REPORT Nº 9/06
ADMISSIBILITY AND MERITS
CASE 12.338
THE TWELVE SARAMAKA CLANS (*LOS)*
SURINAME
MARCH 02, 2006

I. SUMMARY

1. This report concerns the petition lodged before the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission," or the "IACHR") against the State of Suriname (hereinafter "the State" or "Suriname") on October 27, 2000, by the Association of Saramaka Authorities (hereinafter the "petitioners") on behalf of the Saramaka people, clans, and communities of the Upper River Suriname and the Twelve Saramaka Chiefs [captains] (hereinafter the "Saramaka people of the Upper River Suriname," the "Saramaka people," or the "Saramaka clans."

2. It is alleged in the petition that the State of Suriname is responsible for the violation of the rights established in Articles 1, 2, 8, 21, 23, and 25 of the American Convention on Human Rights (hereinafter the "American Convention"), and in Articles XXIV and XIII of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration,") to the detriment of the Saramaka people by granting logging and mining concessions, by not recognizing and protecting its territorial rights, and by not granting judicial protection for its rights and interests in the territories.

3. The State claimed before the Commission that indigenous peoples in Suriname, including the Saramaka people, have historically enjoyed "certain privileges and rights because they lived in certain parts of the national territory," but that the State does not recognize any right to property in the sense of the American Convention, the American Declaration, or the Constitution of Suriname." Consequently, the State denies that it has violated any right of property or any other related right, as claimed by the petitioners. The State maintains that the petition is inadmissible because the petitioners have not complied with Articles 44 and 46 of the American Convention.

4. The Commission decided to consider the admissibility of the petition jointly with the merits of same, in accordance with Article 37(3) of its Rules and Procedures, and, having examined the evidence and arguments presented by the parties, the Commission admitted the petition and concluded that the State violated Articles 21, 25,and 2, of the American Convention, all in relation to Article 1 of the same legal instrument, to the detriment of the Saramaka people.

II. PROCESSING BY THE COMMISSION

5. On October 27, 2000, the Commission received a petition dated September 30, 2000, which alleged that the State had violated the rights of the Saramaka people to property, cultural integrity, and due process. In addition, the petitioners requested the Commission to grant precautionary measures to suspend the logging and mining activity either underway or planned in Saramaka territory because it threatened permanent irreparable damage to the cultural and physical safety of the Saramaka people, and if the State did not comply, to request provisional measures from the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or the "Court"). Furthermore, in their petition, the petitioners indicated their

desire to instigate a friendly settlement procedure, in accordance with the terms of Article 48(f) of the American Convention and of Article 41 of the Commission's Rules of Procedure and requested the Commission to carry out a visit to Suriname to investigate the situation described in the petition and the general situation of the indigenous and Maroon peoples of Suriname.

6. On November 21, 2000, the Commission transmitted the pertinent parts of the petition to the State and requested its observations on the allegations contained in the petition within a period of 90 days, along with all further information concerning whether or not all domestic remedies in this case have been exhausted.

7. On June 6, 2001, the petitioners transmitted further information to the Commission and repeated their wish to enter a procedure for friendly settlement. In addition, they asked the Commission to apply Article 39 of its Rules of Procedure, presuming to be true the facts alleged in the petition because the State had not provided information in response. On June 12, 2001, the Commission transmitted the pertinent parts of this communication to the State, requesting its response within the following 45 days.

8. On August 2, 2001, the State requested an additional period during which to reply to the original petition and subsequent communications from the petitioners. On August 8, 2001, the Commission granted the extension requested for a period of 30 days.

9. On March 22, 2002, the Commission informed the parties of its decision to defer its treatment of admissibility until the decision on the merits, in keeping with Article 37(3) of its Rules of Procedure and requested them to provide their arguments on the merits within a period of two months.

10. On May 8, 2002, the State requested an extension of two months in which to present the observations it had been asked for. On May 15, 2002, the petitioners provided additional observations on the merits, and repeated their request for precautionary measures.

11. On June 12, 2002, the Commission transmitted the additional observations from the petitioners to the State and requested the State to provide all the relevant information within the two following months.

12. On August 20, 2002, the State communicated its intention to transmit an "exhaustive and detailed report on the question of the admissibility of the petition as well as on the merits," and requested an extension of two months in which to respond to the additional information it had been sent by the Commission on June 12, 2002.

13. On July 22, 2002, the petitioners transmitted to the Commission additional information on admissibility and the merits and made a new request for precautionary measures.

14. On December 27, 2002, the State transmitted its response to the petition, in which it reiterated its position that the petition was inadmissible because all relevant domestic remedies had not been exhausted. The State in general denied that there had been a violation of the rights of the Saramaka peoples and stated that "it would play no part in excusing any violation of the rights of its citizens."

15. On February 12, 2003, the Commission acknowledged receipt of the reply from the State and transmitted the relevant parts of the additional information provided by the petitioners on January 23, 2003, and transmitted to the petitioners the relevant parts of the reply from the State on December 27, 2002.

16. On March 18, 2003, the petitioners transmitted their observations on the position of the State. On March 20, 2003, the Commission transmitted to the State the additional information from the petitioners, requesting it to respond within 30 days.

17. On April 23, 2004, the Commission transmitted to the petitioners the relevant parts of the presentation from the State on April 8, 2004, and requested them to provide their observations within one month.

18. On May 3, 2004, the petitioners transmitted complementary information regarding the exhaustion of domestic remedies and comments on Suriname made by United Nations Committee on the Elimination of Racial Discrimination and the United Nations Human Rights Committee.

19. On May 4, 2004, the petitioners lodged their observations on the arguments of the State dated April 8, 2004.[1]

20. On May 23, 2003 [sic], the State replied to the observations of the petitioners of January 23, 2003, and March 18, 2003.

1. Precautionary Measures

21. On August 8, 2002, the Commission transmitted to the State the relevant parts of the communication from the petitioners of July 22, 2002, and advised it that precautionary measures had been granted in accordance with Article 25(1) of its Rules of Procedure. The Commission stated that the precautionary measures requested the State to suspend all concessions, including permits and licenses for mining and logging activities, and other activities exploiting natural resources in the lands used and occupied by the Twelve Saramaka Clans, until there had been an opportunity to investigate the substantive complaints detailed in the petition. The Commission also requested the State to take the necessary steps to protect the physical safety of the Twelve Saramaka Clans. By letter of the same date, the Commission informed the petitioners of this.

22. On August 23, 2002, the Commission granted an extension of one month for the State to present additional information. On October 15, 2002, the State informed the Commission that:

1. On June 27, 2002, it had established a “Commission of Legal Experts in Human Rights.”

[1] The note from Suriname was in response to the petitioner’s communication of December 12, 2003

2. It noted that precautionary measures had been granted, but registered its surprise at this decision in view of the extension granted to the government during which to respond to the petitioners' allegations.

3. It considered that the granting of precautionary measures was evidence of a decision by the Commission on the merits of the case, despite the Commission averring the contrary.

23. On January 23, 2003, the petitioners transmitted to the Commission a complementary note in which they stated, amongst other things, that the government of Suriname had not complied with the precautionary measures issued by the Commission in August 2002, and therefore requested the Commission to re-impose precautionary measures on the State, or failing that, to seek provisional measures before the Inter-American Court.

24. By communication of August 11, 2003, the Commission requested specific information from the State concerning (1) the current situation of all logging concessions granted and active in the lands used and occupied by the twelve Saramaka communities; (2) the current situation of all mining concessions currently granted and active in the lands used and occupied by the Saramaka communities, including all operations assumed to be in the hands of illegal miners; (3) the current situation of any proposal or plan to extend the Central Suriname nature reserve; (4) the current situation of any proposal or plan to increase the water levels in the Van Blommestein Reservoir. The Commission asked for this information to be transmitted within a period of 10 days.

25. On August 20, 2003, the State acknowledged receipt of the communication dated August 11, 2003, and requested an extension until September 14, 2003, in order to respond to the request for information on compliance with the precautionary measures.

26. On October 15, 2003, the petitioners repeated their request for precautionary measures, requesting the State to suspend all logging and other natural resource development in the lands and territories traditionally owned or occupied in other ways by the twelve Saramaka *Los* (clans).

27. On October 23, 2003, the Commission transmitted to the State the relevant parts of the additional information supplied by the petitioners and requested the government to "provide information of the measures or mechanisms established by the government to suspend all illegal gold mining in the Saramaka area, within the period granted in the Commission's letter of October 14, 2003."

28. On December 4, 2003, the State informed the Commission that the Departments of Justice and Work in Suriname were studying the question of illegal mining. The State claimed that in some cases, "Brazilians and other third parties are contracted by the indigenous Maroon people in order to engage in mining and logging activities." In the same note, the State also transmitted its observations on the relevant parts of the information presented by the petitioners on August 22, 2003. The State claimed that it remained willing to continue conversations with the petitioners and expressly rejected the claims made by the petitioners regarding noncompliance by the State with the precautionary measures, and stated that no new concessions had been granted since August 2002.

2. Procedure for Friendly Settlement

29. By communications to the parties on June 27, 2003, the Commission placed itself at their disposal to facilitate a friendly settlement, in accordance with Article 48(1) (f) of the Convention.

30. On July 15, 2003, the petitioners declared their willingness to enter into such conversations. However, the petitioners expressed doubts as to the effectiveness of the procedure.

31. On August 11, 2003, the Commission informed the petitioners that the State had accepted the offer of friendly settlement.

32. On August 12, 2003, the State said that a meeting with the petitioners had been agreed for July 30, 2003, and had been reprogrammed for August 12, 2003.

33. On August 22, 2003, the petitioners reported that a meeting had been held with the government on August 15, 2003 during which "our doubts as to the usefulness of the procedure for friendly settlement have grown." The petitioners reported that during the meeting, the government had been reluctant to consider any judicial or administrative reform that might lead to recognizing the property rights of the Saramaka people in the form proposed by the petitioners.

34. On August 29, 2003, the Commission acknowledged receipt of the State's notes of August 12 and August 20, 2003, and transmitted the relevant parts of the letter from the petitioners of August 22, 2003. The Commission granted the State an extension of 20 days in which to respond to the request for information from the Commission made in its communication of August 11, 2003. On September 9, 2003, the State responded to the request for information from the Commission regarding the situation of the logging and mining concessions.

35. On September 22, 2003, the State acknowledged receipt of the note from the Commission dated August 29, 2003, and confirmed its willingness to "enter into conversations with the petitioners," in spite of the fact that the petition had still not been declared admissible. The State confirmed that it had met with a delegation of the petitioners on August 15, 2003, and stated that at the beginning of September, the acting Attorney General and the Commission of Legal Experts on Human Rights of Suriname had met the President in order to discuss the complaints made by the petitioners and other human rights issues. The State said that its official position would be transmitted in due course to the petitioners. Furthermore, the State informed the Commission that a new meeting had been agreed for August 22, 2003, and requested two months in which to respond to the observations made by the petitioners on August 22, 2003.

36. On September 30, 2003, the Commission transmitted the relevant parts of the note from the State dated September 9, 2003, to the petitioners, and asked them to comment.

37. On October 14, 2003, the Commission acknowledged receipt of the State's note of September 22, 2003, and granted an extension of two months, from September 10, 2003, in which to respond to the observations of the petitioners of August 22, 2003.

38. On October 23, 2003, the State transmitted to the Commission the minutes of the meeting held with the petitioners, which state, among other things, that (a) it is unlikely that the government would issue the Saramaka people (or any other group) collective titles to land, and it was unlikely to amend Surinamese constitutional law to do so; (b) Suriname is similar to other countries in that its law permits the State to own all the land and does not recognize the right of indigenous and tribal peoples to complete ownership of the land."

39. On December 17, 2003, the Commission transmitted to the petitioners the relevant parts of the additional information supplied by the State in its note of December 10, 2003. On January 7, 2004 the petitioners responded to the additional information provided by the State and transmitted to the Commission on December 10, 2003.

40. On January 28, 2004, the State said that it was gathering information in order to respond to the petitioners' note and that its reply would be transmitted within four weeks, requesting an extension until February 27, 2004 in order to present its response.

41. By note to the State on February 4, 2004, the Commission accepted the extension requested, and indicated that no further extensions would be granted.

42. In the same communication, the Commission transmitted the relevant parts of the additional information (of January 7, 2004) lodged by the petitioners, and requested the State to present its observations on this additional information also before February 27, 2004.

43. By communication to the State on May 27, 2004, the Commission acknowledged receipt of the note from Suriname of April 22, 2004, and transmitted the relevant parts of the most recent additional information lodged by the petitioners. The Commission also declared its availability and willingness to facilitate a procedure for reaching a friendly settlement between the parties, and requested the State to respond within 15 days.

44. By letter to the petitioners on May 27, 2004, the Commission acknowledged receipt of their communication of May 3, 2004, and stated that it had transmitted to Suriname the pertinent parts of the communication. The Commission also declared its availability and willingness to facilitate a procedure for reaching a friendly settlement between the parties and asked the petitioners to present their comments within the same 15 days.

45. In a communication to the Commission on June 25, 2004, the State accepted the Commission's offer to facilitate a procedure for friendly settlement between the parties.

46. In a communication to the Commission on July 6, 2004, the petitioners transmitted a revised draft agreement concerning the conditions for the negotiation and requested Suriname to transmit its response to same by July 26, 2004, at the latest. In a communication to Suriname on July 8, 2004, the Commission acknowledged receipt of the note from Suriname on June 25, 2004, and transmitted the draft agreement, requesting the State to lodge its comments on this within 15 days.

47. In a note to the Commission on July 23, 2004, the State acknowledged receipt of the note from the Commission on July 8, 2004, and stated that it would present a complete response to the petitioners' revised draft agreement on or before July 26, 2004. On July 26,

2004, the State wrote to the Commission stating that it would not be in a position to begin the negotiations until between October 4, 2004 and December 17, 2004,[2] and complained that the period proposed by the petitioners was "practically impossible." The State suggested to the petitioners a number of amendments to the draft agreement. In a communication to the parties dated July 27, 2004, the Commission acknowledged receipt of the note from the State of July 26, 2004, and transmitted the relevant parts to the petitioners.

48. In a letter to the Commission on August 3, 2004, the petitioners declared that they were no longer interested in taking part in a procedure for friendly settlement, and stated that "the changes proposed by Suriname and its comments on the draft agreement of conditions suggested that the probability of reaching a mutually acceptable agreement … were remote."

3. Hearings before the IACHR

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

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

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

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

53. By note on September 22, 2004, the State formally requested a hearing before the Commission during its 121st regular session. In letters to both parties on September 23, 2004, the Commission stated that it had agreed to the State's request and that the hearing would be held on October 27, 2004, during the 121st regular session of the Commission.

54. On October 27, 2004, the Commission held the hearing, attended by representatives of the State and the petitioners. The State maintained its previous position concerning the admissibility of the petition. With regard to the merits of the case, although it

[2] In the (revised) draft of conditions for the negotiations, the petitioners had proposed that these should be held between August 2-6, 2004.

acknowledged that the constitution of Suriname did not recognize collective property rights, it denied that some of the concessions granted had had the effect of violating some of the rights of the Saramaka people. In reply, the petitioners repeated their earlier arguments on admissibility and the merits of the petition, and maintained that no effective remedy existed under domestic law to be exhausted, and that the State was in violation of the right of the Saramaka people to property, amongst others.

