

REPORT N° 76/07
PETITION 198-07
ADMISSIBILITY
THE KALIÑA AND LOKONO PEOPLES
SURINAME
October 15, 2007

I. SUMMARY

1. On February 16, 2007, the Inter-American Commission on Human Rights ("the Commission" or "the IACHR") received a petition lodged on behalf of the Kaliña and Lokono Indigenous Peoples of the Lower Marowijne River (hereinafter referred to as "the alleged victims" or "the Kaliña and Lokono Peoples" or "the Lower Marowijne Peoples") against the Republic of Suriname ("Suriname" or "the State"). The petition was jointly filed by the following petitioners:

a) The village leaders of each of the eight Kaliña and Lokono communities/villages of the Lower Marowijne River: Richard Pané (Kaliña) of the village of Christiaankondre, Ramses Kajoeramari (Kaliña) of the village of Langamankondre, Henry Zaalman (Lokono) of the village of Wan Shi Sha, Romeo Pierre (Kaliña) of the village of Pierrekondre, Harold Galgren (Lokono) of the village of Alfonsdorp, Leo Maipio (Kaliña) of the village of Bigiston, Jona Gunther (Kaliña) of the village of Erowarte, and Frans Pierre (Kaliña) of the village of Tapuku.

b) The *Vererniging van Inheese Dorpshoofden in Suriname* (in English, the Association of Indigenous Village Leaders in Suriname), an association of indigenous leaders from each of the 46 indigenous villages in Suriname.

c) The *Commissie Landrechten Inheemsen Beneden-Marowijne* (in English, The Lower Marowijne Indigenous Land Rights Commission), which is described as the "working arm"¹ of the Association of Indigenous Village Leaders in Suriname.

2. The Petitioners are represented by Fergus MacKay (counsel), David Padilla (co-counsel) and Jacqueline Jubithana (co-counsel).

3. According to the Petitioners, the Kaliña and Lokono Peoples have traditionally owned or otherwise occupied their traditional lands, territory, and resources for thousands of years. The Petitioners maintain that their ownership rights arise from their customary laws and tenure, which vest paramount title collectively in the Kaliña and Lokono Peoples and subsidiary rights in extended kinship groups associated with the eight villages each of which hold rights over defined areas of the overall territory. The Petitioners further state that the territory of the Kaliña and Lokono Peoples provides the basis for the vast majority of their subsistence and other material and non-material needs and values.

4. The Petitioners complain that the indigenous property rights of the Lower Marowijne Peoples are neither recognized nor respected in the laws of Suriname, in violation of the American Convention on Human Rights ("the Convention") Suriname's laws (a) vest ownership of all untitled lands and all natural resources in the State; (b) fail to provide adequate and effective judicial or other remedies to protect the indigenous property rights of the Lower Marowijne Peoples; (c) do not recognize the juridical personality of the alleged victims for the purpose of holding title or for exercising or seeking protection for their communal rights. More specifically, the Petitioners contend that the State has violated Articles 3, 21 and 25 (in conjunction with Articles 1 and 2) of the Convention by:

a) issuing approximately 20 land titles between 1976 and 2006 to non-indigenous persons over lands in four of the villages of the Lower Marowijne Peoples (Erowarte, Tapuku, Pierrekondre, and Wan Shi Sha);

¹ See Petitioners' petition, page 3.

b) granting concessions for, and authorizing bauxite mining operations in the territory of the Lower Marowijne Peoples;

c) establishing three nature reserves (in 1966, 1969, and 1986) within the territory of the Lower Marowijne Peoples, without the knowledge or consent of the alleged victims; the Petitioners contend the laws that govern the reserves do not recognize the indigenous rights of the Lower Marowijne Peoples, and expressly prohibit subsistence activities like hunting and fishing.

5. The Petitioners claim that Suriname's laws provide no adequate and effective remedies to seek and obtain the recognition, recovery and protection of the indigenous property rights of the Lower Marowijne Peoples. Accordingly, the Petitioners contend that they are excused from the requirement of exhaustion of domestic remedies, under Article 46(2)(a) of the American Convention and Article 31(2)(a) of the Commission's Rules of Procedure.

6. In response, the State contends that the petition is inadmissible for failure to exhaust domestic remedies and for duplication of international proceedings. With respect to the exhaustion of domestic remedies, the State contends that there are remedies available under the Civil Code of Suriname that the Petitioners have failed to invoke. With respect to duplication of international proceedings, the State argues that the Petitioners presented the same complaints to the UN Commission on the Elimination of Racial Discrimination (CERD) in 2002.

7. As set forth in this Report, having examined the contentions of the Petitioner and the State on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to: (a) admit the claims in the present petition with respect to Articles 3, 21 and 25 (in conjunction with Articles 1 and 2) of the American Convention; (b) transmit this Report to the parties; (c) continue with the analysis of the merits of the case and; (d) publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

8. On February 16, 2007, the Commission received a petition from the Petitioners, the receipt of which was acknowledged by letter of February 23, 2007. By communication of March 20, 2007, the Commission transmitted the pertinent parts of the petition to the State, and advised the Petitioners of this step by letter of the same date.

