FINAL ARGUMENTS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE CASE OF MOIWANA VILLAGE

I. INTRODUCTION

The Case of Moiwana Village was presented before the Inter-American Court of Human Rights because under international human rights law, the victims and the families of those killed have a right to justice that has been and continues to be denied by the State of Suriname. In this sense, the case was not brought to address a "violation of the past," but rather to resolve a human rights violation that continues to affect the survivors and family members of those killed every day.

In November of this year, the Moiwana families will commemorate the 18th anniversary of the attack on their village. On November 29, 1986, the Surinamese Army went into Moiwana Village to terrorize and kill the inhabitants. At least 39 people were killed that day; the majority were children. Everyone who could escape fled in terror, into lives of exile or internal displacement. The soldiers destroyed the Village and burned the remnants to the ground. Moiwana, like other villages in Eastern Suriname at that time, was targeted for destruction because its population was Maroon.

While the Moiwana families have relentlessly pursued justice for the attack, the State has yet to carry out a serious investigation to clarify the facts, or to prosecute and punish those responsible, or to provide any form of reparation for the survivors or the families of those killed. That is why this case was presented before the Honorable Court. The denial of justice under Articles 25, 8 and 1(1) of the American Convention is especially patent, given that the attack is known nationally and internationally as one of the most grave human rights violations committed in Suriname, and that Suriname acknowledges that it was carried out by state agents.

Because they have been denied justice, the survivors of the attack and the families of those killed remain displaced from their traditional lands, and have been unable to discharge the duties incumbent upon them as members of an N'djuka community. These duties, including to obtain clarification and justice, and to properly bury and honor the dead, are responsibilities that remain pending every day. Within the N'djuka culture, these responsibilities, and the corresponding suffering, do not lessen with the passage of time. Nor do the duties of the State to comply with its obligations under international law lessen over time.

Every resident of Moiwana Village was affected in multiple ways by the attack. In terms of those killed, it is important to understand that given the clan and kinship relations in an N'djuka village, it is not the case that some families were affected by the massacre and others escaped. Those killed were related to virtually all who survived, not just through cultural and community ties, but by blood as well. As a result of the destruction of the village and denial of justice, all who survived were forcibly displaced, and remain so to the present. Many remain in exile in a foreign country, French Guiana, while others remain displaced in various cities in Suriname, with a way of life that is also foreign to the N'djuka traditions.

The presentation of the Case of Moiwana Villlage seeks that justice be done for the attack and killings at Moiwana Village, and that the consequences of the denial of justice be remedied.

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II. PRELIMINARY EXCEPTIONS

The State filed several preliminary objections, regarding the admissibility of the case before the inter-American system for the protection of human rights, and alleged procedural flaws. The Commission has already argued in detail the reasons why these objections should be deemed extemporaneous and in all instances rejected. Thus, in the instant brief, the Commission will only refer to the most significant issues that may merit consideration by the Court.

A. The State waived its right to challenge the admissibility of the case before the Inter-American system

The Court has established in its *jurisprudence constante* that the requirement of previous exhaustion of domestic remedies is a means of defense available to the State,[1] and as such, may be waived implicitly by the State having the right to invoke it.[2] Once waived, the principle of estoppel precludes a subsequent change in position.[3]

> Article 44 of the Convention establishes that
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> 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 violations of this Convention by a State Party.
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> and Article 46.1, that
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> Admission by the Commission of a petition of communication lodged in accordance with Articles 44 of 45 [of the Convention] shall be subject to the following requirements:
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> a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
> [...]

These articles enshrine the *applicability of the Convention* and *exhaustion of domestic remedies* as requirements for the admissibility of petitions before the Inter-

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[1] I/A Court H.R., In the matter of Viviana Gallardo et all. Series A No. G 101/81, para. 26.

[2] See id.; Velásquez Rodriguez Case. Judgment of June 26, 1987. para. 88; Case of Neira Alegria et al.. Judgment of December 11, 1991, Ser. C No. 13, para 30; Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996, Ser. C No. 24, para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Ser. C No. 25, para. 40; The Mayagna Sumo Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53.

[3] I/A Court H.R., In the matter of Viviana Gallardo et all. Series A No. G 101/81, para. 28, citing Eur. Court H.R., De Wilde, Ooms and Versyp Cases ("Vagrancy" Cases), Judgment of 18th June 1971.

American system for the protection of human rights. The Commission considers that, as with all requirements of admissibility, it is the duty of the organs of protection to study whether the petition complies with these. However, the Commission also believes that, like the argument of non-exhaustion of domestic remedies, the applicability of the Convention is a means of defense that may be waived implicitly and irrevocably. In defense of the seriousness of the proceeding before the Inter-American system, it is an issue to which the State has the duty to make reference from the earliest stage in the proceedings. In short, the principle of preclusion, according to which once a stage is completed it will not be reopened, bars the State from raising the applicability of the Convention once the respective stage has been closed. Evidently, this does not preclude that the Commission, or the Court, may exercise this examination *motu proprio*, should they deem that the circumstances so require.

The Commission considers that the State had ample opportunity to avail itself of the means of defense relating to the admissibility of the petition, and waived this right. The relevant parts of the petition in this case were initially transmitted to the State of Suriname on October 30, 1997. After this date, the Commission addressed the State on three occasions, requesting its response to the petition. The State never responded to the Commission's initial request for information or the two subsequent reiterations.

In 2000, the Commission adopted report 26/00. In that report, the Commission considered, based on settled case-law of the system, that the silence of the State was an implicit waiver of its right to challenge the processing of the case before the Inter-American system on grounds of admissibility. This being the case, the Commission carefully considered the evidence before it, and admitted the examination of facts relating to Articles 25, 8 and 1(1), concerning the denial of judicial protection and guarantees, under the American Convention on Human Rights, as well as various Articles under the American Declaration on the Rights and Duties of Man.

Subsequent to the adoption of that report, during the merits phase of the proceedings the State did not present any arguments as to why the facts alleged would not constitute violations of Articles 25, 8 and 1(1) of the Convention. Still without receiving any response from the State, the Commission considered the evidence before it, and adopted the report on the merits (Report 35/02).

As the State itself acknowledges, it was only after that date that it questioned the admissibility of the case. During the public hearing held by the Court, the State manifested that

> immediately upon receiving communication 35/02 of February 28, 2002, an extensive response was given to this communication, also in respect to communication 26/00 [...] the State brought this forward to the Commission in April 2002[4];

thereby acknowledging that its first response to the Commission was in fact emitted only after the issuance of the report on the merits of the case.

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[4] See State's Oral Presentation before the I/A Court H.R. on September 9, 2004.

As indicated, the State had ample opportunity to respond to the petitioners' allegations and to present its own, and declined to do so. The State is estopped from alleging, at this procedural stage, the means of defense that it waived in the initial procedure before the Commission.

The norms and rules applicable to the individual case system provide both parties due process with ample opportunity to present their positions. If a defense is waived by the concerned State, the organs of protection retain their duty to ensure the consistent study of the conditions of admissibility, but also the possibility to consider the stage precluded in the absence of serious reasons to re-open it.