55. On October 29, 2004, the State lodged a written version of its presentation to the hearing, and this was transmitted to the petitioners. On November 7, 2004, the petitioners transmitted a written summary of their arguments. On December 7, 2004, the petitioners lodged new comments on the information presented by the State during the hearing before the Commission on October 27, 2004.

III. POSITIONS OF THE PARTIES

A. Petitioners

56. The petitioners claim that the State of Suriname has neither recognized nor guaranteed the territorial rights of the Saramaka people, in accordance with the American Convention and with general principles of international law, and that it is responsible for the violation of the human rights of this people, in accordance with Articles 1, 2, 8, 21, 23, and 25 of the American Convention, and Articles XXIV and XIII of the American Declaration.

57. In particular, the petitioners claim that the State granted logging and mining concessions in Saramaka lands without consulting the people who would be affected, that caused serious environmental damage, and is in danger of causing long- term, irreversible damage to the environment on which the Saramaka people is dependent. The petitioners also claim that these issues form part of a much wider omission on the part of the State, which is to neither recognize nor protect the rights of the Saramaka people to the land in the area around the Upper Suriname River, on the basis of the customary use and occupation of this land by the Saramaka people. Furthermore, the petitioners argue that the State has not provided adequate judicial protection in domestic law against alleged violations of rights to the land and its resources.

1. Position of the petitioners on admissibility

58. The petitioners claim that the petition is admissible because they are excepted from the requirement to exhaust remedies under domestic law; the petition is not pending in any other international proceeding, and they are legally entitled to bring this petition before the Commission.

59. The petitioners claim that the Constitution and the laws of Suriname do not provide adequate and effective redress in order to “affirm and protect the rights of the Saramaka people to the land and its resources.” Consequently, in the absence of any recognition or protection under domestic law for the rights that are alleged to have been violated by the State, the petitioners claim that they are excepted from the requirement to exhaust all remedies available under domestic law in accordance with the terms of Article 46 of the Convention and Article 37(1) of the Rules and Procedures of the Commission. The petitioners maintain that as

these domestic remedies do not exist, they are covered by the exception described in Article 46 of the Convention.

60. The petitioners acknowledge their right in law to bring a case against the State for damages, but they state that Article 1386 of the Civil Code only envisages "proceedings analogous to civil action for damages" which, in the petitioners' judgment, is unable to make good the individual and collective rights that have not been recognized by the State and that have been violated by the State.

61. With regard to a duplication of proceedings, the petitioners claim that the acts referred to by the State were to do with revisions of periodic reports by Suriname to the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD"), and the Human Rights Committee, both of the UN. They add that in the course of these revisions, a coalition of indigenous and Maroon organizations reported on the human rights situation in general and not specifically on the subject of the present petition. The petitioners claim that both organizations completed their observations in March 2004, and maintain that the proceedings of these committees were not "international proceedings" as defined by Article 46(c), and that, in any case, those proceedings are not pending," because they concluded in March 2004.[3]

62. The petitioners reject the State's argument regarding their legal standing, and claim that Article 44 of the Convention and Article 23 of the Rules of Procedure of the Commission stipulate that petitions may be lodged by "any person or group of persons, or non-governmental entity legally recognized in one or more of the Member States of the OAS…" In this respect, the petitioners claim that there is no requisite that a petition be lodged by persons or entities considered by the State to be representatives of the petitioners, in accordance with domestic law, nor is it up to the State to designate who may represent the Saramaka people in this or that situation or circumstance. The petitioners argue that they satisfy the requirements of Article 44 of the Convention in that they are "persons" or "groups of persons." Furthermore, the petitioners claim that they have been legally recognized by the Saramaka people and by the State, in their own right, as the legitimate traditional authorities of their communities and clans. For these reasons, they claim that the objection by Suriname to admissibility on the basis of this supposed requisite lacks merits.

2. Position of the petitioners on the merits

63. The petitioners' arguments refer mainly to the traditional use and occupation by the Saramaka people of the area around the Upper Suriname River; the logging and mining concessions and their effects on the natural environment; the lack of recognition and adequate protection of the lands; and the lack of available and effective legal redress in domestic law.

a. Traditional use and occupation of the land and resources by the Saramaka people in the Upper Suriname River

64. The petitioners state that Saramaka society is organized in twelve *Los,* also known as clans or groups. Each Saramaka belongs exclusively to one *Lo,* a group descended in the maternal line from members of an eighteenth century warlike group. These clans (*los*) are

[3] See note from the petitioners on December 7, 2004, paragraph 6, p. 3.

the basic units for land ownership in Saramaka society. The groups are spread over 58 communities in the Upper Suriname River area and in other regions considered Saramaka territory.[4]

65. According to the petitioners, the Saramaka people have collectively occupied their present lands since the eighteenth century when its territorial and cultural autonomy was recognized by Dutch colonial authorities in the Treaty of 1762. The only break in occupation was caused by the so-called "transmigration villages," when they were forcibly displaced in the 1960s by the construction of a dam to feed a bauxite refinery on the coast. Eleven of these transmigration villages were located in the Upper Suriname River area, in traditionally Saramaka territory. Some are new villages, although most were combined with existing villages. The petitioners claim that Saramaka territory comprises the lands traditionally used and occupied by the Saramaka people, mostly to the exclusion of other groups, whether indigenous, Maroon, or other. These lands are the collective property of the groups (*los*) and members, both individually and in family units, enjoy subsidiary rights of use and occupation.[5]

66. The petitioners state that the Gaaman is the main leader of Saramaka society, elected with a combination of ancestry and divine guidance. Within the clans (*los*), the highest authorities are the chiefs, who are also elected with a combination of ancestry and divine guidance. The petitioners explain that although the Gaaman is the chief leader of the Saramaka people, the customary law of the Saramaka assigns property ownership rights to the clans, who through their chiefs, have authority on matters related to the land and its resources. The petitioners state that for this reason, the Gaaman does not have direct authority over rights to land and resources, nor over how it is divided within and between clans.

67. The petitioners claim that Saramaka lands and resources are considered as a whole and are interconnected through the social, ancestral, and spiritual relationships that rule their everyday life. Expropriation of or threats to their lands and the resources linked to those lands are considered profoundly offensive, particularly in view of their original struggle to free themselves from slavery. Saramaka culture and identity are based on a complex network of permanent relationships with ancestral spirits and with other spirits, with the land, and with extended family structures.

[4] The territory is defined on maps attached to the petition of September 30, 2000, as Annex F.1 and F.2. The maps were taken from *Alabi's World* by Richard Price; John Hopkins University Press; Baltimore, 1990.

[5] See Report by Richard Price, *supra.*

a. Logging and mining concessions and their impact on the environment

68. Given the context of the traditional use and occupation of the land by the Saramaka as described above, the petitioners claim that the State violated rights of the Saramaka enshrined in the American Convention by granting logging and mining concessions in Saramaka lands in the Upper Suriname River area without consulting the Saramaka, and in such a way that it caused substantial environmental damage and risked long term irreversible damage to the environment on which the Saramaka people depend.

69. The petitioners state that the concessions were mainly granted to non-Surinamese companies and the lack of consultation can be seen in the case of the logging concession granted to a Chinese company called NV Tacoba or Tacoba Forestry Consultants. The petitioners claim that the Saramaka people first heard of this concession when company employees arrived in Saramaka territory and began operations.

70. The petitioners also complain that they discovered the existence of other concessions, including concessions for gold and gravel mining, when the Saramaka communities obtained a map[6] of the concessions from a non-governmental organization. According to the petitioners, these concessions cover most of the Saramaka communities of the Upper[7] Suriname River area and they say that it is very difficult to obtain information regarding concessions in Suriname and that information is not published systematically.[8]

71. With regard to the State's position that mining concessions have not been granted in the Upper Suriname River area, the petitioners claim that a map published by the Ministry of Natural Resources in September 1999 reveals the existence of two concessions for gravel extraction and three for mining gold within Saramaka territory.[9]

72. In addition, the petitioners report that at the time of lodging the petition, a highway was being built in Saramaka territory to facilitate access to the areas where there are concessions. The petitioners fear that this new highway will make the Saramaka territory vulnerable to incursions from illegal miners.

73. The petitioners state that the operation of these concessions has already had a negative impact on some of the Saramaka communities. The petitioners state that operations by Tacoba, particularly by building the highway, have increased water pollution, damaged the forests, impaired hunting, destroyed subsistence farming, and restricted the communities' access to the areas where they hunt, fish, and farm. The petitioners report that the affected Saramaka communities have also been the object of intimidation from employees of the Tacoba company and that operations by this company are not supervised by the State. Furthermore, they report that Suriname lacks the environmental legislation that would enable it to exercise control over the impact of managing its raw materials.

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[6] This map was not submitted along with the petition.

[7] Petition of October 27, 2000, paragraph 71.

[8] *Ibid.*

[9] In a note from petitioners dated July 15, 2003, paragraph 20b, page 8.

74. The petitioners state that although concessions have been granted for gold mining and gravel extraction within Saramaka territory, none has yet come on stream. However, they warn that these concessions could be activated at any moment and would affect more than 25 villages.

75. In response to the note from the State of April 8, 2004, the petitioners, by note of May 4, 2004, acknowledge that some of the Saramaka have obtained logging concessions granted by the State but only in order to avoid the State granting the same concessions to people who do not belong to the Saramaka community. The petitioners state that the fact that these concessions have been acquired by members of the Saramaka community is completely consistent with the right of the Saramaka people to use and develop the raw materials within their traditional lands and territory, in accordance with Saramaka customary law, and in order to provide for their subsistence and other needs.

76. Furthermore, the petitioners argue that the danger of greater environmental damage in the future is exacerbated by the alleged inability or disinterest of the State of Suriname to oversee the proper application of forestry and environmental laws, as can be seen from the lack of adequate domestic legislation and the alleged failure by the State to comply with the precautionary measures granted by the Commission. According to the petitioners, the Suriname Forestry Law of 1992, amongst other measures, calls for environmental impact studies to be carried out on the logging concessions, but the by-laws of the Forestry Law have neither been drawn up nor implemented.

b. Lack of recognition of and adequate protection of indigenous lands

77. The petitioners also claim that the State's practice of granting logging and mining concessions without proper consultation with the Saramaka people, and apparently without taking into consideration their customary tenure of the land, is part of a wider omission on the part of the State whereby it refuses to recognize the rights or interests of the Saramaka people to the lands, based on the customary use and occupation of this land by this people. On the contrary, State officials have always restricted the interests of the Saramaka people in their land and resources in relation to the formal state system of land titles and leases.

78. In particular, the petitioners state that the rights of the Saramaka and of other tribal and indigenous peoples to their lands, territory, and resources, as well as their cultural integrity, are neither explicitly recognized nor protected in the 1987 Suriname Constitution.[10] The petitioners claim almost all the land in the provinces of Suriname is classed as private property and that in the eyes of the law, the State is regarded like any private individual and not as the public owner of the land.[11] Based on this premise, the petitioners conclude that all land rights in Suriname derive only from a concession from the State and that the indigenous and Maroon peoples who are unable to display a land title granted by the State are considered "to be merely occupying the land by permission of the state, and have no effective rights or title."[12]

[10] Petition October 27, 2000, paragraph 25, page 8.

[11] *Ibid.* paragraph 26.

[12] *Ibid.*

79. The petitioners state that laws dating from when Suriname had military governments establish that the customary rights of the indigenous and Maroon peoples will be respected, unless they conflict with "public interest."[13]

80. The petitioners state that the breadth of this exception of public interest substantially limits "the rights of the indigenous and Maroon peoples to the extent that they are practically meaningless," particularly when "these rights are in conflict with logging, and mining activities, and other development of natural resources," all of which forms part of the State's development plans.[14] In this regard, the petitioners claim that in accordance with Surinamese legislation, mining, forestry and other activities classed as in the national interest "are excepted from the requirement to respect customary rights", and furthermore, that the "classification of an activity as being in the national interest is a political issue that cannot be tested in a court of law."[15] In addition, the petitioners claim that the rights referred to in Law L-1, of 1982, on Basic Principles of Land Policy, can be applied only to the villages and farms belonging to the Maroon and indigenous peoples, and not to other land and territory used for hunting, fishing, and other subsistence activities.

c. Proceedings in Suriname for granting land titles

81. According to the petitioners, Surinamese legislation[16] states that citizens of Suriname, including indigenous, Maroon, and other legal entities, have the right to apply to the Ministry of Natural Resources of Suriname for any plot of State land that has not been committed.[17] Land titles issued under this proceeding are individual in nature. The petitioners state "the indigenous and Maroon communities have no legal status in Suriname and are therefore not eligible to receive communal title in the name of the community or other traditional collective bodies that may own lands."[18]

82. The petitioners also claim that the nature of the title granted by the State is a lease, renewable for periods between 15 and 40 years, and that can be withdrawn at the discretion of the Ministry of Natural Resources, for logging, mining, and other activities that may be considered to be in the public interest.[19]

d. Logging concessions and activities and relevant legislation in Suriname

83. The petitioners maintain that the 1992 Surinamese Law of Forest Management governs most of the logging activities in the country and Article 41(1) (a) states:

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[13] Law L-1, 1982, Basic Principles of Land Policy, Article 41; quoted in petition dated October 27, 2000, paragraph 27, page 9.

[14] Petition dated October 27, 2000, paragraph 29, page 10.

[15] Petition dated October 17, 2000, paragraph 30, page 10.

[16] Decree L, 1982, Surinam.

[17] Petition dated October 27, 2000, paragraph 32, page 10.

[18] Petition dated October 27, 2000, paragraph 33. The petitioners add that an (indigenous/Maroon) community may only hold an individual title if it is registered as a foundation (Stichting).

[19] *Ibid.*

> The customary rights of the tribal inhabitants of the forest to their villages, settlements and farms will be respected wherever possible.

84. The petitioners claim that Article 41(1) (b) states that, if these rights are violated, the traditional authorities may lodge a petition before the President of the Republic of Suriname, who is empowered to set up a commission to advise him in the matter.

85. The petitioners state that they lodged two official complaints to the President of Suriname under the terms of this clause before lodging the petition,[20] but received no reply from the Office of the President. The petitioners interpret the lack of a reply to mean that measures have not been taken to investigate their complaints and nor have the issues they raised there been addressed.[21] The petitioners state that they also lodged a petition with the President in accordance with Article 22 of the Constitution of Surinam, but received no reply in that case either.[22]

e. Mining concessions and activities and relevant legislation in Surinam

86. The petitioners state that most mining activities in Suriname are governed by Mining Law E-58, of May 8, 1986, and are based on the principle that ownership of the subsoil differs from rights to land on the surface.[23] According to the petitioners, the law provides no protection for indigenous and Maroon peoples, either in relation to the land and its resources, the environment, or in terms of consultation or participation. The petitioners state that Article 25(1) of the Mining Law states that applications for exploration permits should include a list of all the tribal communities living in or near the area to be explored. The petitioners maintain that, however, the Law does not establish the purpose of this requisite and that, in general, it does not apply criminal responsibility for presentation of false information to support applications.[24]

f. Absence of effective instruments in domestic law

87. On the basis of the situation described above, the petitioners allege that the legal framework in Suriname in general does not oblige the State to take into account the rights or interests of the Saramaka people when it grants mining or logging concessions within Saramaka territory. They claim that the Constitution and laws of Suriname do not contain adequate and effective provision for affirming and protecting the rights of the Saramaka people to land and

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[20] Petition dated October 27, 2000, annex C2 and C3 comprise the complaints lodged on October 24, 1999, and July 1st, 2000, with the President of Surinam.

