



FAX ORIGINAL

# Forest Peoples Programme

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18 April 2007

**Re: Twelve Saramaka Clans v. Suriname: Observations of the victims' representatives on the State of Suriname's submission of 26 March 2007**

Esteemed Secretary:

1. The victims' representatives in the above referenced case have the pleasure of again communicating with Honourable Inter-American Court of Human Rights ("the Court"). On this occasion, the victims' representatives respectfully submit their observations on the 26 March 2007 submission of the State of Suriname ("the State" or "Suriname"), which is entitled "Observations of the State of Suriname to the document: 'Pleadings, Motions and Evidence of the Victims' Representatives in the Case of 12 Saramaka Clans (case 12.338) against the Republic of Suriname' ("Second Response"). The victims' representatives received the State's Second Response together with its annexes on 5 April 2007.

2. The victims' representatives respectfully refer to and incorporate by reference the arguments, points of law and requests set forth in paragraphs 150-55 and 160(g) of their 1 March 2007 submission containing observations on the State's preliminary objections. These paragraphs address the State's request to submit an additional pleading pursuant to Article 39 of the Court's Rules of Procedure, and its apparent intent to use this additional pleading to extemporaneously respond the pleadings, motions and evidence submitted by the victims' representatives on 03 November 2006 ("brief of the victims' representatives").

### **Suriname's Second Response is extemporaneous and inadmissible**

3. The victims' representatives were notified by the Court on 26 February 2007 that it had granted Suriname's request to submit an additional pleading pursuant to Article 39 of the Court's Rules of Procedure.<sup>1</sup> The State, however, has chosen to use this additional pleading to file an extemporaneous and inadmissible response to the brief of the victims' representatives.

4. That the State is barred from submitting an additional pleading pursuant to Article 39 of the Court's Rules of Procedure in order to extemporaneously respond to the brief of the victims' representatives is clear from the plain meaning of the terms of Articles 38(1) and 39 of the Court's Rules of Procedure. Pursuant to Article 38(1), the respondent state's answer to *both* the

<sup>1</sup> *Communication of the Court (CDH-12.338/050)*, 26 February 2007.

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Commission's Application and the brief submitted by the victims' representatives must be filed no later than 4 months from the date of notification of the Commission's Application. In the instant case the four month period expired on 12 January 2007. Article 38(1) further and unambiguously provides that said four month period "may not be extended." The Court informed the State of this requirement on two occasions in response to the latter's requests for an extension to the fourth month period on 09 January 2007 and 11 January 2007. At the same time, the Court also expressly denied Suriname's requests for an extension.<sup>2</sup>

5. Article 39 of the Court's Rules of Procedure applies only "Once the application has been answered," and to "[o]ther steps in the written proceedings." This language clearly demonstrates that additional pleadings submitted pursuant to Article 39 may not be used to respond to the Commission's Application or to the brief of the victims' representatives, both of which must be answered no later than the expiration of the fourth month period prescribed in Article 38(1).

6. Suriname has abused its leave to submit an additional pleading by filing an extemporaneous response to the brief of the victims' representatives. That this is the case is conclusively demonstrated by the title of the State's Second Response and by the substance of that submission, both of which exclusively refer to the brief of the victims' representatives. Additionally, in its Second Response and in its communication of 23 March 2007, Suriname expressly acknowledges that it is using an additional pleading to respond to the brief of the victims' representatives, stating, respectively, that

The State will analyze the submission of the original petitioners [the victims' representatives], dated 3 November 2006, as this was submitted to the Court and sent to the State for its observations. As requested in its letter of February 16, 2007 no. CJDM/563/07 this Court granted the State of Suriname the possibility to respond till [sic] Monday 26 March 2007.

The basis for the State's observations is said submission of the original petitioners;<sup>3</sup>

and,

... the State notes that based on its request made in its official response (see para. 284 page 108) of January 12, 2007, the Court granted the State an extension to respond till [sic] March 26, 2007. With the extension given to the State, the arguments set forward by Mr. MacKay do not hold any longer, since the State still have [sic] the right to submit the names of witnesses and expert witnesses now that the Court granted the State till [sic] March 26, 2007.

If the State still has the opportunity, granted by the Court, to respond to the submission "Pleadings, Motions, and Evidence of the Victims' Representatives in the Case of 12 Saramaka Clans (Case 12.338) Against the Republic of Suriname"

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7. As noted above, the Court on two separate occasions expressly denied Suriname's requests for an extension to the four month period contained in Article 38(1) so that it could submit a response to the brief of the victims' representatives. The Court subsequently granted

<sup>2</sup> See, for instance, *Communication of the Court (CDH-12.338/030)*, 11 January 2007.