B. The American Convention on Human Rights is applicable to the denial of justice in the case, and the Court is competent *ratione temporis* to adjudicate it

1. The Convention is applicable to the facts in the instant case

In its answer to the application, the State alleged that the Commission erred when it declared the petition filed in case 11.821 admissible, because in its view all violations occurred before the critical date of 12 November 1987. With respect to this objection to admissibility, the Commission has already noted that it is extemporaneous, as the State waived its right to make use of this means of defense.

Should the Court decide to examine the objection, the Commission notes that it has two aspects. First, the State asserts that the Commission had no basis to admit or examine any alleged violations under the American Convention, and that the concept of continuing violation referred to by the Commission was not applicable.

Hence, the essence of the objection relates to the applicability of the Convention to the facts in the instant case. To this effect, Suriname contends that "the Convention Articles have been applied *ex post facto* against the State,"[5] that the human rights violations at issue in the present case were initiated and completed on the date of the attack on Moiwana, and that the American Convention, to which it acceded almost a year later[6], is therefore not applicable.

The Commission emphasizes in relation to this point that the retroactive application of the obligations of the Convention to events that predated Suriname's accession is neither requested, nor necessary in the present case: the denial of judicial protection and guarantees attributable to the State under Articles 25, 8 and 1(1) of the Convention consists of a series of acts and omissions that have occurred from November 12, 1987 to the date of the present memorial. These acts and omissions demonstrate that the State has not applied due diligence to investigate, prosecute, punish or repair the violations in question. The specific acts and omissions identified in

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[5] See State's Oral Presentation before the I/A Court H.R. on September 9, 2004; cf. State's Answer to the Application, pp. 56-60.

[6] Suriname became a Party to the American Convention on November 12, 1987, and on that same date presented an instrument recognizing the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention. That recognition was made absent any of the conditions permitted under Article 62(2) of the Convention.

the Commission's application, and analyzed below provide a way of concretizing how the State has failed to bring its conduct into conformity with its obligations. As a result, the State is in a situation of continuous nonconformity with its obligations under the American Convention. As the Commission noted in a previous submission, the State itself has recognized that there is valid basis to examine the rights of surviving family members under this heading.[7]

The Commission is not approaching the Court to address a question of history: justice has been and continues to be denied to the victims every day. This is why the Commission is petitioning the Court to examine the conformity of acts and omissions of Suriname with its obligations under the American Convention as from the date when accepting simultaneously to be bound by that treaty and the corresponding scrutiny of the Court.[8]

The fact that the violation started before Suriname became a State party to the Convention does not invalidate the applicability of the Convention or the jurisdiction of this Court over other facts occurring after accession. From the critical date onwards, the obligation of Suriname has been to bring its actions into conformity with the Convention. This means that in relation to continuing situations, the exercise carried out by the Court is to consider the actions and omissions starting after the critical date. In the Inter-American setting, the Cantos Case is a recent example in which this Court has examined its jurisdiction over the facts under such a 'before' and 'after' approach[9], along with the Blake[10] and Genie Lacayo[11] cases. The division of cases in two parts, declining jurisdiction over aspects predating acceptance of jurisdiction, and affirming

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[7] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, at p.7-8; making reference to the statement that "if the rights of family members or surviv[ing] victims as codified in Article 8(1) of the Convention, are violated after Suriname's accession to the Convention, these alleged violations should be dealt with separately under the Convention. .... [T]he State of Suriname wants to make clear that she has started with an investigation in the matter. This happened at several moments after the occurrences took place. The fragile democracy was under heavy siege and survived several difficult situations. If the State can prove that she offered adequate judicial protection after its accession to the Convention, there is no violation of Article 25 of the Convention, assuming that this Honorable Court accept[s] the argument of 'continuous violation'". *Cf.* State's Answer to the Application, pp. 57-58.

[8] As the Court has indicated, its contentious jurisdiction in respect of a State party to the Convention comprises all cases concerning the interpretation and application of the Convention with respect to events and acts transpiring after the date of deposit of a state's instrument of ratification or accession to the Convention and declaration of acceptance of such jurisdiction. See I/A Court H.R., Cantos Case, Preliminary Objections. Judgment of September 7, 2001. Ser. C No. 85, para. 36. This interpretation is also based on the provisions of Article 28 of the Vienna Convention and Article 13 of the International Law Commission's Articles on State Responsibility. For its part, the European Court has acknowledged that, from the critical date onwards, all actions of a State party have to conform with its human rights obligations, and are under the legitimate scrutiny of the organs of protection. Eur. Ct. H.R., Yagci and Sargin v. Turkey, Judgment of 23 May 1995, para. 40.

[9] *See* I/A Court H.R., Cantos Case, *Preliminary Objections.* Judgement of 7 September 2001. Ser. C No. 85; para. 36.

[10] *See* I/A Court H.R., Blake Case, *Preliminary Objections.* Judgement of 2 July 1996. Ser. C No. 27; para. 39-40, and 46.

[11] *See* I/A Court H.R., Genie Lacayo Case, *Preliminary Objections.* Judgement of 29 January 1995. Ser. C No. 21; para. 25.

jurisdiction over related aspects occurring subsequent to acceptance, is becoming fairly frequent in the European system.[12]

Finally, while the Commission has not sought a ruling on the State's responsibility for the attack on the Moiwana Village and the massacre and persecution of its inhabitants, it does request that the Court *have regard* to this act and its gravity when considering the related denial of justice. This exercise is in conformity with the essential principle, established in the Court's jurisprudence, that human rights provisions cannot be interpreted in a vacuum, with disregard to the circumstance of a violation.[13] This principle has been further developed recently by the European Court in the *Ilascu* case, when assessing the conduct of the State after ratification in light of acts committed before that date[14].

2. The denial of justice in the instant case is a continuous violation

The State further contends that addressing a denial of justice under Articles 25, 8 and 1(1) as a continuing violation is, in its words, "extreme, exceptional and against generally accepted principles of international law". This contention is, however, unfounded. In point of fact, the instant case does nothing more than apply generally accepted principles of international law. The International Law Commission has defined a wrongful act as continuing "if it extends over the entire period during which the relevant conduct continues and remains at variance with the international obligation."[15] The *relevant conduct* in the present case is the failure to provide judicial protection and guarantees, a situation that has remained at variance with the international obligations of the State from 12 November 1987 to the present.

With respect to state responsibility in general terms, the Commission included in a previous submission its analysis of the distinction between an instantaneous breach and the continuing violation of an obligation.[16] The use of the concept of continuing violation in the present case is not intended to imply an application of jurisdiction that

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[12] See, e.g., Eur. Ct. H.R., Nevmerzhitsky v. Ukraine, Final Decision on Admissibility, App. No. 4825/00, 25 Nov. 2003, section "the law" 1(a); Broniowski v. Poland, Admissibility, App. 31443/96, 19 Dec. 2002, paras. 74-76; Lukanov. v. Bulgaria, Merits, App. 25/1996/644/828, 20 Feb. 1997, paras. 40-45.