[21] Petition dated October 27, 2000, paragraph 42, page 12.

[22] Petition dated October 27, 2000. The petition submitted by the petitioners in line with Article 22 of the Constitution of Suriname that states: 1. All persons shall have the right to submit written petitions to the competent authority, and 2. The law regulates the procedure by which to give them effect.

[23] Petition dated October 27, 2000, paragraph 38, page 12.

[24] Petition dated October 27, 2000, paragraph 40, page 12. The petitioners refer to a study carried out by the OAS into the conflict between the Maroon community of Nieuw Koffiecamp and the Canadian mining companies Golden Star Resources and Cambior; in this case, Nieuw Koffiecamp was not mentioned by the companies in their application for an exploration permit, but no action was taken to investigate or sanction this violation. (OAS/UPD, *Natural Resources, Foreign Concessions and Land Rights: A Report on the Village of Nieuw Koffiecamp*, Unit for the Promotion of Democracy, General Secretariat, Organization of American States, Washington, D.C. 1997, footnote on page 10, paragraph 102.

resources, and that the few rights that are recognized are permanently denied by the right of the State to develop, or authorize others to develop, natural resources.[25]

88. The petitioners argue that the laws of Suriname do not provide adequate or effective remedy and therefore offer the petitioners no hope of success in the domestic jurisdiction.[26]

B. Position of the State

89. The State argues that most of the violations alleged by the petitioners were invented. However, it recognizes that those Surinamese citizens who live in tribal communities constitute a special group that, apart from individual rights to the land, have historical or traditional rights to state lands. The State maintains contact with remote communities via the Gaaman and has recognized his leadership since the eighteenth century, when the post was first created.

90. The State of Suriname recognizes that it may not behave in such a way as to disregard or violate the basic rights of its citizens in order to exercise its right to develop its natural resources. Suriname stresses that it does not violate and has not violated the rights of its citizens in general and it has not violated the rights of the Saramaka community while developing its natural resources. It goes on to say that if such a violation had occurred, once it had received official notification of such a situation, it would not hesitate to adopt the necessary corrective measures.

[25] Petition dated October 27, 2000, paragraph 22, page 7.

[26] Note from the petitioners dated March 18, 2003, paragraph 11, page 2.

1. Position of the State regarding admissibility

91. The State says that the petitioners do not represent a legally recognized body. The fact that the petitioners claim to act in the name of the Saramaka people of Suriname, thus denying the highest Saramaka authority of the Gaaman, implies that the petitioners do not hold valid statute to lodge this case for the consideration of the Commission. Therefore, it alleges that the petitioners do not satisfy the basic requirements mentioned in Article 44 of the Convention, and therefore, the Commission should declare this case inadmissible.

92. Furthermore, the State maintains that the petition does not satisfy Article 46 of the Convention because the subject is or has been pending for settlement in another international proceeding. The State refers to the 80th regular session of the UN Commission on Human Rights, when the subject of the petition was lodged before said committee at the request of Forest People Programme, in March 2004. The same argument applies with regard to CERD to whom the Forest People Programme presented reports on the same subject during the 64th regular session of that organization, in February 2004. According to the above, the State considers that the subject was pending for settlement in those international proceedings and therefore the requirements contained in Article 46(c) of the Convention have not been satisfied and the Commission should declare this case inadmissible.

93. Furthermore, the State of Suriname argues that domestic legislation provides adequate and effective remedies for the petitioners, but they did not exhaust these. The State claims that the petitioners have chosen not to bring the full range of internal proceedings and state that no official complaint has been made to the judicial authorities regarding the illegal mining being carried out in the area, which is the object of this questioning.

94. In addition, the State says that Article 10 of the Civil Code states that all persons have the right to an impartial and public hearing to consider his claims, within a reasonable period, before an independent and impartial judge, in case his rights and liberties have been infringed. The State adds that if a citizen considers that his rights have been infringed, he may bring a civil action, an option that remains open also to the petitioners. Furthermore, Article 1386 of the Civil Code of Suriname states that any illegitimate act that causes damage to another person makes the person responsible for damage liable to offer compensation. This legal provision applies when the offending party is the government.[27] Based on the foregoing, the State claims that the petitioners did not exhaust all domestic legal remedies and that the remedies available are not ineffectual.

[27] The State quotes two cases: De Verenigde Makomelingen Immigranten en Indianen Partij" vs. Suriname, Kort Geding III, January 3, 1977, No 764045, and Richards vs. Surinam, High Court of Justice, No A28, June 6, 1975. The State claims that in each of these cases "a complaint was made against the State" and that "the petitioners have a legal remedy for what they consider a violation of their rights by the State."

2. Position of the State on the merits

95. The State says that in 2000, at the time the petition was lodged, it is true that exploratory and development work was underway in Saramaka territory and that some of that work was not in line with instructions from the State.

96. The State claims that several indigenous and tribal communities have leased the development permits they were granted under the terms of the land law, to private third parties and national and foreign companies, and that therefore it is difficult to establish whether or not it is people from these very indigenous and tribal communities who, because they are dissatisfied with their share of the financial gain, are protesting against situations in remote parts of the country that are the responsibility of these companies.

97. Because of this, the State argues that it has made allowances for the concerns of Surinamese citizens, including those of the Saramaka people, concerning the forestry work in the Upper Suriname River area, and goes on to say that it has made real efforts to set up adequate mechanisms to protect the interests of all the people of Suriname in terms of land issues, and that it is therefore unrealistic to expect that an issue that basically effects how natural resources are managed in a sizeable part of the country could be resolved quickly and effortlessly.

a. Evidence

98. The State argues that the petitioners have provided no evidence that the Convention has been violated and make no reference to the articles of this instrument the State is alleged to have violated.

99. With regard to the petitioners' allegations as to the effects of the concessions for logging and mining exploration, the State claims that the petitioners have not presented any evidence that the actions or omissions complained of have in fact given rise to the alleged violations of the rights to life, property, cultural integrity, a healthy environment, consultation, or equality before the law.

b. Equality and cultural integrity

100. Suriname claims that, like other members of society, the petitioners are entitled to practice their own culture, language, and religion. The State affirms its recognition of the right of Maroon communities to cultural integrity, evidence of which, it says, is provided by how it recognizes and maintains the authority structures within the Maroon communities.

101. Recognizing that the Saramaka people live collectively in communities, and recognizing their collective cultural identity, the State of Suriname recognizes their *sui generis* nature, and on this basis, extends these groups certain privileges in order to allow them to continue to exist, and preserve their cultural identity. It adds that if, after a suitable investigation, it is revealed that in fact certain areas belonging to their cultural patrimony have been violated, the government will not hesitate to take action.

c. Application of international case law

102. The State argues that the Saramaka people do not have collective rights to the lands and resources they currently inhabit or use, under international law like the American Convention for example, because the nature of the rights of the Saramaka people is only a privilege that is subject to the public interest of the State.

d. Property and natural resources

103. The State of Suriname claims that the right to the use and enjoyment of property has not been violated because ownership is not being questioned. It argues that in Latin America, the territories are not the property of the indigenous peoples, nor under their control, but are merely areas where indigenous peoples exercise certain rights such as use, hunting and gathering, and carrying out sacred ceremonies. In accordance with Article 41 of the Constitution of Suriname, natural resources belong to the State and should benefit all the country's population.

104. At present, the only land title in Suriname is a lease. The State grants the right of use for different purposes to private individuals, private companies and organizations, and to communities of persons living in remote parts of the country. The State argues that granting concessions to the Gaaman and chiefs provides an opportunity to use the natural resources of such areas.

105. The State recognizes that tribal communities in remote areas of Suriname need land in order to live and says that by virtue of the land law currently in effect it may grant certain rights and/or privileges to the Maroon and indigenous peoples so that they may continue to enjoy the use of the land as an integral part of their culture and customs.

106. The State also says that Article 4 of the Principles of Land Policy Law, in the Legal Gazette, and in Law No. 10, legislators recognize the rights of the Maroons and indigenous peoples to live in tribal communities in their villages, settlements, and farms. Community lands and forest are clearly defined in Article 1 of the Law of Forestry Management, and the inhabitants of each village have the right to a community forest.

107. The State recognizes that the issue of the right to property is very important and should be studied extensively within the framework of different international developments relevant to the right to land and the rights of tribal peoples. Suriname is willing to investigate in order to establish whether or not rights have been violated, and where this has happened, to establish which rights were violated. In addition, the State argues that if the petitioners claim that no legislation exists to provide them with a remedy, the State must conclude that the petitioners themselves recognize that they have no right to ownership.

e. Self determination

108. The State of Suriname affirms that those persons who belong to the indigenous and Maroon communities have the right to practice their own culture, their language, and their religion, with other members of their society. Therefore, it rejects the complaint that the right to self-determination has been violated.

109. The State recognizes the right of communities to free determination, establishing that this right, as interpreted internationally, is not the same as that granted at national level to community or tribal peoples. The right to self-determination, according to its acceptance in international law, is applicable to nations and not to internal communities within States.

f. The right to petition and the right to receive prompt response

110. The State accepts that it has not responded adequately to the petitions lodged, but says this was due to a brief period of political instability and general elections.

g. The obligation to respect and protect rights effectively

111. In this respect, the State states that it would never go along with excusing violations of the rights of its citizens, and repeats that it is a complex case that should be handled with great care.

h. The right to be consulted and to participate in decision-making

112. The State declares that the right to be consulted and to participate in decision-making is essential in a democratic State and forms part of the principle of good government, and denies that the right to be consulted and to participate in decision-making has been violated. It claims that it has created an opportunity for citizens to be heard and to participate in the decision-making process.

113. The State alleges that the Saramaka and Maroon people are present in the representative bodies within the Surinamese constitutional system. In this regard, the State explains that the indigenous and Maroon authorities are those with whom the government deals concerning those decisions that affect the local population and communities.

114. It adds that the Saramaka Maroons are able to actively participate in the decision-making process relating to the granting of concessions. It states that explicit instructions have been given to District Commissioners to consult local leaders before making their assessments relating to granting concessions in that area. The State also accepts that it is possible that the implementation of this consultation does not always work as it should and that it could possibly be adjusted, if necessary.

IV. ANALYSIS

A. ADMISSIBILITY

1. Competence *ratione personae, ratione loci, ratione temporis* and *ratione materiae* of the Inter-American Commission

115. The State challenges the admissibility of the petition on the grounds that the petitioners are not empowered by law to lodge a petition before the Commission without the authorization of the Gaaman, the main leader of the Saramaka people.

116. Article 44 of the American Convention establishes the competence of the Commission. It also establishes that **"**Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

117. In this context, it should be considered that unlike other systems for protecting human rights, the inter-American system admits that different categories of petitioners may lodge complaints in the victims' name. The drafting of Article 44 is, in effect, broad. For a petition to be lodged that contains denunciations of violations of the Convention by a state party, unlike the practice established in the European system or in the United Nations Human Rights Committee, it is not necessary for the petitioners to be the actual victims. The inter-American system does not demand that the petitioners have a direct or indirect personal interest in the finding on the petition, nor does it demand that they are legally empowered by the alleged victims or by any other authority or representative of the victim.[28]

118. A study of the case that is the subject of this report clearly reveals that the petitioners lodged a petition in the name of members of the 12 Saramaka clans, alleging the violation of the right of property, amongst other rights. Article 44 does not impose on the petitioners any obligation to obtain authorization from the victims, or third parties such as the Gaaman, in this case. Therefore, the Commission finds that it has the necessary competence *ratione personae* in order to examine the petition in question, in accordance with Article 44 of the Convention.

119. In line with Article 44 of the Convention, and Article 23 of the Rules and Procedures of the Commission, the petitioners are authorized to lodge petitions alleging the violation of a right protected by the American Convention. The alleged victims are members of the 12 Saramaka clans, persons whose rights are protected by the Convention, the provisions of which the State is committed to respect. Suriname has accepted the jurisdiction of the Commission, according to the terms of the Convention, since November 12, 1987, at which time its instrument of ratification was deposited.

120. In view of the fact that the petitioners lodged complaints of violations of Articles 1, 2, 8, 21, 23, and 25 of the American Convention, the Commission has competence *ratione materiae* to examine the complaints. The Commission also has competence *ratione temporis* to examine the complaints because the petition alleges events that took place since the time when Suriname ratified the American Convention. Finally, the Commission has competence *ratione loci*, given that in the petition it is shown that the alleged victims were within the jurisdiction of the State of Suriname at the time when the alleged events took place and that they took place within the territory of that State.

2. Duplication of procedures and *res judicata*

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

121. The petitioners claim that this petition does not duplicate any other petition pending in another international proceeding, nor has it already been before or settled by the Commission or any other international government organization. The State, for its part, states that the subject of this petition is or has been pending settlement in another international proceeding[29] because the subject was examined in March 2004 by the UN Commission on Human Rights at the request of Forest People Programme[30], and in February 2004, by the UN CERD, also at the request of Forest People Programme.

122. As observed by the Commission,[31] Article 46 of the Convention establishes the criteria for admission of petitions by the Commission, while Article 47 establishes the criteria for the inadmissibility of petitions.

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

> Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements :(c) that the subject of the petition or communication is not pending in another international proceeding for settlement.
> 1. Article 47 states the following:
>
> The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: (d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

124. In its findings in the cases of Peter Blaine and Neville Lewis,[32] the Commission stated that, "While the Commission has had occasion to apply Articles 46(c) and 47(d) in its practice, it has not 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 Rules and Procedures. Having examined the jurisprudence of the European human rights system, as well as that of the UN Committee on Human Rights, and consistent with its own past practice, the Committee 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 UN Committee on Human Rights 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 UN Committee on Human Rights."[33] In these same reports, the Commission observed, "claims brought regarding the same

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[29] Presentation by the State to the Commission on October 27, 2004 (121st regular session), page 17, paragraph 27.

[30] NGO established in 1990 by World Rainforest Movement. Fergus Mackay, a consultant for the petitioners, is the Coordinator of Three Guyanas and Legal/Human Rights Programme of the FPP.

[31] See Report No 97/98, Case 11.825 Neville Lewis Jamaica, December 17, 1998; Report No 96/98, Case 11.827 Peter Blaine Jamaica, December 17, 1998; Report No 25/99, Cases 12.018 Steve Shaw, 12.022 Desmond Taylor, 12.024 Beresford Whyte, 12.025 Silbert Daley, 12.026 Deon Mctaggart, 12.027 Andrew Perkins, and 12.029 Everton Morrison, Jamaica, March 9, 1999.

[32] Report No 97/98, Case 11,825, Neville Lewis, Jamaica, December 17, 1998; Report No 96/98, Case 11.827, Peter Blaine, Jamaica, December 17, 1998.

