven that his main purpose is not the acknowledgement by the State of the land rights of the Saramaka people, but more the accomplishment of his own personal agenda. Going along with Mr. Mackay on this private journey, thereby destroying established customs and practices in the Saramaka community living in Suriname, has never been anticipated by the State of such an Honorable human rights specialist as Mr. Padilla.

80. In addition, the state points out that Mr. Padilla was Assistant Executive Secretary of the Commission till 27 July 2001. As Assistant Executive Secretary Mr. Padilla was in charge of the day-to-day operations of the Commissions' secretariat and of the lawyers working at the Commission. The petition filed on behalf of the Twelve Saramaka Clans was filed to the Commission in 2000. This is, in the year 2000 the Commission started to proceed with the petition. It is however, acceptable that the case was submitted prior to this date, but that the Commission has engaged in a communication with the petitioners to request

clarifications or supplemental documentations before to proceed with the case. This is standard practice of the Commission. 0000311

Hence, in 2000 Mr. Padilla was the Assistant Executive Secretary in charge of the petitions filed at the Commission. In this capacity Mr. Padilla had knowledge of the case at hand.

The State argues that Mr. Padilla was based on his position as Assistant Executive Secretary of the Commission, in the capacity to be exposed to facts and circumstances of the case at hand.

81. Article 35 of the Convention reads:

> **"The Commission shall represent all the member countries of the Organization of American States"**

Article 39 of the Convention reads:

> **"The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations."**

Article 40 of the Convention reads:

> **Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission".**

82. Based on abovementioned articles it is evident that the Secretariat of the Commission was instituted to serve the Commission in its principle tasks. The Executive Secretary heading the Secretariat is the principle officer in charge of the Secretariat of the Commission, while the Assistant Secretary is in fact in charge of the day-to-day operations of the secretariat of the Commission. In this capacity Mr. David Padilla was in charge of the specialized unit of the executive secretariat and as of such he was familiar with the ins and outs of the secretariat

of the Commission, and thus of the case at hand. Moreover, Mr. Padilla was in de position to be exposed to the case at hand.

83. Article 1 of the Rules and Regulations of the Commission reiterates the autonomous status of the Commission within the Organization of American States and the fact that the Commission is a representative of all member states of the Organization.

Article 4(1) of said Rules of Procedure of the Commission states:

> **"The position of member of the Inter-American Commission on Human Rights is incompatible with the exercise of activities which could affect the independence or impartiality of the member, or the dignity or prestige of the office. Upon taking office, members shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions and individual cases before the IACHR for a period of two years, counted from the date of the end of their terms as members of the Commission."**

Article 11 of the Rules of Procedure reads:

> **The Executive Secretariat of the Commission shall be composed of an Executive Secretary and at least one Assistant Executive Secretary, with the professional, technical and administrative staff needed to carry out its activities."**

84. Article 12 of the same Rules of Procedure detailing the powers of the Executive Secretary states in section 2:

> **"2. The Assistant Executive Secretary shall replace the Executive Secretary in the event of his or her absence or disability....."**

Section 3 of this article reads:

> **" The Executive Secretary, Assistant Executive Secretary, and staff of the Executive Secretariat, must observe the strictest discretion in all matters the Commission considers confidential. Upon taking office, 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."**

85. Even though the Executive Secretary of the Commission and the Assistant Executive Secretary are no members of the Commission, based on above mentioned Article 12 section 3 of the Rules of Procedure and the nature of their work on behalf of the Commission, the State argues that there is an incompatibility aspect involved, since these officials are in fact exposed to all facts and circumstances in all cases that are brought before the Commission. The State argues that an even more strict rule regarding incompatibility must be enforced to the Executive Secretary and the Assistant Executive Secretary of the Commission, particularly due to the fact that in their respective capacity they are the implementers of Article 35 of the Convention and Article 1(2) of the Rules of Procedure of the Commission, namely representing all member states of the Organization. It is evident that the Commission is an impartial organ in charge of the functions mentioned in Article 41 of the Convention.

86. Moreover, the core content of each case is analyzed under supervision of the Executive Secretary and the Assistant Executive Secretary The members of the Commission operate on part time basis and hold sessions with intervals at

least twice a year[32]. The executive secretariat is a permanent body in charge of all the petitions filed with the Commission.

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87. The average time cases are pending before the Commission, calculated from the submission of the application till the adoption of an Article 50 or an Article 51 Report or a corresponding report based on the Rules of Procedure of the Commission is 5 to 6 years[33].

The State argues that the main purpose of this incompatibility article is to make certain that information regarding petitions or cases to which these officers (members of the Commission, the Executive Secretariat and the Assistant Executive Secretariat), are exposed to during their term in Office, is kept confidential and is not misused.

88. The purpose is also to maintain fair proceedings among parties involved (states and petitioners). With reference to the basic **"equality of arms"** principle, all parties in the procedure before the Commission must be treated in an equal manner. Information known to a professional in his capacity as Assistant Executive Secretary might be used in the proceedings if this professional is contracted as an legal advisor or counsel, by one of the parties. The mere fact that an individual in his or her capacity as a member of the Commission, Executive Secretary or Assistant Executive Secretary, is likely to be exposed to a certain petition or case that was filed or processed during his or her term in Office, triggers the incompatibility issue.[34]

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[32] See article 14 section 1 of the Rules of Procedure of the Commission.

[33] The duration of the following cases was longer than 6 years: Case no. 10.154 Paniagua Morales et al v. Guatemala (7 years); Case Truijilo Orozo v. Bolivia (7 years); Case Durand and Ugarte v. Peru (8 years); Case no. 10.476 Benavides Cevallo v. Ecuador (11 years) The duration of the following cases was app. 5 years: Case no. 7.920 Velasques Rodriques (5 years); Case no. 11.528 Barrios Altos v. Peru (5 years) and case no. 8.097 Godinez Cruz v. Honduras (5 years).

[34] The State respectfully refers to Indra v Slovakia no 46845/99 Violation art.6 para 1 European Convention on Human Rights. In this decision the Court held unanimously that there had been a violation of the convention concerning the lack of an impartial tribunal.

89. The State argues that at least 6 to 7 years should be taken as the so called period of incompatibility for members of the Commission and its implementers, the Executive Secretary and the Assistant Executive Secretary. The State argues that within a period of 6 to 7 years after their resignation, these officers must not be allowed to engage in activities by which they act as advisor or represent parties before the Commission or the Court.
Moreover, the State argues that under all circumstances former members of the Commission, the former Executive Secretary and the former Assistant Executive Secretary, must abstain from participating in petitions or cases that were brought to the Commission during their term in Office. Acting accordingly will serve the purpose of the Commission as an independent, autonomous supervising organ within the Inter-American human rights system, representing all member states of the organization.

90. Avoiding engaging in activities that could affect the independence, the impartiality of the Commission, or the dignity or prestige of the Commission, must be the leading principle. In the instant case of the Twelve Saramaka Clans, this did not happen.

91. Referring to the position of the Executive Secretary and the Assistant Executive Secretary as stated in article 12 of the Rules of Procedure of the Commission, and the functions of the Executive Secretariat as stated in article 13 of said Rules of Procedure, the State argues that the period of two years is not enough to satisfy the impartiality of the proceedings before the Honorable Court, now that information submitted to the Executive Secretariat of the Commission when Mr. Padilla was the Assistant Executive Secretary in Office, could be used in the proceedings on behalf of one of the parties involved. The mere fact that Mr. Padilla was Assistant Executive Secretary when the case was submitted to the Commission is enough to indicate the incompatibility.

Mr. Padilla acting as the legal advisor of the representative of the original petitioners ("victims"), does not safeguard the impartiality of the proceedings and in fact violates the "equality of arms" principle[35].

92. The State argues that due to the average time cases are pending before the Commission and due to the position of the Commission and its Executive Secretariat as the sole implementers of the different duties of the Commission, at least 6 years should be taken into account before the Executive Secretary and the Assistant Executive Secretary can undertake representing victims or their relatives before the Commission and the Court, or even represent States in proceedings before the Commission and the Court.

93. Moreover, the State is of the opinion that no member of the Commission and neither the Executive Secretary nor the Assistant Executive Secretary, must be allowed to take up cases that were originated as petitions while they were in Office. This will guarantee the impartiality of the proceedings and will not undermine the dignity and prestige of the Commission as an autonomous organ of the Organization.

94. In addition, Mr. David Padilla represented the petitioners before the Commission during its 119th and 121th Session held respectively in March and October 2004 in Washington, DC. The Commission did not make any objection as to the participation of the former Assistant Executive Secretary presenting petitioners against a member State of the Organization.

95 The State points out that prior to these acts which took place in 2004, Mr. Padilla, started to work for the petitioners in 2003. The State has information (among others the issuance of consular visa) indicating that in de second part of 2003, Mr. Padilla started to work actively with Mr. Fergus Mackay on behalf of

[35] Mr David Padilla submitted, together with Mr Fergus MacKay , "Pleadings, Motions and Evidence of the Victim's Representatives in the Case of Twelve Saramaka Clans, case 12.338 against the republic of Suriname".

the petitioners of the Twelve Saramaka Clan. He visited Suriname regularly and attended several krutu's" (meetings of the Saramaka people's in the villages) advising on the petition that was submitted when he was the Assistant Executive Secretary at the Commission.

96. As a matter of fact the State has information that in March 2003, Mr. Padilla was a visiting professor at the Institute of International Relations at Anton de Kom University of Suriname. During his stay in Suriname Mr. Padilla had several meetings with the petitioners and the foreign lawyer, Mr. MacKay.

97. By engaging in these activities, the State is of the opinion that Mr. Padilla abused the standard practice that is safeguarded in Article 12(3) jo. Article 12(2) of the Rules of Procedures. Since the Assistant Executive Secretary replaces the Executive Secretary in every event of his or her absence or disability, and the fact that the Assistant Executive Secretary is in fact the Officer of the Executive Secretariat who deals with the day to day administration of all petitions to the Commission, the State believes that the norm codified in this article, is violated, now that Mr. Padilla engaged in advisory activities within the prescribed period of two years from the date of his termination as Assistant executive Secretary.

98. Moreover, the State argues that the period of two years is not in conformity with the current practice with the caseload of the Commission. A period of minimal 6 (six) years should be taken into account.
In addition, the State argues that **under all circumstances** officers in the Inter-American human rights system employed with the supervisory organs, should abstain from participating in a petition/case that was filed while that officer was in office.

99. In addition, Mr. Padilla also submitted documents[36] to your Honorable Court in said case no. 12.338 Twelve Saramaka Clans on behalf of the original

[36] Id, Title page naming the representatives of the original petitioners in their respective capacity.

petitioners (the members of the Saramaka Clans that filed the petition to the Commission)[37].

100. Based on abovementioned facts and circumstances the State argues that the participation of Mr. Padilla is in violation of the established rules and practices applicable in the Inter-American human rights system. Moreover, it is highly improper to participate in a petition that was presented to the Commission while Mr. Padilla was in Office. The State argues that the Commission allowed this violation to take place, thereby further increasing the inequality of the State in the proceedings.
The Commission acted against the principles of public international law and the Rules of Procedure of the Commission.

101. The State argues that now that Mr. Padilla was allowed by the Commission to actively participate in the continuation of the petition before the Commission (since 2003), the position of the Commission is highly disputable. The State is of the opinion that the Commission should have taken its duties more seriously. With reference to the acts undertaken by the Commission or in some instances, that not have been taken by the Commission during the course of the proceedings, the State agues that the Commission has disregarded its main functions as autonomous organ of the Organization.

102. Because of these reasons the State argues that the application of the Commission should not have been admitted. Since the Commission admitted the petition, the State argues that is up to this Honorable Court to remedy the injustice. The Commission must be declared without legal standing to submit this particular application to the Court, because due to its acts it forfeited its rights to present this application to this Honorable Court.

[37] As stated previously in this document, the State argues that the original petitioners do not have separate legal standing before this Honorable Court, equal to the State and the Commission. The State will elaborate further in detail on this issue.

Moreover, the State requests this Honorable Court to immediately remove Mr. Padilla from participating in all future proceedings of this case before your Honorable Court.

2.6. Mr. Hugo Jabini

103. The State now turns to the position of Mr. Hugo Jabini. As mentioned in previous paragraphs of this document, the Republic of Suriname was confronted with a military coup d'etat on 25 February 1980. The military remain in power till 25 November 1987, when the first general elections after the coup were held. But in fact the military still maintained tremendous power in the community of Suriname. The second military coup in 1990 is a clear example. As stated in previous paragraphs, the period 1980 – 1991 can be classified as a period in which huge human rights violations occurred in Suriname. The accountability of the military, headed by Mr. Desiree Delano Bouterse, was discussed in the First[38] en Second[39] Report on the human rights situation in Suriname, issued by the Commission. In addition, this Honorable Court has ruled in three cases against the State of Suriname, all of which[40] originate in the period Suriname was under military ruling.

104. The current Venetiaan government is committed to return and maintain democracy in Suriname. This has clearly been indicated in the acts taken by this government. It is considered highly unsatisfactory that institutions like the Commission and the Court that are charged by the Convention to maintain democracy in this hemisphere, are totally unaware of the circumstances democratic States in the region are facing in their constant fight to maintain the democracy that was established under very difficult circumstances.

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[38] First Report on the Human Rights situation of Suriname was issued in 1983, OAS/ser.L/11.61 doc. 6.rev.1 October 5, 1983

[39] Second Report on the Human Rights Situation in Suriname was issued in 1985, OAS/ser.L./V/11.66 doc. 21 Rev. 1, October 2, 1985

[40] The three cases this Honorable Court has ruled on are: Aloeboetoe et al v. Suriname; Gangaram Panday v. Suriname and Village of Moiwana v. Suriname

105. In the case at hand it must be mentioned that Mr. Hugo Jabini is an active member of the National Democratic Party (NDP), the party headed by Mr. D.D. Bouterse, the same military ruler who committed the coup d'etat in 1980, the same military ruler who was heading the government when the killings in the maroon village Moiwana took place, the same military ruler who was heading the army when several members of the maroon tribe were killed at Tjongalanga Pasi, the same military ruler who was heading the army when Mr. Gangaram Panday was found dead in his cell while in custody at the military police, the same military ruler who was in charge of the government when 16 political opponents were killed in Ford Zeelandia on 8 December 1982, the same former military ruler, Mr. D.D. Bouterse, who is currently facing criminal charges with regard to these killings[41].

106. The State acknowledges the right of every citizen to participate in all sectors of life in Suriname en to engage in political activities. All citizens have the active and passive right to elect representatives in organs of the government and to be elected in organs of the government. Mr. Hugo Jabini as a member of the Surinamese community certainly has these rights.
However, it must be noted that is gives a very sour taste in the mouth that while a democratic elected government is trying to maintain order and stability in the State, to make sure that all its citizens have the possibility to freely engage in all sectors of life and enjoy all the basic rights that they are entitled to based on the Convention and other human rights instruments applicable in the region, individuals are being used as instruments of the same person or persons who were in charge of or in fact executed several human rights violations in Suriname.