[13] I/A Court H.R., Restrictions to the Death Penalty (arts. 4.2 y 4.4 American Convention on Human Rights). Advisory Opinion OC-3/83 of 8 September 1983. Series A No. 3; making reference to: Interpretation of the Agreement of 25 March 1951 between WHO and Egypt, 1980 I.C.J. 73 at 76.

[14] Eur. Ct. H. R., Ilascu v. Moldova and Russia, App. 48787/99, Judgment of July 8, 2004, paras. 399, 400, 403, 407, 408. The interpretation is in line with Crawford's comments on the Articles on State Responsibility, when construing that if an obligation enters into force after a series of acts and omissions has been initiated, this does "not prevent a court from taking into account earlier actions or omissions for other purposes (e.g. in order to establish a factual basis for the later breaches). Cf. James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge Univ. Press) 2002, p. 144.

[15] As established in Article 14(3) of the Articles on State Responsibility, *in* James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge Univ. Press) 2002, p. 144.

[16] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, at p. 8-9.

would be in some way retroactive, or require the Court to reach outside its temporal jurisdiction to decide the case. In this respect, "[i]n cases where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the 'first' of the actions or omissions of the series for the purposes of State responsibility will be the first occurring after the obligation came into existence."[17]

The concept of continuous violation is the manner of understanding when the breach begins (November 12, 1987) for the purposes of the present case, and to what point it extends. While the obligation to provide judicial protection and guarantees in the present case is necessarily related to violations of the rights to life and personal integrity, among others, the breach in the instant case is not composed of indirect or secondary effects[18] of perfected violations. Rather, the series of acts and omissions at issue in the present case, directly attributable to the State, constitute autonomous violations of the State's obligations under Articles 25, 8 and 1(1) of the American Convention.

In its previous submissions, the Commission outlined acts and omissions such as the failure to initiate an *ex officio* investigation until 1989; the liberation of suspects in police custody by the army; the murder of Inspector Gooding, the officer in charge of the investigation and the subsequent suspension of the inquiry in 1990; and the chilling effect of the adoption of the Amnesty Law in 1992. These are individual, autonomous violations of the State's obligations under the Convention, as is the current state of impunity of the massacre.

The acts and omissions described have all taken place subsequent to Suriname's accession to the American Convention and acceptance of the jurisdiction of the Court. The general principles of international law and the law and practice of the supervisory organs in the area of human rights indicate that the fact that a claim originates in relation to a circumstance prior to the acceptance of contentious jurisdiction does not operate to invalidate the exercise of such jurisdiction once in effect over related acts and omissions that occur subsequent to such acceptance.

The scope of Article 62 of the Convention includes jurisdiction *ratione temporis* concerning acts and omissions that are continuing in nature and have effects subsequent to a state's acceptance of the Court's contentious jurisdiction, even where the incidents giving rise to the continuing events or effects occurred prior to that acceptance of jurisdiction.[19] The denial of justice presented by the Commission in this Application is continuing in nature and has had specific, identifiable effects after Suriname's accession to the American Convention and its acceptance of the Court's contentious jurisdiction. The Court is therefore properly seized of jurisdiction in this matter.

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[17] James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge Univ. Press) 2002, p. 144.

[18] See *id.*, p. 136. "An act does not have a continuing character merely because its effects or consequences extend in time. It must be the wrongful act as such which continues." Id.

[19] I/A Court H.R., Blake Case, Preliminary Objections, supra, paras. 39-40 and 46. See *similarly* Eur. Court H.R., Papamichalopoulos et al. v. Greece, June 24, 1993, Ser. A Nº 260-B, pp. 69-70, paras. 40, 45-46.

3. There is no basis in the Convention for two separate processes

Furthermore, the State contends that, even if the concept of continuing violation were applicable, the Commission erred in its processing of the petition. As the Commission stated in an earlier submission,[20] this objection is difficult to understand. In its Answer to the Application the State indicates, on the one hand, that the violations under the Declaration and Convention "should have been processed separately," evidently arguing that the Commission processed the two categories in a way that failed to preserve the differences between them. On the other hand, the State indicates that the Commission in fact "drew a distinction between two categories of rights, one under the Declaration, and the other under the Convention.[21] The position is somewhat contradictory.

The Commission notes that, in both Admissibility Report 26/00 and Merits Report 35/02, it drew a clear distinction between the violations addressed under the American Declaration, Articles I (right to life, liberty and personal security), VII (protection of mothers and children), IX (inviolability of the home) and XXIII (property), and those addressed under the American Convention, namely Articles 25 (judicial protection), 8 (judicial guarantees) and 1(1) (obligation to respect and ensure rights). While the State contends that it has effectively been treated as a State Party to the Convention with respect to the entirety of the claims presented in Case 11.821,[22] the texts of both the Admissibility and Merits Reports demonstrate that only claims relating to ongoing denial of justice were addressed under the American Convention. The claims related to the attack, executions, and related violations completed on November 29, 1986 were dealt with only under the American Declaration.

The denial of justice and resulting impunity in this case remain very present concerns not just for the petitioners, but for Surinamese society and for the international community as well. Both the United Nations Human Rights Committee[23] and the United Nations Committee on the Elimination of All Forms of Racial Discrimination[24] recently examined the situation of human rights in Suriname. Both bodies highlighted the pressing need for the attack and killings at Moiwana Village to be duly investigated so that those responsible would be prosecuted and punished, and those affected would receive just reparation.

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[20] Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, at p. 4.

[21] State's Answer to the Application, p. 31.

[22] State's Answer to the Application, p. 34.

[23] See "Concluding observations of the Human Rights Committee – Suriname, CCPR/CO/80/SUR, 80th session, Human Rights Committee, [unedited version], para. 7; UN Human Rights Committee, Press Release HR/CT/648, "Human Rights Committee Begins Review of Suriname's Report, Hearing of 'Steady Progress' in Investigation of Violations under Previous Regime: But Committee Experts Concerned at Lack of Concrete Results Regarding Murder Investigations," 18 March 2004, particularly the introductory section, and the summary of the observations of Experts Rivas Posada, Solari-Yrigoyen and Ando; Press Release HR/CT/649, 19 March 2004, particularly the observations of Expert Solari-Yrigoyen; Second Periodic Report – Suriname, CCPR/C/SUR/2003/2, 4 July 2003, paras. 132 – 33, 136-37.

[24] "Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding observations of the UN Committee on the Elimination of Racial Discrimination, -- Suriname," CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 20.

C. Effective domestic remedies were unavailable to remedy the breaches of the Convention

The Commission maintains that the exception of non-exhaustion of domestic remedies is inadmissible because it has been raised extemporaneous. Should the Court decide to depart from its jurisprudence in this regard, the Commission will offer its considerations on this point.