[33] Report No 97/98, Case 11.825, Neville Lewis, Jamaica, December 17, 1998, paragraph 43. Report No 96/98, Case 11.827, Peter Blaine, Jamaica, December 17, 1998, paragraph 43.

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."[34]

125. The instances referred to by the State do not imply a duplication of proceedings before the Commission with regard to the present petition. The Commission comments that the proceedings referred by the State have to do with revisions by Suriname of periodic reports and not with a measure seeking settlement in international proceedings of the subject that is the basis of this petition. The Commission also notes the State's own declaration that the proceedings before the UN were brought by the non-governmental organization Forest People Programme and not by the petitioners *per se* and that they were not restricted to the subject of the present petition. Consequently, the Commission concludes that the subject of the petition before us is not pending in another international proceeding for settlement and therefore finds no impediment to the admissibility of the petition lodged by the petitioners, in accordance with Article 33 of its Rules and Procedures.

3. Exhaustion of remedies under domestic law

126. The State here invokes Article 46 of the Convention in order to affirm that the Commission should not admit the petition on the grounds that all remedies available under domestic law have not been exhausted, and that the exceptions described in this provision are not applicable to this case because the petitioners did not bring legal proceedings for compensation as provided for by the Suriname Civil Code.

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

128. Article 46(1)(a) of the Convention states that for a case to be admissible the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. Article 46(2) of the Convention defines the exceptions to the previous rule as when the domestic legislation of the state concerned does not afford due process of law for the protection of the right that has allegedly been violated, when the party alleging violation of his rights has been denied access to the remedies available under domestic law, or when there has been an unwarranted delay in rendering a final judgment under the remedies.

129. Furthermore, when the petitioner contends that he cannot prove the exhaustion of domestic remedies, Article 31(3) of the Rules and Procedures of the Commission establishes

[34] Report No 97/98, Case 11.825, Neville Lewis, Jamaica, December 17, 1998, paragraph 45. Report No 96/98, Case 11.827, Peter Blaine, Jamaica, December 17, 1998, paragraph 45.

that it shall be up to the State to demonstrate that the remedies under domestic law have not previously been exhausted, unless that is clearly evident from the record.[35]

130. When deciding whether the petitions lodged by the petitioners should be considered inadmissible because all remedies available under domestic law have not been exhausted, the Commission refers to the basic principles that govern the nature of the remedies that should be exhausted in the inter-American system, that is, whether they are adequate or relevant in addressing an infringement of a legal right, and effective in that they must be capable of producing the result for which they were designed.[36]

131. The Commission shared the opinion of the European Court of Human Rights that the petitioner may be excepted from the requirement to exhaust all domestic remedies if it is clearly evident in the record that the proceedings brought in connection with the petition do not suggest reasonable prospects of success, in view of the prevailing case law of the State's highest legal bodies.[37] The Commission considers that in such circumstances, actions in which complaints of this nature are made would not be considered "effective" in accordance with generally recognized principles of international law.

132. Therefore, the petitioners argue that the domestic law of Suriname does not provide due process to protect the rights that have allegedly been violated, and "does not provide the petitioners with any hope of success under domestic law."[38] In particular, the petitioners argue that neither the laws nor the legal bodies[39] of Suriname recognize or protect

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[35] I/A Court of H.R., Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C, No 1, paragraph 88.

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

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

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

[39] The petitioners quote a number of cases in this regard. In their notes of July 15, 2003 and May 3, 2004, the petitioners quote the Surinamese legal judgment of Tjang A Sijn vs. Zaalman and others as proof of the inadequacy and ineffectiveness of the Civil Code. In this case, proceedings were brought against a captain (chief) of an indigenous community by a resident of Paramaribo because he was interfering in the reconstruction of a holiday house located in the neighborhood of the indigenous community. The court found in favor of the plaintiff on the grounds that the plaintiff possessed "real title to the land and the captain had committed an illegitimate act by obstructing the attempts to rebuild the house." The petitioners add that the court rejected the defense of the captain that the land was "traditionally and from time immemorial the property of the Lokono indigenous people…" In their note of May 3, 2004, the petitioners quoted the most recent case, *Celientje Martina Joeroeja-Koewie and others vs. Surina and Suriname & Industries N.V.,* that was the subject of the judgment pronounced in July 2003, which, they argue, provides even more backing for their conclusion that adequate and effective remedies do not exist [copy of the decision is attached as Annex 1]. In this case, the members of the indigenous community of Pierre Kondre opposed the concession and operation of a gravel pit, and affirmed their rights to their communal lands on the grounds of their traditional occupation and use. According to the petitioners, the Court rejected the complaint lodged by the community on the grounds that it was "without any basis in law" and appeared to state that the community and its members lacked legal competence to seek the protection of their rights. According to the petitioners, the Court did not directly address the claim by the indigenous community to have the right to the land and its resources by virtue of their traditional occupation and use of it, or by virtue of the requests from the community for compensation."

The petitioners point out that this case was lodged in accordance with Article 1386 of the Civil Code, the same procedure that the State "repeatedly refers to as proof of the existence of adequate and effective remedies…" In addition, the petitioners argue that in each of the cases quoted, "the courts have rejected the claims of indigenous and tribal peoples for their rights to their

(Continued…)

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

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

4. Deadline for presentation of petition

134. According to Article 46(1) (b) of the Convention, petitions must be lodged within a deadline, that is, a period of six months from the date on which the petitioner was notified of the final judgment in domestic law.

135. As in the case of the exhaustion of domestic remedies, Article 46(2) (a) of the Convention establishes that the period of six months defined in Article 46(1) (b) of the Convention is not applicable when **"**the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."

136. The State has not met the deadline for its response to the petition, and the Commission is satisfied in the circumstances of the case that the petition was lodged within a reasonable period of time. Therefore, the Commission finds no impediment to the admissibility of the petition, considering the provisions of Article 46(1) (b) of the Convention.

5. Colourable claim

137. Articles 47(b) and 47(c) of the Convention demand that the Commission shall consider inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by the Convention, or if the statements of the petitioner or of the State indicate that the petition is manifestly groundless or obviously out of order.

138. The petitioners allege that the State violated the rights of the Saramaka people enshrined in Articles 8, 21, 23, and 25 of the American Convention, together with the obligations imposed on the State by Articles 1 and 2 of the Convention. The petitioners also lodge specific declarations of fact concerning the granting by the State of logging and mining concessions in lands and territories occupied and used by the Saramaka people.

(…Continuation)
traditional lands and resources and their opposition to the concessions granted in these lands, either on the grounds that they lack judicial merit or simply that the right to registered real property issued by the State revokes any right that could be claimed by indigenous or tribal peoples."

139. Furthermore, the Commission considers that the facts alleged by the petitioners, if true, might also reveal violations of Article 25 of the Convention in that the alleged absence in Suriname of an effective remedy with which to redress violations of human rights protected by domestic law in Suriname and the American Convention could establish a violation of the obligation of the State to give judicial effect in domestic law to the rights and freedoms enshrined in the Convention, as well as the right to protection under the law.

6. Conclusions

140. The Inter-American Commission concludes that it has competence to examine this case and that the petition is admissible in accordance with Articles 46 and 47 of the Inter-American Convention.

B. MERITS OF THE CASE

141. The Commission will now analyze the facts it considers proven, based on the arguments and documents presented by the parties during processing and will issue a special pronouncement regarding those it considers controversial. The Commission will also analyze the law and jurisprudence applicable in the instant case.

1. Preliminary

142. In order to determine the human rights norms and principles applicable to this case, the Commission notes that the alleged human rights violations are with respect to persons who identify themselves as members of a community forming part of a tribal people and who live in a specific territory, that is to say, the Saramaka community, which inhabits the region of the Upper Suriname River.,

143. According to the jurisprudence of the Inter-American human rights system, the provisions of its governing instruments, including the American Convention, should be interpreted and applied in context of developments in the field of international human rights law since those instruments were first composed and with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged[40] This approach is also reflected in Article 29(b) of the American Convention which provides that "No provision of this Convention shall be interpreted as: [. . .] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party".

144. Without limiting the terms and characteristics by which indigenous and tribal peoples may be identified, the Commission notes that recognized international instruments, such as the International Labor Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (hereinafter "ILO Convention No. 169"), make tribal peoples the subject of special provisions[41]. The Commission notes, however, that the State of

[40] See Advisory Opinion OC-10/89, supra, para. 37; I/A Court H.R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Ser. A Nº 16 (1999) [hereinafter "Advisory Opinion OC-16/99"], para. 114 (endorsing an interpretation of international human rights instruments that takes into account developments in the corpus juris gentium of international human rights law over time and in present-day conditions; Report Nº 52/02, Case Nº 11.753, Ramón Martinez Villareal (United States), Annual Report of the IACHR 2002 [hereinafter "Martinez Villareal Case"], para. 60.

[41] The ILO Convention No. 169 makes a distinction is made between tribal and indigenous peoples. According to Article 1 the Convention applies to:

a. Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from 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;

(Continued…)

Suriname has not ratified ILO Convention 169 and that the Commission lacks competence to pronounce on the application or transgression of any of its norms.

145. In the context of the inter-American human rights system, this Commission has recognized and promoted respect for the rights of the indigenous peoples of the Hemisphere. In the resolution the Commission adopted in 1972, for instance, on "Special Protection for Indigenous Populations – Action to Combat Racism and Racial Discrimination," the Commission proclaimed that "for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states."[42] This concept of special protection has also been considered in a series of countries and in individual reports approved by the Commission and it has been recognized and applied in connection with numerous rights and freedoms of the American Convention, including the right to life, the right to humane treatment, the right to judicial protection, the right to a fair trial, and the right to property[43]. In its 1997 report on the human rights situation in Ecuador, the Commission declared that

> Within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions[44].

146. The Commission's criterion in recognizing and giving effect to particular protections in the context of the human rights of indigenous peoples is consistent with developments in the field of international human rights law in a broader sense. Other international and national organizations have recognized and applied special measures to guarantee the human rights of the indigenous, including the Inter-American Court of Human Rights[45] the International Labour Organization [46], the United Nations, through its Human Rights

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(…Continuation)

b. Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

[42] Resolution on "Special Protection for Indigenous Populations. Action to Combat Racism and Racial Discrimination," cited in IACHR, Yanomami Case, Report 12/85, 1984-1985 Annual Report, (hereinafter "Yanomami Case"), paragraph 8.

[43] See, for instance: Yanomami Case, sup*ra*. IACHR, Report on the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, Doc. 10 rev. 3 (November 29, 1983). IACHR, Second and Third Reports on the Situation of Human Rights in Colombia 1993, 1999; Draft American Declaration on the Rights of Indigenous Peoples, approved by the IACHR, 95th regular session, February 26,1997, Annual Report of the IACHR 1997, Chapter II.

[44] IACHR, Report on the Situation of Human Rights in Ecuador, OAS/Ser.L/V/II.96.Doc.10 rev 1, April 24, 1997, Chapter IX [hereinafter, "Ecuador Report"].

[45] See, for example: I/A Court of H.R., *Mayagna (Sumo) Community of Awas Tingni.* Judgment of August 31, 2001. Series C No. 79; I/A Court of H.R., *Plan de Sánchez Massacre Case,* April 29, 2004. Series C No. 105; I/A Court of H.R., *Plan de Sánchez Massacre Case vs. Guatemala.* Judgment of November 19, 2004. Series C No. 116; I/A Court of H.R.. *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124; I/A Court of H.R.. *Indigenous Community of Yakye Axa vs Paraguay Case.* Judgment of June 17, 2005. Series C No. 125; I/A Court of H.R.. *Yatama vs. Nicaragua Case*. Judgment of June 23, 2005. Series C No.127.

[46] *See, for example*, ILO Convention No. 169, *supra*.

Committee [47] and the Committee for the Elimination of All Forms of Racial Discrimination [48] and the domestic legal systems of States.[49]

147. Accordingly, in determining the present case, the Commission will, to the extent appropriate, interpret and apply the pertinent provisions of the American Convention in light of current developments in the field of international human rights law, as evidenced by treaties, custom and other relevant sources of international law.

2. The Saramaka people

148. As mentioned above, the Saramaka people is one of six Maroon peoples living within the borders of Suriname. The Maroons are the descendents of slaves who freed themselves from slavery and established viable and autonomous communities along the main inland rivers of the forests of Suriname in the 17th and 18th Centuries.[50]

149. The Maroons consider themselves, and are culturally perceived to be, different from other sectors of Surinamese society and they apply their own laws and customs.

150. According to the information available, Saramaka society is essentially organized in 12 matrilineal clans, who are the primary possessors of land in Saramaka society. These clans are scattered over 58 communities along the Upper Suriname River. Collectively, the Saramaka people has occupied its current territory since the beginning of the 18th Century, the only exceptions being the so-called "transmigration villages," which were displaced in the 1960s by the construction of a hydroelectric dam to feed a bauxite refinery.

151. The Saramaka territory includes lands that the Saramaka people occupied and traditionally used, for the most part to the exclusion of other groups, be they indigenous, Maroon, or other. These lands are possessed collectively by the clans (*los*), whereby the individuals and extended family units in the clan enjoy subsidiary use and occupation rights. The occupation of the Saramaka territory dates back to the 16th Century, when the ancestors of this people fled from slavery on the plantations[51]. At that time they put up resistance against the Dutch colonial authority until it finally recognized their territorial and cultural autonomy in a treaty signed in 1762, which put an end to hostilities between the Dutch and the Saramaka people, as well as other Maroon peoples.[52] The Inter-American Court of Human Rights has observed – and

[47] *See, for example,* United Nations Human Rights Committee, General Comment 23, PIDCP, Article 27, UN Doc. HRI/GEN/1/Rev.1, 38 (1994) [hereinafter, "General Comment 23 of the UN Human Rights Committee], paragraph 7.

[48] *See, for example,* CERD General Recommendation XXIII (51) regarding indigenous peoples (August 18, 1997).

[49] For a compendium of domestic laws governing the rights of indigenous peoples in numerous OAS member states, see IACHR, International and National Law Sources for the Draft American Declaration on the Rights of Indigenous Peoples, OEA/Ser.L/V/II.110 Doc. 22 (March 1, 2001).

[50] I/A Court of H.R., *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraph 86.1

[51] I/A Court of H.R., *Aloeboetoe et al Case, Reparations* (Article 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, paragraph 56; *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraph 86.1.

[52] I/A Court of H.R., *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraph 86.2

the Commission concurs with its interpretation – that the 1762 agreement contravenes the rules of *jus cogens superveniens.*[53]

152. Saramaka culture and identity form a complex network of ongoing relations with ancestral and other spirits, with the land and with kinship structures. The lands and resources of the Saramaka are considered in their entirety and intertwined with social, ancestral, and spiritual relations, which govern their daily life. In particular, their identity is inextricably linked to their struggle to free themselves from slavery, which they call the "first time".

153. The State has produced no evidence contradicting or challenging the longstanding ancestral connections of the members of the communities in question with the Saramaka people in the northern part of Suriname.

