I. SUMMARY

1. On May 26, 2004, the Inter-American Commission on Human Rights ("the Commission" or "the IACHR") received a petition dated March 1, 2004, from Robert Karel Hewitt (hereinafter "the Petitioner" or "Mr. Hewitt" or "Hewitt"), a national of the Republic of Suriname ("Suriname" or "the State").

2. According to the Petitioner, the State of Suriname ("Suriname" or the "State") arbitrarily deprived him of his parental rights with respect to his four children. More particularly, the Petitioner contends that the State violated his right to:

a. protection of family life;
b. a fair trial/ due process; and to
c. judicial protection.

3. The State denies that it violated the rights of the Petitioner as alleged, and further contends that the petition is inadmissible for failure to exhaust domestic remedies.

4. 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 8, 25, and 1(1) 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

5. On May 26, 2004, the Commission received a petition from Mr. Hewitt dated March 1, 2004. The Commission received further submissions from the Petitioner by letters dated April 11, 2005, April 18, 2005, September 13, 2005, and June 12, 2006. By note of July 7, 2006, the Commission transmitted the pertinent parts of the petition to the State and requested a response within two months.

6. By note of September 5, 2006, the State requested a three-month extension to respond to the petition. By communication of October 10, 2006, the Commission granted the State an extension to November 5, 2006, and informed the Petitioner accordingly, by letter of the same date. By note of November 16, 2006, the State responded to the petition, the pertinent parts of which were transmitted to the Petitioner by letter of November 30, 2006.

7. By letter of December 14, 2006, the Petitioner responded to the State's submission. By communication of December 20, 2006, the Commission transmitted the pertinent parts of the Petitioner's observations to the State. By note dated February 14, 2007, the State transmitted its response, the pertinent parts of which were forwarded to the Petitioner for his information under cover of a letter dated February 22, 2007.

III. POSITION OF THE PARTIES

A. The Petitioner

8. The Petitioner was married to Lydia Bianka Hensen out of which union there were four children: Sierra Savora, born October 22, 1987; Felicia Clasina, born April 30, 1989; Liza Gienza, born October 11, 1994; and Josh Robert, born June 12, 1998.

9. The Petitioner alleges that in June 2002 his wife began to behave strangely. According to the Petitioner, his daughter Liza reported to him that his wife had stated "that there were demons at the back of the house". The Petitioner states that his wife rejected his suggestion to seek medical attention. She however acted on his suggestion to stay for a few days at her mother's house to convalesce. The four children accompanied his wife to her mother's house. Shortly after, during a chance meeting with a medical doctor that he knew, the doctor informed him that his wife had been admitted to a mental institution due to mental illness. Upon making multiple inquiries, he discovered that his children were now staying with his wife's sister and husband. The Petitioner made unsuccessful attempts to retrieve his children from his wife's family; however on July 22, 2002, he was summoned to a police station to respond to a complaint by his children, alleging that he had mistreated them. He denied these allegations, and after further abortive attempts to see his children at school, the Acting Procurator General, Mr. S. Punwasi, issued an order on August 01, 2002, temporarily depriving both the Petitioner and his wife of parental rights with respect to their four children. The Petitioner contends that the decision of the Procurator General was based on a negative evaluation from the Familie Rechtelijke Zaken (Bureau for Family Matters). The Petitioner contends that he was never shown a copy of the evaluation nor given the opportunity to challenge it.

10. Further to the Acting Procurator General's order, on June 11, 2003, the Cantonal Court in the First District permanently divested the Petitioner of his parental rights, vesting all parental rights exclusively in his estranged wife (the children's mother). The Petitioner contends that the Procurator General was by law obliged to obtain judicial confirmation of his decision without delay, and that he failed to do so, given the time that elapsed between August 1, 2002 and June 11, 2003. During this period, according to the petitioner, he was deprived of any contact with his children, by virtue of this order.

11. The Petitioner complains that the judicial proceedings leading to the permanent order (depriving him of his parental rights) were vitiated by several irregularities. In this regard, the Petitioner asserts that, during the proceedings, adverse evidence was adduced against him (in terms of his parental fitness) and that he was deprived of a fair opportunity to confront this evidence. He further states that the order to vest custody of the children was based principally on a report of a single psychologist, one I.G. Leckie. This report stated that Mr. Hewitt had, for many years, exhibited "irrational and aggressive behaviour" towards his wife and children. According to the Petitioner, no other expert opinions were sought nor relied on by the court. According to the Petitioner, the court was obliged to consider at least three psychological expert opinions, which would include psychologists (one each) called by either party.

12. On June 23, 2003, the Petitioner appealed this decision of the Cantonal Court to the High Court Justice of Suriname. He complains, however, that to date, the appeal has not yet been heard and that, in the interim, he has been deprived of contact with his children. The Petitioner further states that due to the mental illness of his ex-wife, her family continues to exercise de facto custody of the children. The Petitioner contends that the State has been guilty of undue delay in disposing of the appeal.