In its answer to the application, the State argues that the petition concerning the Case of Moiwana Village should never have been admitted by the Commission because "remedies under domestic law have not been exhausted."[25]

As a first point, the facts of the case speak for themselves. The attack on Moiwana Village occurred in 1986. As State agents participated in the massacre,[26] the State had immediate cognizance of the facts. The passage of over 17 years since the attack notwithstanding, no one has been prosecuted or punished, and the survivors and families of those killed have yet to obtain an official accounting of what happened or any form of reparation. In its submissions before the Court, the State recognizes multiple times that it has not carried out an adequate investigation. In one of its written submissions, Suriname states that

> [i]f it appears, from the inquiry commenced by the State of Suriname that individuals and/or establishments are guilty of human rights violations, the State shall not hesitate to prosecute and punish the guilty parties ....[27]

During the public hearing in the case, the State declared that

> there is not unwillingness of the State to investigate matters, at this moment [the State] could not say that the investigation will start tomorrow, but for matters represented, there was really *force majeure* so that the State was not given the chance to conduct the investigation [inaudible] as it should be done [...] it is clear that this case has to be profoundly re-investigated...[28]

and that

> ... it is clear that the Amnesty Act [...] has explicitly excluded the crimes against humanity from amnesty. If, *after investigation*, it appears that the events of Moiwana have to be qualified as a system of [inaudible] directed against the population of [inaudible], that means that in all reasons it can be stated that there can be a systematic violation of human

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[25] State's Answer to the Application, p. 37: see generally, pages 37-47.

[26] See State's Oral Presentation before the I/A Court H.R. on September 9, 2004.

[27] State's answer to the Application, p. 9.

[28] See State's Oral Presentation before the I/A Court H.R. on September 9, 2004..

rights, then these events will be according to the law excluded from amnesty... [29]

As the representative of the victims stated during the same hearing, it would be difficult to ascertain whether the Moiwana massacre is or is not in fact formally qualified as a crime against humanity, as the State has failed to investigate in the first place.

What is clear is that, for 17 years, the survivors and families have engaged in a long and fruitless struggle for justice, which has been denied to them at every opportunity. The Commission was required to apply the terms of Article 46 of the Convention in analyzing the admissibility of their claims, given its determination that a number of the facts in the case fell within the temporal application of the American Convention. The petitioners had alleged that effective domestic remedies were unavailable, and the State never challenged these claims. It must be emphasized that it is only the claims admitted and later examined under the terms of the American Convention that are submitted before the Court.

In its Admissibility Report, the Commission recounted what the proceedings demonstrated:

a. that remedies had been denied,
b. that State agents had obstructed any efforts toward investigation,
c. that those responsible for moving judicial processes forward had failed to initiate, much less complete them, and
d. that the Amnesty Law had been interpreted by the authorities as relieving them of their responsibility to investigate and prosecute and punish the perpetrators.

These findings were further developed in the Commission's Report on the Merits. The State has pointed to some remedies theoretically available, including civil and criminal remedies that could apply to the claims at issue, which it considers should have been exhausted.[30]

In relation to the possible recourse to civil action,[31] the Commission is of the opinion that such an action does not represent an adequate and effective remedy to investigate and obtain the prosecution and punishment of actions that constitute serious crimes under the domestic law of Suriname. When the State argues that civil remedies would have been the most effective for obtaining compensation,[32] it ignores the fact that the victims, their relatives and their representatives are seeking clarification and accountability.

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[29] See State's Oral Presentation before the I/A Court H.R. on September 9, 2004. (Emphasis added)

[30] State's Answer to the Application, p. 40.

[31] The State has cited two cases in support of its contention. The Commission respectfully remits to the analysis that it made of the said cases in its answer to the preliminary objections raised by the State. Ref. Observations of the Inter-American Commission on Human Rights in response to the preliminary objections presented by the Republic of Suriname, at p. 21-22.

[32] State's Answer to the Application, p. 41.

In relation to the criminal proceedings, the Commission wishes to underline that the purpose of the requirement that claimants exhaust domestic remedies is not to impose unjustified procedural obstacles but to ensure that the State is placed on notice of the claims prior to being convoked before an international mechanism of supervision.[33] When it is not possible for claimants to exhaust such remedies as a matter of fact or law, the requirement is consequently and necessarily excused.

As the Commission detailed in a previous written submission, the remedy suitable to address the infringement of the rights of those subjected to the attack against Moiwana Village is an efficient and effective criminal investigation. This was requested by the Moiwana families on numerous occasions. Only embryonic steps were taken to answer to the victim's quest for criminal investigation. The Commission has detailed in its submissions that no substantive action fulfilling the State's duties under Articles 8 and 25 of the Convention stemmed from these attempts.

In fact, the State acknowledges that conditions were not in place to respond to the need for the investigation, prosecution and punishment of the events at Moiwana. The instability of the nascent democracy is cited for ending the efforts initiated in 1989 and 1993. Yet, the failure of the State has not been limited to failing to deliver justice, but has extended to active obstruction. The liberation by the army of a number of soldiers implicated in the massacre in 1989, the murder of Inspector Gooding, and the adoption of the Amnesty Law in 1992, are indications that the intent is to leave the attack on the Moiwana Village in impunity.

Independently of the petitioners' efforts to seek justice, the Commission wishes to note that, when a crime is committed that is subject to prosecution at the state's own initiative, *ex officio*, the state is obliged to initiate the criminal justice process and follow it through to its conclusion. In such cases, this is the appropriate way to clarify the facts, prosecute those responsible, and establish the corresponding criminal sanctions, in addition to making possible other forms of pecuniary reparation.[34] In the instant case, the State was in possession of or could obtain access to relevant information and evidence; it is the State that has the jurisdiction and faculties to carry out an effective criminal investigation. The facts at issue in the present case involve the violation of rights which, under domestic law, are crimes subject to prosecution *ex officio*. It is therefore the criminal justice process, pushed forward by the State, which should be considered for the purposes of determining the admissibility of the claims. In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the Convention.[35]

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[33] See I/A Court H.R., Decision in the Matter of Viviana Gallardo et al., para. 26.

[34] See, IACHR, Report N° 72/03, Admissibility, Gabriel Egisto Santillán, Case 12.159, Argentina, Oct. 22, 2003, para. 53, citing, Report N° 52/97, Case 11.218, Argues Sequeira Mangas, Nicaragua, paragraphs 96 and 97; Report No. 57/00, Case 12.050, La Granja - Ituango, Colombia, October 2, 2000, paragraph 40.

[35] See, for example, IACHR, Report 72/03, supra, para. 54; Report 72/01, Case 11.804, Juan Angel Greco, Argentina, Oct. 10, 2001 (Admissibility), para. 51; Report N° 62/00, Case 11.727, *Hernando Osorio Correa*, Colombia (Admissibility), *2000 Annual Report of the IACHR*, paragraph 24.