154. What is more, during the processing of this case, the State has recognized that the petitioners have a right to enjoy their own culture, language, and religion and affirms respect for the cultural identity of the Maroon communities, stating that this respect is shown in the recognition and maintenance of such communities' traditional structures of authority. The State further recognizes that the Saramaka people lives in communities and recognizes its collective cultural identity. Moreover, the State recognizes that the land is necessary for the survival of the tribal communities in the provinces and states that under current land law it can grant certain rights and/or privileges to the Maroons and the indigenous so that they may continue to enjoy use of the land as an integral part of their culture and customs.

155. For its part, domestic law in Suriname provides for legal recognition of the existence of indigenous and tribal peoples. Article 4 (1) of Decree L-1 of 1982[54] states that in assigning privately owned land the rights of Maroons and the indigenous must be respected.

> In assigning privately owned land, the rights of the Bush Negroes [55] and tribal indigenous to their villages, settlements, and plots of land in the forests shall be respected, provided they do not contravene the general interest;
>
> In assigning privately owned land, the rights of the Bush Negroes [56] and tribal indigenous to their villages, settlements, and plots of land in the forests shall be respected, provided they do not contravene the general interest;

156. The members of the Saramaka community are not native to the region. Nevertheless, as has been established and in keeping with the facts that the Commission considers proven, they form a tribal people, with specific cultural characteristics, and an identity

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[53] In the *Aloeboetoe* Case, the Inter-American Court of Human Rights noted 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 Saramaka undertake to, 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 Saramaka to sell to the Dutch any other prisoners they might take, as slaves. No treaty of that nature may be invoked before an international human rights tribunal." *Series* C Nº 15 I/A Court of H.R., Aloeboetoe et al. vs. Suriname Case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of September 10, 1993), paragraph 57.

[54] Decree L-1 of 1982 on Basic Principles on Land Policy.

[55] The Maroons have been called bosnegers, Bush Negroes or bushnegros.

[56] The Maroons have been called bosnegers, Bush Negroes or bushnegros.

made up of a complex network of relations with spirits, the land, and kinship structures. The lands and resources of the Saramaka are considered as an all-embracing whole and intertwined with the social, ancestral, and spiritual relations, which govern their daily life.

157. Consequently, the jurisprudence developed by the organs of the Inter-American human rights system concerning indigenous peoples shall in the instance case also apply to the Saramaka people in Suriname.[57]

158. With regard to the foregoing, a study of treaties, legislation, and international jurisprudence shows, since the beginning of the 20th century, evolving human rights provisions and principles applicable to the situation of indigenous and tribal peoples.[58]

159. Having regard for the foregoing jurisprudential considerations, the Commission concludes that the petition in this case has been presented on behalf of the members of the tribal people called Saramaka, who inhabit the territory currently comprising the Upper Suriname River in Suriname.

160. In this regard, the Commission will pronounce on possible violations by the State of Suriname of the American Convention to the detriment of the Saramaka people and its members, paying special attention to the particular principles of international human rights law governing the individual and collective interests of indigenous and tribal peoples, including consideration of any special measure that may be appropriate and necessary to assert those rights and interests.

3. Right to property

161. Article 21 of the American Convention establishes:

> 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.

162. In analyzing the right to property in the context of the case at hand, it is useful first to discuss how this right is addressed in the domestic legal system in Suriname. Then the Commission will provide a more specific analysis of the rights that members of the Saramaka people of the Upper Suriname River have in the territory in question, according to the applicable

[57] I/A Court of H.R. *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraph 133: "[Accordingly], the Moiwana community members, a N'djuka tribal people, possess an "all-encompassing relationship" to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole. Thus, this Court's holding with regard to indigenous communities and their communal rights to property under Article 21 of the Convention must also apply to the tribal Moiwana community members: their traditional occupancy of Moiwana Village and its surrounding lands – which has been recognized and respected by neighboring N'djuka clans and indigenous communities over the years (*supra*, paragraph 86.4) – should suffice to obtain State recognition of their ownership. The precise boundaries of that territory, however, may only be determined after due consultation with said neighboring communities (*infra* paragraph 210)."

[58] For a historical overview of the evolution of international human rights with regard to indigenous peoples, see IACHR, *The Human Rights Situation of Indigenous Peoples in the Americas*, OEA/Ser.L/V/II.108, Doc. 62 (October 20, 2000), pp. 21-25.

provisions and principles of international human rights law, and of any corresponding obligation of the State to recognize and protect such rights. In this analysis, the Commission also proposes to consider the juridical balance between any rights that the Saramaka people may be entitled to under Article 21 of the Convention, and the prerogative of the State to subordinate those rights to "the interest of society" or "for reasons of public utility or social interest". Finally, the Commission will discuss whether the State is responsible for violating any of the rights and obligations with respect to the Saramaka people.

163. As the parties pointed out in their briefs to the Commission, Suriname is a former Dutch colony, whose legal system is based on the civil law tradition. When Suriname became fully independent in 1975, it adopted a written Constitution, which was subsequently replaced (in 1987) and amended (in 1992).

164. Article 34 of the Constitution of Suriname provides for an individual right to property, subject to the State's right to expropriate, in the following terms:

> 1. [Property, of the community as well as of the private person, shall fulfill a social function]. Everyone has the right to undisturbed enjoyment of his property subject to the limitations which stem from 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 be previously assured if in case of emergency immediate expropriation is required.
>
> 4. In cases determined by or through the law, the right to compensation shall exist if the competent public authority destroys or renders property unserviceable or restricts the exercise of property rights for the public interest.

165. Ownership of natural resources pertains to the State by virtue of Article 41 of the Constitution:

> Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation has the inalienable right to take complete possession of its natural resources in order to utilize them to the benefit of the economic, social and cultural development of Suriname.

166. The information available indicates that land titling, leasing, and occupation on a permit basis is mainly governed by Decree L-1 of 1982 on Basic Principles of Land Policy. According to this law, any Surinamese citizen and any legal person is entitled to ask the government for a plot of uncommitted state land. These land titles are issued on an individual basis and are granted as leases vis-à-vis the State, renewable for periods of 15 to 40 years.

167. The aforementioned Decree L-1 of 1982 partially recognizes the rights of tribal and indigenous peoples, but subject to the "general interest" of the State. Article 4 establishes that:

> 1. In assigning privately owned land, the rights of the Bush Negroes and tribal indigenous to their villages, settlements, and plots of lands in the forests shall be respected, provided that they do no contravene the general interest;

2. The general interest includes execution of any project in the framework of an approved development plan.

168. In this regard, the State has repeatedly expressed the view that the use and occupation of lands and resources by the Saramaka people is not equivalent to "a right to property in the sense of the right to property of the Convention, the Declaration, or the Constitution of Suriname,"[59], but, at most, a "privilege" or "right of use,"[60] for which reason the State maintains that it has not violated any individual or collective right to property of the Saramaka people.

169. According to the information provided by the parties, the State, and not the Saramaka people, is the owner of the territories and resources occupied and used by the Saramaka people. At the same time, the best information shows that the Saramaka people, through tacit approval by the State, have attained a certain degree of autonomy to govern its lands, territories, and resources.[61]

170. Indeed, in its note to the Commission dated December 27, 2002, the State expressly recognizes the "*sui generis* nature" of the Saramaka people, which, for the State constitutes the basis for granting it "certain privileges" under which it can exploit its territories and preserve its culture. In the same note, the State asserts that "it does not interfere in the use of these lands given that these privileges must be exercised collectively by the communities." Although it denies the existence of communal property rights, through what it calls "privileges" the State recognizes the collective management of the territories that the Saramaka people has traditionally possessed and occupied and it also recognizes the structure of authority within the Maroon communities, including the Gaaman. However, in none of its submissions does the State identify any legal framework to recognize these so-called privileges or to mediate between them and the State's prerogative to subordinate them to a wider social or public interest.

171. After referring to domestic legislation on property and its application in the instant case, the Commission will refer to the right to property of the indigenous and tribal peoples in the context of international human rights law and the corresponding implications for this case.

4. The right to property and tribal and indigenous peoples in the context of contemporary international human rights law.

172. In assessing the nature and content of the right to property in Article 21 of the American Convention, in the context of the case at hand, certain aspects in the evolution of international protection of the human rights of tribal and indigenous peoples are particularly relevant.

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[59] Official Reply by the State of December 27, 2002, paragraph 9, p. 4; See also the supplementary written communication from the State of May 23, 2003, paragraphs 56ff., page. 39.

[60] Ibid.

[61] See the petition of September 30, 2000, attaching a report by Dr. Price as Appendix D; this report documents the social, political, and geographical history of the Saramaka people. Specifically, the report addresses: (1) The political geography of Saramaka territory (2) ownership of Saramaka land; (3) Saramaka land use; (4) Saramaka sovereignty. The report also cites numerous articles and books put together by Dr. Price on Saramaka and Maroon culture and history.

173. Among the facts to emerge from advances in the human rights of the indigenous is the recognition that indigenous and tribal communities frequently exercise rights and freedoms collectively, in the sense that those rights and freedoms can only be guaranteed when the guarantee concerns a community as a whole.[62] The right to property has been recognized as one such, collectively exercised, right. As has been stated in the instant case, the State acknowledges that the Saramaka people lives collectively in communities and it recognizes its collective cultural identity in connection with the land.

174. It is, furthermore, significant that the organs of the inter-American human rights system have specifically recognized that indigenous peoples enjoy a special relationship with the land and resources they have traditionally occupied and used, whereby these lands and resources are regarded as the property and enjoyment of the indigenous community as a whole[63] and the use and enjoyment of the land and its resources form an integral part of the physical and cultural survival of the indigenous communities and of the fulfillment of their human rights in the broader sense.[64] As the Inter-American Court of Human Rights observed in its judgment in the case of the (Sumo) Community of Awas Tingni v. Nicaragua:

> For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[65]

175. In its reports on individual petitions and on the overall human rights situation in member states, and in precautionary measures, the Commission has pronounced on the need for states to adopt measures designed to restore, protect, and preserve the rights of indigenous peoples to their ancestral lands.[66] It has also maintained that respect for the collective rights to property and possession of the indigenous peoples vis-à-vis their lands and ancestral territories constitutes an obligation of the member states of the OAS and that the states incur international liability if they fail to meet that obligation.[67] According to the Commission, the right to property set forth in the American Convention must be interpreted and applied in connection with indigenous peoples with due consideration of the principles relating to protection of traditional forms of property and cultural survival and of the rights to land, territories, and natural resources[68]. .

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[62] See the Dann Case, *supra*, paragraph 128, which cites the IACHR, *The Human Rights Situation of the Indigenous Peoples of the Americas*, 2000, OEA/Ser.L/V/II/108, Doc. 62 (October 20, 2000), page. 125; Yanomami Case, *supra*. *See also* ILO Convention Nº 169, *supra*, Article 13 (which establishes that "In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.").

[63] See, for example, the Awas Tingni Case, *supra*, paragraph 149 (which observes that" Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community.").

[64] The Commission has noticed, for instance, that continued use of traditional collective systems for controlling and using territory are frequently essential for individual and collective wellbeing and, indeed, for the survival of indigenous peoples; and that this control over the land has to do with their capacity to obtain life-sustaining resources and the geographical space needed for the cultural and social reproduction of the group. Ecuador report, *supra*, page. 115.

[65] Awas Tingni Case, *supra*, paragraph 149.

[66] See, for example, Yanomami Case, *supra*; Dann Case, *supra.*

[67] See, for example, Dann Case, *supra*.

[68] See el Dann Case, *supra*, paragraphs 129-131, which cite the Draft American Convention on the Rights of Indigenous Peoples, *supra*, Article XVIII; Ecuador report, *supra*; Awas Tingni Case, *supra*, paragraphs 134-139; PICDP, Article 27; PIDCP, General Comments 23, *supra*, paragraph 7; CERD General Recommendation XXIII (51) regarding the indigenous peoples (August

(Continued…)

176. The Inter-American Court has adopted a similar criterion with regard to the right to property in connection with indigenous peoples, in recognizing the communal form of indigenous land tenure as well as the special relationship of an indigenous people with its land. According to the Court,

> Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.[69]

177. On numerous occasions the Court has emphasized that the close relationship between the indigenous and their land must be recognized and understood as the fundamental basis of their culture, spiritual life, integrity, economic survival and their preservation and transmission to future generations.[70] It added that the culture of members of the indigenous communities corresponds to a special way of life, of being, seeing, and acting in the world, based on their close ties to their traditional territories and the resources found therein, not just because these are their principal means of subsistence, but also because they constitute an integral part of their vision of the cosmos, religiosity, and, consequently, their cultural identity.[71]

178. The organs of the inter-American system of human rights have therefore recognized that rights to property are not restricted to the property interests already recognized by states or defined in domestic laws, but have an autonomous significance in international human rights law.[72] Accordingly, the jurisprudence of the system has recognized that the rights to property of the indigenous peoples are not exclusively defined by the rights assigned under the State's formal legal system, but also include the indigenous communal property derived from and founded upon custom and indigenous tradition. Based on this criterion, the

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(…Continuation)
18, 1997) in which the states parties to the Convention on Racial Discriminating are called upon to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."); ILO Convention No. 169 *supra*, Article 14(1) (which states that: The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect "); Article 15(1) (which establishes that "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources").

[69] Awas Tingni Case, *supra*, paragraph 149.

[70] I/A Court of H.R.. *Plan de Sanchez Massacre Case*. *Reparation* (Article 63.1 American Convention on Human Rights. Judgment of November 19, 2004. Series C No. 116, paragraph 85; and *Mayagna (Sumo) Community Awas Tingni* Case, paragraph 149; *Yakye Axa Indigenous Community vs Paraguay* Case. Judgment of June 17, 2005. Series C No. 125, paragraph 131.

[71] *Yakye Axa Indigenous Community vs Paraguay* Case. Judgment of June 17, 2005. Series C No. 125, paragraph 135.

[72] The European Court of Human Rights has applied a similar interpretation of the concept of "possessions" in the context of Article 1 of Protocol Nº1 of the European Convention on Human Rights. See Matos E Silva, Ltd v. Portugal (1997) 24 E.H.R.R. 573. The Court declared that "the notion of "possessions" in Article 1 of Protocol Nº 1 has an autonomous meaning. In the present case the applicants' unchallenged rights over the disputed land for almost a century and the revenue they derive from working it may qualify as "possessions" for the purposes of Article 1." *See also* Latridis v. Greece (1999) E.C.H.R. 31107/96 Hudoc REF00000994, of March 25, 1999 (in which interests are asserted in connection with the possession and running of a movie theater over 11 years, even though under domestic legislation there was a dispute over the title to the movie theater); The Holy Monasteries v. Greece, (1995) 20 E.H.R.R. 1 (in which rights to property are recognized on the basis of occupation over centuries).

Commission has maintained that the application of inter-American human rights instruments to the situation of indigenous peoples requires

> special measures to ensure recognition of the particular and collective interest that indigenous peoples have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation.[73].

179. This interpretative approach is supported by the language of other instruments and other international deliberations that constitute new indications of international views of the incidence of the traditional land tenure system on modern human rights protection systems[74].

