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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 18/89; Case No. 10.116
Session: Seventy-Sixth Session (18 – 29 September 1989)
Title/Style of Cause: J.E. Maclean v. Suriname
Doc. Type: Resolution
Decided by: Chairman: Oliver H. Jackman;
First Vice-Chairperson: Elsa Kelly;
Second Vice-Chairman: Leo Valladares Lanza;
Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; John R. Stevenson; Patrick L. Robinson
Dated: 27 September 1989
Citation: Maclean v. Surin., Case 10.116, Inter-Am. C.H.R., Report No. 18/89, OEA/Ser.L/V/II.76, doc. 10 (1988-1989)

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HAVING SEEN:

1. The petition received by the Inter-American Commission on Human Rights on October 8, 1987, according to which:

J.E. Maclean was murdered by soldiers between the 13th and the 30th of June 1987, at a place called Marchelkreek. Before being killed he was brutally tortured. A bush negro Captain named Ro was witness to the deed. A soldier named Sgt. Nelom was in charge of the operation and gave the orders to execute Maclean. Sgt. Nelom and his soldiers must be brought to justice.

2. The transmission of that complaint to the Government of Suriname in the note of October 30, 1987, requesting it to provide such information as it deemed pertinent, as well as any information that would make it possible to ascertain whether, in this case, the remedies of domestic law had been exhausted.

3. A copy of the same note and the pertinent parts of the complaint were also sent to the Mission of the Government of Suriname to the Organization of American States on the same date.

4. The communication of October 30, 1987, to the Government of Suriname was repeated on February 9, 1988.

5. The repetition of the request for information made in the note of February 9, 1988, informed the Government of Suriname that should such information not be provided within a period of thirty (30) days, pursuant to Article 42 of the Regulations, the facts reported would be considered to be true.

CONSIDERING:

a. That the Government of Suriname did not reply to the request for information made by the Commission concerning this case despite an expressed written reminder.

b. That a Resolution was adopted by the Inter-American Commission on Human Rights on March 24, 1988, Resolution No 2/88, and duly sent to the Government of Suriname on March 30, 1988, granting a 60 day period to inform the Commission of measures taken to implement this Resolution.

c. That the Resolution was based on Article 42 of the Commission's Regulations which provides:

Article 42. Presumption

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

d. That the Government of Suriname thereafter sent a note dated May 19, 1988 to the Commission regarding the Resolution which stated in pertinent part:

The Permanent Representative of the Republic of Suriname to the Organization of American States presents his compliments to the Executive Secretary of the Inter-American Commission on Human Rights and upon instructions received from the Government of Suriname has the honour to inform the Inter-American Commission on Human Rights with reference to the Resolutions concerning cases N' 9778, 10.116, 10.117, 10.118, 10.119 and 10.124 the following:

The Government of the Republic of Suriname has taken due note of the contents of aforementioned Resolutions and will seriously endeavour to act upon the recommendations contained therein.

Mindful of the gravity of the cases cited, the Government intends to carry out a further investigation into those cases.

The Government is aware, however, that a thorough investigation of alleged violations of human rights, which would have occurred during the internal conflict since July 1986, is a most difficult and time consuming exercise.

The Government is nevertheless determined to do everything within its power to serve the cause of justice.

e. The Commission, thereafter in reply to this note, advised the Government on June 9, 1988, inter alia:

On behalf of the Inter-American Commission on Human Rights, I am pleased to respond to your note of May 1988, in which you inform the Commission that Your Excellency's Government intends to seriously endeavor to act upon the recommendations contained in the Resolutions stemming from Cases 9778, 10.116, 10.117, 10.118, 10.119, and 10.124. Moreover, Your Excellency's statement that the Government intends to carry out a thorough investigation into those cases in order to serve the cause of justice is most heartening.

Because the Commission will be meeting in September of this year and will necessarily have to decide whether to include those Resolutions in its 1987-88 Annual Report, it is very important that the Commission be advised in a timely way of the actions taken by Your Excellency's Government with respect to said cases.

f. That the Government, on August 19, 1988, sent the following note to the Commission concerning this case:

The Permanent Representative of the Republic of Suriname to the Organization of American States

presents his compliments to the Executive Secretary of the Inter-American Commission on Human Rights and with reference to the latter's notes concerning Cases 10.115, 10.117, 10.118, 10.119, 10.124, 9820, as well as to the note dated May 19, 1988, has the honour, upon instructions received from the Government of Suriname to further communicate the following.

An inquiry at the proper judicial authorities into the abovementioned cases revealed that no complaints have been filed. Since the Office of the Public Prosecutor has no knowledge of abovementioned cases, it is not possible to provide satisfactory answers to the questions submitted by the Commission.

The information as contained in the notes of the Commission is however not sufficient to enable the Office of the Public Prosecutor to make thorough inquiries into these cases. The Government of Suriname would therefore appreciate being provided with any additional information, which the Commission might have at its disposal and which might facilitate such investigations. Needless to say that this information will be dealt with in the strictest confidence.

Nevertheless the Office of the Public Prosecutor is attempting to gather information, in order to investigate these alleged violations. In this respect the Government of Suriname would like to state that the continuation of the hostilities in the area, where the alleged violations occurred, is not conducive to an investigation.

g. That despite the assurances provided in the foregoing notes, no further investigation has been conducted and no further information has been provided to the Commission by the Government on this case.

h. That the Commission thereafter received testimony regarding the modus operandi of Army troops in this and similar cases which corroborates the original complaint during its on-site visit to Suriname in December, 1988.

i. That the Commission was told by the Acting Attorney General of Suriname, during its December 1988 on-site, visit that the Government was unable to investigate this matter.

j. That the Commission is satisfied that the Government has failed to make a good faith effort to investigate the allegations in this case and to punish those responsible for its occurrence.

k. That it was impossible for the complainants to exhaust domestic remedies in this matter since the authorities that would have been responsible for the investigation, namely the military police, form part of the military establishment accused of the violations in question, and that it can reasonably be deduced that the inaction of military in this and other cases clearly demonstrates an unwillingness to investigate, prosecute, and punish those responsible for the violations.

l. That under these circumstances it is unreasonable and disingenuous for the Government to assert that it received no complaint in this case.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:**

1. To determine to be true the facts denounced in the communication of October 8, 1987, concerning the killing of Mr. J.E. Maclean, in June, 1987, at Marchelkreek.

2. To declare that the Government of the Republic of Suriname is responsible for this extrajudicial killing although it occurred before the democratically elected civilian Government took office in January, 1988.

3. To declare that this constitutes a very serious violation of the right to life (Article I) of the

American Declaration of the Rights and Duties of Man.

4. To insist that the Government of Suriname proceed, as soon as possible, to carry out an investigation of the event and punish those responsible therefor with the most severe penalties established in its domestic legislation.
5. To declare that the relatives of the victim are entitled to fair compensation, according to law, whereby the Government is responsible for said compensation.
6. To publish this Resolution in its next Annual Report.
7. To transmit this Resolution to the Government of Suriname and the petitioner.