Further, the Commission wishes to underline that the remedies that should have been developed by the State through its criminal justice system have been subject to evident undue delay. As the Court has reiterated, "[u]njustified delay is an acknowledged exception to prior exhaustion of domestic remedies."[38] "Under international jurisdiction what is essential is to maintain the necessary conditions to avoid diminishing or creating an imbalance in the procedural rights of the parties, and to attain the aims for which the various procedures were designed."[37] As the Commission indicated in its Merits Report, notwithstanding the passage of over 16 years (at that time) since the State had acceded to the American Convention and accepted the contentious jurisdiction of the Court, no one had been prosecuted or punished for the human rights violations at issue, nor had the victims received any form of reparation. The victims have been denied effective judicial protection and guarantees, and it is precisely this delay and denial of justice that form the basis for the Commission's application.

In the present case, it is abundantly clear that the exercise of international jurisdiction has in no way deprived the State of its due opportunity to redress the wrongs in question through its domestic remedies. As the Court has reiterated: "[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective."[38]

Impunity for human rights violations during the military regime in Suriname was a key point in the UN Human Rights Committee's considerations of the present situation of human rights in Suriname. Notwithstanding the State's general assurances that it was moving forward with investigations, the Committee emphasized the absence of any concrete advances or results, not only with respect to the attack on Moiwana Village, but also with respect to the murder of Inspector Herman Gooding, the police official who had attempted to initiate a criminal investigation of the attack.[39]

What the petitioners expressed in their initial petition before the Commission remains equally valid as of the date of the present observations:

> As a consequence of Suriname's failure to investigate the Moiwana massacre and prosecute those responsible, the victims and their next of

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[36] I/A Court H.R., Juan Humberto Sánchez Case, Judgment of June 7, 2003, para. In that case, the Court confirmed a situation of undue delay on the basis that criminal proceedings had been initiated in 1992, but remained pending absent concrete results at the time of its determination.

[37] *Id.*, citing *Baena Ricardo et al. Case. Preliminary Objections*. Judgment of November 18, 1999. Series C No. 61, para. 41; *Case of the "White Van" (Paniagua Morales et al.). Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 42; and *Gangaram Panday Case. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12, para. 18.

[38] I/A Court H.R., Case of Velázquez Rodríguez, Preliminary Objections, *supra*, para. 93; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, *supra*, para. 92; Case of Godínez Cruz, Preliminary Objections, *supra*, para. 95.

[39] UN Human Rights Committee, Press Release HR/CT/648, "Human Rights Committee Begins Review of Suriname's Report, Hearing of 'Steady Progress' In Investigation of Violations under Previous Regime: But Committee Experts Concerned at Lack of Concrete Results Regarding Murder Investigations," 18 March 2004, particularly the introductory section, and the summary of the observations of Experts Rivas Posada, Solari-Yrigoyen and Ando; Press Release HR/CT/649, 19 March 2004, particularly the observations of Expert Solari-Yrigoyen.

kin have been and continue to be denied access to judicial remedies of fundamental importance to the enjoyment of their right to redress for human rights violations. [Citations omitted.] Moreover, the inaction of the Government of Suriname in this regard "eliminates perhaps the single most effective means of enforcing such rights, the trial and punishment of offenders."[40]

D. The application was submitted in conformity with all applicable procedural norms

The State contends that the application in this case is procedurally flawed on several accounts. The Commission, in its part, confirms that the case was submitted in accordance with the applicable norms and practices, as detailed below.

1. The application was submitted in a timely manner

The State submits that the application was presented extemporaneously,[41] as the Commission issued its report on the merits on February 28, 2002, but did not refer the case to the Court until December 20, 2002. Firstly, the Commission notes that the Report Nº 35/02 was transmitted to the State on March 21, 2002. This was the date in which the timeframe established in Article 51(1) of the Convention started.

In this respect, the Commission considers that it suffices to demonstrate that on 20 June and 20 August 2004, the Commission, at the request of the State, granted consecutive extensions of the time in which to pursue a possible friendly settlement and investigate the violations at issue, adding up to six months.[42] In the respective communications, the Commission made perfectly clear to the State that it would consider the possibility of presenting the case before the Court upon the expiration of the requested suspension. The State, for its part, expressly recognized that the Commission maintained the possibility to take that action. There was no room for misunderstanding as to the terms of the acceptance of the requests for additional time, or as to the possible effects.

On both occasions, the State manifested that the purpose of the extensions was to substantiate its commitment to investigate the attack on Moiwana Village, and its interest in pursuing a possible friendly settlement of the matter. These were deemed by the Commission as reasonable and desirable goals. However, in the absence of substantive related developments, the Commission presented its application in the Case of Moiwana Village on December 20, 2002.

The State cannot request and accept a benefit and then invoke it as a procedural violation. This is solidly established in the jurisprudence. As indicated in the Caballero

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[40] Petition dated June 27, 1997, section IV, citing with respect to the requirement for criminal prosecution Report 26/92, Case No. 10.287 (El Salvador), IACHR Annual Report 1992, at 86.

[41] See *id.* pp. 48-52.

[42] It may also be noted that, in both instances in which the Commission granted the requested suspension of the three-month period set forth in Article 51 of the Convention, it duly informed the petitioners that this had been done.

Delgado and Santana Case, "when a party requests something, even if such a request is based on an inapplicable provision, that party cannot later challenge the basis for its request once it has been complied with." Further, the Court has expressly declared that "[t]he extension of the time limit for submission of an application to the Court does not impair the procedural position of the State when the State itself requests [it, since] neither the State's procedural rights nor its opportunity to provide a remedy were in any way diminished."[43]

2. The pertinent parts were duly communicated to the State

The Commission has attempted to provide comprehensive observations with respect to the preliminary objections invoked by the State. However, throughout the proceedings, it has found itself unable to formulate a full response to this objection, which it finds unclear. First, the Commission does not understand which would be the pertinent parts in reference that were not transmitted to the State, and this information was never indicated by the State.

As the Court indicated in the Genie Case, preliminary objections require the invocation of a particular article or some other form of support[44]. The Rules of Procedure of the Court require that such objections include "the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents." The Commission considers that these minimum requirements have not been met: the objection is generic, unclear and unsupported, and therefore inadmissible.

3. The rights and corresponding obligations dealt with in the Commission's admissibility and merits reports were addressed in accordance with the applicable norms and procedures

In its answer to the application, the State argues that, while the Commission admitted the present case with respect to "certain violations" ... it "concluded in its Report 35/02 that the Republic of Suriname has violated other provisions than those for which the case was admitted."[45] The State further objects that the Commission "makes use of Article XVIII of the Declaration in order to be able to insert Article 8(1) of the Convention," and that the Commission adds violations that were not included by the petitioners in their petition.[46] The State affirms that the Commission's actions in this regard were contrary to the requirements of the individual case system, and international law.

In response, the Commission first recounts that it admitted the claims concerning the denial of judicial protection and guarantees under Articles 25, 8 and 1(1) of the American Convention in Admissibility Report 26/00. The Commission went on to

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[43] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No 1, para. 70.

[44] See I/A Court H.R., *Genie Lacayo Case. Preliminary Objections.* Judgment of January 27, 1995. Series C No. 21, para. 35.

[45] State's Answer to the Application, pp. 66-67.