[41] The Office of the Prosecutor General has stated that the criminal case against the accused in the December killings will probably start in the first part of 2007.

107. Fabricating petitions and sending them to the Commission is not a difficult task for an experienced human rights lawyer who has his own personal agenda. Mr. Hugo Jabini is a member of the NDP and is currently elected by Mr. Bouterse to participate in the State Advisory Council *(Dutch: Staatsraad)*[42], one of the Constitutional organs, among other in charge of advising The National Assemblee with regard to proposed laws that must be enacted in The National Assemblee.

108. The State have indicated to the Commission the possible political implications or involvement of third parties in this petition. The State has pointed out the complexity of this case and requested to take all these circumstances into account when reviewing this petition.
However, despite all efforts of the State in this respect, the Commission did not address this issue adequately.
The State calls on this Honorable Court to scrutinize the role of Mr. Hugo Jabini and place this role in the context of its political operations.

2.7. The status and role of the Gaa'man

109. To contradict the statements made by petitioners headed by their foreign lawyer Mr. F. MacKay, with regard to the status and role of the Gaa'man of a maroon tribe, the State respectfully refers to page 17 of the survey of M. Misiedjan and W. Misiedjan . The general chart on this page gives detailed information as to how a maroon tribe is composed.
The Gaa'man is referred to as the highest authority of the tribe, who has a supervisory jurisdiction over all other members of the tribe. He represents his tribe in all matters concerning the tribe and is in contact with the central government with regard to issues involving his tribe. The installation of this "First

[42] Reference is made to the letter of the State Advisory Council indicating that Mr. Jabini is participating in this organ on behalf of the National Democratic Party.

Citizens of the Tribe", as the authors refer to, is done in full compliance with the culture, traditions and customs of the maroons.
This is indeed the general accepted view of the role and status of the Gaa'man of a respective maroon tribe[43].
Mr. MacKay implicated a different view – as discussed previously - just to have the opportunity to disguise his omission with regard to the application submitted to the Commission during the heat of a dispute between the Gaa'man and several of his lower dignitaries (other authorities).

110. The foreign lawyer argued that the Gaa'man does not have anything to do with land rights issues. The modification of the "land" of the Njudka maroons by the current Gaa'man on behalf of the tribe of the Paramacaners maroons is a clear indication that this view of the foreign lawyer is false.
In addition, it must be noted that based on the tradition, customs and culture of the maroons, the Gaa'man is also the authority that holds veto power with regard to several issues that were not resolved by the lower authorities. The Gaa'man even has to decide in disputes involving land issues among the individual *"lo's"* or *"be's"* within his tribe. The State hereby asserts that Mr. Mackay is single-handedly destroying the culture and customs of the Saramaka people.

111. The State regrets that the local dignitaries were misled by Mr. F. Mackay and that Mr. Hugo Jabini assisted in this matter. The role and the position of Mr. Hugo Jabini, being an active member of the NDP, is one that calls for huge questions and indicate the complexity of the matter at hand, since a political impact is cely related to this issue.

112. Demarcating the land for several community services, (religious sites, schools, for the Gran Krutu's - meetings of all the members of the community-

[43] See conclusions by two maroon lawyers presented in their respective graduation thesis namely Ms. P. Meulenhof and Mr. R. Libretto (annex .. and annex 7).

burial grounds, etc) belong to the competence of the Gaa'man. See page 22 of the survey of M and W. Misiedjan.

113. As stated the Gaa'man even has the authority to engage in modification of local territory/land on behalf of a *lo* or a *bee,* to avoid disproportionate distribution among members of his tribe.
It is there fore incorrect to suggest that the Gaa'man does not have any involvement in issues regarding land rights of his tribe and that the captains are the sole authorities that decide on this issue.

114. The State points out that there is a discussion in the maroon community with regard to the number of lo's, a tribe consists of. In the Ndjuka tribe, the number of lo's is fourteen, including the Gaa'man as a separate lo's. It is also argued by several expert who have written on the maroon culture and tradition that the Gaa'man of the Saramaka people is in a class of its own, making up a separate lo's. This will indicate that leaving the chief of the tribe out of the proceedings means, leaving the 13th lo out of the proceedings, meaning that not all lo's have submitted the petition to the Commission regarding issues involving the whole tribe as a collective entity. Based on these facts the Commission should have declared the petition inadmissible.
The State has brought the issue of inadmissibility based on these facts to the attention of the Commission, who still admitted the petition. There fore the State is of the opinion that it has the right to request your Honorable Court to scrutinize the decision of the Commission and independently address this issue of admissibility on this matter all over again. The State asserts that based on the evidence provided, the Court should declare the application submitted by the Commission inadmissible.

115. The original petitioners in case no. 12.338 are The Association of Saramaka Authorities (VSG) and twelve individual captains of the Saramaka tribe. The State will prove that neither the Association nor the twelve captains have standing to file a petition to the Commission on behalf of the Saramaka Tribe in the State of Suriname.

3. PRELIMINARY OBJECTIONS

3.1. Jurisdiction of the Court

116. The Republic of Suriname is a member State of the Organization of American States (1977) and since 1987 a party to the Convention. In 1987 the State also accepted the jurisdiction of the Court, meaning that from this date the Honorable Court has jurisdiction to hear cases involving the State of Suriname.

3.2. Standing of the Original Petitioners ex Article 44 Convention

117. In all its communications the State has indicated to the Esteemed Commission the complexity of the petition at hand. The position and the role of Mr. Hugo Jabini has been an important point of discussion for the State. Firstly, it was unclear to the State what the position of Mr. Jabini was. The State received documents signed by different individuals claiming to represent the petitioners in the petition at hand. For your information, your Honorable Court, Mr. Jabini was introduced as a member of a non governmental organization named Tooka who was said to be in charge of the administration of the Foundation of Saramaka Authorities *(Dutch: Vereniging van Saramacaanse Gezagsdragers – VSG)*.

118. Due to this confusion, the State requested the assistance of the Commission to determine who was in fact authorized to address the State on behalf of the petitioners. Finally, it became a little bit clear as to the individuals who were authorized to address the State on behalf of the signatories of the communications send to the State.
The State has information that not every signature on the final document that was submitted to the Commission with the names of several members of the Saramaka community, who believe that they are entitled to represent the Saramaka tribe, was placed on the document by the respective persons. The State has received information that a few signatures were placed on the document by other persons. In once instance a grandchild signed for her grandpa. The State does not believe that this is a proper conduct for attorneys, certainly not for human rights attorneys. The argument that once the boat is in the middle of the river (indicating the application submitted to the Commission), one (the Saramaka people) does not have a choice than to go along. The State can offer testimony for these statements.
Based on these facts, the State is of the opinion that the case must have been declared inadmissible by the Commission.

119. The State contested the admissibility of the petition maintaining its position that the requirements set out in Article 44 and Article 46(1) under d of the Convention, were not met. Article 46(1) under d reads:

> **" d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition".**

120. Based on the information provided by the State the initial petition was signed by members of the Saramaka community. In addition, some communications to the State were signed by members of the Saramaka community, while others were signed by members of the NGO Tooka.

Furthermore, the State has received communications indicating that the petitioners (those who signed the petition that was submitted to the Commission), will not act unless they have consulted with their foreign lawyer, who is employed by an NGO called Forrest People Program.

121. However, the NGO Forrest People Program was never introduced to the State as being the legal representative, as mentioned in article 44 (1) under d. The State concludes that Forrest People Program therefore can not be classified as the legal representative of the entity lodging the petition. This view has its bases in the fact that members of the Saramaka Communities have indicated to the State that Mr. Jabini of the NGO Tooka, was in charge of the administration of them. In that capacity the State continued sending its communications through the NGO Tooka (Mr. Jabini).

122. The State has already raised this issue of standing of the original petitioners before the Esteemed Commission, who did not address it adequately[44]. This indicates that the State is not barred from raising this issue before your Honorable Court, requesting to determine the compliance of the requirements set out in article 44 and 46 of the Convention[45].

123. In addition, the State respectfully points out that if some members of the Saramaka communities organized in the VSG (see above) satisfy the requirements of article 44, being individuals or a group of persons, entitled to submit a petition to the Commission, the State is of the opinion that these individuals or group of persons do not have the authority to petition the C Commission on behalf of the Saramaka community as a whole, thereby purposely denying any involvement of the Gaa'man, the Chief authority of the Saramaka Tribe. The State is of the opinion that based on the authority of this

[44] Reference is made to the correspondence of the State to the Commission with regard to this particular issue.

[45] See the extensive jurisprudence of this Court by which it argued that if a State has brought a particular issue before the Commission it is not barred from bringing this issue before your Honorable Court for adjudication.

Paramount Chief, who was elected by the Saramaka people themselves based on their customs and traditions, a denial of this authority to participate in the proceedings can never satisfy the purpose of the individual members of the Saramaka community, nor as a group to demand certain issues on behalf of the Saramaka community as a whole.

124. Article 51 of the Convention states:

1) "If, within a period of three months from the date of the transmittal of the report of the Commissions to the states concerned, the matter has not either been settled or submitted by the Commission or by the State concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2) Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to remedy the situation examined.

3) When the prescribed period has expired, the commission shall decide by the vote of an absolute majority of the members whether the State has taken adequate measures and whether to publish its report".

125. In addition article 61 of the Convention states:

1. *"Only the States Parties and the Commission shall have the right to submit a case to the Court.*
2. *In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed."*

These articles conclusively indicate that only the Commission and the State, the latter being a member of the OAS that have accepted the jurisdiction of the Court, shall appear before the Court. Only states parties and the commission have the right to submit cases to the Court. The State argues that the two parties that have standing to appear an equal footage before your Honorable Court are states and the commission the latter in her capacity of petitioner in a particular case brought before your Honorable Court.

126. Since the Convention is the leading human rights instrument within the Inter American Human Rights system; since it is the constitution for both the commission and the Court, establishing these two supervisory organs, giving in detail their existence and operations, secondary rules and regulations adopted by these organs may not or can not violate the principles set out in the Convention.

127. Reference to the current practice of your Honorable Court indicates that the Commission and victims or descendants of victims and/or representatives of the latter appear before the Court. The State is of the opinion that giving individuals standing before your Honorable Court is in violation of the principle concept of the Convention. In addition, the State strongly opposes the fact that individuals are given standing before your Honorable Court an equal footage as the State.

128. This practice is totally disproportionate and violates the ***"equality of arms principle"*** that is inherent in all legal systems and in international human rights law as well. The State contests the appearance of individuals before the Court in this particular case, if they are not a representative of either the State or the commission. In particular cases before your Honorable Court it happened that positions taken by the Commission, the only organ charged by the Convention, to appear in all cases before the Court, were not shared by the victims or descendants of the victims or the representatives of these individuals. The latter

situation places the State in an awkward position, and is a clear indication of the inequality that exists before your Honorable Court[46].

129. In September 2004 the Republic of Suriname contested before your Honorable Court, the proceedings in the Stefano Ajintoena et al case (No. 11.826), claiming that the principle of equality of arms was not upheld by the Court since on one hand both the commission and the representatives of the victims appeared before your Honorable Court on separate equal standing and on the other hand the State.

130. The State respectfully points to the procedure before the Honorable European Court of Human Rights. In the European human rights system the member states adopted a new protocol giving individuals standing before the European Court. Prior to the adoption of this protocol individuals did not have standing to appear before the Court. This was the primary task of the European Commission on Human Rights, namely to bring cases before the European Court of Human Rights.

131 In a presentation at the Specialized Course for State Employees on the Use of Litigation on the Inter-American System of Human Rights, organized by the Inter-American Institute of Human Rights, this Honorable Court and the Esteemed Commission, the petitioner before your Honorable Court, former President of this Court, H.E. Judge Antônio A. Cancado Trindade, stated that in May 2005 this Honorable Court has submitted a draft Protocol encompassing this specific issue, to the General assembly of the organization of American States. It must be concluded that this Protocol, once adopted will give individuals separate legal standing, before this Honorable Court.

[46] See the LXXII Period of Regular Session of the Inter-American Court of Human Rights in the case La Cantuta v. Peru, public hearing held on the issue of reparations on 29 September 2006. See also the case Five Pensionistas v. Peru. In these cases certain views of the Commission and the representatives of the victims were not in conformity with one another.

132. Since this draft Protocol has not yet been discussed or even place on the agenda of the General Assembly of the OAS, this implicates that the Convention is the only leading human instruments in this hemisphere with regard to this particular issue. And therefore, the State concludes that individuals do not have separate legal standing before the Honorable Inter-American Commission of Human Rights prior to the adoption, and enter into force of a legally binding instrument in our hemisphere.

The State hereby argues that this Honorable Court can **not** give individuals separate legal standing before the Court on equal footage as the Commission and the states, by adopting a rule that has a secondary nature or that is subordinate to the Convention itself.

133. The State is of the opinion, whatever noble and humanizing arguments there might be given, that for individuals in the Inter American system of human rights to have separate standing before the Court, the creators of the system, the states, must agree to do so. This indicates that the states will have to adopt a protocol making this possible, until that moment the Convention applies, by which individuals do not have separate standing before your Honorable Court.

134. Secondary rules and regulations adopted by organs that are created by the Convention cannot be in violation of the rules clearly set out in the Convention. The State strongly opposes the participation of other parties, apart from the Commission and the State, in the proceedings before your Honorable Court.

3.3.1. Non Exhaustion of Domestic Remedies

135. "International Human Rights generally requires that the states parties afford an effective remedy to the victim of a human rights violation. Failure to provide a remedy constitutes a separate breach of the treaty, additional to the

original violation"[47] There are four admissibility requirements set forth in article 46(1) on the exhaustion of domestic remedies;

136. The general rule of International law that domestic remedies be exhausted before recourse is had to an international forum has been incorporated into the American Convention (article 46) and the commissions statute art 19(a) and article 20(c), and reiterated in the commission's regulations (article 37).[48]
There are four admissibility requirements set forth in article 46(1) on the exhaustion of domestic remedies;

1. Article 46(1) A, compliance with the six month rule;
2. Article 46(1) B, no case pending before another international forum on the same subject;
3. Article 46(1) C, the provision of details of the petitioners or his /her representative(s);
4. Article 46(1) D, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

137. It is an international principle that the defendant State must be allowed, before anything else to provide redress on its own and within the framework of its internal legal system, which must be exhausted before the international instance is brought into play.[49]
Suriname asserts that case No. 12.338 should be declared inadmissible for the failure to exhaust domestic remedies. Before a petition can be admissible, the remedies under domestic law must have been pursued and exhausted. The petitioners have not pursued and exhausted the remedies under domestic law in

[47] See The Inter- American system of Human rights, edited by David Harris and Stephen Livingstone, Clarendon Press Oxford 1998

[48] Id. page 85
[49] See case no 10.208 Dominican Republic n. 71, at 100 Cf. The Inter-American Court's statement in the Velasquez case I/A Court H.R. Series C no 4 Para 61(1988), 9 HR.LJ 212

accordance with generally recognized principles of international law, as this is set forth in the Convention Article 46 (1)(a).