180. The organs of the inter-American system attach special importance to protection of the right of indigenous peoples to own their ancestral territories because its effective protection implies not only protection of an economic unit, but protection of the human rights of a collective unit whose economic, social, and cultural development is based on its relation to the land. The Commission has long argued that protecting the culture of tribal peoples includes preservation of factors related to the organization of production, which includes, inter alia, the question of ancestral and communal lands.[75]

5. The right to property and traditional territory of the Saramaka people

181. In the context of the provisions and principles outlined above, it has to be determined whether the Saramaka people of the Upper Suriname River enjoy a right to property in accordance with Article 21 of the Convention, with respect to the lands, territories, and resources it has traditionally occupied and used, and, if so, the nature of the State's obligations with respect to observance and protection of this right under Articles 1 and 2 of the American Convention.

182. The petitioners asked the State to recognize their communal rights to the lands, territories, and resources in the Upper Suriname River area. The Commission is aware of the attempts by the State and the petitioners to arrive at a friendly settlement of claims to the Saramaka lands. However, since these attempts have failed, the Commission feels obliged to define the rights of the Saramaka people in accordance with international law, along with the positive measures that the State must adopt in order to respect and guarantee such rights.

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[73] Dann Case, *supra*, paragraph 131. The Inter-American Court has similarly recognized that " indigenous peoples' customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration." Awas Tingni Case, *supra*, paragraph 151.

[74] For example, Convention Nº 169 of the International Labour Organization on the rights of indigenous and tribal peoples, asserts the rights of the indigenous and tribal peoples to ownership and possession of the lands they traditionally occupy and requires governments to safeguard those rights and provide appropriate mechanisms for solving their land disputes. Moreover, the Draft American Declaration on the Rights of Indigenous Peoples and the Draft United Nations Declaration on the Rights of Indigenous Peoples expressly or implicitly assert the rights of the indigenous peoples to possess, develop, control, and use the lands and resources that they have traditionally possessed, or occupied, and otherwise used. Furthermore, Article XI of the CARICOM Charter of Civil Society (adopted by the CARICOM states on February 19, 1997). also obliges member states – including Suriname -- to "recognize the contribution of the indigenous peoples to the development process and to undertake to continue to protect their historical rights and respect the culture and way of life of these peoples"

[75] Miskito Case, *supra*, 81, Part II, paragraph 15. See also the Yanomami Case *supra*, 24, 431; Ecuador Report, *supra*, 103-4.

183. As indicated above, the Commission has satisfied itself that, based on the information available, the members of the Saramaka communities constitute a tribal people, whose ancestors have inhabited this region since the 17th century, when Suriname was a Dutch colony.

184. According to the petitioners, the nature or scope of any claim that the Saramaka people may have to its lands, territories, and resources is uncertain because the borders of the lands and territories of the Saramaka have not been clearly defined in practice nor demarcated on the ground.[76] They add that the formal system governing real estate in Suriname does not duly respect their rights to the land.

185. In this regard, the petitioners also allege that the Saramaka people has maintained customary forms of land use, which means that the land and its natural resources are used and occupied by the members of the Saramaka community in a variety of ways that differ from those recognized under the formal real property system in effect in Suriname. The petitioners maintain that these forms of land use have been and continue to be governed by a traditional system of land ownership, according to which the Saramaka villages possess the land collectively, while individuals and families enjoy subsidiary rights to use and occupy that land.[77] Moreover, the petitioners assert that thee land use practices are essential, not just for the subsistence of the members of the Saramaka communities, but also because they cement the life and cultural continuity of the Saramaka people.

186. Furthermore, the petitioners argue that that State has not recognized nor properly protected the traditional Saramaka land tenure system and that the State's granting of forestry and mining concessions in the Upper Suriname River region, without consulting the Saramaka people and without obtaining their informed consent is a specific indication of the omissions of the State with respect to Saramaka land rights. In March 2004,[78] the Saramaka Chief, Wanze Eduards, stated before the Commission that the woods in Saramaka territory are necessary for physical survival, because they are hunting ground and are used for farming and as a source of water.

187. For its part, the Government of Suriname has recognized the cultural and territorial identity of the Saramaka people and states that that is why the State assigns "certain privileges" to these groups to enable them to assure their survival, while maintaining their cultural identity. Nevertheless, the State insists that the legal relation of the Saramaka people

[76] See the petition of May 3, 2004, paragraph 18, page 6.

[77] Petition of September 30, 2000, paragraph 53, p. 15, which cites the testimony of expert Dr. Richard Price before the Inter-American Court of Human Rights in the *Aloeboetoe et al* Case, (1993). In his testimony, (according to the transcription of it on pp. 91-92), Dr. Price describes Saramaka land tenure as follows: "The Saramaka people, the Saramaka nation, if we can call it that, as a whole, have a particular territory that you can see on that map. In terms of agricultural land, and the land in which they have their houses, they are held communally, by large kinship groups, of which there are 13 or 14 in Saramaka, and the whole river is divided into large areas of several miles long, owned by one of this particular groups. Every Saramaka belongs to one of these groups, through his or her mother, these groups are called Lo. They are what anthropologists call matrolineal clans, but you belong, every Saramaka belongs to one, and only one Lo. A person's Lo owns particular land, and any member of the Lo's has rights to work, to ask the Village Captain, in the area where the Lo owns lands, for an area to cut gardens. Any member of the Lo has a right to pick food from trees that grow in that area. Members of other Lo's, other Saramaka have to ask permission in order to pick food. But land is held communally, and it's held for posterity, so that if I am given a particular garden, for the present, I do not have rights to pass that particular place on to my children, rather the matrilineal group as a whole…"

[78] Hearing # 49 before the Commission of March 5, 2004, during the 119th regular period of sessions.

with their lands and territories does not amount to an individual or collective property right as internationally recognized in instruments such as the American Convention.[79]

188. In this regard, the State considers that the right to property has not been violated, as there is no question of property in this case. Suriname cites examples in Latin America, in which territories are not owned or controlled by indigenous peoples, but are rather zones in which the indigenous peoples exercise other rights, such as use, passage, hunting, gathering, and the celebration of sacred ceremonies. The State says that, according to Article 41 of the Constitution of Suriname, "Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation has the inalienable right to take complete possession of its natural resources in order to utilize them to the benefit of the economic, social and cultural development of Suriname." In the context of Article 21 of the American Convention, the Commission acknowledges that the subordination of collective property rights (by the State) to the public interest is indeed permissible, subject to just compensation. However, this premise presupposes, firstly, the recognition of such collective property rights, and secondly, the balancing of such rights against the public interest imperative of the State. In the absence of any such regime, where the State does exercise its prerogative to subordinate Saramaka lands and territories, it can do so without compensating the Saramaka people. The State has repeatedly denied any violation of Article 21 of the American Convention, "since there is no question of [a right to] property as such is defined in the [American] Declaration and the [American] Convention."[80]

189. The State asserts that the only land ownership title that exists is a lease that can be renewed for between 15 and 40 years exclusively legally recognized persons or entities, such as companies. The State confirms that there is no domestic legal regime that establishes or recognizes a collective property title for indigenous or tribal peoples. In the absence of any such recognition, it follows that there is no legal regime in Suriname charged with mediating between the right of the State to appropriate (collective) property in the public interest and the right to collective ownership *per se*. The Commission notes that while the State has asserted its right to "exploit its natural resources in order to bring development for the nation", it has also recognized that "this basic right for a state, must not and cannot be executed in violation of the rights of individuals".[81]

190. The Commission observes in this regard that the State has not presented any international jurisprudence to support its position on the legal status of the Saramaka people's use and occupation of its lands and territories or to contradict prevailing international jurisprudence on the rights of indigenous and tribal peoples. The State has accepted that the Saramaka people have historically inhabited the territory of the Upper Suriname River, but applies Surianme's legal and constitutional framework to defend its position that the Saramaka people has no property rights *per se*, but rather just a privilege or permission to use and occupy

[79] In its official reply of December 27, 2003, the State asserts on page 4, paragraph 9 that "The State of Suriname is aware that for centuries these communities have used the land and lived in harmony with their environment in order to satisfy their basic needs, without harming the environment. That being so, the State considers that these tribal communities enjoy the privilege of continuing to live as they have. Nevertheless, there is no question of them owning the land in the sense established in the Convention, the Declaration, or the Constitution of Suriname."

[80] See paragraph 8 of Suriname's submission to the Commission of December 27, 2002

[81] See paragraph 46 of Suriname's submission to the Commission of May 23, 2003

the lands at the discretion of the State. This position appears to be echoed in Suriname's primary legislation, which provides for respect for the customary rights of the indigenous and the Maroons, unless they conflict with the 'general interest'.[82] The Commission notes that the State has not explicated how this general interest is balanced, if at all, with these customary indigenous and tribal 'privileges' or rights, particularly in respect to the grant of logging and mining concessions exercisable by third parties over lands and territories used and occupied by the Saramaka people.

191. The Commission also notes that, in its concluding observations on Suriname in March 2004, the Committee for the Elimination of Racial Discrimination observed that over 10 years after the Peace Accord of 1992, Suriname had not adopted an appropriate framework to govern legal recognition of the rights of indigenous and tribal peoples to their communal land, territories, and resources.[83]

192. In reaching its conclusion that Surinamese legislation is deficient with respect to the existence of the communal property rights of the Saramaka, the Commission has taken into account the general acknowledgement by the State of a very longstanding presence of the Saramaka people in the Upper Suriname River region, which is formidable proof of lasting ties between the Saramaka people and the lands of the Upper Suriname River. That view is also supported by experts in the traditional and modern land use practices of the Saramaka people, who confirm that this people, through its farming, land tenure, and other systems has, continuously and over a very long period of time, occupied vast areas of land, over and above the specific villages.[84]

193. Consequently, in the Commission's opinion, there is substantial proof that, through agriculture, hunting, fishing, and other traditional ways of using the land and resources, the Saramaka people have occupied large areas of land in the Upper Suriname River region, over and above particular villages, since colonial times, and that the dates on which they settled in specific Saramaka villages are not in themselves what determines the existence of communal property rights of the Saramaka to those lands.

194. Based on the arguments and evidence placed before it, the Commission is satisfied that the Saramaka people has demonstrated, in accordance with current international law, its right to communal ownership of the land it currently inhabits in the Upper Suriname River region. These rights derive from the use and occupation of the territory by the Saramaka people: a use and occupation that the parties agree has existed for centuries, ever since Suriname was a Dutch colony.

195. The Commission also considers that this communal right to property of the Saramaka people qualified for the protection of Article 21 of the American Convention, interpreted in accordance with the aforementioned principles regarding the situation of tribal and

[82] Article 4 of Decree L-1 of Suriname of 1982, [Basic Principles on Land Policy] *supra* and the Statement that the limitation of that right is "in the general interest." In paragraph 46, Suriname declares that "the State must have opportunities to exploit natural resources for national development."

[83] Paragraph 17 of the CERD report.

[84] See*, for example,* the Richard Price report, *supra*.

indigenous peoples, including the obligation to adopt special measures to guarantee recognition of an individual and collective interest of indigenous peoples in the occupation and use of their traditional lands and their resources.[85] In this respect, the communal right to property of the Saramaka people has a significance and autonomous foundation in international law.

196. Parallel to the existence of a communal property right of the Saramaka people, according to Article 21 of the Convention, the State has the corresponding obligation to recognize and guarantee the enjoyment of this right. Accordingly, the State must adopt appropriate measures to protect the right of the Saramaka people to its land.[86] In the Commission's opinion, this necessarily includes conducting effective and informed consultations with the Saramaka people regarding possible uses of its territory and taking into account in that process the traditional forms of land use and customary land tenure systems.

197. To further illustrate this position, in the Moiwana case, and based on arguments and evidence presented by the Inter-American Commission, the representatives of the victims, and the State of Suriname, the Inter-American Court concluded that Suriname had violated the right of the members of the community to communal use and enjoyment of their traditional property and it therefore considered that the State had violated Article 21 of the American Convention, in conjunction with Article 1.1 of the same 198. Convention, to the detriment of the members of the Maroon community. In substantiating its conclusion, the Court stated:

> The parties to the instant case are in agreement that that the Moiwana community members do not possess formal legal title – neither collectively nor individually – to their traditional lands in and surrounding Moiwana Village. According to submissions from the representatives and Suriname, the territory formally belongs to the State in default, as no private individual or collectivity owns official title to the land.
>
> Nevertheless, this Court has held that, in the case of indigenous communities who have occupied their ancestral lands in accordance with customary practices – yet who lack real title to the property – mere possession of the land should suffice to obtain official recognition of their communal ownership and consequent registration.
>
> That conclusion was reached upon considering the unique and enduring ties that bind indigenous communities to their ancestral territory. The close relationship of an indigenous community with its land must be recognized and understood as the fundamental basis of its culture, spiritual life, integrity, and economic survival. For such peoples, their communal nexus with the ancestral territory is not merely a matter of possession and production, but rather consists of material and spiritual elements that must be fully integrated and enjoyed by the community, so that it may preserve its cultural legacy and pass it on to future generations.
>
> In this way, the Moiwana community members, a N'djuka tribal people, possess an 'all-encompassing relationship' to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole. Thus, this Court's holding with regard to indigenous communities and their communal rights to property under Article 21 of the Convention must also apply to the tribal Moiwana community members: their traditional occupancy of Moiwana Village and its surrounding lands – which has been recognized

[85] See, similarly, the Dann Case, *supra*.

[86] In its judgment on the Awas Tingni Case, the Inter-American Court ruled that the fact that the State did not define the borders or effectively demarcate the collective assets of the Mayagna community of Awas Tingni created a climate of permanent uncertainty among the members of this community in as much as they have no certainty as to the geographical extension of their communal goods, and hence do not know the extent to which they can use and freely enjoy them. Awas Tingni Case, *supra*. [Cite the paragraph]

> and respected by neighboring N'djuka clans and indigenous communities over the years (*supra* paragraph 86(4)) –, however, may only be determined after due consultation with said neighboring communities *(infra* paragraph 210).
>
> Based on the foregoing, the Moiwana community members may be considered the legitimate owners of their traditional lands; as a consequence, they have the right to the use and enjoyment of that territory.[87]

199. In the instant case, for the Commission it is clear that the State has not established any legal mechanism for clarifying and protecting the property rights of the Saramaka people with regard to their territory. In that regard, it emerges from the file that the current system for land titling, leasing, and granting permits under Suriname law does not either recognize or adequately protect the communal rights of the Saramaka people to the land they have traditionally used and occupied. According to information provided by the petitioners, which has not been refuted by the State, the rules governing private property do not recognize or take into account the traditional collective system under which the Saramaka people uses and occupies its traditional lands. It is evident that ownership of the lands possessed by the Saramaka people resides with the State and that there are no provisions recognizing or protecting the communal interests of the Saramaka in those lands. Based on the record, there is no legal framework for regulating those interests or balancing them against the prerogative of the State to subordinate them to a clearly defined public or general interest. The Commission considers that the imperative for such a framework is inherent in the provisions of Article 21 when read in conjunction with Articles 1 and 2 of the American Convention.

200. Thus, the Commission observes that the Saramaka people has demonstrated a right to collective ownership of the land it currently inhabits in the Upper Suriname River region and that this property right of the Saramaka people is protected under Article 21 of the American Convention.