[46] *Id.* p. 67.

examine these and other violations in its Merits Report 35/02. It is only the violations established under Articles 25, 8 and 1(1) of the Convention that are before the Court in the present case. The claims before the Court were admitted and reviewed by the Commission according to the applicable norms and procedure, and the State had a full opportunity to participate in all stages of the proceedings and respond to the claims raised.

The State has presented no argumentation as to why the formulation of violations established by the Commission under the American Declaration would be relevant with respect to the admissibility of the claims before the Court under the American Convention.

The Commission accordingly reaffirms that the present case was processed in accordance with the applicable norms and procedures; there was no conflict with international law; and this objection of the State should accordingly be dismissed as unfounded.

E. Conclusions as to the preliminary objections

The objections to the admissibility of the case are extemporaneous and lack merit in any case. The claims as to possible procedural flaws in the application are manifestly unfounded. The Commission therefore requests that all objections raised by the State be rejected, and that the Court rule on the merits of the case and the respective measures of redress.

III. FACTS PROVEN

A. The historical context: the pattern of human rights violations against the Maroons

The attack on Moiwana village, for which justice has been and continues to be denied, was committed in the context of a pattern of human rights violations against the Maroon population of Suriname.[47]

In 1980, as the result of a *coup d'etat*, a *de facto* military regime was established in Suriname. In 1986, armed opposition to the regime was organized by the group known as the Jungle Commando.[48] The internal conflict that arose lasted until 1992. It

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[47] This is explained in more detail in the application of the IACHR of December 20, 2002 (hereinafter "application"). The Commission closely monitored and documented the situation of human rights in Suriname during the period, particularly between 1983 and 1991. Commission initiatives included conducting four on-site visits to Suriname, and publishing two special reports (annex 4, IACHR, Report on the Human Rights Situation in Suriname dated October 5, 1983, OEA/Ser.L/V/II.61/doc.6 rev. 1; annex 5, IACHR, Second Report on the Human Rights Situation in Suriname dated October 2, 1985, OEA/Ser.L/V/II. 66/doc.21 rev. 1), as well as providing regular updates on the situation of human rights in Suriname in its annual reports (annexes 6-13, Inter-American Commission on Human Rights, Annual Reports for 1982-83, 1984-85, 1985-86, 1986-87, 1988-89, 1989-90, 1990-91 and 1991). The Commission also presented the Aloeboetoe Case, concerning the massacre of a group of Saramaka Maroons, before the Honorable Court. I/A Court H.R., Aloeboetoe et al. Case, Judgment of December 4, 1991, Ser. C No. 11.

[48] This is explained in more detail in the application, section V.A.1, citing relevant supporting documentation.

began in the Eastern part of the country, including the Cottica region where Moiwana Village was located, and spread to other areas of the country. The attack at Moiwana Village was part of a pattern and practice of widespread and systematic reprisals against the civilian Maroon population for the activities of the Jungle Commando.

Witness Stanley Rensch described the kinds of human rights violations committed against the Maroon population as including massacres, disappearances, arbitrary and illegal detention, and the systematic destruction of Maroon villages in Eastern Suriname. Expert witness Polimé indicated that these violent collective reprisals particularly targeted the N'djuka and Paramaka Maroon populations.

The UN Special Rapporteur on Summary or Arbitrary Executions reported in 1987 that the Maroons "as a community have not only suffered the most as far as the arbitrary deprivation of life is concerned but a high proportion of them have lost their houses and property, have been displaced from their land, their communal and family life has been disrupted and they are being deprived of their cultural roots."[49] The Inter-American Commission confirmed that the most serious violations of human rights during that period had been "the treatment of the unarmed civilian Maroon and Amerindian populations in the eastern area of the country" and that these had "taken on truly alarming proportions."[50]

B. The attack on Moiwana Village

In 1986, Moiwana Village consisted on ten camps located over 4 kilometers on the Paramaribo-Albina road, from kilometers 126-30. Their farming, hunting and fishing lands extended for tens of kilometers into the forest on both sides of the road.[51]

On November 29, 1986 a military operation was executed against the Village of Moiwana. The attack began in the early morning, and continued until after darkness fell. At least 39 people were killed, including babies, children, women and the elderly. The victims were defenseless: some were lined up and shot, while others were shot in their homes or as they tried to flee.[52] Others were hacked to death with machetes.[53] Witness Antonia Difienjo testified about how soldiers killed her father, her baby of seven months whom she was holding in her arms, and her pregnant aunt.[54] Erwin Willemdam saw his wife, and mother of their two children killed. Andre Ajintoena testified about how soldiers killed his sisters, and his sisters' children. Those children included the first named victim in this case, Stefano Ajintoena.[55] The attackers terrorized the other residents, and

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[49] Application, annex 19 (Report by the Special Rapporteur, Mr. S. Amos Wako, pursuant to Economic and Social Council Resolution 1987/60, of 19 January 1988, U.N. Doc. E/CN.4/1988/22 [hereinafter Wako Report], para. 104); see also, *id.*, para. 35, reporting the results of the Rapporteur's visit to the area near Moiwana Village, cited in the Commission's application at p. 17.

[50] Application, annex 9, Inter-American Commission on Human Rights, Annual Report 1986-87, Chapter IV: Political Rights, Suriname, OEA/Ser.L/V/II.27 doc. 9 rev.1, p. 264.

[51] Affidavit of Thomas S. Polimé, before the I/A Court H.R., dated August 20, 2004, para. 36; see generally, application, p. 14.

[52] Application, annex 19, Wako Report, *supra*, para. 50.

[53] The Commission's application includes the descriptions of several witnesses to the massacre, see pp. 14-15.

[54] Statement by Antonia Difienjo before the I/A Court H.R. on September 9, 2004.

[55] Statement by Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

destroyed their property. The soldiers then burnt the remains of the village to the ground.

The massacre left at least 39 dead, and many others seriously wounded. Most of the victims were children: over 70 percent of those killed were 18 years of age or younger. Over 40 percent were 10 years old or younger, and approximately 25 percent were 5 years old or younger. Over half of the victims were women or girls.[56] The Commission identified 39 of those killed in its application:

Victims who were killed in the massacre at Moiwana

No.	Family Name	First Name	Birth Date/Age
1	Ajintoena	Stefano	3 years
2	Ajintoena	Cherita	10 years
3	Ajintoena	Magdalena	3/3/'50
4	Ajintoena	Patrick	30/4/74
5	Ajintoena	Iwan	12 years
6	Ajintoena	Kathleen	10 years
7	Majkel	Rinia	10/8/78
8	Ajintoena	Celita	12 years
9	Ajintoena	Eric (Manpi)	8 years
10	Ajintoena	Olga	7 years
11	Ajintoena	Sonny Waldo	14 years
12	Apinsa	Albert	20/1/68
13	Apinsa	Alice Yvonne	18 years
14	Asaitie	Elisabeth	2/4/62
15	Asaiti	Jurgen (zoon van Asaitie, Elisabeth)	25/07/80
16	Asaiti	Margo (dochter van Asaiti, Elisabeth)	11 years
17	Asaiti	Jenifer(dochter van Asaiti, Elisabeth)	1 year
18	Bron	Ma-betoe	17/6/83
19	Bron	Josephine	
20	Bron	Steven	19/9/81
21	Difijon	Dennis	A few months of age
22	Dogodoe	Ciska J.	29/3/68
23	Dogodoe	Theresia	28/8/70
24	Dogodoe	Cequita	7/7/85
25	Dogodoe	Patricia	2/8/72
26	Kodjo	Irene,(Fanja Oema)	28 years
27	Kodjo	Remeo	4 years
28	Kodjo	Marilva	2 years
29	Kodjo	Jurmain	Unknown
30	Mijnals	Babaja	50 years
31	Misidjan	Sajobegi	45 years

[56] See application, p. 15, and footnote 17, citing data compiled by petitioners concerning the ages of those killed.