13. Given the delay in the hearing of his appeal to the High Court of Justice, the Petitioner contends that he has a cause of action before the Constitutional Court of Suriname. However, the Petitioner asserts that this court is not in operation. Accordingly, he claims that the State has deprived him of access to this domestic remedy. The Petitioner states that on October 3, 2002, his wife instituted divorce proceedings against him in the Cantonal Courts of Suriname. A divorce decree was ultimately granted on October 2004.

B. The State

14. The State rejects the Petitioner's petition as inadmissible for failure to exhaust domestic remedies. The State also contends that the proceedings before the Suriname courts were conducted in accordance with the requirements of due process.

15. With respect to exhaustion of domestic remedies, the State contends that the Petitioner submitted his petition to the Commission while his appeal to the High Court of Justice was still pending. The State concedes that this appeal has not yet been disposed of. The State contends Petitioner's petition represents an impermissible 'fourth instance' appeal from the Suriname courts.

16. The State contends that although the Constitutional Court is not in operation, there are other judicial authorities that have the power to adjudicate "issues regarding possible violations of local laws and regulations with the Constitution and Convention (sic)"[FN1]. In this regard, the State argues that the Cantonal Courts of Suriname "can conclude in a particular set of circumstances that the implementation of certain local laws and regulation might lead to violations of higher laws and norms written in the Constitutions or in human rights treaties."[FN2] Further, the State argues that: "In this situation, the Cantonal Court has the authority to declare that the implementation of that particular law or regulation may not be enforced", and that "[b]ased on this authority, a similar result can be achieved in a particular case as if the Constitutional Court was in force."[FN3] The State concludes that "…the fact that the Constitutional Court is not yet in operations (sic) does not in any way prohibits (sic) the petitioner to (sic) undertake other measures within the legal framework of the State to achieve the same results."

[FN1] State's Official Response of February 14, 2007, para. 20.
[FN2] Id. para. 21.
[FN3] Id.

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17. With respect to the substance of the petition, the State argues that not only was the Petitioner accorded due process, but that the Suriname courts were justified in revoking his parental rights over his children. According to the State, the Petitioner's parental rights were revoked due to his history of abuse towards his wife and children. The State asserts that the Petitioner's abuse of his wife resulted in her mental illness. In respect of the court proceedings, the State asserts that "the judge decided the case on parental rights based on the interest of the children which is perhaps an unfavourable decision for the petitioner, but this does not indicate that the petitioner had no fair trial."[FN4] The State adds that "[t]o confront and cross-examine the children is not for the petitioner to decide but for the judge."[FN5] Finally, the State contends that if the petitioner "feels he was not given the right to defend himself, he may constitute a civil suit against the State of Suriname, but not overstep the available local remedies."[FN6]

[FN4] Id. para. 36.
[FN5] Id.
[FN6] Id.

IV. ANALYSIS OF ADMISSIBILITY

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

18. 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 Petitioner has locus standi to submit petitions to the IACHR, in accordance with Article 44 of the Convention. The petition identifies as the alleged victim Mr. Hewitt, a person, whose rights under the Convention the State of Suriname is committed to respect and ensure.

19. 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.

20. The Commission has competence ratione temporis, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

21. The Petitioner pleaded violations of Articles V (Right to protection of honor, personal reputation, and private and family life), IX (Right to inviolability of the home), XVIII (Right to a fair trial), and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man. However, given that Suriname is a signatory to the American Convention, the Commission has competence ratione materiae to examine these violations within the context of the American Convention.

22. The Commission therefore has competence ratione materiae, since the petition alleges violations of human rights protected by the American Convention.

23. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

B. Other requirements of admissibility

1. Exhaustion of domestic remedies

24. Article 46(1)(a) of the Convention provides that the admissibility of a petition submitted to the Commission is subject to the requirement that remedies within the domestic jurisdiction be exhausted, in accordance with generally recognized principles of international law. The preamble to the Convention states that it grants international protection to support or complement the protection provided by a State's domestic laws.[FN7] The rule of prior exhaustion of domestic remedies allows the State to resolve the problem according to its internal law before facing an international proceeding, which is particularly valid in the international jurisdiction of human rights.

[FN7] See second paragraph in fine of the Preamble to the American Convention.

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25. The requirement of prior exhaustion applies when domestic remedies are available in law and practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the

right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

26. In this context it is appropriate to clarify the remedies available under domestic law that should be exhausted in each particular case. The Inter-American Court of Human Rights has indicated that only those legal actions that provide appropriate remedy for the violations that are alleged to have taken place need be exhausted. As the Court observed:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. [FN8]

[FN8] I/A Court of H.R., Velásquez Rodríguez. Judgment July 29, 1988, Series C, No. 4, paragraph 64.

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27. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness.

28. In this matter, the State contends that the Petitioner has failed to exhaust domestic remedies, while the Petitioner argues that there has been unwarranted delay in issuing a final judgment; or that alternatively, he has been deprived of access to domestic remedies by virtue of the non-functioning Constitutional Court of Suriname. In Milagros Fornerón & Leonardo Aníbal Javier Fornerón (Argentina)[FN9], the Commission considered the issue of unwarranted delay in two disparate but related legal proceedings dealing with (a) the legal guardianship of the petitioner's infant daughter and (b) the petitioner's visiting rights with respect to his daughter. The Petitioner's daughter was born in June 2000. The Commission noted that the proceedings relating to legal guardianship lasted from October 2000 until April 2004; while the latter proceedings were commenced in November 2001, and remained pending up to, and after the petition was lodged in 2004. Under the circumstances, and taking into account the purpose of the actions in question, the Commission determined that the proceedings for both legal guardianship and visiting rights were marked by unwarranted delays on the part of the jurisdictional authorities.