9. By letter of March 22, 2007, the Petitioners acknowledged receipt of the Commission's letter of March 20, 2007. By note of May 15, 2007, the State requested an extension of three months to submit its observations on the petition. By communication to the State of May 21, 2007, the Commission granted the State an extension to June 20, 2007. By letter of the same date, the Commission advised the Petitioners of the extension.

10. By note received on June 19, 2007, the State submitted its observations on the petition, the pertinent parts of which were transmitted to the Petitioners by letter of July 03, 2007, for their observations. By letter of July 12, 2007, the Petitioners submitted their observations on the State's submission, the pertinent parts of which were transmitted to the State by note of July 23, 2007.

III. POSITIONS OF THE PARTIES

A. The Petitioners

Background

11. The Petitioners are:

a) Richard Pané, Ramses Kajoeramari, Henry Zaalman, Romeo Pierre, Harold Galgren, Leo Maipio, Jona Gunther, Frans Pierre, village leaders of the Kaliña and Lokono Peoples of the Lower Marowijne River;

b) The *Vererniging van Inheese Dorpshoofden in Suriname* ("VIDS"), which is known in English as the *Association of Indigenous Village Leaders in Suriname*. VIDS is an association of indigenous leaders from each of the 46 indigenous villages in Suriname. According to the petition, this association was established in 1992 to promote and defend the rights of indigenous peoples;

c) The *Commissie Landrechten Inheemsen Beneden-Marowijne* ("CLIM"), which is known in English as the *Lower Marowijne Indigenous Land Rights Commission*, CLIM is described as the "working arm"² of the Association of Indigenous Village Leaders in Suriname and was created in 2003 to enhance the efforts of the Lower Marowijne Peoples to obtain title to their traditional territory. According to the Petitioners, CLIM is headed by a board comprised of the eight village leaders, as well as other members of the village councils of their villages.

12. The petition states that the alleged victims are the Kaliña and Lokono Peoples of the Lower Marowijne River, their eight constituent communities, and the members thereof. According to the Petitioners, the traditional territory of the Lower Marowijne Peoples is situated on the northeast coast of Suriname and is composed of moist and dry tropical forests, savannahs, coastal mangrove forests, beaches, coastal seas, inland waterways, and a variety of wetlands. The Petitioners state that the Lower Marowijne Peoples have occupied their territory for at least 2000 to 3000 years. The total resident population of the Lower Marowijne Peoples (distributed among the eight communities) is approximately 2026 persons.

13. According to the Petitioners, the territory of the Lower Marowijne Peoples represents "the foundation of their spiritual, cultural and physical sustenance and well-being, and is integral to their cosmologies and views of the world."³ The Petitioners maintain that the culture and identities of the Kaliña and Lokono Peoples are "thus inextricably tied to the maintenance of their ongoing and multiple relationships with their traditional territory and its resources."⁴

14. In accordance with customary law, the Petitioners state that paramount title to the territory as a whole is vested collectively and jointly in the Kaliña and Lokono Peoples, and that subsidiary rights to communal and land resource ownership are vested in extended kinship groups associated with each of the eight villages. These land and resource ownership rights apply to defined areas of their traditional territory and the boundaries of the various villages are clearly understood and observed. The Petitioners further state that within the village lands, members have rights of occupation and use over specific areas associated with their immediate family as well as rights in communal areas not associated with any particular family group.

15. According to the Petitioners, the traditional territory of the Lower Marowijne Peoples provides for "the vast majority of their subsistence needs and is extensively used for hunting, fishing (inland and coastal), swidden agriculture, and the harvesting and gathering of forest produce."⁵ The Petitioners contend that traditional resources gathered in the territory continue to provide a large part of the diet of the alleged victims in addition to building materials, medicines, utensils, clays for pottery, cotton for hammocks, and timber for fuel, and for watercraft.

Lack of legal recognition of the property rights of the Lower Marowijne Peoples

16. The Petitioners allege that the indigenous property rights and customary laws of the Lower Marowijne Peoples are internationally guaranteed, yet are neither recognized nor respected in

² See Petitioners' petition, page 3.

³ Petitioners' petition, para. 43, page 11.