201. Likewise, the Commission observes that the State has not established in domestic law a mechanism for recognizing and protecting the territory of the Saramaka people, in full and effective consultation with the Saramaka people and in accordance with its customary law, values, habits, and customs, pursuant to the provisions of Article 21 of the American Convention, in conjunction with the general obligations imposed under Articles 1 and 2 of the Convention.

202. Consequently, the Commission concludes that the State of Suriname violated the right to property established in Article 21 of the Convention.

6. Mining and forestry concessions in the area of the Upper Suriname River

203. The petitioners affirm that the State's practice of granting numerous forestry and mining concessions in lands used and inhabited by the Saramaka people in the Upper Suriname River region violates the right to property of this people, established under Article 21 of the American Convention and they argue that this practice of granting concessions is part of a more general omission of the State of Suriname with respect to recognition and effective

[87] I/A Court of H.R.. *Moiwana Community vs Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraphs 130, 131, 133 and 134.

guarantees for the territorial rights of the Saramaka people, which also contravenes its right to property.

204. For its part, the State asserts its right to exploit its natural resources and argues that this exploitation benefits the whole population of the Republic of Suriname and it has not refuted the claim that it has granted concessions to third parties for forestry and mining activities in the area of the Upper Suriname River.

205. The principal forestry concessions identified by the petitioners are those granted by the State to two private lumber merchants - Ji Shen[88] and Tacoba Forestry Consultants, and one awarded to a private individual called D.W. Leysner.[89] According to the petitioners, the logging concessions to private enterprises were operating on the date the petition was filed, while the concession to D.W. Leysner came on stream in November 2003.

206. Although the State has admitted the existence of the forestry concession to the company named Ji Shen, it points out that this enterprise suspended its logging operations as of November 2002, above all because of depressed international market prices. The State makes no specific comment about the other concessions, but claims that the government's policy is "aimed at granting concessions outside the areas inhabited by the Maroons, which include an economic zone around the territories they inhabit."

207. The parties recognize that some members of the Saramaka community have obtained forestry concessions from the Government. The Government asserts that some of these concessions have been sublet or in some way transferred to third parties, who are unaware of social relations in the provinces of Suriname, or the role of traditional authorities, but provides no documentary support for this assertion. For their part, the petitioners recognize that a few members of the Saramaka community have obtained forestry concessions from the State, but they have done so to prevent the State from "granting those concessions to persons that do not belong to their community."[90]

208. The State has claimed that it suspended the granting of new concessions in order to comply with the precautionary measures ordered by the Commission. However, it asserted that the concessions complained about were awarded after consulting the leaders of the Saramaka people and that the petitioners have not presented evidence that the actions or omissions complained about in fact gave rise to the alleged violations.

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[88] Also known as Jin Lin Wood Industries.

[89] See position of the petitioners (*supra*).

[90] In paragraph 5, page 2, the petitioners assert that the fact that these concessions have been obtained by members of the Saramaka people is "completely consistent with the right of the Saramaka people to use and develop the raw materials within their traditional lands and territory, in accordance with Saramaka customary law, and in order to provide for their subsistence and other needs." The petitioners add that the Saramaka people has traditionally engaged in small-scale logging activities on its own land, unlike the large-scale exploitation practiced by individuals that do not belong to its community, who are authorized to act like that by the State. The petitioners also argue that the small-scale logging by members of the Saramaka community "to a large extent benefits the environment, in keeping with traditional Saramaka practices and resource management skills, and does not violate the sacred places of the Saramaka people." [paragraph 8. page. 3]. The petitioners argue that, for those reasons, they did not object to the concessions to members of their community, of which they said "there are currently four in Saramaka territory." According to the petitioners, what they object to is "the fact that Suriname does not recognize or guarantee their property rights," which obliges the Saramaka people "to obtain logging concessions in order to be able to use their own resources freely and to safeguard their ancestral lands from persons who are not members of their community and from the State." [paragraph 9, p.3].

209. With regard to mining concessions, the petitioners attached a map drawn up by the Ministry of Natural Resources in September 1999,[91] which shows two gravel mining and three gold mining concessions in the territory of the Saramaka people.[92] The petitioners accept that no mining activity is going on in these concessions. However, they believe it could begin at any time and affect more than 25 villages.[93]

210. The petitioners have also complained of gold mining activities carried out by some 30,000 to 40,000 illegal miners operating in Suriname, some of whom operate in Saramaka territory. This has led to mercury contamination[94] in traditional food supply areas.

211. On this subject, the State acknowledges the existence of illegal gold mining on Surinamese territory and states that it is in the process of "preparing a joint project with the Brazilian Government, which will address the issue of the use of mercury in gold mining" and that "the panners (*garimpeiros*) in the provinces will be trained on the method to be used for gold exploration, in order to ensure the least possible damage to the environment."[95] The State has not denied that these illegal activities are taking place in Saramaka territory and it has stated that the only mining activities in that area are gold extraction by the Saramaka people itself, which the State would consider illegal.

212. Apart from illegal gold mining, the parties agree that mining activities have so far not been carried out as a result of concessions awarded by the State.

213. The Commission recognizes the importance of economic development for the prosperity of the peoples of the Hemisphere. As the Inter-American Democratic Charter proclaims: "the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the status of the Hemisphere"[96]. At the same time, development activities must be accompanied by appropriate and effective measures to guarantee that they are not conducted at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous and tribal communities, or at the expense of the environment on which they depend for their physical, cultural, and spiritual wellbeing.[97]

214. The Commission has also said that "The norms of the Inter-American System neither prevent nor discourage development; rather they require that development take place under conditions that respect and ensure the human rights of the individuals affected."[98] Back in 1997, the IACHR recommended ensuring that "The State should ensure that the exploitation

[91] See Appendix F4 of the petition.

[92] See the petitioners' written statement of July 15, 2003, paragraph 20, p. 8.

[93] See the petitioners' written statement of August 22, 2003

[94] Mercury appears to be used in the small-scale mining carried out by the so-called "*garimpeiros"*.

[95] See the State's submission to the Commission at the 121st session, page. 9, paragraph 18.

[96] Inter-American Democratic Charter, approved by the OAS General Assembly at the special session held in Lima, Peru, on September 11, 2001, Article 13.

[97] See also the Report on the Situation of Human Rights in Ecuador (OEA/Ser.L/V/II.96 Doc. 10 rev. 1 of April 24, 1997).

[98] Report on the Situation of Human Rights in Ecuador (OEA/Ser.L/V/II.96 Doc.10 rev. 1, April 24, 1997), Chapter VIII.

of natural resources found at indigenous lands should be preceded by appropriate consultations with and, to the extent legally required, consent from the affected indigenous communities. The State should also ensure that such exploitation does not cause irreparable harm to the religious, economic or cultural identity and rights of the indigenous communities"[99]. The Commission notes, in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples that the indigenous people's consent to natural resource exploitation activities on their traditional territories is always required by law.

215. In relation to this position, the Commission notes that, in a complaint involving the Ogoni people and their communities in the State of Nigeria,[100] the African Commission on Human and Peoples' Rights addressed issues related to the impact of resource exploitation activities on the indigenous community. In that case, it was argued that the Nigerian Government had done grave environmental harm to the Ogoni people's rights to property and to their own culture by participating in irresponsible oil exploration activities in their communities and by allowing private oil companies to destroy the homes, villages, and food sources of the Ogoni people. In concluding that the State of Nigeria was guilty of violating several articles of the African Charter on Human and Peoples' Rights (the Banjul Charter),[101] including the right to property protected by Articles 14[102] and 21[103] of that instrument, the Commission indicated that it did not "wish to fault governments that are labouring under difficult circumstances to improve the lives of their people."[104], but at the same time emphasized that

> The intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities.[105]

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[99] Report on the Human Rights Situation in Colombia, (OEA/Ser.L/V/II.102 Doc. 9 rev.1, February 26, 1999), Chapter X (j) (3).

[100] Communication Nº 155/96, African Commission on Human and Peoples' Rights, 30th ordinary session, held in Banjul, Gambia on October 13 to 27, 2001 [hereinafter, the "Ogoni Case").

[101] June 27, 1981, 21 I.L.M. 59 (1981).

[102] Article 14 establishes: "The right to property shall be guaranteed. It may only be encroached upon in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

[103] Article 21 of the African Charter establishes that:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

[104] Ogoni Case, *supra*, paragraph 69.

[105] *Ibid*.

216. Based on information provided by the parties, the Commission concludes that the State awarded forestry and mining concessions to third parties so that they could carry out activities in Saramaka territory, but that only the forestry concessions have begun activities in Saramaka territory. The Commission also concludes that illegal gold mining is practiced in Saramaka territory, a situation that the State is aware of.

217. Regarding the illegal gold mining activities, the Commission notes that the State's acknowledgment that most of these activities are not regulated and have not effectively been subject to State control; that damage is being done to the environment by the use of mercury, and that a joint project with the Brazilian government is being processed with a view to addressing the issue of mercury use in gold mining and to ensuring that "the least possible damage is done to the environment."[106]

218. With respect to the natural resources found in the territories of indigenous peoples, the Inter-American Court has established that the close ties of the indigenous peoples with their traditional territories and the natural resources related to their culture that are found therein, as well as the intangible elements arising from them must be safeguarded under Article 21 of the American Convention. On other occasions, the Court has considered that the term "property" used in said Article 21 concerns "material objects that may be appropriated, and also any right that may form part of a person's patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value."[107]

219. The Commission considers that Article 21 of the Convention does not *per se* preclude the exploration and exploitation of natural resources in indigenous territories. However, in this case, the State did not consult the affected people beforehand regarding those activities, nor did it obtain its free and informed consent. Furthermore, the State did not regulate those activities or effectively supervise the way they would be carried out, all of which violates the right to property established in Article 21 of the American Convention, to the detriment of the Saramaka people. For these reasons, the Commission concludes that the State of Suriname violated Article 21 of the American Convention to the detriment of the Saramaka people.

220. As regards the environmental damage said to have been caused by the concessions, the petitioners assert that the logging concessions awarded by the State encompass areas that include vital parts of the natural environment which the Saramaka people depend on for their subsistence, including vulnerable soils, the growth of primary forests, and major basins. They also affirm that the logging undertaken as a result of the concessions has impaired an essential water source, has disrupted fauna and flora, and therefore made it more difficult to hunt, fish, and gather supplies: activities that are essential for the cultural and physical survival of the Saramaka people. To prove these allegations, the petitioners have submitted reports prepared by experts familiar with the environmental characteristics of the

[106] See the submission of the State before the Commission at the 121st session, page 9, paragraph 18.

[107] I/A Court of H.R.. *Mayagna (Sumo) Community of Awas Tingni Case*, paragraph 144; *Ivcher Bronstein* Case, paragraph 122; I/A Court of H.R.. *Yakye Axa Indigenous Community vs Paraguay Case.* Judgment of June 17, 2005. Series C No. 125, 137.

lands in the Upper Suriname River region,[108] as well as sworn statements by members of the Saramaka people itself, concerning the effects of logging activities on their communities.[109] According to experts who have studied environmental conditions in northern Suriname, forestry activities have damaged vital watercourses and flora and fauna in several parts of the Upper Suriname River area.

221. The State, for its part, claims that the petitioners have not shown proof that the concessions have given rise to adverse impacts on their environment. At the same time, the State has not produced evidence to show that environmental conditions in the lands in question were not affected by the permits it issued and by the gold mining activities carried out by the "*gambusinos"* or foreign panners (*garimpeiros)*, whose presence the State has acknowledged.

222. Based on the information presented, the Commission concludes that the forestry concessions awarded by the State in the Upper Suriname River lands have damaged the environment and that the deterioration has a negative impact on lands that in whole or in part are within the limits of the territory to which the Saramaka community has a communal property right. The Commission also considers that the harm partly resulted from the State's failure to put in place adequate safeguards and mechanisms, or to supervise or control the concessions, as well as its failure to ensure that the logging concessions did not cause major damage to Saramaka lands and communities.

223. The Commission notes that the State's failure to comply with its obligation to respect the communal right of the Saramaka people to ownership of the land it has traditionally used and occupied has been exacerbated by the environmental damage by some forestry concessions awarded in these lands, which in turn had a damaging impact on the members of such communities.

224. Consequently, and given developments in property law, as the organs of the inter-American human rights system have recognized, the State must eliminate the legal and regulatory impediments to the protection of the Saramaka people's property rights or adopt the necessary legal provisions to ensure protection.

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[108] *See, for example,* the Report by Dr. Richard Price attached to the petitioners' written statement (Appendix A) of July 22, 2002 in support of precautionary measures, which documents the threat of irreparable destruction of the means of subsistence, spiritual assets, and culture of the Saramaka. See also the presentation by Dr. Peter Poole to the Commission during the 119th session, in which he presented maps and photographs of the effects of the three concessions operating in Saramaka territory.

[109] See, for example, the sworn statement by Mr. G. Huur (a Saramaka) on May 7, 2002 in Appendix A of the petitioners' written statement of May 15, 2002, in which he declared that he was being prevented from hunting and fishing by a Chinese forestry enterprise.

7. Obligation to respect rights and equal protection

225. The petitioners have argued that the State is guilty of violating its obligation to respect the rights of the Saramaka people to the territory they inhabit, thereby contravening Article 1 of the American Convention on Human Rights.

226. Article 1 of the American Convention provides as follows:

> 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, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

227. For its part, Article 2 establishes 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 States 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.

228. There is no disagreement among the parties on the fact that the Constitution of Suriname neither explicitly recognizes nor guarantees the rights of the indigenous and tribal peoples of Suriname to own their lands, territories, and resources. There is likewise consensus on the fact that almost all the land in the inland provinces of Suriname is currently classified as state property, and that all land rights in Suriname must derive from a concession awarded by the State. In this context, the indigenous and tribal peoples that cannot show a title granted by the State are regarded by the latter as occupants with permission to inhabit state lands, but whose interests are subordinate to the "general interest."[110] Titles are only granted to individuals, unless a community registers itself as a legal entity: a foundation, for instance.

229. According to the petitioners, Surinamese legislation[111] establishes that the citizens of Suriname, including the indigenous and Maroons, and other juristic persons, are entitled to request a plot of state-owned land that is not the preserve of the Ministry of Natural Resources of Suriname.[112] According to this procedure, the titles issued are of an individual nature. The petitioners state that "the indigenous and Maroon communities of Suriname do not enjoy legal status in Suriname and are not eligible to receive communal titles on behalf of the

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[110] Suriname's primary legislation on state lands are the L Decrees of the military era, which establish that the customary "rights" to land of the indigenous and the Maroons shall be respected unless they conflict with the general interest [Decree L-1, of 1982, Basic Principles of Land Policy, Article 41].

The "general interest" includes execution of any project contained in an approved development plan, which includes the granting of concessions (See the National Forestry Policy document presented by the State at the hearing before the Commission on October 27, 2004).

As regards mining activities, Article 25 (1) (b) of Decree E-58 of May 8, 1986 requires a mention of the indigenous and Maroon peoples and that exploration permits must contain a list of all the tribal communities located in or near the area to be explored.

[111] The L Decrees of 1982 of Suriname.

[112] See the petition, paragraph 32, page. 10.

community or of other traditional collective entities that possess land."[113] Neither the Constitution nor any other law of Suriname confers legal status on the Saramaka people or any of the indigenous or tribal peoples of Suriname.