[FN9] IACHR, Report Nº 117/06, Petition 1070-04, Admissibility, Milagros Fornerón & Leonardo Aníbal Javier Fornerón (Argentina), October 26, 2006.

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29. In determining whether there has been unwarranted delay in proceedings, the Commission considers it essential to have regard to (a) the actions of the claimant; (b) the actions of the State; and (c) the complexity of the matter (which is the subject of those proceedings). The Commission considers that it might also have regard for the nature of the interests at stake in the proceedings under question.

30. With reference to the petition under consideration, the Commission finds that:

a) there is no dispute between the parties with respect to the nature, purpose or chronology of the domestic proceedings;
b) the State has not refuted the Petitioner's allegation that his appeal to the High Court of Justice has been pending since June 2003;
c) the State has offered no explanation for the delay in the hearing of the appeal, but has simply asserted that the Petitioner failed to exhaust this particular remedy prior to lodging a petition before the Commission.
d) there is no dispute that pending the hearing of the appeal, the Petitioner has been barred from contact with his children.

31. The Commission observes that the appeal by Mr. Hewitt was designed to preserve not only his parental rights, but to enable him to maintain a parental relationship with his children. The litigation does not appear to be particularly complex; and further, on the face of it, in the absence of any information to the contrary, it appears that the delay of more than fours years is directly attributable to the inertia of the State. As the Commission observed in the Fornerón Case[FN10], judicial proceedings concerning guardianship and custody of children should be handled with dispatch because of the importance of the interests involved. Having regard for these considerations, the Commission finds that there has been unwarranted delay in rendering a final judgment within the meaning of Article 46(2)(c), and that the Petitioner is therefore exempt from the requirement of exhaustion of domestic remedies.

[FN10] Ibid.
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2. Timeliness of the petition

32. 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 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.

33. However Article 46(2) of the American Convention exempts petitions from this rule where (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been

prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

34. Where a petition is exempted from the six-month rule, Article 32 of the Commission's Rules of Procedure prescribe that the deadline for presentation 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."

35. The petition was submitted to the Commission on May 26, 2004, following the Petitioner's appeal to the High Court of Justice in June 2003. This appeal has not yet been heard. The Petitioner contends that failure of the State to dispose of his appeal constitutes a continuing violation of his right to due process and to judicial protection with due guarantees. In the particular circumstances, the Commission considers that the petition was filed within a reasonable time.

3. Duplication of proceedings and res judicata

36. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement, or is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission concludes that the requirements established in Article 46(1)(c) are met.

4. Characterization

37. The parties have joined issue on the question of whether the petition discloses colorable claims. To determine admissibility, the Commission must decide whether the petition describes facts that could tend to establish a violation, as required by Article 47(b) of the American Convention.

38. 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 prejudges nor offers an opinion on the merits of the claims presented.

39. The Petitioner has complained of certain due process irregularities that occurred during the judicial processes leading to the judicial revocation of his parental rights over his four children. He has also complained of undue delay in prosecuting his appeal, during which time he has been barred from having contact with his children. The State has argued that the judicial authorities of Suriname were justified in revoking the Petitioner's parental rights, and that the processes preceding such a revocation were fair. The State has not addressed the issue of undue delay in prosecuting the ensuing appeal to the High Court of Justice of Suriname. In relation to the absence of the Constitutional Court, the State contends that its absence has not violated any of the Petitioner's rights.

40. The Commission is of the view that it is not necessary at this stage of the proceeding to resolve these questions of law to determine the existence of prima facie claim. For the purposes of admissibility, the Commission must decide if the acts alleged tend to establish a violation, as provided for in Article 47(b) of the American Convention and whether the petition is "manifestly groundless" or "obviously out of order", in accordance with Article 47(c). The Commission does not propose to embark on a "fourth instance review" of the proceedings before the Suriname courts, nor does the present decision indicate any position on Mr. Hewitt's fitness as a parent. The Commission considers that the petition has presented ample basis for inquiring whether the Petitioner's right to due process was violated under Articles 8 and 25 of the American Convention.

41. In light of the allegations and information submitted by the Petitioner in this matter, the Commission considers that the petition satisfies the requirements of Article 47(b) and (c) of the American Convention. In the Commission's view, the petition demonstrates prima facie violations of Articles 8, and 25 in conjunction with Article 1(1) of the Convention that ought to be evaluated on the merits of the case.

V. CONCLUSION

42. 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 8, and 25 in conjunction with Article 1(1) of the Convention relating to the judicial processes surrounding the revocation of the Petitioner's parental rights.

43. 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 with respect to Articles 8, 25, and 1(1) 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 24th day of the month of July, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, Commissioners.