⁴ *Ibid.*

⁵ *Ibid.*, para. 47.

the Constitution of Suriname or other laws of Suriname. According to the Petitioners, the right to communal property is not a legal right under Suriname law, and so accordingly, there are no remedies, judicial or otherwise, specific to indigenous persons or generally applicable, designed to provide for recognition and recovery of the alleged victims' traditional lands, territory and resources. In support of this contention, the Petitioners rely on previous findings of the Commission and the Inter-American Court of Human Rights.⁶

17. Despite the absence of this legal framework, the Petitioners contend that the Lower Marowijne Peoples have, since the late 1960s, been seeking State recognition of their property rights, but to no avail. The Petitioners cite the following examples of their endeavors in this regard:

a) **Petitions filed under the Constitution of Suriname.** Article 22 (1) of Suriname's Constitution provides that "Everyone has the right to submit written petitions to the competent authority". Under this provision, the Lower Marowijne Peoples have submitted three petitions to State officials requesting the State to negotiate a settlement that recognizes and secures the Lower Marowijne indigenous peoples' rights."⁷ The Petitioners contend that the three petitions were submitted on January 12, 2003, March 22, 2004, and September 25, 2005. According to the Petitioners, the State has not formally responded to any of the petitions.

b) **Meetings with government officials.** The Lower Marowijne Peoples met with the Ministers responsible for Regional Development and Natural Resources on three occasions: once in 2002 (when they presented a map of their territory) and twice in 2003 to discuss their concerns. Since these meetings, the Petitioners contend that the Lower Marowijne Peoples have heard nothing further from these State officials.

c) **Written complaints to the Minister and agency responsible for issuing land titles.** The Petitioners allege that a letter was sent to the State Lands Office in December 2004 complaining about the issue of individual land titles to non-indigenous persons within the traditional territory of the Lower Marowijne Peoples. No response was received, according to the Petitioners. In May 2006, a letter was sent to the Minister responsible for issuing land titles, complaining about the issue of individual land titles and mining concessions within the traditional territory of the Lower Marowijne Peoples. Similarly, there was no response received, according to the Petitioners.

d) **Protest action.** In 1976, the Lower Marowijne Peoples organized a 142-kilometer long "land rights" march from Albina to Paramaribo to protest against violations of their rights in connection with the Galibi Nature Reserve (established by the government) and the forced sub-division and allotment of the villages of Erowarte, Wan Shi Sha, Tapuku, and Pierrekondre. According to the Petitioners, the response of the State was expressed by a special commission known as the Commission on Entitlements to Land in the Interior, which stated that indigenous peoples had no rights to land and therefore no right to object.⁸

18. The Petitioners also cite other examples of collaborative efforts by indigenous people generally to secure recognition of their indigenous rights. These include:

⁶ The Petitioners rely on I/A Court of H.R., *Case of Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, where the Court stated at paragraph 86 (5) that "Although individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective rights". The Petitioners also cite IACHR Report 09/06, Case 12.338, *Twelve Saramaka Clans*, Suriname, March 02, 2006, where the Commission found, at para. 230, that "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."

⁷ Petitioners' petition, para. 33, page 8.

⁸ See Petitioners' petition, para. 61, page 15.

a) **Three cases⁹ filed in 1975-1976 in the Suriname courts by the now defunct Association of Indigenous Peoples.** In all of these cases, it was argued that the State had an obligation to recognize indigenous people's property rights. According to the Petitioners, all of these cases were dismissed by the judiciary as lacking legal merit.

b) **Presentation of joint position to the State by indigenous peoples and Maroons.** In 1995 and 1996, the traditional authorities of indigenous peoples and Maroons convened meetings to agree on, and present a joint position to the State demanding recognition of their property and other rights. The State responded by establishing a Commission in 1997, known as the *Commission on State Lands and Indigenous Peoples and Maroons*, with a mandate to provide proposals and recommendations to the State to resolve this issue. According to the Petitioners, the Commission was subsequently dissolved without issuing a final report.

19. In the absence of any legal recognition, the Petitioners contend that the communal rights of the Lower Marowijne Peoples have been adversely affected by (a) the issue of individual land titles to non-indigenous persons; (b) the issue of mining concessions; and (c) the establishment of nature reserves, all of which subsist or operate in the traditional territory of the Lower Marowijne Peoples, without their consent.

Issue of individual land titles

20. According to the Petitioners, the Lower Marowijne Peoples do not hold title to their traditional land, territory or resources and there is no mechanism under Suriname law to permit them to obtain effective communal title. Under Suriname law, the ownership of the traditional territory of the Lower Marowijne people is legally vested in the State. According to the Petitioners, Suriname citizens (including indigenous peoples) may obtain individual title to State lands, but only by means of a revocable leasehold interest (*Grondhuur*) for period of 15-40 years. According to the Petitioners, the titleholder is required to pay rent to the State in exchange for this leasehold interest. The Petitioners state that *Grondhuur* titles can only be held by recognized legal persons, which in Suriname, are limited to individuals, corporate bodies or registered foundations. According to the Petitioners, indigenous peoples, their communities or other traditional land-holding entities are not recognized as legal persons for the purpose of holding title.¹⁰