Exceptions to this rule are provided in Article 46(2): "

a. *the domestic legislation of the State concerned does not afford due process of la for the protection of the right or rights that have actually been violated;*
b. *the party alleging violation of his rights as been denied access to the remedies under domestic law or has been prevented from exhausting them; or*
c. *there has been unwarranted delay in rendering a final judgment under the afore- mentioned remedies"*

138. Requiring prior exhaustion of domestic remedies is a rule of State responsibility; "*it 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".*[50]

In interpreting the term" exhaustion of domestic remedies", the commission and Court have repeatedly that an applicant must exhaust all remedies provided for by domestic law, administrative as well as judicial.[51]

When several possible remedies exist for rectifying violations of a given right, the applicant must give reasonable and objective arguments to explain why he/she chose a certain remedy, therefore he/she must lodge appeals to all judicial bodies available to him/her, because he /she is only required to exhaust those remedies open to him /her as a right not as an privilege.[52]

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[50] In the Matter of Viviana Gallardo, No.101/81 Ser A&B 2HRLJ 328, Para 26

[51] See p.55 Law and practice of the European Convention and Human Rights and the European Social Charter

[52] Id 56

139. Article 25 of the Convention states the right to judicial protection, where the State has the obligation to provide effective remedies in order to guarantee due process of law. The legislation offers individuals who feel that their rights have been violated, adequate and effective legal recourse. The State will show, which articles, based on the civil code, the petitioners could have utilized, and that these legal remedies are effective. The State does afford due process of law for the protection of the right or rights that have allegedly been violated. The petitioners are not able to demonstrate that they had been denied access to the remedies under domestic law or were prevented from exhausting them.

140. The remedies do exist in the legislation of Suriname and are effective and adequate. An adequate remedy is one suitable to address an infringement of a legal right. (See Velázquez Rodriquez case Judgment n.961 Para 64). An effective remedy is a remedy that is capable of producing the result for which it was designed.[53] The petitioner's argument indicating that the national legislation does not provide for due process is incorrect, because there is effective legal recourse based on several articles within the civil code; the fact is that the petitioners did not choose to utilize the domestic remedies before filing a petition to the Commission.

141. Article 1386 of the Suriname Civil Code states:
"...that each unlawful action, which causes another person to suffer damages, obliges the person who is to blame for the damage, to compensate the damage".

This legal provision also applies when the violator happens to be the state.[54] In the case Richards v. Suriname, a petition was filed in Court against the state; petitioners received legal recourse, because it was proven that their rights were violated. The petitioners in the case of the Saramaka have the burden to prove, that the remedies available under the legal system in Suriname were exhausted

[53] See p. 118, The International Dimension of Human Right. Inter- American Development Bank/American University
[54] Case Richards vs. Suriname, High Court Of Justice, No. A28, June 6, 1975

and are not adequate, because the petitioners have alleged that in the case of violations of the individual and collective rights mentioned in petition no 12.388, the laws of Suriname do not provide adequate and effective remedies and therefore offer them no success in a domestic venue. The petitioners also allege that the Surinamese laws do not effort recourse in this particular case.

142. The petitioners were unable to prove that the remedies available under the legal system in Suriname were not adequate or not effective. The petitioners simply did not use the available remedies. They had access to the institutions such as: the police, the Cantonal Courts, the High Court of Justice or the office of the Attorney General, they simple failed to exhaust them. The State would like to point out, that if in a case the local Courts dismiss the claims brought by a petitioner, this does not mean that the remedies offered are not adequate or effective.

143. Non exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (Velasquez Rodriguez case). Non exhaustion proves the existence of domestic remedies that should have been utilized. Petitioners have the burden of showing the remedies that were exhausted. It must not be rashly presumed that a State has failed to comply with its obligation to provide effective domestic remedies. The petitioners have never filed an official complaint with the High Court of Justice or with the Registrar of the cantonal Courts. The fact that a petition was submitted to the President of the Republic according to Article 41(2) of the Forest Management Act and this did not produce a result favorable to petitioners, does not in and of itself demonstrate the in existence of the domestic remedies, nor does this indicates that petitioner exhausted all the effective remedies that were readily available. 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, meaning they had to

exhaust the other domestic remedies such as the civil, and or use the local Courts for their redress, which they simply did not choose to do[55].

144. In addition, the State points to a number of articles in the Civil Code on which the petitioners could have instituted actions.

- Article 1386. *Every lawful act which causes damages to another imposes an obligation on the person through whose fault the damage was caused to compensate such damage.*
- Article 1387: *Every one 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 cause by one's own act, but also fro 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. School teachers 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, school teachers and employers show that they were unable to prevent the act for which they would be responsible.*
- 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.*

[55] The Africa/Move case, report 19/92 Case no. 10.865, Africa/ move Organization

- 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 both party and the circumstances.*

145. If petitioners allege that they have suffered damages due to an act or omission by or in the name of the State and on the basis thereof want their right of return to the status quo ante and or damages, they may institute, in the manner indicated in the code of civil procedure, an action against the State which is accountable as a person under private law. 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 an action[56]. Article 8 of the Constitution recognizes the equality of all persons in the administration of justice. Based on article 14 of the International Covenant on Civil and Political Rights, every person has a right to a fair trial. Everyone has a right to a fair trial, especially to guarantee the access to a judge and to a fair treatment of the case (Golder case)[57]. The petitioners ought to be aware of this possibility to obtain its right to justice. No claim for damages has been lodged at the Office of the Attorney –General of Suriname or to the cantonal Courts, in relation to the alleged violations of the Saramaka .

146. The Attorney General is by virtue of article 146 of the Constitution the legal representative of the State in the Court, and if an action is constituted against the state, the Attorney General on behalf of the State receives the writ of summons against the State of Suriname before the cantonial Courts, in relation to the alleged violations of the Saramaka .

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[56] Annex 14, 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

[57] Golder arrest 21-2-1975, Public European Court D H. ,Serie A nr. 18

147. The most effective manner to obtain damages and repair is the civil process. For that purpose a civil action may be brought as mentioned before, 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. Practice has shown that such a civil action has a fair chance of success.[58] 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 effective but the petitioners choose not to, they have neglected to do so, which might have been successful.[59]

148. From 1 – 5 December 2006, the local authorities of the Amerindians and maroon tribes living in Suriname held a Gran Krutu (general meeting) in the village Diitabiki. The respectfully refers to the conclusions of this Gran Krutu as it was submitted to the President of the Republic by a letter dated 5 December 2006.
In this letter all the Paramount Chiefs of the tribes (Amerindians and maroons) in Suriname, signed the letter to the President[60].

149. This letter is a clear indication that the Gaa'mans are the paramount chiefs of the tribes and that they represent their tribe in all matters regarding the tribe. This is with regard to actions taken within the tribe, actions taken towards the central government, as well as action taken regarding issues to third parties outside the State of Suriname (e.g. the Commission).
The statement that the separate lo's (clans/communities) of a certain tribe has the authority to represent the tribe as a whole, is clearly not based on customs

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59 The Africa/Move case, report 19/92 Case no 10.865, Africa/ move Organization

60 The letter was signed by or on behalf of Gaa'man Jan levi, Gaa'man Ashongo Alalaparoe, Gaa'man Apuk Noewahe, Gaa'man Ankarapi Pikoeme, Gaa'man Oscar Lafanti, Gaa'man Mathise Andre, Cap'ten Ricardo Pane, Gaa'man Belfon Aboikoni, Gaa'man Pelenapin Ipomandi and Gaa'man Emanuels Jacob (of the Aluku Tribe), see annex 14, Overview of the Paramount Chiefs

and the traditions of these local people and is not the accepted view of these local peoples as implicated by their Gaa'mans with this document. The petition filed by the Association of Saramaka Authorities (VSG) and by some of the individual cap'ten, is therefore in violation of the respective Conventional provision. The petition should not have been admitted by the Esteemed Commission.
The State therefore requests your Honorable Court to declare the application submitted by the Commission inadmissible.

150. In addition the State refers to the conclusions in said document regarding the traditional authority of the indigenous and maroons in Suriname, and the conclusions regarding case no. 12.338 Twelve Saramaka Lo's vs. Suriname. The specific reference of this case before your Honorable Court in this official document is a clear indication that when the application was filed in 2000 with the Commission, by the alleged representatives of the Saramaka tribe, the local authority of the Saramaka people, Gaa'man Songo Aboikoni, did not consented to do so. Moreover, as stated in the previous communications of the State the case was permitted without the expressed approval of the Gaa'man because there was an internal dispute between Gaa'man Songo Aboikoni and some of his members of his tribe. As stated by the State, the petitioners brought that internal dispute to the table of the Commission, by using a (false) argument, provided by the foreign lawyer, Fergus MacKay, that they do not need the approval or consent or whatever from the Gaa'man to bring a claim to the Commission.

151. As a matter of fact, in July 2006 the State invited the current Gaa'man of the Saramaka People for a meeting and also the organization that petitioned the Commission and the different Lo's (clans) were invited to attend the meeting[61]. This meeting was the first ever held between the Association of Saramaka Authorities as an entity with Gaa'man Belfon Aboikoni. This is once again a

[61] On July 26, 2006 the meeting was held at the Office of the Chairman of the Commission Legal Experts in Human Rights who is also the Prosecutor General at the High Court of Suriname.

clear indication of a total disregard of the Paramount Chief of the Saramaka people.

152. This approval is an indication of the illegality of the application when it was submitted to the Commission in 2000.
However, the State points out that this approval by the Gaa'man of the Saramaka people, Belfon Aboikoni as a cosigner of this document does not at all remedy the illegality that existed in 2000 when the petition was submitted with total disregard of the Gaa'man to the Commission.
The State argues that it seriously questions the arrival to this point by which "approval" is given to the illegal submission of the petition. The State has already pointed out that the signing of the submission to the Commission has taken place under questionable circumstances.
Moreover, the State argues that approval can not be given afterwards to remedy this illegal act because in doing that this will be a carte blanche to every one with or without a viable claim to address institutions outside the jurisdiction of the State and afterwards using questionable methods and circumstances in trying to remedy the situation at hand. The State vigorously apposes this position, because this will further lead to the destruction of the customs and traditions of the Saramaka people. This will also in violation of the rights of the indigenous and maroons to be allowed to enjoy their cultural identity to the fullest extent.
Because the abovementioned reason the State argues that your Honorable Court must conclude that the Commission acted against the Convention by admitting this petition filed in 2000. Therefore the State argues that this Honorable Court must remedy this judicial mistake by the Commission and declare the application submitted by this Commission to the Court inadmissible.

153. The State points out that in the current development of international laws and relations, there is a growing tendency by which several general principles are being incorporated within the accepted customs and traditions of several tribes. Concepts such as democracy, elections, transparency, etc. are growing

and there will be a stage in which these concepts will be incorporated in the established customs and practices.
The State argues that it can only act as a moderator in this respect and that it does not have the authority to force certain concepts on people who have been operating in a certain manner based on their established customs and practices. Even so the State argues that it must respect the religious and cultural rights of the peoples living in Suriname.

154. The State apposes the acts of a foreign lawyer who does not have any link with the State of Suriname and is trying to single-handedly change the customs and traditions of the Saramaka tribe in Suriname by forcing certain concepts in to these proceedings. The disaster that has currently come out from the acts, are at this particular moment very clear[62].

155. The State has clearly communicated this issue with the Commission and had also brought this issue orally to the attention of the Commission at the hearing in October 2004, referring to the total destruction of established customs and traditions of the maroons, particularly of the Saramaka tribe. The State is of the opinion that the Commission did not address this issue adequately. Moreover, the State is of the opinion that the Commission addressed this issue very poorly, disregarding the total destruction of the established customs and tradition at one hand while on the other hand the petitioners submitted to the same Commission, demands that the State must maintain customs and traditions of the Saramaka tribe.

156. Since the State has raised this issue during the proceedings before the Commission, the State has the right to request your Honorable Court to address this issue in detail. In fact the inconsistent and opportunistic arguments of petitioners are in question. On the one hand demanding the State to respect their

[62] The abduction of the Gaa'man of the Saramaka People is just one example. The growing resistance towards the traditional authorities is another example.

customs and tradition, while on the other hand blaming the State for upholding their customs and tradition when the State points to the status of the elected Gaa'man within the maroon culture and customs. The argument that the latter position (regarding the Gaa'man) is the view of the Saramaka people themselves of their own Chief and therefore it must be respected by the State, is totally unfounded, since this will lead to the opportunistic application of culture, tradition and customs just as the Saramaka people prefers. And this is exactly the danger that is tacitly implicated in this position.

When must the State abide by the customs and traditions of the maroons, e.g. the Saramaka people? And when must the State deny the application of the customs and tradition of the maroons e.g. the Saramaka people?

157. The State is of the opinion that if the Saramaka people have internal problems with regard to the status of their local authorities, they will have to address these internal issues themselves based on their long-lasting customs and traditions. Bringing the Commission in to decide on their internal disputes with their local authorities is demanding the Commission to overstep is jurisdiction as mandated by the Convention.

158. As stated in previous communications some of the local dignitaries of the Saramaka Tribe had an internal dispute with their Gaa'man, Songo Aboikoni. Instead of of addressing this internal dispute these authorities founded the Association of Saramaka Authorities (VSG), and on the advice of Mr. Fergus Mackay this internal dispute was brought outside the jurisdiction of the state, to the Commission.

159. The establishment of the VSG was a mere result of the dispute. Moreover, the State is of the opinion that that this entity, the Association of Saramaka Authorities **CAN NOT** serve as the authority acting on behalf of the Saramaka People, since the Chief of the tribe has purposely been excluded from this entity. Therefore, the State argues that also in this respect, this entity can not serve as

legally representing the Saramaka tribe as a whole. Therefore the provisions of article 44 of the Convention are not met.

160. As an example of the complexity of the case and the danger of the matter at hand, the State points to the fact that local authorities wrote to Conservation International Suriname, the well known and established Suriname section of the Washington, DC based NGO, that is very active in Suriname, to make a proposal to the Government to install the Suriname Nature Reservation, the biggest Reservation in the Western Hemisphere. When the government installed the Reservation individual members of the maroon community disagreed and argue that the installation happened without their consent.
In the light of the nature of the maroon communities in Suriname, this matter must be dealt with in a very precarious manner, as the State has always communicated to the Commission. The acts that the State has taken so far are a clear indication that the State is willing to address this manner in a precarious way.

161. The State points out that at the hearing held in October 2004 with the Commission, it discussed the discrepancy in the statements of the signatories of the petition, and the view of the foreign lawyer joined by Mr. Hugo Jabini. The State unofficially received information that the Commission contacted the Gaa'man of the Saramaka People. It is not known which request was made by the Commission to Mr. Belfon Aboikoni, the newly elected Gaa'man of the Saramaka people, since no copy of the letter was sent to the State. The State learned of a request made by the Commission through the Gaa'man, who requested the attention of the President of the Republic for the matter.

162. Based on the information the States received on this matter, Mr. Belfon Aboikoni did not respond to the letter or the request made by the Commission because he was threatened by members of the Saramaka community that if he does he will face severe consequences. As indicated in previous correspondence

there is a growing disagreement or unsatisfaction with the local dignitaries. In the light of the treats made to the Gaa'man, the latter was afraid to respond to the Commission.