32	Misidjan	Mado	55 years
33	Misidjan	Difienjo	55 years
34	Misidjan	Iries	24 years
35	Misidjan	Judith	22 years
36	Misidjan	Ottolina, M.	13/2/44
37	Misidjan	Betsie	Unknown
38	Benjamin	Johan	16 years
39	Misidjan	Sylvano	7 months

Once the soldiers burned the remains of the village to the ground the operation had achieved its intended objective: to eradicate the N'djuka village of Moiwana. The actions of the soldiers, which included the killing of babies and the elderly, were clearly understood by the survivors to signify that all villagers were targets, and no one would be spared. The only residents who escaped being shot or hacked to death were those who hid, or were able to flee.

Even the remains of the victims were mistreated. One witness reported that ten people were killed in and around his house. He stated that, after the killings, houses were burnt with bodies still inside them.[57] When some of the bodies were taken to a mortuary in nearby Moengo, soldiers burned the mortuary down to prevent the burial of the bodies.[58] In almost all cases the bodies were not recovered, and the families don't know where the remains are located.

Survivors recounted having to hide within the cover of the forest for days.[59] Many fled to refugee camps administered by the United Nations High Commission for Refugees in French Guiana. Others became internally displaced, with some moving to larger cities in the interior of Suriname and some to the Capital, Paramaribo.

As the State itself affirmed before the Honorable Court, the attack on Moiwana Village was "systematic," perpetrated by state agents, and constituted crimes against humanity.[60] Information presented by the State includes statements taken from suspects during an aborted attempt to investigate the attack, describing a planned military attack that included the murder of unarmed women and children.[61]

C. The Moiwana families remain forcibly displaced from their traditional lands

In contrast to other Maroon villages that were destroyed by the military during the internal conflict, Moiwana Village has not been reestablished. It remains destroyed and

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[57] Application, annex 16, Amnesty International, *Suriname: Violations of Human Rights*, dated September 1987 [hereinafter Amnesty Report], p. 9.

[58] Application, annex 19, Wako Report, *supra*, para. 50.

[59] *Id.*, p. 9.

[60] Statements of State representatives before the I/A Court H.R. on September 9, 2004.

[61] See State's answer of May 1, 2003, annex 20, statements of Frits Cornelis Moesel, pp. 25-26, and 28-29 of 49.

deserted. The survivors and families have not returned to live or even to visit. They consider return under present circumstances impossible.[62]

Because no one has ever been held accountable, the perpetrators remain at large. Given that the attack remains in impunity, they consider that the State does not attribute them the same levels of respect or protection as other Surinamese, and that there are no guarantees for their safety.[63] Witnesses Erwin Willemdam and Stanley Rensch confirmed that the denial of justice is itself a source of fear for the Moiwana families.[64]

Further, in accordance with N'djuka culture, because justice has not been done, and because they have been unable to provide a proper burial for those killed, they consider that Moiwana Village remains impure and uninhabitable. According to their culture, justice must be done before they can undertake the rituals and other steps necessary to prepare to even visit their ancestral lands.[65] Dr. Bilby confirmed that there would have to be clarification and justice before other measures could be taken to bring about an eventual return to Moiwana Village.[66] Nor does Surinamese law recognize the rights of the community to their traditional lands in the area of Moiwana Village.

The survivors and families of those killed remain either internally displaced in other areas of Suriname, or in exile in French Guiana. Because they are unable to return to their traditional lands, they are unable to pursue their traditional way of life as an N'djuka community.

D. The denial of justice for the attack

The State was obliged as a matter of both national and international law to apply due diligence to investigate, prosecute, punish and repair the human rights violations that were perpetrated at Moiwana Village, but has not done so. Nor has it undertaken an effective response to the repeated requests of the victims and the families of those killed to provide them with access to justice. The facts demonstrate the ongoing nature of the denial of justice in the present case, in terms of the State having failed to provide an effective judicial response; state agents having affirmatively obstructed justice; and the undue delay that has elapsed in the proceedings initiated.

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[62] Statements by Antonia Difienjo, Erwin Willemdam and Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[63] Statements by Antonia Difienjo, Erwin Willemdam and Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[64] Statements by Erwin Willemdam and Stanley Rensch before the I/A Court H.R. on September 9, 2004. The victims indicate generally that they don't understand why their loved ones were killed, and that they require an explanation. See, for example, statement of Antonia Difienjo before the I/A Court H.R. on September 9, 2004. Because they have never been afforded an explanation, they feel they have no guarantees against the repetition of such violations. See Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 57.

[65] Statements by Antonia Difienjo, Erwin Willemdam and Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[66] Expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

1. The victims

Moiwana Village was an N'djuka Maroon village located in the Cottica region along the Cottica River. It consisted of ten sub-villages linked by culture, clan and kinship relations.

Maroons are the descendants of African slaves who fought for and won their freedom from the Dutch colonial regime that ruled Suriname until 1975. The ancestors of the Maroons began rebelling against their enslavement in 1651. They fled into the jungle and developed a unique Afro-American culture with its own political system. Their rights to freedom from slavery and to self-government within their territories were recognized in treaties concluded with the Dutch in the 18th Century. They were the first people in the New World to achieve independence. Since that time they have been living in Suriname's rain forest, concentrated along the major waterways.

The N'djuka are one of the six different Maroon groups in Suriname.[67] They are distinct from other Maroon peoples in Suriname by virtue of language, religious traditions, history, clan and kinship structures and relation to "their ancestral lands and the spirits that occupy those lands."[68]

The victims of the denial of justice in the present case are the Moiwana residents who survived the attack and the family members of those who were killed. The Commission identified the following survivors and family members of those killed:[69]

Victims now living in Paramaribo, Suriname

40	Solega	Pepita M.J.	13/1/75
41	Sjonko	Cornelia	18/12/64
42	Misidjan	Rudy	
43	Misidjan	Andre	
44	Sjonko	Annelies	19/01/67
45	Ajintoena	Gladys	09/09/71
46	Misidjan	Jofita	
47	Apinsa	Anika M	08/11/59
48	Apinsa	Sylvia	05/12/61
49	Misidjan	Carla	09/07/60
50	Misidjan	Wilma	11/04/74
51	Kagoe	Adaja	14/04/29
52	Misidjan	Awena	07/04/62
53	Difienjo	Marlon	21/4/71
54	Ajintoena	Aboeda	

Victims now living in Albina, Suriname

55	Allawinsi	Richard	10/05/30
56	Misidjan	Malai	16/8/35

[67] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 7.