230. The Commission observes that the indigenous and Maroon communities lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community or other traditional collective entities that possess land.

231. As regards the forestry concessions, the State maintains that the Forestry Management Law of Suriname of 1992 affords protection for the rights of the Saramaka people in Article 41(1), which establishes that "the customary rights of tribal inhabitants and inhabitants of the forests to their villages, settlements, and agricultural plots shall continue to be respected as much as possible." Article 42(1) (b) establishes that, if these rights are violated, appeals may be lodged with the President of Suriname. The petitioners assert that they have filed at least two official complaints with the President of Suriname based on that provision (regarding the effects of logging concessions), without having received any reply from the Office of the President. The State has not contested this allegation by the petitioners nor has it indicated what remedy is available to them in the event that no answer is received to the complaints lodged with the President.

232. As with all fundamental rights and freedoms, it is not enough for States to provide for equal protection in the law. The state must also adopt legislative, political, and other measures to guarantee the effective exercise of these rights. In the circumstances of the instant case, and for the reasons given below, the Commission must conclude that the State of Suriname has not complied with the obligations imposed on it by Articles 1 and 2 of the American Convention, in that it has not established the legal mechanisms needed to clarify and protect the Saramaka people's right to communal property.

233. In complying with the general obligation to respect and guarantee fundamental rights, the States are obliged to "take affirmative action, avoiding taking measures that restrict or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right"[114].

[113] *Ibid*. paragraph 33. The petitioners add that an (indigenous/Maroon) community can only obtain an individual title if it registers as a foundation (*Stichting*).

[114] See Series A Nº 18 I/A Court of H.R., Legal Status and Rights of Undocumented Migrants. Advisory Opinion OC-18 of September 17, 2003; paragraph 81.

234. The Inter-American Court has also declared that:

> In international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted, and is supported by jurisprudence. The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of *effet utile)*. This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention's rules on protection[115].

235. As regards indigenous peoples in particular, several international studies conclude that, historically, indigenous peoples have endured racial discrimination, and that one major manifestation of such discrimination has been the failure of state authorities to recognize customary indigenous forms of land possession and use.[116] The Commission also noted that:

> Within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.[117]

236. In the circumstances of this case, the Commission has concluded that the Saramaka people constitute a separate group which merits special protection by the State. The Commission considers that the lack of constitutional and legislative recognition or protection of the collective rights of the Saramaka communities reflects unequal treatment in the law, which is not compatible with the guarantees of the American Convention. It has also concluded that, unlike the treatment of rights to property derived from the formal system of titling, leasing, and awarding of permits contemplated in Suriname's own domestic law, the State has not established the legal mechanisms needed to clarify and protect the communal property rights of the Saramaka people. Indeed, the State has expressly denied that the Saramaka people has an internationally recognized right to the lands and resources it has occupied and used for over three centuries.

237. In light of the principles examined above, the Commission concludes that Suriname violated Article 1 of the American Convention on Human Rights by failing to provide the necessary protection for full exercise of the right to property, on an equal footing with the other citizens of Suriname. The State of Suriname also violated its obligations under Article 2 of the Convention.

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[115] *"The Five Pensioners" Case* , *supra* note 27, paragraph 164; and *cf. Cantos Case*. Judgment of November 28, 2002 Series C Nº 97, paragraph 59; and the *Hilaire, Constantine and Benjamin et al Case* Judgment of June 21, 2002. Series C Nº 94, paragraph 213; and *cf. also* "*principe allant de soi*"; Exchange of Greek and Turkish Populations, Advisory Opinion, 1925, P.I.C.J., Collection of Advisory Opinions. Series B. Nº 10.

[116] For example, the UN Committee for the Elimination of Racial Discrimination has noted: in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized." (Committee for the Elimination of Racial Discrimination, General Recommendation XXIII, on the rights of indigenous populations, approved by the Committee at its 1,235th meeting, August 18, 1997, CERD/C51/Misc. 13/Rev. 4(1997), paragraph 3.

[117] Ecuador Report, *supra*, Chapter IX.

8. Right to judicial protection

238. Article 25 of the American Convention establishes that:

> 1. 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 rights 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. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.

239. The Inter-American Court has stated that safeguarding the individual from arbitrary exercise of public authority is the paramount objective of international protection of human rights. The nonexistence of effective domestic recourse renders persons defenseless. Article 25.1 of the Convention has established, in broad terms, the obligation of States to afford all persons subject to their jurisdiction effective judicial recourse against acts that violate their fundamental rights. It also establishes that the guarantee established therein applies not only to the rights contained in the Convention, but also to those recognized in the Constitution or the law.[118]

240. The petitioners argue that the State of Suriname has not provided effective judicial protection of the rights of the Saramaka communities of the Upper Suriname River, contravening Article 25 of the American Convention, because the Saramaka have not been able to obtain reparation through domestic remedies for the alleged violations of rights in respect of lands and resources.

241. As mentioned above, Suriname's legislation regarding state-owned lands consists of the decrees of the military era, which establish that the customary "rights" of the indigenous and the Maroons to land shall be respected unless they conflict with the "general interest."[119] The "general interest" exception with respect to the rights of the indigenous and Maroon communities could include any action that the State deems in the public interest or any project in a development plan. The effect of this provision is to substantially limit the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favor of an eventual interest of the State that might compete with those rights.

242. What is more, according to Suriname's laws, mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights. In practice, the classification of an activity as being in the "general interest" is not actionable and constitutes a political issue that cannot be challenged in the courts. What it does, in effect, is to remove land issues from the domain of judicial protection.

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[118] I/A Court of H.R.. *Tibi case*, paragraph 130; *Cantos Case.* Judgment of November 28, 2002. Series C No. 97, paragraph 52; *Mayagna (Sumo) Indigenous Community of Awas Tingni Case.* Judgment of August 31,2001. Series C No. 79, paragraph 111; Judicial Guarantees in States of Emergency, paragraph 23; *Yatama vs. Nicaragua Case,* paragraph 167.

[119] Decree L-1, 1982, Basic Principles on Land Policy, Article 41.

243. The rights of indigenous and Maroon peoples, such as the Saramaka, to their lands, territories, resources, and cultural identity are not explicitly recognized or guaranteed in the 1987 Constitution[120] and, for that reason, there are no provisions contemplating judicial recourse if they are violated.

244. The Saramaka people has lodged official complaints with the President of Suriname on two occasions in the past two years. In neither case did they receive a reply from the Office of the President, nor were any steps taken to investigate the complaint.[121] The petitioners also resorted to the right to petition established in Article 22 of the Constitution.[122] Evidence shows that these "remedies", in their current form, are intrinsically ineffective for guaranteeing the rights of the Saramaka, given the balancing of interests that the State has to establish in considering land issues and their rights.

245. With regard to the right to judicial protection, the Inter-American Court has declared that states parties have the obligation to provide effective judicial remedies to victims of human rights violations (Article 25 of the American Convention).

246. According to that principle, the nonexistence of effective recourse in the case of violations of rights recognized by the Convention is in itself a violation of the Convention by the State in which such recourse does not exist.[123]

247. The Commission has concluded that the nonexistence of effective judicial recourse implies not only an exception to exhaustion of domestic remedies, but also a violation of the substantive right to judicial protection established by the inter-American human rights system.[124]

248. On this same matter, the Inter-American Court has declared that:

> The inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs[125].

249. The State has challenged the allegations of the petitioners regarding the availability of domestic remedies by saying that they opted not to exercise them. In particular, the State argues that there has always been the possibility of filing claims for recovery and it

[120] According to Article 41 of the Constitution of Suriname: "Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation has the inalienable right to take complete possession of its natural resources in order to utilize them to the benefit of the economic, social and cultural development of Suriname."

[121] Appendix C – copies of the complaints.

[122] Which establishes: 1. Everyone has the right to submit written petitions to the competent authority, and 2. The law regulates the procedure for handling them.

[123] I/A Court of H.R., Advisory Opinion OC-9/87, Judicial Guarantees in States of Emergency, Articles 27(2), 25 and 8 of the American Convention on Human Rights, Ser. A N 9 (1987), paragraphs 27, 28.

[124] See*, for example, Case* 11.233, Report Nº 39/97, Martín Javier Roca Casas (Peru), 1998 Annual Report of the IACHR, paragraphs 98, 99.

[125] I/A Court of H.R.. Mayagna (Sumo) Community of Awas Tingni case, paragraph 113; Ivcher Bronstein case, paragraph 136; Constitutional Tribunal Case, paragraph 89; Yatama vs. Nicaragua Case, paragraph 168.

cites Article 1386 of the Civil Code of Suriname, which establishes that "any illegal action causing harm to another person obligates the person causing the harm to indemnify the person harmed."[126] The State also cites two Surinamese court decisions in support of its argument.

250. For their part, the petitioners[127] acknowledge the legal possibility of bringing a suit against the State for damages within the framework of Suriname's Civil Code. However, they assert that Article 1386 of the Civil Code only contemplates "a procedure analogous to a civil action for damages (*agravio*)", which, in the petitioners' opinion, is incapable of making reparation for the individual and collective rights that the State has not recognized and which the State has violated. The petitioners also assert that the State must say what domestic remedies must be exhausted and provide proof of their effectiveness, and that in this regard the State has not met the burden of proof requirement because "it has not indicated what remedies must be exhausted nor shown…that they match and are effective in the circumstances of the petitioners' case."[128]

251. Furthermore, in their brief to the Commission of May 3, 2004, the petitioners also assert that the cases cited by the State as supposedly demonstrating the existence of a "legal recourse" for "individuals and collective entities" were "summarily dismissed by the courts as lacking merits." The petitioners cited two more cases filed by the Association of Indigenous Peoples against the State in relation to rights to land and resources and alleged violations of those rights, which they say were summarily dismissed.[129]

252. In their written communications of July 15, 2003 and May 3, 2004, the petitioners cited the Surinamese court decision in Tjang A Sijn v. Zaalman and others[130] as proof of the inadequacy and ineffectiveness of the Civil Code procedure. In this case, the chief of an indigenous community was the subject of a legal action brought by a resident of Paramaribo who accused him of interfering with the reconstruction of a vacation home in the vicinity of an indigenous community. The court ruled in favor of the plaintiff, arguing that he had a "real title to own the land and that the Chief had committed an illicit act in hampering his attempts to reconstruct the home." The petitioners add that the court rejected the Chief's defense that the land was the "traditional property since times immemorial of the lokono indigenous people…"[131]

253. In their written statement of May 3, 2004, the petitioners cited the more recent case of *Celientje Martina Joeroeja-Koewie and others v. Suriname & Suriname & Industries N.V.,* which was the subject of a judgment handed down in July 2003,[132] which, they maintain, also supports the conclusion that adequate and effective remedies do not exist.[133] In this case, the members of the *Pierre Kondre* indigenous community contested the awarding and exploitation of a sand concession and asserted their communal rights to the land based on

[126] The State's reply of December 27, 2002, paragraph 5, page. 3.

[127] Supplementary written statement by the petitioners to the Commission on March 18, 2003, paragraphs 9ff., pp. 2-3.

[128] *Ibid*. paragraph10.

[129] A.R. Nº 753160, January 13, 1976 and A.R. Nº 754180, September 26, 1975 4.

[130] A.R. Nº 025350, Cantonal Court, First Canton, Paramaribo, May 21, ed

[131] Written statement by the petitioners of July 15, 2003

[132] A.R. Nº 025350, Cantonal Court, First Canton, Paramaribo, July 24, 2003.

[133] A copy of the decision is included in Appendix 1 of the document.

traditional occupation and use. The court rejected the community's claims for recovery as "lacking any legal support" and appeared to indicate that the community and its members lacked juridical personality ("competence") to attempt protection of their rights.[134] According to the petitioners, the court "did not directly address the indigenous community's assertion of its rights to the land and resources based on traditional occupation and use nor the community's claim for compensation."[135]

254. As the Commission maintained previously, the State's obligation to provide judicial recourse is not simply met by the mere existence of 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 "really effective for determining the existence of a human rights violation and providing the corresponding compensation."[136] 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 and collective rights of indigenous communities. With respect to the right to collective property, the State should provide in its judicial regime, suitable and effective judicial remedies, which should provide some special guarantee/compensation depending on/in accordance with the social dimension of the violated right. These remedies should offer an adequate procedural framework to deal with the collective dimension of the conflict, conferring on the affected group the possibility of claiming, through its representatives or authorized persons, the guaranteed right to participate in the process and to obtain compensation.

255. Based on the foregoing considerations, the Commission concludes that there are no domestic remedies available to the Saramaka people and, consequently, the State of Suriname violated the right to judicial protection established in Article 25 of the American Convention to the detriment of the Saramaka people.

V. CONCLUSIONS

256. Based on the foregoing analysis, the Commission concludes that:

257. The State violated the right to property established in Article 21 of the American Convention to the detriment of the Saramaka people by not adopting effective measures to recognize its communal property right to the lands it has traditionally occupied and used, without prejudice to other tribal and indigenous communities.

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[134] In paragraph 4 of their written statement of May 3, 2004, the petitioners cite the following text from the judgment:: "*Considering the circumstances in which the petitioners say they are litigating, i.e., as inhabitants of the village of Pierre Kondre, they are not competent to demand the measures they are calling for in this case, because there is no legal foundation for that, and the petitioners will have to try to obtain satisfaction by rejecting the expansion of the concession by the defendant sub A, in reference to which, given the nature of the expansion, they may exert influence.*" [A.R. Nº 025350, page. 3]. [TR. Original source not found; re-translated]

[135] Written statement by the petitioners to the Commission of May 3, 2004, paragraph 5, p. 2.

[136] See, for example, Case 10.606, Report Nº 11/98, Samuel de la Cruz Gómez (Guatemala), 1997 Annual Report of the IACHR, paragraph 52, which cites I/A Court of H.R.., Advisory Opinion 9/87 of October 6, 1987, Judicial Guarantees in States of Emergency (Articles. 27(2), 25 and 8 of the American Convention on Human Rights), Ser. A Nº 9, paragraph 24.

258. The State violated the right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, by not providing it effective access to justice for the protection of its fundamental rights.

259. The State of Suriname violated Articles 1 and 2 of the Convention by failing to recognize or give effect to the collective rights of the Saramaka people rights to their lands and territories.

VI. RECOMMENDATIONS

260. In accordance with the analysis and conclusions contained in this report, the Inter-American Commission on Human Rights recommends that the State of Suriname should

1. Remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Saramaka people exercises its right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities.

2. Refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people as established in this report.

3. Repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and make reparation and due compensation to the Saramaka people for the damage done by the violations established in this report.

4. Take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used.

VII. NOTIFICATION

261. The Commission decides to remit this report to the State of Suriname, in accordance with Article 43 of its Rules of Procedure, and to give it 60 days, starting from the date this report is remitted, to comply with the recommendations contained in said report. During that period, the State shall not be authorized to publish the report. The Commission also decides to notify the petitioners of the approval of this report.

Done and signed in the city of Washington, D.C., on the 2nd. day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio,Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo G. Carozza and Víctor E. Abramovich Commissioners.

The undersigned, Santiago A. Canton, Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.

Santiago A. Canton
Executive Secretary