21. The Petitioners indicate that this is the situation that confronts all indigenous and tribal peoples in Suriname. Against this background, the Petitioners claim that four of the villages of the Lower Marowijne Peoples have been affected by the grants of individual titles to non-indigenous persons. According to the Petitioners, between 1976 and 2006, the State issued individual land titles to non-indigenous persons in Erowarte, Tapuku, Pierrekondre, and Wan Shi Sha.¹¹ The Petitioners claim that the titleholders have constructed vacation homes, which they use only intermittently for recreational purposes. In 2006, the Petitioners claim that the Captain of the Wan Shi Sha village was informed that a titleholder has been authorized by the State to construct a hotel within the village, and that construction commenced shortly thereafter. The Petitioners state that in 1998, villagers of the Wan Shi Sha community attempted to stop a Paramaribo resident from rebuilding his vacation home on land located in the village. The resident sued¹² the Captain of the Wan Shi Sha village, claiming that he was unable to enjoy his property rights because of the actions of the Captain and the villagers. The court ultimately ruled in favor of the plaintiff, holding that he held valid title to the land, and that the Captain had unlawfully hindered the plaintiff's efforts to rebuild his home. The court rejected the Captain's defense that the land was traditionally and immemorially owned by the Lokono indigenous people of Wan Shi Sha.

⁹ Case No. 165, Association of Indigenous People v Suriname, 17 March 1975; Association of Indigenous People v Suriname, A.R. No. 754180, 26 September 1975; and Association of Indigenous People v Suriname, A.R. No. 753160, 13 January 1976.

¹⁰ The Petitioners indicate that this *status quo* was confirmed by the Inter-American Court in the *Moiwana Case* (supra) and by the Commission in *Twelve Saramaka Clans* (supra).

¹¹ A partial list of the titleholders is attached to the Petitioners' petition as Annex J.

¹² *Tjang A Sijn v Zaalman and others*, Cantonal Court, First Canton, Paramaribo, May 21, 1998.

Mining concessions

22. The Petitioners state that bauxite-mining operations have been taking place in the Lower Marowijne Peoples' territory since 1997. According to the Petitioners, this mining is conducted by two multinational mining companies: Suralco NV, the wholly owned subsidiary of US Company Alcoa, and the UK-based BHP-Billiton. The mining operations are conducted within the Wane Kreek Nature Reserve area of the Lower Marowijne Peoples territory.

23. The Petitioners allege that these mining operations were authorized with the knowledge or consent of the Lower Marowijne Peoples. According to the Petitioners, the mining operations have caused and continue to cause a reduction in the quantity of game animals, which the alleged victims rely on for subsistence purposes. The Petitioners add that members of the Alfonsdorp and Wan Shi Sha villages have been denied access to the area of mining operations, for hunting purposes, and that company employees are indiscriminately using a plant-based poison to fish in the creeks within the Wane Kreek Nature Reserve. The Petitioners state that the use of this poison is highly regulated by indigenous law as overuse can destroy all the fish stocks in creeks.

24. According to the Petitioners, mining activities are governed by Decree E-58 of May 8, 1986, but that this law contains no protections for indigenous peoples.

Establishment of Nature Reserves

25. The Petitioners allege that the State has established three nature reserves within the territory of the Lower Marowijne peoples, pursuant to the 1954 Nature Protection Act. According to the Petitioners, these reserves are: (a) the Galibi Nature Reserve (1969); (b) the Wane Kreek Nature Reserve (1986); and (c) the Wiawia Nature Reserve (1966). According to the Petitioners, these nature reserves were established without the knowledge or consent of the Lower Marowijne Peoples. The Petitioners complain that the establishment and operation of these nature reserves has negatively affected, and continues to affect their traditional property rights on an ongoing basis.

26. The Petitioners point out that the Nature Protection Act makes no reference to the existence of indigenous peoples, nor does it recognize or protect their ownership rights to their traditional territories. According to the Petitioners, the Nature Protection Act permits the State to unilaterally declare any indigenous territory or part thereof to be a nature reserve by decree.¹³ The Petitioners add that the Act makes no provision for the exercise of indigenous peoples' rights within any nature reserves that are established in their traditional territories. Instead, the Act expressly affirms that nature reserves are the property of the State and criminally prohibits activities such as hunting or fishing. Thus the traditional subsistence activities of the Lower Marowijne Peoples in these nature reserves remain prohibited by law and subject to criminal sanctions. The Petitioners contend that legal regime of the State with respect to the nature reserves is tantamount to "a unilateral extinguishment and expropriation of the Lower Marowijne indigenous peoples' property and other rights in and to these areas of their traditional territory that continue to negatively and severely affect them to this day."¹⁴

State Responsibility for Violations

27. By virtue of these acts and omissions, the Petitioners contend that the State of Suriname is internationally responsible for violating the rights of the alleged victims guaranteed by the American Convention, namely:

- the right to property (Article 21),

¹³ According to the Petitioners, Article 1 of the Nature Protection Act provides that "For the protection and conservation of the natural resources present in Suriname, after hearing the Council of State, the President may designate lands and waters belonging to the State Domain as a nature reserve." As indigenous peoples' territories are classified as State lands, the Petitioners argue that this enables the State to unilaterally appropriate their lands.

¹⁴ Petitioners' petition, para. 128, page 33.