163. In addition, Mr. Aboikoni faces internal disputes in his tribe. A small part of the lo's are not content with his election of him as the Gaa'man, because they believe that based on their customs and traditions, another lo's should have entitled to deliver the next chief of the Saramaka people. With reference to the treath made by members of the Saramaka community to Gaa'man Belfon Aboikoni, combined with the internal disputes regarding the accession of the late chief of the Saramaka people, Mr. Songo Aboikoni, by Mr. Belfon Aboikoni, the latter was afraid to engage in acts that might increase the internal problems. However, the State believes that this issue should have been dealt with internally – within the Saramaka tribe itself - That is probably the reason why the Gaa'man did not respond to a request made by the Commission.
Strangely enough, the State was not informed of this act taken by the Commission, which is against the transparency of the discussion of the petition before the organ that is charged by the Convention to operate on behalf of all member states when taking care of its duties and responsibilities.

164. The State argues that it experienced the role of the Esteemed Commission in the proceedings regarding the petitions as one that is contrary to the object and purpose of the Commission as entailed by the Convention. The State has already discussed the role of the Commission with regard to the supplemental petitions that the petitioners were allowed to submit in the proceedings, the acts of the Commission leading to the public hearing of March 2004 and the public hearing of October 2004, the response or non response to requests of the State regarding this case[63]. The State is of the opinion that the Commission did not act as the objective organ that is charged by the Convention.

[63] The State respectfully refers to previous information submitted to the Court in this communication with regard to the involvement of Mr. David Padilla, Suriname's participation in the 119th and 121st Public Hearing of the Commission, the request for the minutes of the 119th Session of the Commission, etc.

This was clearly pictured by the way the case was processed before the Commission and referred to your Honorable Court.
Based on the following arguments the State requests this Honorable Court to declare this petition inadmissible.

3.3.2. Duplication of Procedures

165. In accordance with Articles 46(c) and 47(d) of the American Convention, the Commission shall consider inadmissible a petition which is substantially the same as one pending before another international proceeding, or which has been previously studied by itself or another international organization. This refers to an organization which is competent to take decisions on the specific facts set forth in the petition, and measures in favor of the effective settlement of the dispute concerned. See, e.g., IACHR, Reso. 33/88, Case 9786 (Peru), in OEA/Ser.L/V/II.76, Doc. 10, 18 Sept. 1989, at consideranda d – h.

166. In December 2002 petitioners submitted a petition to the Committee on the Elimination of Racial Discrimination (CERD)[64] requesting for urgent action on indigenous and tribal peoples' rights in Suriname. The petition in fact was submitted by three Surinamese organizations, the Association of Indigenous Village Leaders in Suriname (VIDS), the Association of Saramaka Authorities(VSG) and the Foundation Sanomaro Esa, and a UK- Based NGO, the Forest Peoples Programme.

[64] The CERD, which is composed of 18 independent experts elected by states, was established to monitor compliance with the Convention on the Elimination of All Forms of Racial Discrimination, one of the six core United Nations human rights treaties. The Convention has been ratified by 167 countries as of December 2003 Suriname ratified the Convention in 1985.

167. From December 2002 to July 2005, the petitioners have made 5 formal applications to the CERD - committee requesting a decision on a specific rights of indigenous people and tribal people in Suirname..[65]

168. In sum the CERD – committee has formally issued 5 decisions on the rights of indigenous and tribal people in Suriname. The first in March 2003 and lastly in August 2006. [See Annexes 4.1, 4.2, 4.4, 4.5, 4.6 – Decisions of International Human Rights Bodies in Pleadings, Motions and Evidence of the Victim's representatives in the Case of 12 Saramaka Clans (Case 12.338) against the Republic of Suriname.]
The UK Based NGO Forest Peoples Programme also submitted a petition to the Human Rights Committee Concerning the Republic of Suriname and its Compliance with the International Covenant on Civil and Political Rights (ICCPR) emphasizing violations of Articles 1, 26 and 27. NGO report 30 Januari 2002.[66]

169. On May 4, 2004 the [United Nations] Human Rights Committee or ICCPR also issued its Concluding observations with regard to Indigenous and Tribal rights in Suriname. [See Annex 4.3 – Decisions of International Human Rights Bodies in Pleadings, Motions and Evidence of the Victim's representatives in the Case of 12 Saramaka Clans (Case 12.338) against the Republic of Suriname.]

170. The petitioners to the CERD and the ICCPR namely the Association of Saramaka Authorities (VIDS) and Forest Peoples Programme (namely Fergus M. MacKay) are (is) the same petitioner (s) involved in Case 12.338 Twelve Saramaka Clans now before your Honorable Court. Also the nature of the legal claims and guarantees and the facts adduced in support thereof presented

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[65] *Request to Initiate an Urgent Procedure to Avoid Immediate and Irreparable Harm*, 15 December 2002; *AdditionalInformation*, 21 May 2003; *Comments on Suriname's State Party Report (CERD/C/446/Add.1)*, 26 January 2004; *Request for the Initiation of an Urgent Action and a Follow Up Procedure in Relation to the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Suriname*, 06 January 2005; *Request for Follow Up and Urgent ActionConcerning the Situation of Indigenous and Tribal Peoples in Suriname*, 08 July 2005.

[66] See annex

before the Commission and now before your Court are the same and hold no new facts[67].

171. In fact Honorable Court when scrutinizing the petitions submitted to the CERD and the ICCPR one could clearly notice that pertinent parts of Case 12.338 Twelve Saramaka Clans have been copied and pasted or reformulated to fulfill formal requirements to file the petitions before the CERD and ICCPR[68].

172. In the case of *Moiwana Village*, the Inter-American Court of Human Rights held and ordered that Suriname shall adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for their use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories. The State shall take these measures with the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages and the neighboring indigenous communities, including the community of Alfonsdorp.[69]

173. In response to this judgment, on 4 January 2006, Suriname established a Presidential Commission on Land Rights (CLR). The terms of reference of the CLR provide that it shall, by January 2007, "research and identify in ce collaboration with the target groups maroons, Amerindian and other stakeholders the problems relating to land rights, as well as giving advice to the Government concerning the approach to these issues...."[70]

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[67] The State has stated in previous communications that in 2003, immediately after the precautionary measures were issued by the Commission, no new concessions were issued.

[68] Idem 2.

[69] *Case of Moiwana Village v Suriname, Judgment of 15 June 2005*, at paras. 209-10, 233.

[70] Establishment of a Land Rights Commission, Presidential Order of 04 January 2006, at I.

174. The installment of the CLR was necessary to address amongst others the problems rising with regard to the implementation measures the Government had to take with regard to adopt such legislative, administrative and other measures that are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled and the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories.

175. To give your Honorable Court insight in the complexity of the matter at hand the Government of the Republic of Suriname draws the attention of his Honorable Court to a letter written by Mr. Martin Misiedjan, former Counsel for Petitioners, to the Minister of justice and Police of Suriname the Honorable mr Chandrikapersad Santhoki requesting his urgent intervention with regard to problems related to the execution of the Moiwana Decision. Besides the legal heirs of the initial founder of the Original Moiwana Village also Amerindians of the Alfonsdorp Village are claiming part of or the complete "Moiwana Territory". [See the letter of Martin Misiedjan dated[71] 30 August 2006]. That's also why your Honorable Court acknowledged the position of Alfonsdorp by specifically including the community of Alfonsdorp in said judgment.

176. The matter at hand is also more complex because individual Maroon - and Amerindian Leaders applied for and received concessions for logging and mining in the Upper-Suriname and other areas. This behavior led to high tensions amongst the local authorities of the Saramaka Tribe. [See e.g. annex 3.5 (De West, March 26, 1998) – Decisions of International Human Rights Bodies in Pleadings, Motions and Evidence of the Victim's representatives in the Case of 12 Saramaka Clans (Case 12.338) against the Republic of Suriname.]

[71] Letter written by Martin Misiedjan to the Minister of Justice and Police regarding individual rights to property in the Moiwana area.

177. Clearly the claims before the IACrtHR concerning violation of the right to property established in Article 21 of the American Convention to the detriment of Maroon and or Indigenous [Tribal] people have already been decided by this Honorable Court in the *Case of Moiwana Village v. Suriname, Judgment of 15 June 2005.*
Because of the complexity of Indigenous and Maroon Land rights, issues need to be dealt with on a case by case basis taking into account, other individual, tribal and indigenous communities' rights.

178. All the applications before the CERD and the ICCPR and also the above named case of Moiwana Village are principally in relation to alleged violations of indigenous rights or rights of tribal people in Suriname namely the claims before the IACHR concerning violation of the right to property established in Article 21 of the American Convention to the detriment of the Saramaka people. The right to judicial protection enshrined in Article 25 of the American Convention and Articles 1 and 2 of the Convention. (corresponding articles 1, 26 and 27 of ICCPR)

179. In Peter Blaine v. Jamaica, Case 11.827, Report No 96/98, Inter-Am. C.H.R., OEA/SER.L/V/II.95 Doc.7 rev. at 312 (1998), Paras. 42 and following and also in Neville Lewis v. Jamaica, Case 11.825, Report No 97/98, Inter-Am. C.H.R., OEA/SER.L/V/II.95 Doc.7 rev. at 327 (1998), Paras 42 and following. The Commission presented an in detailed explanation of the matter of duplication of procedures.

180. The State refers to Neville Lewis v. Jamaica Paras. 42 and following and Peter Blaine v. Jamaica Paras 42 and following.

> ***42. Where a matter is first presented before one international proceeding, and is then essentially replicated and placed before another, the issue of duplication may be readily identified and disposed of. Where successive petitions do not clearly replicate each other, further analysis may be required. The fact that a communication involves the same person as a***

previously presented petition is just one element of duplication. Regard must also be had to the nature of the claims presented and the facts adduced in support thereof. The presentation of new facts and/or sufficiently distinct claims about the same person could, under certain circumstances, and with other applicable requirements having been met, provide the basis for consideration. (See, e.g., Eur. Comm. H.R., App. 10785/84, Dec. of July 18, 1986, D&R 48/102; App. 12164/86, Dec. of Oct. 12, 1988, D&R 58/63; App. 24088/94, Dec. of Oct. 12, 1994, D&R 79/138.)

It may also be noted that, where a second presentation of claims concerns rights which were not covered by the subject matter jurisdiction of the body before which a first petition was presented, the matter will not, in principle, be barred as duplicative. (See, e.g., Eur. Comm. H.R., App. 24088/94, Dec. of 10.12.95, D&R 79/138

181. It must be noted that in the case Twelve Saramaka Clans, the same petitioner filed exactly the same claim to the CERD Committee and the ICCPR demanding these international quasi judicial tribunals to decide on the same subject matters as the case presented to the Commission.

43. While the Commission has had the occasion to apply Articles 46 (c) and 47 (d) in its practice, it has no previously explained in detail what is meant by a matter which is "substantially the same," and finds it pertinent to clarify what is required in this regard under the terms of Article 47(d) of the Convention, and Article 39 of its Regulations. Having examined the jurisprudence of the European human rights system, as well as that of the UNHRC, and consistent with its own past practice, the Commission observed that a prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof. This essentially means that a petitioner cannot file a petition before the UNHRC complaining of the violation of a protected right or rights based on a factual predicate, and then present a complaint before this Commission involving identical or integrally related rights and facts which were or could have been raised before the UNHRC. .

182. The State argues that based on the above analysis in the case at hand petitioners can not continuously file petitions before the CERD and the ICCPR thereby also overtaxing the government and then present the same complaints to the Inter American Commission and now before this Honorable Court.

> ***44. To illustrate, in Ajinaja v. the United Kingdom, the applicant had alleged before the European Commission on Human Rights that he had been unlawfully arrested, convicted and detained in violation of Articles 3, 4 and 5 of the European Convention. Pursuant to the rejection of that petition as manifestly ill-founded, the petitioner submitted a second application alleging violations of his right of defense under Article 6. The European Commission determined that the second petition represented a reformulation of complaints which clearly could have been presented in the original petition. Both petitions concerned the right to basic due process guarantees and relied on the same factual basis. Similarly, in V.O. v. Norway, the applicant had complained unsuccessfully before the European Commission about alleged violations of his rights in domestic custody proceedings. He then petitioned the UNHRC on the same facts and violations, arguing that the emphasis of the European Commission's analysis had been misplaced, and that the construction of the rights concerned differed in some respects under the jurisdiction of the Committee. The UNHRC deemed the petition inadmissible based on the identity between the legal claims and facts presented before it with those previously presented before the European Commission. (UNHRC, App. 168/1984, in Selected Decisions of the Human Rights Committee under the Optional Protocol, CCPR/C/OP/2, at p. 48 (involving construction of reservation under Article 5(2) of the Optional Protocol).***
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> ***45. 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. For example, where an applicant has brought allegations concerning his or her right to due process at trial and appeal before the UNHRC, and is then subjected to repeated beatings in prison at the hands of guards, he or she could elect to complain about the latter situation before the IACHR. The legal claims and guarantees concerned would be distinct from those pending before the UNHRC, as would the facts alleged in support thereof.

This however, is absolutely not the situation in this instant case.

183. In the case of the Twelve Saramaka Clans v. Suriname, the petitioners have cast their claims under headings distinct from those involved in the petitions presented before the CERD and the ICCPR. It is also a fact that the claims presented before this Court involve the same rights and guarantees, and the same factual predicate as were previously examined and judged by the CERD and the ICCPR. The claims before the IACHR concerning violation of the right to property established in Article 21 of the American Convention to the detriment of the Saramaka people.

184. The right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, in conjunction with articles 1 and 2 of the Convention. The CERD and the ICCPR committees examined the same facts concerning alleged violations in petitioner's case. Challenges on the specific grounds presently invoked by the petitioners before the Commission and now before your Honorable Court have been raised and decided before the CERD and the ICCPR committees.

185. As stated in Peter Blaine v. Jamaica and Neville Lewis v. Jamaica, where a petitioner has filed claims concerning a specific guarantee and factual basis before one international organization, the rules prohibit the

admissibility of claims concerning those same guarantees and facts by this Commission.[72]

186. In accordance with the foregoing with regard to Articles 46 and 47 of the American Convention and applicable provisions of its regulations, the State concludes that due to the prohibition of duplication set forth in Article 47 (d) of the Convention the Government of Suriname submits that the present petition should be declared inadmissible pursuant to the Convention, the rules and procedure of both the Court and the Commission.

187. The State has brought this issue to the attention of the Court in several communications. During the oral proceedings at the 120th session in October 2004 the State has also specifically requested the Commissions' attention for this aspect of duplication since this is in violation of the Convention and all other accepted principles in the IACHR system and other relevant accepted principles of International Law.

188. Still the Commission declares this petition admissible. One of the arguments given by the Commission in paras 121 -125 is that the proceedings before the UN organs were brought by Forest Peoples Program and not by petitioner per se. This however is not true; the proceedings are in fact a duplication. The petitions brought to the UNHRC Committee (based on the ICCPR) and the UNCERD Committee, were brought by and The Association of Saramaka Authorities and Forest People Program. The States asserts that this is probably one of the main reasons why the petitioners who are guided by Forest People Programs' attorney-at-law suddenly changed their standing before the Commission.