<sup>3</sup> *Observations of the State of Suriname to the document: "Pleadings, Motions and Evidence of the Victims' Representatives in the Case of 12 Saramaka Clans (case 12.338) against the Republic of Suriname"*, CJDM/645/07, 26 March 2007, at para. 3 (hereinafter "Second Response")

<sup>4</sup> *Communication of the State of Suriname*, 23 March 2007 (CJDM /644/07), at para. 19.

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the State leave to file an additional pleading rather than, as the State asserts, an extension to the four month period in which the State was required to respond to the brief of the victims' representatives. The State's attempt to extemporaneously file such a response in the guise of an additional pleading submitted pursuant to Article 39 of the Court's Rules of Procedure – and in direct contravention of the express instructions of the Court – is therefore inadmissible and, respectfully, should be rejected by the Court.

### Observations on the Second Response

8. As stated above, the victims' representatives have averred that the State's Second Response is extemporaneous and therefore inadmissible. Without prejudice to their views in this respect and for the sake of presenting a comprehensive answer to the Second Response, the victims' representatives nevertheless offer the following observations.

9. First, the State's Second Response largely repeats the contentions set forth in its 12 January 2007 answer ("Official Response") to the Commission's Application. While a few new issues and alleged facts are presented by the State, these, and the repetition of the contentions set forth in the State's Official Response, are adequately addressed in the pleadings and evidence submitted and offered to the Court by the victims' representatives and by the Inter-American Commission on Human Rights. Therefore, with the exception of the points listed below, the victims' representatives refer to and rely upon their prior submissions to the Court.

10. In paragraphs 23 and 55 of its Second Response, the State acknowledges that it has failed to recognize the property rights of the Saramaka people by stating: i) that the victims' traditional lands and territory is "... not theirs but belongs to the State...";<sup>5</sup> and, ii) that "[a]ll land is State owned land. All the property belongs to the State. There is no Saramaka law pertaining to own[ing] state property and there is no separate law, under the Constitution there is only one law and that is the law of the State of Suriname, minority groups or indigenous populations living in Suriname have no separate law or legislation, because all falls [sic] with Suriname's legislation."<sup>6</sup> These statements are admissions against interest that support the violations of Article 21 of the American Convention alleged in this case and that also confirm statements to the same effect made by the State before the Inter-American Commission.<sup>7</sup>

11. In paragraph 70 of its Second Submission, Suriname admits that "It is true when the representatives of the victims state in para. 38 that the concessions were issued without first conducting an environmental and social impact assessment, but [they] forget to state that although there are no environmental norms and standards effective in Suriname, those of the World Bank apply." This statement is another admission against interest that in this instance explicitly confirms the facts presented by the victims' representatives concerning the absence of environmental protection laws in Suriname and that concessions were granted in Saramaka territory without an environmental and social impact assessment. Suriname's claim with respect to the domestic application of World Bank standards does not bear scrutiny; even if they were in effect domestically, said standards require environmental and social impact assessments for logging operations that affect indigenous or tribal peoples' lands and, thus, as admitted by the State, these standards clearly were not applied in the case at hand.<sup>8</sup>

<sup>5</sup> Second Response, at para. 23.

<sup>6</sup> *Id.* at para. 55.

<sup>7</sup> See, *inter alia*, Report 09/06, Case 12.338, paras. 168-70 (recording statements made by Suriname to the effect that the Saramaka people do not have any legal property rights under its domestic law).

<sup>8</sup> See, The World Bank Operational Manual: *Operational Policy 4.01, Environmental Impact Assessment*, January 1999, para. 1; *Operational Directive 4.20 on Indigenous Peoples*, September 1991, para. 10;

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12. As it did in its Official Response, Suriname again argues that Maroons are not dependent on forest resources for their subsistence needs, but instead predominantly rely on wage labour in the capital city or with logging and mining companies in the interior.<sup>9</sup> In addition to the evidence previously offered to the Court with respect to these assertions, the victims' representatives annex hereto excerpts of a March 2007 United Nations Economic Commission for Latin America and United Nations Development Programme report.<sup>10</sup> This report, which also observes that indigenous and tribal peoples in Suriname lack effective property and political participation rights,<sup>11</sup> further disproves Suriname's unfounded and unsubstantiated claims about the economy of the Saramaka people, stating, *inter alia*, that