- the right to judicial protection (Article 25),
- the right to juridical personality (Article 3),

and is further liable for failing to respect the rights of the alleged victims or to give domestic legal effect to their rights, pursuant to Articles 1 and 2 of the American Convention, respectively.

Admissibility Issues

28. The Petitioners argue that the petition is admissible for the reasons set out in the following paragraphs.

29. The Petitioners assert that Suriname acceded to the American Convention on November 12, 1987, and that the Commission has jurisdiction to receive and act on their petition by virtue of, and in accordance with Articles 44-51 of the American Convention, and Article 19 of the Commission's Statute. The Petitioners further assert that the alleged violations occurred within Suriname's territory. The Petitioners add that the alleged violations were all initiated subsequent to Suriname's accession to the American Convention, or, where they were initiated subsequent prior thereto, exhibit ongoing and continuous effects and consequences attributable to Suriname which violate the guarantees of the Convention. The Petitioners therefore contend that the Commission has the jurisdiction *ratione loci*, *ratione materiae*, and *ratione temporis* to examine the allegations in the petition.

30. With respect to the Commission's jurisdiction *ratione temporis*, the Petitioners acknowledge that the establishment of the nature reserves and the issue of some of the individual land titles occurred prior to Suriname's accession to the American Convention. However, the Petitioners argue that the consequences of these State actions continue to affect the rights of the alleged victims under the American Convention, as detailed above. The Petitioners rely on inter-American and other international human rights jurisprudence to buttress their position in this regard.¹⁵

31. The Petitioners assert that the subject matter of the petition is not presently pending before any other international proceedings, nor does it duplicate a petition already examined by any other international governmental organization.

32. The Petitioners allege that Suriname's laws do not provide adequate or effective remedies to seek the recognition, recovery, and protection of the indigenous property rights of the Lower Marowijne Peoples. As the Petitioners have previously stated, the Constitution and laws of Suriname preclude the recognition and effective protection of the property rights of the alleged victims. The Petitioners add that the territory of the Lower Marowijne Peoples is classified as State property under Suriname law, and that accordingly, the alleged victims have no justifiable rights that may be enforced against the State. The laws of Suriname further do not recognize the right to communal property, and there are accordingly no remedies, judicial or otherwise, specific to indigenous peoples or generally applicable, designed to provide for recognition of the alleged victims' traditional lands, territory and resources. According to the Petitioners, the State's land laws and titling procedures provide no basis for regularizing and securing the communal rights of the Lower Marowijne Peoples, and the only available title (to State lands) is a revocable 15-40 year lease (*Grondhuur*), which cannot be issued to collectivities.

¹⁵ The Petitioners rely on: I/A Court of H.R. *Case of Blake*. Preliminary Objections, Judgment of July 2, 1996, Series C No. 27, paras. 33 & 40; I/A Court of H.R., *Case of Genie Lacayo*. Judgment of January 27, 1995, Series C No. 21, para. 22-26; I/A Court of H.R., *Case of Plan de Sanchez Massacre. Reparations*. Judgment of November 19, 2004, Series C No. 105; I/A Court of H.R., *Case of Alfonso Martin del Campo Dodd*. Preliminary Objections. Judgment of September 03, 2004, Series C. No. 113, para. 79; I/A Court of H.R., *Case of the Serrano-Cruz Sisters*. Preliminary Objections, Judgment of November 23, 2004, Series C, No 118, para. 67; I/A Court of H.R., *Case of Moiwana Village*, (*cit. supra*), paras. 108 and 126. The Petitioners also cite a number of decisions from the European Court of Human Rights, including *Papamichalopoulos et al. v Greece*, Eur. Ct. H.R., App. No. 14556/89 (1993) (Judgment) (Merits); *Agrotexim and others v Greece*, Eur. Ct. H.R. App. No. 14807/89 (1995) (Judgment) (Merits).

33. The Petitioners contend that this *status quo* was confirmed by the Commission in its 2006 report on the *Twelve Saramaka Clans*, where the Commission found that legal remedies are unavailable in domestic law for the recognition of indigenous peoples' land and resource rights, and that "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."¹⁶

34. As set out above, the Petitioners contend that they have made multiple efforts to negotiate with the State to rectify the alleged violations of the rights of the Lower Marowijne Peoples, but so far, to no avail.

35. In the circumstances, the Petitioners argue that they are excused from the requirement of exhaustion of domestic remedies under Article 46(1) of the American Convention and Article 31(1) of the Commission's Rules of Procedure. The Petitioners point out that Article 46(2)(a) of the Convention and Article 31(2)(a) of the Commission's Rules of Procedure exempt petitioners from the requirement of exhaustion of domestic remedies when "the domestic legislation of the State does not afford due process for the protection of the right or rights that have allegedly been violated."

36. The Petitioners contend that where the requirement of exhaustion of domestic remedies is inapplicable, Article 32(2) of the Commission's Rules of Procedure provides that "the deadline for the presentation of the petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." The Petitioners assert that, having regard to the circumstances of the alleged violations, the petition has been presented within a reasonable time.