189. The State has proven that petitioners do not satisfy the basic requirements to submit a petition to the Commission, since the requirement set forth in Article

[72] See para 46 of the case

46(1) under c: ***"..... that the subject of the petition or communication is not pending in another international proceeding for settlement:"***

190. The State has communicated this issue in depth to the Commission and the Commission should have declared the petition inadmissible. However, the petition was declared admissible by the Commission. Now that the State is not barred from presenting this issue of duplication of procedure to your Honorable Court for adjudication.

191. Based on the abovementioned statements and evidence provided by the State, this Honorable Court is hereby requested to declare that the Commission incorrectly admitted this petition and remedy this legal injustice and declare this petitions inadmissible.

3.4. Non Compliance with Articles 50 jo. 51 Convention

192. The State points out that the commission has no standing to bring this particular petition before your Honorable Court.

Article 50 of the Convention reads:

> ***" 1. 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.***
>
> ***2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it".***

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit."

193. By letter dated 22 march 2006, the State received said Article 50 report and started immediately with the implementation of the recommendations. By communications No. CJDM/103/06 dated May 22, 2006 and CJDM 116/06 dated June 15, 2006 the State informed the Commission of the implementation of the recommendation mentioned in said Article 50 report. After the State has sent its communications to the Commission, not a single response was received by the State.

194. The State wrote the Commission in said case, regarding the implementations of the recommendation, but still there was no response from the Commission.

Article 51 of the Convention reads: reads:

"1. 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 and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members

whether the State has taken adequate measures and whether to publish its report."

195. In the last week of June, 2006 the State was surprised by a news item in the local media indicating that case no. 12.338 "Twelve Saramaka Clans", was submitted by the Commission to your Honorable Court.
On June 30, 2006, the State received a letter from the Esteemed Commission , dated June 26, 2006, informing the State **".....that on June 23, 2006, the IACHR filed an application with the Honorable Inter-American Court of Human Rights in case 12.338 versus the illustrious State of Suriname, pursuant to Articles 51(1) of the American Convention and 44 of the Rules of Procedures of the Inter-American Commission"**
The State is of the opinion that the procedure followed by the Esteemed Commission is highly irregular and incorrect towards the State. The Commission never replied to the Communications submitted by the State with regard to the implementations of the recommendations in the Article 50 Report.

196. The State argues that the application was filed in violation of the Convention because:
a) The application to the Court was filed after the period of three months mentioned in article 51 has prescribed;
b) No article 51 report was adopted by the Commission;
c) The Commission abused the Convention and its current Rules of Procedure within the Inter American human rights system.

197. With regard to para 72 under a. The application to the Court was filed after the period of three months mentioned in Article 51(1).
The report mentioned in Article 50 of the Convention was transmitted to the State on by a letter dated 22 March 2006, pursuant to Article 51(1) of the Convention. The commission should have submitted the case to the Court within three months from the date of transmittal.

198. The Commission informed the State that on 23 June 2006, it filed an application to the Court. 0000356

The Honorable Court informed the State by its letter dated 5 September 2006 of a submission of the Court ***"....that on June 23, 2006 in accordance with Articles 51 and 61 of the American Convention on Human Rights, an application against the illustrious State of Suriname, for adjudication by the Court, regarding Case 12.338 (Twelve Saramaka Clans)".***

The Court states further: ***"That the original petition application was received at this Secretariat, along with its appendices, on July 18, 2006".***

199. The State argues that the Commission should have submitted its application to the Honorable Court on June 22, 2006 and not on July 18, 2006.

Based on the current Rules of Procedure of the Commission, the final date for submitting an application to the Court was June 22, 2006, since the date of transmittal of the Article 50 Report is March 22, 2006. Since the original petition and the appendices were submitted to the to the Court on July 18, 2006, the Commission did not comply with the provisions of the Convention.

200. The State argues that the Commission made a choice not to submit the case within the prescribed 3 months time frame. This indicates that Article 51 comes in force, namely that even if only one day after the three months period, a case is not submitted by the commission to the Court, ***".... the commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration."*** This opinion and conclusions will be set forth in an Article 51 Report.

201. The State is of the opinion that the Commission forfeited its right to submit the case to the Court by letting the prescribed deadline pass by. The period of three months is a fixed time frame set out by the State parties to guarantee a certain transparency and predictability with regard to cases in the Inter American

human rights system. Since the Commission is ***"dominus litus***[73]*"* with regard to the submission of cases to the Court, this mandatory period of three months must be strictly enforced to guarantee the transparency and predictability. Exceeding this three month period leads to the conclusion that the commission opts for the next procedure as stated in Article 51 of the Convention, namely, the adoption of the Article 51 Report. Submitting an application afterwards to your Honorable Court, in violation of the Convention, leads to the only conclusion by your Honorable Court: inadmissibility of the application submitted by the Commission. The State concludes that your Honorable Court should declare the application submitted by the commission inadmissible, now that it is submitted in violation of the Convention.

202. With regard to para 72 under b:
The State was not informed of the adoption of an Article 51 report drafted in case 12.338 "Twelve Saramaka Clans". The State did not receive such a report, if adopted. Since the mandatory period of three months mentioned in Article 51(1) has elapsed, the Commission should have adopted an Article 51 Report concerning the questions submitted for its consideration.

203. With regard to para 72 under c. The Commission did not abide by the Convention and its current Rules of Procedure within the Inter American human rights system, and in some respect even gave the opportunity to the petitioners to abuse the procedures. The State respectfully points to the issues discussed previously indicating the acts taken by this Commission in this particular case.

1. As discussed in previous communications to the Commission which are included for this Honorable Court, the State claims that the Commission gave the petitioner the latitude to constantly and disproportion ally submit additional petitions (approximately 11) throughout the proceedings;

[73] Those who have the authority to decide on the subject matter. Pursuant to Article 51(1) of the Convention, the Commission has the authority to submit cases to the Honorable Court.

2. The Commission gave the former Assistant Executive Secretary, Mr. Padilla the possibility to act as advisor and counsel for the petitioners in this case before the Commission;
3. The Commission did not give the State the opportunity to attend the 119th Hearing of March 2004, by purposely not inviting the State in a timely manner as mandated by the current rules applicable in the Inter-American human rights system.
4. After the Commission refused to postpone the March 2004 hearing, the State immediately requested a hearing before the Commission on Case 12.338, Twelve Saramaka Clans, based on the Rules of Procedure of the Commission. This request was submitted to the Commission on .....2004. Strangely enough the Commission never responded to this urgent request made by the State. Moreover, the State has communicated to the Commission that it deems it very important to have this public hearing on said case. Despite the request made by the State for a public hearing, it had to submit a second request to remind the Commission of its request for a public hearing. Finally, the State was able to attend the 121st Session of the Commission and present facts, testimony and opinions on several issues regarding case no. 12.338. Also other relevant and interrelated aspects of the case were brought to the attention of the Commission during this hearing.
5. The State points out that its delegation that attended the 121st Session of ten people. The State has made enormous efforts to bring local experts regarding several issues at hand, to the hearing. The State found the acts taken by the Commission very appalling. During the hearing on the Case, the Commission was presented by only one member, President Kamu Roberts. The second member of the Commission abruptly stood up shortly after the meeting started and never returned to the hearing even though it continued for almost three hours. The State is of the opinion that the Commission did not treat the delegation of the State in a respectful manner. Based on the performance of the Commission at the hearing, the

State has serious doubts if the information provided by the State during the public hearing was ever seriously taken into consideration by the Commission. Once again the State must conclude that the position taken by the Commission during the hearing is not considered as that of an objective human rights organ.

6. Despite several requests by the State to the Commission, the latter did not submit the minutes or other information regarding the 119th Session of the Commission involving the case at hand, to the State. The State was unable to respond adequately to the statements made at said 119th hearing in March 2004 by the petitioners and their expert witnesses. The State attended the 121st Session of the Commission in October 2004 without any information as to the contents of the March 2004 Session. It must be concluded that the State was placed in an disadvantageous position and that the Commission did not correctly apply the procedural rules and regulations to the State.
7. The State points out that the Commission purposely did not respond to the communications submitted by the State after it received the Article 50 report of the Commission in said case. The State argues that in fact the Commission misled the State by failing to respond to the implementation by the State of the recommendation mentioned in the Article 50 report. The Commission could have communicated its opinion on the implementation by the State of the recommendations of the Article 50 report.

The State argues that for among other the reasons stated above the application submitted by the Commission must be declared inadmissible.

4. SUBSTANTIVE LEGAL ANALYSIS 0000360

4.1. Introductory Remarks

204. In the case at hand the State is going to analyze the submission of the Commission, whereby it is contesting all allegations made by either the petitioner or the commission.
In the analyzes the State is going to proof that as is stated in the Constitution in article 8, "that all who are within the territory of Suriname shall have an equal claim to protection of person and property" and article 34 which states *inter alia* that everyone has the right to the undisturbed enjoyment of his property, subject to limitations which originates in the law.
Article 41 of the same Constitution further states that "natural riches and resources are the property of the nation and shall be used to promote economic, social and cultural development". It further states *inter alia* that the natural resources are to be utilized for the benefit of the economic, social and cultural development of Suriname.
Turning to article 21 of the American Convention it is clear that there is the same wording as in the Surinamese Constitution. Article 17 of the Charter of the Organization of American States establishes that "Each State has the right to develop its cultural, political

205. Suriname is of the opinion that it has not violated the rights of its citizens in the territory of Suriname.
The Commission submitted the above-mentioned application to the Court alleging that Suriname has violated the following rights of the Saramaka people as enshrined in the Convention: Articles 21 and 25 in relation to articles 1(1) and 2.

206 In a communication[74] the Commission had issued precautionary measures of which the State has complied.
In June 2003 the Commission placed itself at the disposal of the parties to facilitate a friendly settlement. Due to the impossible requirements of the petitioners the process of a friendly settlement came to an end.

207, In March 2004 a hearing was held before the commission whereby the State notified the commission that it could not attend the hearing due to other obligations[75]. In September 2004 the State requested a hearing before the Commission which was granted.

208. On March 02, 2006 the Commission issued an article 50 report[76] in which it is alleged that the State of Suriname has violated the rights established in the Convention (articles 1, 2, 8, 21, 23, and 25) and the American Declaration (articles XXIV and XIII)
In the instant case the Commission considered the admissibility of the petition jointly with the merits of which the State objected.
The State has complied to the recommendations of the Commission, but still the commission thought it necessary to take the State to the Court

209. The State wants to point out that according to law and jurisprudence the human rights norms and principles which are applicable to this instant case are the American Declaration, the American Convention, the Surinamese Constitution, the Surinamese Civil Code, the Mining Decree, the Forest Act and all other national laws and regulations relevant to this case, the principle of a fair balance

[74] On August 8, 2002
[75] In February 2004 the State had to present the country report in Geneva and in March a country report at the UN headquarters in New York
[76] Report No 9/06 Admissibility and Merits, case 12.338, The Twelve Saramaka Clans

210. The State is of the opinion that it has not violated the human rights of the Maroons as enshrined in articles 21 and 25 of the Convention and neither has it fail to comply with its obligation in the articles 1 and 2 of said Convention.
On the other hand the Commission is of the opinion that the Republic of Suriname has violated the rights of the Saramaka people as enshrined in the Convention namely articles 21 and 25 and failed to comply with its obligation as enshrined in articles 1(1) and 2 of the Convention.

4.2. Comments Report no.9/06 of March 2, 2006

Procedure for Friendly Settlement

211. In addition to the remarks in this document put forward by the State with regard to the joint admissibility and merits report no. 9/06 in case no. 12.338, Twelve Saramaka Clans (Lö 's) Suriname, adopted by the Commission during its 124th regular period of sessions, the State will address a few specific issues mentioned in this report.

212. The friendly settlement procedure was terminated by the petitioners after the State had given its comments on the proposed agreement submitted by the attorney of petitioners.
A crucial factor in terminating the friendly settlement procedure was the principle demand of the State of Suriname that the Gaa'man of the Saramaka Tribe must be part of the proceedings since leaving the highest local authority of the Saramaka people out of the procedure would indicate a violation of accepted customs and traditions of the tribe itself.
The fact that previously the State of Suriname had been confronted with different views or a change of position among maroon tribes, and that the state have been accused of not abiding by the customs and traditions of the maroons , was a leading factor in requesting the participation of the Paramount chief of the Saramaka Tribe.

Petitioners' denial to continue further participation in reaching a friendly settlement is a clear indication that there never was a will to reach a friendly settlement in this matter.
The Commission did not address this issue adequately in its report no 9/06 of March 2, 2006.

Hearings before the IACHR.

213. As stated previously in this document, the State clearly communicated to the Commission that it was not invited in a timely manner to participate in the 119th session of the Commission held in March 2004. The State refers to its letter of March 2, 2004 no. P.G.652/04. The State informed the Commission that based on Article 62(4) of its Rules of Procedure the State was not informed of the hearing at least one month in advance.
The State argued that by providing this information after the period mentioned in said article 62(4), the State did not have sufficient time to adequately prepare for the hearing. The State refers to the list of annexes (annex 40).

214. In the same letter dated March 2, 2004, the State requested a hearing before the Commission regarding case no.12.338 pursuant to article 62(2) of the Rules of Procedure of the Commission.
The State respectfully points out that the request for a hearing was submitted to the Commission pursuant to article 62(2) of the Rules of Procedure of the Commission. The request was made as follows:
"…..the State hereby explicitly requests a hearing in case no. 12.338 Twelve Saramaka Lö's (Communities) ".
The State notes that in this Commission's report no reference is made to said request.
Instead, the Commission suggests that the State requested a last minute hearing in case no. 12.338 by a note dated September 22, 2004 (Reference paragraph 53 of report No 9/06).

The State vigorously opposes this statement by the Commission and respectfully refers to annex 40.

215. The State is very disappointed as to the way it was treated by the Commission, and once again refers to the questionable position of the Commission throughout these proceedings.
The State reiterates that despite its several requests, the Commission did not submit the minutes and other documentations of the 119th sessions (held in March 2004) to the State.
The State was unable to respond to the statements and submissions of the petitioners made during the 119th session.
The State is of the opinion that this report does not entails the correct statements of facts regarding the discussions concerning the 119th and 121st session of the Commission. The State of Suriname was not treated in an acceptable manner.

216. The State believes that to preserve the Inter-American Human Rights System and to safeguard the necessary transparency on behalf of all actors taking part in the System an analysis of the status, and role of the Inter American Commission as one of the supervising actors, must be discussed in the near future.

Legal standing of petitioners

217. The State indicates that it never had the intention to designate who may represent the Saramaka people. The State is of the opinion that the Saramaka people have decided who has the authority to do so by choosing their Paramount chief.
As discussed in this document the petitioners cannot randomly decide when they want the official chief of the tribe to represent them and when not, simply because some members of the tribe have a dispute amongst one another.