The interior of Suriname is essentially a subsistence agricultural economy. Agricultural production and income is supplemented by other sources of income, where possible, including working in gold mining and harvesting of forestry products, nonetheless, agriculture remains the overwhelming mainstay of this rural sub-economy. ... Farming is so entrenched in the Maroon community, that if a person of farming age does not farm, he or she is not deemed productive in the community.<sup>12</sup>

13. In paragraph 73 of its Second Response, Suriname refutes the victims' representatives' accounts of the amount of timber cut in Saramaka territory by the Ji Shen, Tacoba and D.W. Leysner logging companies. The State argues that the statistics presented by the victims' representatives "refer to total amounts of export of wood by the State," and asserts that the victims' representatives' claim that the majority of this timber was cut in Saramaka territory "is too general and unacceptable."<sup>13</sup>

14. The victims' representatives observe that the statistics they presented to the Court specifically concern production volumes attributed by the State's Forestry Service to the Ji Shen and Tacoba companies and do not merely refer to total export amounts as the State claims.<sup>14</sup> Also, Ji Shen operated solely in a concession within Saramaka territory while Tacoba held two concessions, one of which was in Saramaka territory. Therefore, the timber production attributed to Ji Shen unquestionably came from Saramaka territory and at least part of the timber exports attributable to Tacoba were harvested in Saramaka territory. The two and only concessions held by D.W. Leysner are both within Saramaka territory, and the timber production volumes presented by the victims' representatives could only have come from these concessions.<sup>15</sup>

15. Information concerning logging concessions, production volumes, and the origin of timber per company and/or concession is held solely by the State. The victims' representatives have presented the statistical information that is available to them, some of which details export or production volume for specific companies. They have also previously explained that "The State has refused to release statistics indicating the export volumes of individual companies –

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*Operational Policy 4.10 on Indigenous Peoples*, 10 May 2005, para. 10 (replacing OD 4.20); and, *Operational Policy 4.36 on Forests*, November 2002, para. 8.

<sup>9</sup> *Inter alia*, Second Response, para. 53.

<sup>10</sup> See, Annex A, R. Buitelaar et al., *Suriname: The Impact of the May 2006 Floods on Sustainable Livelihoods*, UNECLAC/UNDP, Port of Spain, March 2007. The full text is available at: [http://www.eclac.org/publicaciones/xml/7/28147/L\\_114.pdf](http://www.eclac.org/publicaciones/xml/7/28147/L_114.pdf)

<sup>11</sup> *Id.* para. 6, 48.

<sup>12</sup> *Id.* at p. 26-7.

<sup>13</sup> Second Response, at para. 73.

<sup>14</sup> *Motions, Pleadings and Evidence submitted by the Victims' Representative in Twelve Saramaka Clans v. Suriname*, 03 November 2006, para. 41.

<sup>15</sup> *Id.* para. 43.

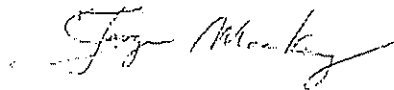
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citing company confidentiality – and therefore it is not possible to specify exactly how much timber was exported by Tacoba and Ji Shen. The victims' representatives request that the Court requests the State to present this information."<sup>16</sup> As the State has failed to present this evidence, yet nonetheless attempts to refute the evidence presented on these points, the victims' representatives hereby reiterate their request that the Court requires that Suriname presents this information.

16. Finally, as it did in its Official Response, Suriname's Second Response erroneously asserts that referring to the internationally guaranteed rights of the Saramaka people, among others, to freely dispose of its natural wealth and resources and to be secure in its means of subsistence will lead to the destruction of the State as a subject of international law.<sup>17</sup> In this regard and for the record, the victims' representatives affirm that the victims in no way seek or wish to harm the political or territorial integrity of the State of Suriname. They simply seek recognition of and respect for the internationally guaranteed human rights of Saramaka people and its members.

17. The victims' representatives have offered the expert testimony of Professor Martin Scheinin on the relationship between Articles 3 and 21 of the American Convention and common Article 1 of the international human rights Covenants. To provide further evidence on these points, they hereby submit and annex hereto the 2004 Final Report of United Nations Special Rapporteur on indigenous peoples' permanent sovereignty over natural resources (see Annex B).

Please accept, Mr. Secretary, the renewed assurance of my highest consideration.



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Fergus MacKay  
Counsel of Record  
Forest Peoples Programme

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Total pages inclusive: 40

**NB:** Two documents are annexed to this submission. Both of these annexes have been transmitted by fax together with this submission and there are no further annexes or appendices to be transmitted to the Court in relation to this submission.

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<sup>16</sup> *Id.* at para. 42.

<sup>17</sup> Second Response, para. 52.