B. Position of the State

37. The State's submissions are confined to the admissibility of the petition. The State argues that the petition is inadmissible for failure to exhaust domestic remedies and for duplication of procedures.

38. The State contends that the Petitioners have failed to exhaust domestic remedies available under Suriname law. The State refers to section 1386 of the Suriname Civil Code, which according to the State enables a citizen to "apply to the independent judiciary in case of an alleged unlawful infringement of his interests by any person, including the State."¹⁷ The State goes on to assert that "Any violation by any act or omission of a person or the State, either of the law, subjective right or an unwritten standard of due care or good governance that causes someone harm is an unlawful infringement of that person's interests and entitles him to one or more forms of repair of the harm (damages, *restitution in integrum*, declaratory decision, prohibition for the future) (sic)".¹⁸ The State goes on to contend that Article 1386 of the Suriname Civil Code provides adequate and effective remedies to address the alleged violations of Articles 3, 21, and 25 of the American Convention, which the Petitioners have failed to exhaust.

39. The State argues that the subject matter of the petition was previously the subject of proceedings before the UN Committee on the Eradication of Racial Discrimination (CERD) between 2002 and 2004. The State acknowledges that it made the same submission to the Commission with respect to the case of the *Twelve Saramaka Clans*, but that the Commission had rejected the submission because (a) the petition in the case of the *Twelve Saramaka Clans* predated CERD's consideration of the subject matter, and (b) the Commission considered that the proceedings before CERD were with respect to revisions of periodic reports due to CERD by the State of Suriname and not with "a measure seeking settlement as the basis of [the] petition."¹⁹

¹⁶ IACHR Report, Case 12.338, Report No. 09/06, *Twelve Saramaka Clans*, Suriname, March 02, 2006, para. 230.

¹⁷ State's submission received by the Commission on June 19, 2007, page 2.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, page 3.

40. The State takes issue with the Commission's second finding, contending that "it is not in accordance with international human rights practice", and making reference to "the constant refusing of the European Rights Commission (sic) to accept a case that has previously been submitted to the ILO Committee of Experts."²⁰

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

41. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. Suriname is party to the American Convention, having deposited its instrument of accession thereto on November 12, 1987. The Petitioners have *locus standi* to submit petitions to the Commission, in accordance with Article 44 of the Convention. The petition identifies as the alleged victims, the Lower Marowijne Peoples, persons, whose rights under the Convention, the State of Suriname is committed to respect and ensure.

42. The Commission has competence *ratione loci* to take cognizance of this petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

43. Finally, the Commission has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

44. The Commission has competence *ratione temporis* with respect to the alleged violations that occurred since Suriname acceded to the American Convention, given that the alleged events occurred at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State. While the Petitioners have not invoked the American Declaration on the Rights and Duties of Man, the Commission notes that the Charter and the American Declaration became sources of legal obligations upon Suriname becoming a Member State of the OAS upon ratification of the Charter of the OAS on June 08, 1977. From this date, the State of Suriname was bound to respect and ensure the rights and duties enshrined in the American Declaration with respect to any alleged violations of the Declaration that occurred between June 08, 1977 and November 12, 1987, when Suriname ratified the American Convention. The Commission would accordingly have competence *ratione temporis* under the Declaration with respect to any of alleged violations that occurred within this time frame while the Declaration was in force in regard to Suriname.

45. The Petitioners acknowledge that the establishment of the nature reserves and the issue of some of the individual land titles occurred prior to Suriname's accession to the American Convention. The Petitioners argue that the consequences of these State actions continue to affect the rights of the alleged victims under the American Convention, as detailed above. Based on certain inter-American and other international human rights jurisprudence on this issue²¹, the Petitioners contend that the Commission is competent, *ratione temporis* to examine allegations related to the ongoing consequences of violations that commenced prior to Suriname's accession to the American Convention. The State has not offered any observations on this issue.

²⁰ *Ibid.*

²¹ The Petitioners rely on: I/A Court of H.R. *Case of Blake*. Preliminary Objections, Judgment of July 2, 1996, Series C No. 27, paras. 33 & 40; I/A Court of H.R., *Case of Genie Lacayo*. Judgment of January 27, 1995, Series C No. 21, para. 22-26; I/A Court of H.R., *Case of Plan de Sanchez Massacre*. Reparations. Judgment of November 19, 2004, Series C No. 105; I/A Court of H.R., *Case of Alfonso Martin del Campo Dodd*. Preliminary Objections, Judgment of September 03, 2004, Series C. No. 113, para. 79; I/A Court of H.R., *Case of the Serrano-Cruz Sisters*. Preliminary Objections, Judgment of November 23, 2004, Series C, No 118, para. 67; I/A Court of H.R., *Case of Moiwana Village*, (*cit. supra*), paras. 108 and 126. The Petitioners also cite a number of decisions from the European Court of Human Rights, including *Papamichalopoulos et al. v Greece*, Eur. Ct. H.R., App. No. 14556/89 (1993) (Judgment) (Merits); *Agrotexim and others v Greece*, Eur. Ct. H.R. App. No. 14807/89 (1995) (Judgment) (Merits).