The State respectfully refers to above stated analysis on the issue of legal standing of petitioners.

The granting of concessions

218. The State wants to bring to the attention of the Honorable Court that the Saramaka people are involved in decision-making regarding concessions on their land. The procedure in the concession process[76] is that when an individual or organization filed a request for a concession, he had to submit a statement signed by the Gaa'man or captain of that particular area, that he the Gaa'man has no objection to the granting of the concession.
This is one of the requirements in getting a concession.
The State once again wants to point out that there are no concessions granted without the consent of the Saramaka people and authorities. The State agrees that there may be some illegal logging, but this is due to the Saramakas themselves. Almost all villages have a community forest to use and explore at the benefit of the villagers. In many cases the captain, of the village who is the holder of the concession of the community forest, leases the concession to third parties and sometimes keeps the revenues for himself. When difficulties arise the Saramakas are writing letters to the Foundation for Forest Management and Production Control for assistance in solving the problems. Annex..
The State will also provide your Honorable Court with an overview of Saramakas who are holding concessions. **Annex 54**

4.3. Analysis of the application of the Commission

219. The State will analyze the alleged violations of the Conventions as stated by the Commission in its application to this Honorable Court.

[76] Annex 55 concession procedure

4.3.1. Right to Property, Article 21 Convention

220. Article 21 of the American Convention: the Right to Property
If your Honorable Court compares article 21 of the American Convention and article 34 of the Surinamese Constitution you will notice that it is almost of the same wording

221. The right to property is one of the provisions of almost all the above-mentioned Declaration, Convention, Acts, Laws, etc.
Article XXIII of the American Declaration, the right to property, reads as follows:
Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

Article 21 of the American Convention, the right to property, reads:

1. *Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society*
2. *No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law*
3. *Usury and any other form of exploitation of man by man shall be prohibited by law*

The Surinamese Constitution establishes in article 34 the right to property as follows:

1. *Property, both of the community and of private persons, shall fulfill a social function. Everyone has the right to the undisturbed enjoyment of his property, subject to the limitations which originate in the law.*
2. *Expropriation shall take place only in the general interest, pursuant to rules to be laid down by law and against compensation guaranteed in advance.*
3. *Compensation need not previously be assured if, in case of emergency, immediate expropriation is required*
4. *In cases determined by or pursuant to the law, the right to compensation shall exist if, in the public interest, the competent authority destroys or renders property unusable or restricts the exercise of property rights*

222. In the Surinamese Civil Code provisions of property are to be read in the articles 625 up to article 670.
Surinamese legislation does not only establish the way to achieve property, but also determined what will happen in case of expropriation.

Article 8 of the Surinamese Constitution establishes that

1. *all who are in the territory of Suriname shall have an equal claim to protection of person and property;*
2. *No one shall be discriminated against on grounds of birth, sex, race, language, religion, education, political opinion, economic position or any other status*

223. In Suriname collective rights were known as the Dutch words *dorpsgemeenten en waterschappen*, but in all other cases the individual right is recognized by national legislation. In 2000 the Suriname administration recognized the collective rights of the indigenous people and the maroons by Presidential decision. (see annex)
The State has already recognized the collective rights of the indigenous and maroons in said document, so the State can not violate article 21 of the American Convention.
Since the collective rights is recognized but does not form part of the Surinamese Constitution, the State is working at recognition of said rights in national legislation.

224. The State wants to State that in the case at hand the State is working to an integral solution for the land rights issue, since at the Moiwana judgment[77] the Court has ordered Suriname to demarcate the land of the N'djuka people in the village of Moiwana. In that case the land was also claimed by the indigenous

[77] Judgment of 15 June 2005

community. These indigenous people of the neighboring village claimed that the land, on which the Moiwana village was located, was theirs.

225. A lawyer who is a maroon also claimed that the land on which Moiwana village is located, is from his grandfather (see letter as annex) In other locations on the territory of Suriname there is also land which is claimed simultaneous by maroons and indigenous people. Land claims by maroons and indigenous can lead to the existence of complex conflicting interests, which will require careful analysis. This analysis is being conducted by the national land rights commission which was appointed by the President of the Republic of Suriname in February 2006. **(annex 50)**

226. This national land rights commission has to advise the government of Suriname on the land rights issue regarding the maroons and indigenous people in order to adopt an appropriate framework to govern more legal recognition of the rights of indigenous and maroons to their communal land. Your Honorable Court has to keep in mind that the process of indigenous and maroons titling of the communities on the territory of the Republic of Suriname is characterized by being complex, due to the following circumstances: a. the phenomenon of proliferation of indigenous and maroon communities, as a consequence of the dismemberment of these groups; b. the phenomenon of migration of indigenous and maroon communities, especially the indigenous who occupy land that is not ancestral; c. human groups from the city and abroad that claim indigenous and maroon status.

227. The State must point out that even among the indigenous and maroons there are no communis opinion how to address this land right issue. This became very evident at the conference on land rights of indigenous and maroons in Suriname, which was held in November 2003. Some descendants from maroons live and work in the cities and have no other link with the interior than that they were born out of a maroon who is maybe still living in the interior. Several of

these individuals own property land in the cities. Property which were purchased or given by the State based on the current land legislation. These individuals still claim that they are entitled to land rights in the interior. After informing the indigenous and the maroons and with their participation the national land right commission will conduct a national dialogue on the land right issue which is to beheld in February 2007. This will be done after a thorough consultation with the indigenous and maroons.

228. In the opinion of the State, the Commission, in explaining the collectiveness of the exercise of the rights and freedoms of the indigenous and tribal communities, is constantly referring to the ILO Convention no. 169, of which Suriname is not a State party. At the same time the Commission, in effect, is interpreting through the American Convention, various articles of the Draft Inter-American Declaration of the Rights of Indigenous Peoples, viz: **(annex 11)**

Art. II Full observance of Human Rights;
Art. VII Rights to Cultural integrity;
Art. XIII Right to Environmental Protection
Art. XVI Indigenous Law

Turning to art. 29 (d) of the Convention, which reads as follows:

"No provision of this Convention shall be interpreted as:

d. excluding or limiting the effect *that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have"*

229 The State asserts that the Commission is violating the abovementioned article.

The State does not intend to restrict any enjoyment or right recognized by a Convention to which it is a party, but objects that the Commission applies provision of ILO Convention no. 169 of which the State is not a party (see par. 132, 134, 138) and therefore not bound by this convention. In addition, the norms, codified in this Convention cannot be assumed to be ius cogens or erga omnes norms within public international law. The State is therefore not bound by these norms.

At the same time the Commission is re- interpreting articles which are embedded in the draft Declaration on Indigenous Peoples, through interpreting the American Convention.

The State maintains that also in this case the Commission violates art. 29(d) of the Convention in its attempt to include the effects of this draft Declaration, which, in the opinion of the State is a distorted interpretation of an international instrument which is not binding on the State, since it has not ratified this Declaration, and thus totally lacking legal grounds towards the State (Blake Case, preliminary Objections (judgment of July 2, 1996, para 27.)

230. The State asserts that notwithstanding its great and nobility, the draft Declaration [on Indigenous People], is not a treaty as defined by international law, so art. 64 of the American Convention does not authorize the Court, and for that matter the Commission, to interpret this draft Declaration (Adv. Opinion OC-10/89, July 4, 1998, para 11.

231. In effect the Commission is trying to transform a statement of principles into a binding legal instrument, which would seriously undermine the process of international law making, by which sovereign States voluntary undertake specific legal obligations – to impose legal obligations on States through a process of re-interpretation" or inference" from a non binding statement of principles, indirectly binding the State to a non- binding instrument which is has not ratified

232. The inter-American Commission is using outdated evidence and proof to prove that the Saramaka people of the Upper Suriname River, through agriculture, hunting, fishing and other traditional ways of using the land have ties to large areas of land in the Upper Suriname River region. Anno 2007 the main sustenance of the Maroons in particular the twelve Saramaka Clans is not fishing and hunting, but gold mining and logging. In that way these people are occupying the land they have used for centuries.

233. In para 156 the Commission states that only the forestry concessions have begun activities and that there is illegal gold mining which is practiced in Saramaka territory. In annex ... your Honorable Court can see the areas which are deployed by loggers. In 2003 the Commission has issued precautionary measures and from then on the Forest Management Institute have not issued other logging concessions to third parties. The only logging concession was awarded to a Saramaka person.

234. It is also known that the State awards the captain of a village a concession for a community forest on behalf of the village. The captain then leases the concession to third parties and uses the revenues for his own benefit. Article 41 of the Forest Management Act of 1992 states that the customary law rights of the tribal inhabitants of the interior, in respect of their villages and settlements as well as their agricultural plots, will be respected as much as possible.

235. With regard to mining in the Saramaka territory the State wants to point out the Saramaka people themselves have begun activities together with third parties. It is the Saramaka people who work with third parties who have polluted the rivers with mercury. The State has begun to regulate the mining activities in the interior in order to help the Saramaka people so that the least possible damage would be done to the environment.

4.3.1a. Problems with demarcation

236. As explained in previous communications the State harbors different ethnic and religious groups. In the interior of the State several maroon and indigenous tribes are living together. With an exception of the internal armed conflict instigated by the military rulers headed by D.D. Bouterse, currently the chairman of the NDP, these groups live in ce harmony with one another and with the environment.

The demarcation of the neighborhood in which these tribes established their villages and can engage in activities that are crucial for their existence (previously hunting, fishing, farming), has never been easy to determine.

The State respectfully points to an example provided in **"Wi Gôn Na Wi Leti"** by **Martin Misiedjan** en **Wensley Misiedjan**, published on 9 december 1999. On page 21 of this study the authors indicate that the Gaa'man of the Njduka tribe choose to narrow down the "territory" of his tribe in favor of the Paramacaners, a neighboring maroon tribe that has grown and has its own Gaa'man.

These authors engaged in a wide survey among Njudka maroons regarding land rights. The report was written with the support of Mr. Fergus MacKay, the lawyer of Forest People Program, the foreign lawyer whose name has been mentioned several times as the principle advisor/lawyer on behalf of some members of the Saramaka community.

237. The authors of the survey continue to point out that "land" in the opinion of the maroons is interpreted in a very broad manner. "Land" is seen as all land that the maroon wants to use to provide for in his existence. In this respect often a comparison is made to a statement made by a local authority referring to the "land" that is considered to belong to his village as the land in which they see and hunt on animals such as deer's, apes and birds. As far as their prey flees, is considered "their land" in which they are entitled to hunt. Obviously, this broad view will lead to difficulties in those areas where different tribes, maroons or indigenous are living.

The State knows that this is exactly a current problem in Nicaragua regarding the implementation of the Awas Tingi Judgment issued by this Honorable Court in 2000.

238. Increasing the complexity of the matter at hand, it must be argued that several villages where the maroons are living are often not one coherent entity but are more a conglomeration of small living establishments that might be considered all together as a village. The living areas of a maroon tribe are often located at different rivers, but they are not one coherent entity. This makes it extremely difficult to engage in an adequate demarcation.

4.3.1b. Collective or individual right to property

239. The State points out that it agrees with several human rights activists who argue that the issue of land rights must be considered an issue of a collective right. This is clearly discussed in the survey written by Martin and Wensley Misiedjan. The State is indeed of the opinion that this issue must be discussed, handled as for a collectivity. The purpose of the State is to have a thorough investigation of the matter at hand, have discussion with the respective groups living in the interior, particularly in those areas where several tribes have villages close to one another.

The State will address this issue of land rights as a collective issue for the maroons and indigenous tribes living in the interior.

If villages have made the choice to continue living as tribal communities in the interior, the State will respect this choice and will certainly take the necessary steps to safeguard the rights of these tribal communities in the area where they live. However, it must be very clear as to what these tribes wants, as to which directions these tribes want to go, as what their view is as to the issue of land rights.

240. As discussed previously some members of the maroons are discussing the issue of land rights as individual rights and not as rights that are given to tribal people because of the fact that they live and have lived for centuries as tribal people in the interior. The State argues that the abovementioned different views among the maroons increase the complexity of the matter at hand. This is the reason that these issues must be addressed adequately in order to achieve an acceptable solution in the matter at hand.

In this respect the State has undertaken several acts to address this issue in the broadest manner. In this respect reference has already been made to the Presidential National Commission on Land Rights.

4.3.2. Article 25 Right to Judicial Protection

241. Article 25 of the Convention establishes that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent Court or tribunal for protection against acts that violate his fundamental right recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties:

And that State Parties undertake:

a. *to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;*
b. *to develop the possibilities of judicial remedy; and*
c. *to ensure that the competent authorities shall enforce such remedies when granted.*

242. The Commission asserts that the 1987 Constitution nor any law of Suriname confers legal status on the Saramaka community – or any of the

indigenous or tribal peoples of Suriname, and therefore they lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community of other traditional collective entities that posses land. 0000375

243. In the opinion of the state, the Commission in trying to manipulate or at least is trying to twist the meaning and intentions of the Constitution of the Republic of Suriname.

244. Even though no provisions are made in the Constitution with respect to the collective rights of the Saramaka community, the State is of the opinion that these rights have over decades always been respected. Moreover, the national legislation of Suriname, provides ample protection and recourse for the maroon community.

245. In the Mining Act provisions are laid down, viz;
Article 47, which stipulates that:

1. *rightful claimants and third parties with an interest of land on which a mining right is granted are obligated to allow holder of this mining right to execute activities on the land in relation to the right obtained, provided that:*
   a. *they received prior information from the holder of his intentions to performs such activities, stipulating the purpose, time and the location where these activities will be carried out;*
   b. *against a prior established or secured indemnification, according to the provisions of this decree;*

246. Article 48 articulates that:

1. *The holder of a mining right shall equitably take into considerations the interest of rightful claimants or third parties with an interest and shall*

perform his activities in such a way that the interest of rightful claimants or third parties with an interest are harmed as least as possible;

2. *the holder of a mining right is obligated to indemnify the rightful claimant or third parties with an interest for all damages done as a result of his activities, whether or not through his fault,*
3. *In case the parties cannot come to an agreement with respect to the amount of indemnification, as mentioned in the previous par., the most appropriate party can request a judicial ruling.*

247. Article 21 of the Forestry Management Act articulates in par. 5 the following

" In the general interest no applications will be considered, in case the exploration and exploitation will be in violation of one or more basic principles as laid down in article 2 of this Act".

In article 2 of this Forestry Management act, which should be read in connection with article 21 of this act, the "general interest" principle is further expounded, viz:

1. *the minister is in charge of forestry management, which is aimed at a rational use of the forest as a self- generating natural resource, in such a way that:*

a. *the stabilizing influence of the forest on the natural environment, in particular the soil, the water, the flora and fauna, are not affected and thus the fundamental natural requirements for the sustainability of the quality of life in Suriname is guaranteed;*

b. *the advantages to be derived from forestry exploitation, should, from a national-economic point of view, be optimal, in particular in relation to the desired diversification of the industry,*

increasing the employment and the distribution of economic activities across the entire country;

the recreational and other social functions of the forest are maintained en further developed;

2. The management as referred to in par. 1 is applicable to all forest areas within Suriname;

3. The management as referred to in par. 1 should provide for an all encompassing forest planning, in the framework of which necessary provisions will be made in order to protect, regenerate and improve the forest, as well as an appropriate supervision on the forestry exploitation in the forestry processing industry.

248. Article 41 of the Forestry Management act states in par.

1a. The customary rights of the tribal and indigenous people in their villages, settlements and agricultural grounds, will be respected as much as possible.

1b. In case of violation of the customary rights mentioned in sub 1a, a written appeal can be lodged with the President by the traditional authorities of the tribal communities living in the hinterland, stating the reasons on which the petition is based. The President appoints an appropriate commission who will advise him in this matter.

249. Furthermore the State asserts that the rule of "*general interest*" is not a rule that is applicable to maroons *per sé*. It is a general rule of national law which is embedded in the Surinamese legislation and thus applicable to all subjects in the Republic of Suriname.

250. The State is of the opinion that the "general interest will", by the very nature of its implications, entail limiting the rights on an individual. Of course, the government of Suriname is aware of the fact that the general interest should not be to the detriment of the individual. In this regard, the national legislation

provides for procedures for compensating individuals, whose land are ousted or reposed by the government in the general interest.

251 The decree on Land Management (Decree L 9) art 4 par. 1 does establish that the customary rights of maroons shall be respected unless they conflict with the general interest The "general interest" is to be explained as being in the interest of the state, hence in the interest of the entire nation.
In the explanatory notes on art 4 par 1, the meaning of this article is elaborated on, as it states that "*taking into account the fact that the inhabitants in the interior, who still live in community relations, are dependant of various areas in the interior, it is a condition sine qua non of equity that account should be given to their factual rights on those areas, when domain land is being issued*".

252. In the Decree L-2 of June 15,1982 regarding issuing domain land several provisions are made with respect to ousting or taking into repossession of domain land by the government in the general interest.

Article 29 of this Decree stipulates that *the right to land lease may be ended in part or in whole, because of:*

c. a declaration of expiration in the general interest

Furthermore article 31 of this Decree is articulated as follows"

1. .In case the domain land which has been issued under the title of land lease will be needed in whole or in part for any public service or for any objective in the general interest, the Minister can declare this right in whole or in part expired in the general interest, as regards the piece of land that is needed.
4. the land lessee will be informed by the State by registered and certified letter of the ministerial decision and the related map On the copy of the decision the land registry office will make a declaration of transfer

5. The land lessee whose title has been declared expired in part or in whole in the general interest, is eligible for an indemnification, among which the improvements, the value of which will be determined by the Land commission with the possibility of appeal at the Court of Justice, in the event parties cannot come to an agreement in a friendly settlement.

253. Therefore the State asserts that the "general interest" as has been simplistically explained by the "expert witness", Mr. Muskiet that a company can just go into the forest and destroy domain land just at will. Within the national legislation guarantees are embedded for those who feel that their rights have been trespassed. In accordance with article 25 of the American Convention, the State has the duty to adopt positive measures to guarantee the judicial protection of the individual. Although the collective rights of the maroon community have not been codified in the Constitution of the Republic of Suriname, the State is of the opinion that, as stated before, appropriate protection under the law is guaranteed.

254. As this Court has previously held, the State has the obligation to provide judicial recourse is not simply met by the mere existence of the Courts or formal procedures, or even by the possibility of resorting to the Courts. Rather, the State has to adopt affirmative measures to guarantee that the recourses it provides through the justice system are "truly effective in establishing whether there has been a violation of human rights and in providing redress" **(see, for example, I/A Court H.R.; Judicial Guarantees in States of Emergency (arts. 27(2), 25 and (8) American Convention on Human rights); par. 24).**

255. Under Article 46(1) of the Convention and in accordance with general principles of international law, it is for the State asserting non exhaustion of domestic remedies to prove that such remedies in fact exist and that they have not been exhausted (*Velasquez Rodriguez case Preliminary Objections, supra 29, para. 88; Fairen Garbi and Solis Collares Case, Preliminary Objections,*

supra 39, para 87, and Godinex Cruz Case, Preliminary Objections, supra 39, para. 90)

256. The State asserts that its judicial system provides ample recourse to the Saramaka community and that they have not fully used the procedures that are available under the national legislation. The petitioners have not exhausted all remedies that are available to them.

257. The Commission asserts that the Saramaka community has lodged official complaints with the President of Suriname without receiving a reply. The Commission therefore submits that "these" remedies, in their current form, are intrinsically ineffective for guaranteeing the right of the Saramaka given the balancing of interest that the State has to establish in considering land issues and their rights.

258. The State is aware that the President did not react to the complaints made by the Saramaka community, under the remedies which were available to them under article 41, par. of the Forestry Management Act.

259. Yet, the State is of the opinion that the appeal procedure as laid down in this article is an administrative appeal, which is available within the reigns of the administration. The procedures for administrative appeal entail that an appeal is made on a decision taken by a lower administrative body. By making an appeal, a decision or an act of a lower body is being laid down for scrutiny by another body than the one that had taken the primary decision (**Hoever – Damen, pg. 341-342)**

260. The State is of the opinion that petitioners purposely did not pursue the other remedies which are readily available to every citizen and which are effective, because citizens do make use of these procedures. In the opinion of the State the petitioners want to establish the negative impression that this

appeal on the President is the only remedy that is available under the domestic law, which is not the case.

261. Pursuant to art. 1386 (and following) of the Civil Code of Suriname the petitions could have filed a suit against the administration on the basis of tort at the Cantonal Court. In order for the Cantonal Court to adjudicate a petition, several requirements must be met, such as:

1. the jurisdiction of the Cantonal Court to hear the case;
2. the claim of the claimant must be susceptible, whereby in cases against the administration special meaning is attributed to forms of judicial protection;
3. the act or omission of the administration must be an act of tort, which means in contravention of a written or unwritten legal norm;
4. this norm must be destined to protect the interests of the complainant;
5. harm must have been done;
6. the administration must be liable for the act.

(Hoever/Damen page 385-386)

262. The State asserts that the summary proceedings, is another remedy which could have been pursued by the petitioners, which they have failed to do so.
If, in the opinion of the petitioners their rights were violated and there would be an element of urgency in this matter, then the summary proceedings procedure would provide ample remedy in this matter.
This summary proceedings procedure is embedded in art. 226 of the Code for Civil procedures, which articulates that in all cases which require immediate urgency, provisional measures are required and in all cases where the interest of the parties requires a provisional measure, a decision of the Cantonal Court can be requested.

In the opinion of the State, the petitioners have never made use of these remedies that have always been available and still are available.

263. As this Honorable Court has stated concerning the burden of proof that "*if the State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of article 46(2) of the Convention. It must not be rashly presumed that a State party to the Convention has failed to comply with its obligations to provide effective remedies"(Velasquez Rodriguez case, 4/1988. para 59)*

264. This Honorable Court has previously stated that *the rule that requires the prior exhaustion of domestic remedies is designed for the benefit of the State. The rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it, before it has had the opportunity to remedy them by internal means. This rule is considered a defense for the State (Viviana Gallardo et. al. case Prelim. Obj. Series A no. G 101/81, para 26).*

265. The State asserts that the petitioners, by the mere fact, that they have not even contemplated other national remedies which are readily available to them, are trying to use the rule of exhaustion of local remedies to their own benefit and discretion and by doing so, are jeopardizing the judicial branch of the state.

266. As this Court has held that "*the mere fact that a domestic remedy does not produce a result favorable to the petitioners does not in and of itself demonstrate the inexistence of exhaustion of all effective domestic remedies*" ***(supra para. 68).***

The State reiterates that the petitioners should still exhaust the domestic remedies which are readily available to them.

4.3.3. Obligation to respect rights and Domestic Legal Effects (Articles 1 and 2 Convention)

267. Article 1 of the American Convention articulates that the State parties:

"undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition"

Article 2 established that:

"where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the State Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms".

268. The State of Suriname has complied with its obligation under article 1 and 2 of the American Convention, since everyone living on the Surinamese territory is regarded as a Surinamese. Even though there are various groups who are claiming to be indigenous and/or maroons in Suriname they are in the first place Surinamese. In article 34 of the Surinamese Constitution establishes that Surinamese have a legal status

269. Article 41 of the Mining Management Act of 1992 establishes the customary law rights of the tribal inhabitants of the interior

The rights of all persons/individuals living in Suriname are recognized by the Constitution and the Civil Code of the Republic of Suriname. It is the governments policy to develop and foster a sphere of harmony in the Surinamese society, because of its already diversity in ethnicity, religions and cultures. Privileging certain groups above others would not be in the interest of the society at large as that would deteriorate the foundations of the process of nation building in Suriname.

270. Since the elections in 1985, democracy has gradually been restored in Suriname and is increasingly improving. The Judicial branch, as part of democracy is also developing positively, and it may be said that this branch is in effective operation. In the opinion of the government the petitioners deliberately failed to initiate Court procedures and exhaust the local remedies (jurisprudence). The Government of Suriname is of the view that the Commission has the tendency to easily accept that local remedies have been exhausted.

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271. The State of Suriname does not deny that the maroons have certain communal rights on the lands that they occupy, a right which has evolved over centuries. Yet there has been a tendency now, which has developed over the past few decades that the number of maroon people acquiring a plot of land on an individual title in Paramaribo is increasing.

4.4. The Request for Reparations and Costs

272. The Commission holds that the failure to guarantee the right of property of the Saramaka community over their territory and the human rights violations described above, inflicted material and non material harm on the victims.

273. In compliance with the basic principles of international law, a State's violation of international standards gives rise to its international responsibility and, consequently, its duty to make reparations. In this regard, the Court has expressly and repeatedly maintained in its jurisprudence, that "*any violation of an international obligation that has produced damage entails the obligation to make adequate reparations*" ***(I/A/ Court H.R. case of the Street Children" v. Guatemal;. Villigran Morales et al) Reparations, art. 63 (1) American Convention on Human Rights) Judgment of May 26, 2001; par. 59)***

274. The State asserts that it cannot accept international responsibility, since it has not violated any international instrument, which it has ratified. As the State has earlier asserted, the Commission is trying to re-interpret provisions of international non- binding instruments, of which Suriname is not a party to and thus has no legal obligation to be bound by.

275. As this Court has held that "reparations of damage caused by the violation of an international obligation requires, whenever possible, full restitution (restitution in integrum), which entails re- establishing the situation as it previously stood" If that is not possible, "it falls to the international court to determine a series of measures to guarantee the violated rights and to repair the consequences arising from the violation and to order payment of reparations in compensation for the damage caused. The respondent Sate may not invoke provisions of domestic law in order to modify or fail to comply with the obligation of making reparation – all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law" (I/A Court

H.R. Case of Bámaca – Velasques v. Guatemala, reparations (art. 63(1) Am. Convention on Human Rights) Judgment of Febr. 22 , 2002, para 39).

276. The State is of the opinion that, since the national legislation provides ample redress to those whose rights have been allegedly violated under the domestic legal system, still have the opportunity to seek recourse before the national court; the petitioner also in this regard have not exhausted these domestic remedies that are available to them.

277. In the instant case the Commission asserts that the question of making amends acquires a special dimension in account of the collective nature of the rights infringed by the State to the detriment of the Saramaka people. Compensation cannot be seen from an individual perspective, since the victims are members of a community and the community itself has been affected. Strangely, the Commission finds that consequential damages must be paid to individuals. This covers the property damage suffered as a result of violations and the expenses incurred by the victims as a direct result of the facts.

278. In the opinion of the State the arguments posed by the Commission are confusing and contradict one another, because on the one hand the Commission acknowledges compensation to the community itself based on the collective nature of the violations if committed. While on the other hand, the Commission introduces a concept of consequential damages arguing compensation of an individual nature.

279. In the view of the State the petitioners have not proved that the community has been affected; since the Commission issued precautionary measures in 2003, the Government of Suriname immediately ceased to grant concessions in the areas in question. In the opinion of the State much harm is done by the Saramaka community itself, because of the practice of under-leasing of forestry concessions to third parties and by small scale gold mining activities by the

Saramaka itself in the areas concerned (see annexes 15, 19, 20, 23 etc). The State cannot be held responsible for damages that were caused by the Saramaka community itself to the environment

280. Moreover, in view of the fact that it has not been proved that the violations attributed to the State were committed, Suriname should not pay compensation of any kind to the Saramaka community. In addition, the State holds, that is must cannot be responsible for payment of costs in the instant case, since no damages have been demonstrated and if so, they themselves contributed to it

281. The State finally asserts that the Saramaka clan is not eligible for neither material nor moral damages This honorable Court has held that linking the claim for moral damages to the unique social structure of the Saramakkas [...] the Court believes that "all persons, in addition to being member of their own families and citizens of a State, also generally belong to intermediate communities. In practice, the obligation to pay moral compensation does not extend to such communities, nor to the State in which the victims participated; these are redressed by the system of laws". *(Aloeboetoe et al case, Reparations (art. 63(1) Am. Convention on Human Rights Judgment of Sept. 10, 1993, Inter- Am. Cr.H.R. (Ser. C) no. 15 (1994)*. This Court further asserts that "*moral damages must, in general be proved"(idem)*

282. The State asserts that the petitioners have not proved that either material or moral damages were suffered. The State therefore requests the Court to dismiss the petitioner's request for reparation and costs.

4.5. Analysis of the Submission of the Representatives of the "victims"

283. The State denies the legitimacy of this document as a separate brief in the proceedings before your Honorable Court, apart from the brief including the application of the Commission to this Court in case no. 12.338. The State denies and contest all statements made in the document ***"Pleadings, Motions and Evidence of the Victim's Representatives in the Saramaka Clans (case 12.338) against the Republic of Suriname".***

284. The State respectfully requests this Court to address this issue in detail in a separate submission. Furthermore, the State request this Court to include its analysis in this official response that refer to issues in said submission as being also related to the submission as being a response of the State to a testimony on behalf of the representatives of the original petitioners codified in said submission.

4.6. Comments on the testimony of expert witnesses and evidence

285. 4.6.1. Statements of Peter Poole (expert witness of the Commission).

1. The statement acknowledges that Dr. Poole is an expert in his field. Even though the audio was not very clear. The State notes the following.
2. The research was done without the approval of authorities in Suriname such as the ministry of ROGB - department of LBB, or the ministry of Natural Resources, the Bureau for Air Research (Dutch: Bureau Lucht Kaartering). The University of Suriname was also not involved in this research. It is an accepted principle that individuals and (or) organizations, that want to engage in research activities in the interior, must seek the approval of certain authorities. This is to avoid the misuse of information

and to protect among others the intellectual property rights of the maroons and indigenous as well as the biodiversity of the rain forest in Suriname.