46. The Commission, and the Inter American Court, like other international human rights bodies, has applied the generally recognized principle of international law that international instruments are not retrospective in effect. The Vienna Convention on the law of treaties codifies this principle in Article 28, which provides that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

47. However, in keeping with international law, the Inter-American human rights system recognizes that States may be liable for violations that originated prior to a State's ratification of a treaty or other international instrument, but continue thereafter.²²

48. Having regard for the Petitioners' submissions, the Commission must determine whether the alleged violations had already been consummated prior to the State's accession to the American Convention (and American Declaration) or are continuing. Based on the record before it, the Commission considers that, while the establishment of the nature reserves and the issue of some of the individual land titles occurred prior to the State's accession to the Convention, the Petitioners have *prima facie* demonstrated that the alleged violations were not consummated prior to the State's accession to the American Convention, but have continued after Suriname's accession to the American Convention (and American Declaration). Accordingly, the Commission finds that insofar as these events may be of a continuing nature, it has the competence, *ratione temporis*, to examine the alleged violations of the American Convention.

Duplication of procedures, *res judicata*

49. The State contends that the petition is inadmissible because it is "substantially the same as one previously studied by the Commission or by another international organization", pursuant to Article 47(d) of the American Convention. The State contends (a) that the subject matter of the petition was previously considered by the CERD, commencing in 2002; and (b) that the Commission declined to uphold this identical submission in the *Twelve Saramaka Clans* case because the petition in that case pre-dated the proceedings before the CERD. In response, the Petitioners contend that the State made a similar submission in the case of the *Twelve Saramaka Clans*, which was rejected by the Commission. The State also contests the Commission's finding in that earlier case, that proceeding before the CERD did not constitute a duplication of proceedings. In response to these submissions, the Commission wishes to point out the following:

a) The timing of the petition in the *Twelve Saramaka Clans vis a vis* the proceedings before CERD was *not* the basis of the Commission's rejection of the State's submission in that matter.

b) The Commission found that the proceedings before the CERD had to do with the latter's review of periodic reports and not with a measure seeking settlement in international proceedings of the subject that was the basis of the petition.

c) Consequently, the Commission concluded that the subject of the petition was not pending in another international proceeding for settlement and therefore found no impediment to the admissibility of the petition lodged by the petitioners.

50. The Commission finds that its analysis in the *Twelve Saramaka Clans* applies *mutatis mutandis* with equal rigor to the petition under consideration, and therefore dismisses the

²² I/A Court H.R., *Case of Blake*. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27; I/A Court H.R., *Case of Cantos*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85; I/A Court H.R., *Case of Alfonso Martín del Campo-Dodd*. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113; I/A Court H.R., *Case of Almonacid-Arellano et al.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154; IACHR Report N° 74/90 Case 9850, Hector Geronimo Lopez Aurelli, Argentina, 4 October 1990.

State's submissions on this issue. The procedures undertaken by the CERD were thematic in nature, and did not involve the same claims and guarantees as presented in the instant case. Accordingly, the Commission therefore finds that the petition lodged by the petitioners does not violate Article 47 (d) of the American Convention with respect to duplication of procedures, and is therefore admissible under this rubric.

1. Exhaustion of domestic remedies

51. The State invokes Article 46 of the Convention 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 relief as provided for by the Suriname Civil Code.

52. 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, or access to justice in this case. The Petitioners allege that the indigenous property rights and customary laws of the Lower Marowijne Peoples are internationally guaranteed, yet are neither recognized nor respected in the Constitution of Suriname or other laws of Suriname. According to the Petitioners, the right to communal property is not a legal right under Suriname law, and so accordingly, there are no remedies, judicial or otherwise, specific to indigenous persons or generally applicable, designed to provide for recognition and recovery of the alleged victims' traditional lands, territory and resources. In support of this contention, the Petitioners rely on previous findings of the Commission and the Inter-American Court of Human Rights.²³

53. 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: 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.

54. Furthermore, when the petitioner contends that he cannot prove the exhaustion of domestic remedies, Article 31(3) of the Rules and Procedure of the Commission establishes 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.²⁴

55. 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 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.²⁵

²³ The Petitioners rely on I/A Court of H.R., Case of *Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, where the Court stated at paragraph 86 (5) that "*Although individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective rights*". The Petitioners also cite IACHR Report 09/06, Case 12.338, *Twelve Saramaka Clans*, Suriname, March 02, 2006, where the Commission found, at para. 230, that "*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.*"

²⁴ I/A Court of H.R., *Velásquez Rodríguez Case*. Preliminary Exceptions, Judgment of June 26, 1987, Series C, No 1, paragraph 88.

²⁵ 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.

56. The Commission shares 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.²⁶ 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.