3. Dr. Poole elaborates on a certain environmental damage. It is not clear however what he means with this environmental damage. The statement is vague / not specific enough. The State points out that this information was presented to the State together with the application and the admissions in November 2006.
4. The State requested Mr. Somopawiro to review certain statements made by Dr. Poole. Maintaining the road properly can also be done by a bulldozer and not only with a grader. Dr. Poole did not only prove that the bulldozers, which were used, by Gi Sheng, were unsuitable for the surface maintenance.
5. The expert witness states that the major damage will be caused to the man road. It is not clear who will cause this damage. The expert witness admits that currently the damage is minimal but that after the concession will start this will increase. It is not clear what he means with this statement.
6. Request Mr. Somopawiro to submit a current photograph taken now – January 2007 – and give his analysis.
7. The ending of the audio is very sudden, request clarification if all issues are addressed.

4.6.2. Statements made by Ms. Mariska Muskiet, Professor at Law at the Anton de Kom University of Suriname

286. Firstly, The State points out that this information was not submitted to the State during the proceedings before the Commission. After March 2004, the State has requested the Commission to send to the State all relevant documentations that were discussed at the 119th Hearing of the Commission in March 2004 to the state. The State did not receive the documents timely. It is highly strange that the Commission, in its position as semi judicial organ in

charge of supervising the compliance of the human rights instruments in the region, did not communicate this information to the State.

287. Secondly, the State respectfully points out that Ms. Mariska Muskiet achieved the Master of Laws degree from the Law School of the Anton de Kom University of Suriname in 1994 as a General Lawyer in Surinamese Law. Ms. Muskiet does not have any post graduate specialization at a recognized institution with regard to property law in Suriname, or in the Caribbean or elsewhere. Ms. Muskiet also does not have any specialization with regard to land rights in Suriname.

288. No publications of Ms. Muskiet are available as to the issue of property law in Suriname neither on the issue of land rights of indigenous and maroons in Suriname.
Ms Muskiet's participation as chairperson of the Board of Moiwana Human Rights Organization Suriname and as of such Acting Director of Moiwana, does not qualify her as an expert in the field of property law in Suriname and/or land rights of indigenous and maroons in Suriname.

289. Thirdly, the States points out that because of the general nature of her law degree, namely basic Surinamese laws, the State considers the statements given by Ms. Muskiet as incorrect. This is among others indicated by:

1. Based on the current laws of Suriname it is possible for the government to issue other titles besides land lease to individuals.
2. The concept of general interest as explained by Ms. Muskiet is simplistic and is more a populist statement made on behalf of the petitioners rather than a statement that is based on professional expertise on the subject matter. The State respectfully points out that Article 21(1) of the Convention explicitly acknowledges the interest of the society, the so-called "general interest principle". Article 21(1) reads: ***"Everyone has the***

right to the use and enjoyment of property. The law may subordinate such use and enjoyment to the interest of society". It is clear that the Convention provides for the possibility that the right to property can subordinate the use and enjoyment of the right to property in the interest of the society, the so called general interest principle.

It is not true that general interest as explained by Ms. Muskiet is a synonym for simple every foreign company that wants a concession in the interior. The State respectfully refers to article 625 of the Civil Code. The concept of general interest is decided based on a certain plan drafted by the Government. Detailed information regarding general interest principle is stated in the explanatory note of the Landmanagement Decree act.

3. Ms. Muskiet did not include these principles in her "expert testimony" before the Commission that is now submitted to your Honorable Court.
4. Ms. Muskiet wrongly explained the concept of prescriptive rights to land. Based on this article individuals can receive a title to land based on prescription. Legally it is possible that a community that satisfies the requirements set out in the Civil Code can be entitled to land by prescription. However, this avenue was never taken by petitioners in the domestic Courts. However, the foreign lawyer who assists petitioners has stated that the Saramaka People are the owners of the land because of the analysis in his book: "The Rights of Indigenous Peoples and Maroons in Suriname" and still he did not submit a claim in domestic Courts.
5. The State is of the opinion that the statements made by Ms. Muskiet are not objective and in contradiction as to what is mentioned in the application, Ms. Muskiet lacks the professional expertise to testify as an expert witness on this specific issue of property law in Suriname and land rights of indigenous and maroons in Suriname.
6. The State points out that the subjective statements given by Ms. Muskiet are not acceptable as expert testimony in this case and can be qualified as subjective testimony on behalf of the petitioners.

7. The State respectfully requests to disregard the testimony given by Ms. Muskiet.

4.6.3. Statements Expert Witness Richard Price outdated

290. The State respectfully points out that petitioners submitted documentations of the expert witness Richard Price which is totally outdated. The State is of the opinion that the information provided by Mr. Price is not based on the actual situation of the maroons in Suriname and certainly not of the Saramaka maroons in Suriname. The State seriously doubts if Mr. Prices has been to Suriname in recent years.

291. On page 13 of the survey written in 1999 by Martin and Wensley Misiedjan, these authors argue that ***"Even though the exploration of gold is directly or indirectly the main source of income for a significant part of the maroons....."***.
This survey was done in ce cooperation with the maroons through several meetings (Krutu's) in different villages.
The authors refer to these activities as the traditional means of support, which are no longer the **THE** means of support of the maroons e.g. of the Saramaka people.

292. This conclusion done in 1999, clearly indicates that at that particular moment fishing and hunting has been replaced as the main sources of income in the maroon communities in the interior. And still Mr. Richard Price in his testimony still refers to fishing and hunting as the main source of income of the Saramaka people.
With regard to the Saramaka people the State submits additional evidence that clearly indicate that indeed the traditional means of income were substituted for mining in gold and forestry. The State requests your Honorable Court to dismiss

the expert testimony given by Mr. Richard Prices as legally unfounded to the matter at hand.

5. CONCLUSIONS

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

The State would like to summarize their conclusions of case no 12.338 Twelve Saramaka lös as follow:

- Suriname has a multi ethnic, multi cultural and multi religious community and wants to emphasize that all fundamental rights and liberties exercised and experienced in the Republic of Suriname are guaranteed through the constitution at their fully extent;

- Based on the current status of the Saramaka maroons in Suriname living in the interior (in villages, in Paramaribo and other in cities, the Saramaka maroons do not satisfy al the requirements of tribal people as posted by the commission, they simply do not qualify the criteria mentioned in the Draft OAS declaration on Indigenous and the ILO Convention no 69;

- The agreements concluded by the maroons with the Dutch colonial power in the 18 th and 19 th centuries are null and void since they are in violation of established *erga omnes* norms (*jus cogens* norms) in public

international law. These agreements cannot be invoked before any national nor international Tribunal;

- The acts of Mr. Fergus MacKay are violating the customs and tradition of the Saramaka maroons, which has been culturally preserved for more then several decade's by the fore fathers of the maroons;

- A consequence of the acts of Mr. Fergus MacKay marks the beginning of the total destruction of the established authority of the local leaders of the maroons living in Suriname and the Saramaka maroons in particular, as he is trying to dismantle the position of the Gaa'man and shows no respect to him as being the highest authority among the Saramaka community;

- A consequence of the acts of Mr. Fergus MacKay is the destruction of the Saramaka tribe itself;

- Mr. David Padilla acting as advisor of petitioners since 2003 is in violation of the Convention, the rules of procedures of the Commission and is against the established ethical principles and norms in the Inter-American Human Rights system;

- The Inter- American Commission allowed Mr. Padilla to participate as an advisor of petitioners in case no. 12.338 Twelve Saramaka clans.

- Due to among the Commissions' role in this violation, it is no longer allowed to file a petition in this case to the Court.

- Mr. Hugo Jabini involvement in this case and his active membership of the political party of Mr. D.D. Bouterse, the former military ruler, who leaded the military dictatorship in the 80's, and who is responsible for several

human rights violations in Suriname, are critical facts in analyzing this case no 12.338 Twelve Saramaka clans was submitted in 2000 to the Commission, at that time when Mr. Bouterse political party was leading a coalition of several parties which formed the government of Suriname;

- The original petitioners do not satisfy the requirements mentioned in article 46 and 47 of the Convention to file a petition on behalf of the Twelve Saramaka communities. The Commission declared the petition admissible which is against the provisions of the Convention.

- The representatives of the "victims" do not have separate legal standing, before the Court on the same footage as the State. Only the State and the Commission are on the same footage before the Court;

- Participation of the representatives of the "victims" can only take place through the Commission (time sharing at the oral presentation, and regarding the submission of pleadings etc.);

- Pursuant to article 36(5) of the Rules of Procedures of the Court, the State requests a separate hearing on the preliminary objections;

- Based on the considerations in its previous communications and its final response, the State respectfully requests the Honorable Court to accept its Preliminary Objections and dismiss this instant case;

- The State is of the opinion that the petitioners do not have standing before the Court based on Article 44 Convention;

- The State is of the opinion that the requirements for admissibility has not been met base don the facts that the petitioners did not exhaust the domestic remedies available within the legal system of the State and that

the petitioners violated the principle 'duplication of procedures' set forth in article 47(4) of the Convention. Due to this violation and non-exhaustion of domestic remedies the State submits that the present submission should be declared inadmissible pursuant to the Convention, the rules of procedures of the Commission and the Court;

- The Commission has no standing in said case, and should be declared inadmissible, because the Commission abused the Convention and its current Rules of Procedures by not adopting an article 51 report and by exceeding the three months period, when submitting the application to the Court, mentioned in article 51;

- The State of Suriname is not responsible for the violation of the right to property established in article 21 of the Convention, because the State does recognize the Saramaka community, that has traditionally occupied the land and is used by them;

- The State is of the opinion that the right to judicial protection has not been violated, because the Surinamese legislation does provide effective legal recourse. Appropriate protection under the law is guaranteed; the State has adopted measures to guarantee the judicial protection of the petitioners. Petitioners simply did not choose the available remedies for their legal recourse;

- The State of Suriname has complied with its obligation under article 1 and Article 2 of the Convention and therefore not violated these rights.

5.1 Prayer for Relief

294. Due to the above-mentioned arguments the State of Suriname argues that it has not violated the rights of its citizens as enshrined in the American Convention on Human Rights or other related documents and therefore requests your Honorable Court to declare that:

a. Suriname with its multi-ethnic and multi-cultural population is respecting and guaranteeing the fundamental rights and liberties of its population;
b. According to its Constitution, all who are within the territory of Suriname shall have an equal claim to protection of person and property;
c. Although the Commission alleged the contrary, Suriname has neither violated the rights of its citizens in general nor that of the Saramaka community in particular as is stated in the American Declaration, the American Convention and other related human rights documents;
d. Suriname *in concreto* has not violated the rights to property (art. 21 of the Convention) and the right to judicial protection (art.25 of the Convention) of the Saramaka people in Suriname;
e. Suriname does comply with its obligation under article 1(1) and 2 of the American Convention;
f. Case no 12.338, the Twelve Saramaka Clans is inadmissible;
g. Case no. 12.338, the Twelve Saramaka Clans must be closed the case or be referred to the inter-American Commission for settlement.

6. WITNESSES ON BEHALF OF THE STATE

295. The State would like to propose the following persons as witnesses on behalf of the State:

1. Mr. R. Strijk; The District Commissioner of District Sipaliwini
2. Mr. Salomon Emanuel, Cultural Antropologist
3. Mr. Albert Aboikoni, who was during the period of Songo Aboikoni the subchair of the Saramaka community
4. Mr. Somopawiro; acting director of SBB (Suriname Forest Control Policy)
5. A Representative of the illustrious state of Nicaragua

7. TABLE OF AUTHORITIES

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Treaties

1. American Declaration of the Rights and Duties of Man
2. American Convention on Human Rights
3. Rules of procedures of the Inter- American Commission on Human Rights
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5. Convention on the Elimination of all Forms of Racial Discrimination
6. International Covenant on Civil and Political Rights

National Laws

1. Constitution
2. Code of Criminal procedure
3. Civil Code
4. Code of Civil Procedure
5. Presidential Decree no 6899/02, dated September, 24, 2002 regarding establishment of the Commission of Legal Experts in Human Rights
6. Regulation by the Minister of Justice and Police dated May, 28, 1991, no 2470, regarding the institutionalization of the Legal Aid Office, Official Gazette No. 40
7. Forestry Management Act
8. Decree L-1 of 1982 on Basic Principles of Land Policy
9. Decree L-2
10. Decree on Land Management

National Judgment

1. Richards v. Suriname, High Court of Justice, no A 28, June 6, 1975
2. Summary verdict regarding Tooy, Abelie "Longo" no 119
3. Summary verdict regarding Leidsman, Claudio Ludwig no 187.
4. Summary verdict regarding Vrede, Marilio Kenslien no 241.
5. Summary verdict regarding Robert, Eric Imro no 153.
7. Summary verdict regarding Main, Kenneth Gerald no 291.
8. Summary verdict regarding Azijnman, Liana Helena no 301.
9. Summary verdict regarding Roosblad, Orlando no 300.
10. Summary verdict regarding Tooy, Leandro "Apitanie" no 150.
11. Summary verdict regarding Fedies, Marcelino hardy no 149.
12. Summary verdict regarding Adjako, Elvis no 62

Doctrine

1. David J. Harris and Stephen Livingstone, the Inter-American system of Human Rights, Clarendon Press-Oxford, 1998
2. Veronica Gomez, The Inter- American System of Human Rights; The interaction between the political actor of the OAS, The commission and the Court, Clarendon Press-Oxford 1998, p.179
3. Donna Gomien, David Harris, Leo Zwaak, Law and practice of the European Convention on Human Rights and the European Social Charter
4. Mr. Dr. M.R.Hoever –Venoaks/Prof. Mr. L.J.A. Damen, Surinaams Bestuursrecht, Universiteit van Suriname/Rijks Universiteit Groningen, Ars Aequi Libri 2003
5. The Rights of Indigenous and Maroons in Suriname by Ellen- Rose Kambel and Fergus Mac Kay, IWGIA Document no. 96, Copenhagen 1999;
6. Martin and Wensley Misiedjan; 'Wie Gôn Na Wi Liti'

Reports of the Inter-American Commission on Human Rights

1. Report on the Human Rights situation in Suriname 1983. OAS/ Ser.L./11.61 doc
2. Report on the Human Rights situation in Suriname 1985. OAS/Ser. L/11.66 DOC
3. Inter American Commission on Human Rights annual Report 1987-8, 154

Rulings of the Inter-American Court:

Judgments

1. Velasquez Rodriquez; I/A Court H.R. Series C no. 4, 1988
2. Blake case; Preliminary Objections, Judgment of 2 July 1996, Ser. C. no. 27

3. African Move, report 19/92 Case no. 10.865
4. Aloeboetoe et al
5. Gangaram Panday
6. Moiwana village
7. Stefano Ajintoena et al
8. I/A Court H.R. Case Of the Street children v Guatemala, judgment of May 26, 2001
9. Case of Bamaca-Velasquez v. Guatemala, judgment of febr.22, 2002
10. Golder case 21-2-1975, Public European Court Serie A nr.18
11. Peter Blaine v. Jamaica case 11.827, Report no 96/98
12. Neville Lewis v. Jamaica case 11.825, Report no 97/98

Advisory Opinions

1. Advisory Opinion OC-1/90, August 10, 1990
2. Advisory Opinion OC-1/82, September 24, 1982
3. Advisory Opinion OC-8/87, January, 1987

8. LIST OF ANNEXES

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Annex 3: Wi Gon Na Wi Leti (author M. Misidjan).

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