57. The Petitioners allege that Suriname's laws do not provide adequate or effective remedies to seek the recognition, recovery, and protection of the indigenous property rights of the Lower Marowijne Peoples. As the Petitioners have previously stated, the Constitution and laws of Suriname preclude the recognition and effective protection of the property rights of the alleged victims.

58. In its report on the *Twelve Saramaka Clans*, the Commission addressed an identical submission from the State with respect to availability of remedies under Suriname's Civil Code. At paragraph 253 of its report, the Commission observed that:

.... 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."²⁷ 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.

59. Based upon this analysis, the Commission found that Suriname failed to provide any remedies under domestic law for the petitioners, and accordingly, they were exempted from the requirement to demonstrate exhaustion of domestic remedies. The Commission considers that the situation of the Lower Marowijne Peoples with respect to this issue is indistinguishable from that of the Twelve Saramaka Clans. Consequently, the Commission concludes that the domestic legal system does not provide adequate, effective remedies to respond to the complaints presented, and for this reason they are exempt from the requirement of exhaustion of domestic remedies.

2. Timeliness of the petition

60. Article 46(1)(b) of the American Convention prescribes that a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the

²⁶ See, for example, Case 11.193, Report 51/00, Gary Graham, 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, United States (Admissibility), Annual Report of the IACHR 2000, paragraph 70.

²⁷ See, for example, Case 10.606, Report N° 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 N° 9, paragraph 24.

complaining party was notified of the final judgment at the domestic level. The six-month rule ensures legal certainty and stability once a decision has been taken.

61. However, in those cases in which an exception to the prior exhaustion applies, Article 46(2) of the Commission's Rules of Procedure provides that petitions must be presented within a reasonable period of time as determined by the Commission.

62. In this case, the Petitioners' petition was lodged on February 16, 2007. It concerns alleged violations of property and other rights of the alleged victims, which have been ongoing for many years. The allegations of the Petitioners refer to continuing circumstances and events, such as the alleged lack of legal recognition of the property rights of the Lower Marowijne Peoples, the establishment of, and impact of nature reserves in the traditional territory of the alleged victims, the impact of bauxite mining operations, and the issue of individual land titles granted to non-indigenous peoples over lands within the traditional territory of the Lower Marowijne Peoples.

63. As the Commission has previously observed, where alleged violations in a particular case are continuing in nature, there is no single date from which to calculate a reasonable period of time. Given that the alleged violations are ongoing, the Commission considers that the present petition has been lodged within a reasonable time as stipulated by Article 32(1) of its Rules of Procedure.

3. Characterization

64. The standard of evaluation regarding the admissibility of a petition is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to determine whether the complaint entails an apparent or potential violation of a right protected by the Convention and is not at this stage establishing the existence of such a violation. This examination is a summary analysis that neither prejudices nor offers an opinion on the merits.

65. The Petitioners allege that the State violated the rights of the Lower Marowijne Peoples enshrined in Articles 3, 21, and 25 of the American Convention, together with the obligations imposed on the State by Articles 1 and 2 of the Convention. The Petitioners have alleged that the indigenous property rights of the Lower Marowijne Peoples are neither recognized nor respected in the laws of Suriname, and that Suriname's legal framework:

- a) vests ownership of all untitled lands and all natural resources in the State;
- b) fails to provide adequate and effective judicial or other remedies to protect the indigenous property rights of the Lower Marowijne Peoples;
- c) fails to recognize the juridical personality of the alleged victims for the purpose of holding title or for exercising or seeking protection for their communal rights.

66. Against this background, the Petitioners contend that the State has:

- a) issued approximately 20 land titles between 1976 and 2006 to non-indigenous persons over lands in four of the villages of the Lower Marowijne Peoples (Erowarte, Tapuku, Pierrekondre, and Wan Shi Sha);
- b) granted concessions for, and authorized bauxite mining operations in the territory of the Lower Marowijne Peoples;
- c) established three nature reserves (in 1966, 1969, and 1986) within the territory of the Lower Marowijne Peoples, without the knowledge or consent of the alleged victims; the Petitioners contend the laws that govern the reserves do not recognize the indigenous rights of the Lower Marowijne Peoples, and expressly prohibit subsistence activities like hunting and fishing.

67. After carefully reviewing the information and arguments provided by the Petitioners in respect of these claims, and without prejudging the merits of the matter, the Commission considers that the petition states certain facts that, if proven, tend to establish violations of rights guaranteed under the American Convention with respect to Article 3, 21, 25, in conjunction with Articles 1 and 2 of the American Convention.

V. CONCLUSION

68. The Commission concludes that it is competent to examine the allegations of the Petitioner and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention, with respect to the violations of Articles 3, 21, and 25 in conjunction with Articles 1 and 2 and that these claims are admissible in accordance with the Commission's Rules of Procedure.

69. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the petition under consideration admissible with respect to the alleged violations of Articles 3, 21, 25, in conjunction with Articles 1 and 2 of the American Convention.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case.
4. To publish this decision and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 15th day of the month of October, 2007.
(Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.