[68] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 11.

[69] This list was complied by the representatives of the victim on the basis of the information to which they could obtain access.

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57	Misidjan	Roy	28/12/76
58	Misidjan	Miraldo	29/9/76
59	Sate	Felisi	11/8/46
60	Toeboe	Jozef	11/12/36
61	Toetoe	Awese, Lina L.	3/3/52
62	Agemi	Anto-nius	15/9/35
63	Misidjan	Mitori	5/1/60
64	Makwasie	Martha	10/12/61
65	Sjonko	Carlo	6/9/53
66	Difienjo	Antonia	4/10/53
67	Difienjo	Diana	28/3/78
68	Bron	Jacqueline	4/10/52
69	Jajo	Johannes Alia	

Victims now living in Moengo, Suriname

70	Apinsa	Alphons	21/10/32
71	Misidjan	Anojé M	3/12/49
72	Willemdam	Erwin	13/01/31
73	Misidjan	Apoerlobbi	18/05/41
74	Sjonko	R	
75	Sjonko	Aines	13/2/84
76	Sjonko	Jeanette. E	12/11/62
77	Adam	Marlene	8/11/78
78	Adam	Hesdie	9/11/80
79	Adam	Marlon	25/1/83
80	Adam	Johiena	23/1/85
81	Pinas	Leonie	01/04/65
82	Sjonko	Alma. O	15/9/75
83	Dogodoe	Hellen	02/10/65
84	Ajin-toena	Jacoba	23/10/48
85	Dogodoe	Cynthia	25/03/79
86	Dogodoe	Alfons	7/6/39
87	Misidjan	Johny Delano	30/11/72
88	Misidjan	John	30/11/75
89	Misidjan	Theodorus	
90	Bane	Cyriel	19/01/41
91	Pinas	Toeli-jozef	10/6/70
92	Misidjan	Marlon M.	21/04/71
93	Bron	Tjamaniesting P.	1922
94	Moiman	Sadijeni	15/06/35
95	Adam	Petrus	1/11/57
96	Antonius	Misidjan	1/12/61
97	Ajintoena	Miranda	
98	Kanape	Johannes	5/5/53

Victims now living in French Guiana

99	Ajintoena	Andre	12/10/65
100	Sjonko	Nicolien	10/02/69
101	Solega	Antoon	07/01/53

102	Difienjo	Martha	12/10/60
103	Solega	H. Roel	13/01/77
104	Solega	M. Seclely	06/06/83
105	Solega	A. Dorothy	23/04/86
106	Kate	Alexander	20/10/57
107	Djemesie	Ligia	13/10/67
108	Djemesie	Anelis	Unknown
109	Djemesie	Glenn	Unknown
110	Sjonko	Lothar	19/02/71
111	Solega	K. Delano	17/11/72
112	Daniel	Rudy	12/04/66
113	Martinies	Petrus	31/01/54
114	Sjonko	Isabella	30/06/60
115	Martinies	Marciano	09/09/79
116	Martinies	Rodney	28/09/77
117	Martinies	Chequita	22/01/82
118	Martinies	Benito	13/04/84
119	Sjonko	Natashia	25/09/86
120	Martinies	S. Ruben	15/10/75
121	Difienjo	Antonia	04/10/53
122	Difienjo	M. Milton	14/03/81
123	Difienjo	Petra	02/11/83
124	Difienjo	Diana	28/05/78
125	Difienjo	Patricia	19/10/74
126	Ajintoena	Doortje	02/04/71
127	Ajintoena	Maritje	
128	Dogodoe	Richenel	07/04/75
129	Ajintoena	Atema	28/09/33
130	Dogodoe	Benito	21/07/84
131	Dogodoe	Benita	21/07/84
132	Dogodoe	S. Claudia	26/12/86
133	Dogodoe	R. Patrick	31/05/82
134	Dogodoe	D. Silvana	29/05/81
135	Dogodoe	Z. Jose	03/07/84
136	Ajintoena	S.Marciano	25/02/70
137	Ajintoena	P. Joetoe	20/10/61
138	Ajintoena	Ottolina	13/02/58
139	Ajintoena	Eddy	28/10/78
140	Ajintoena	Cynthia	13/11/80
141	Ajintoena	Lettia	19/11/82
142	Ajintoena	A. Andro	17/07/84
143	Ajintoena	Maureen	08/05/77
144	Ajintoena	Maikel	08/07/68
145	Laurence	Johan	13/06/10
146	Bron	Rosita	4/5/72
147	Bron	Mena	3/12/60
148	Bron	Sawe	15/9/34
149	Ajintoena	Julliana	12/08/61
150	Ajintoena	Franklin	10/07/57

151	Sjonko	Johan	30/03/73
152	Kastiel	Agwe	25/10/37
153	Sjonko	Carlo	
154	Meenars	Rinia	02/03/69
155	Asaiti	Dannie Anna	16/08/28
156	Asaiti	Hermine	17/9/67
157	Misidjan	Anoje Moyda	3/12/49
158	Pinas	Jozef Toeli	1/7/36
159	Misiedjan	Antonius	01/12/61
160	Misiedjan	Sandra	11/01/64
161	Misiedjan	Johny Delano	30/11/72
162	Apinsa	Meriam	
163	Apinsa	Gwhen D.	
164	Apinsa	Erna	
165	Djemesie	Gladys	

2. The collective search for justice

Stanley Rensch testified that the organization Moiwana '86 was initiated with the specific objective of seeking justice for this case and other human rights violations in Suriname. As from 1988 the organization began collecting information and presenting it to the Ministry of Justice as a means of impelling the relevant authorities to investigate.[70]

Andre Ajintoena testified to his involvement as a founding member and Chairman of the Moiwana Association, organized and incorporated in French Guiana for the purpose of pursuing justice in this case.[71]

Each of the witnesses before the Court testified to having personally participated in efforts to seek justice. Each explained that these efforts have been and are pursued by the survivors and family members of those killed in an organized way, as a group. Moiwana '86 and the Moiwana Association collaborate in this regard. These organizations represent the interests of the Moiwana families; therefore, whenever important decisions must be taken, there is a series of meetings to inform and consult. Consultations include all of the survivors and the family members of those killed in the attack. Both adults and children participate in these activities,[72] given that, according to N'djuka culture, the obligation to pursue justice passes from one generation to the next until it is fulfilled.

Moiwana '86 and the Moiwana Association have made numerous requests to the relevant authorities to conduct a serious investigation of the attack, clarify what happened and hold those responsible to account, but to no avail. At least once or often

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[70] Statement by E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[71] Statement by Andre Ajintoena before the I/A Court H.R. on September 9, 2004. He noted that, prior to the hearing before the Honorable Court, there had been meetings in French Guiana, and in Paramaribo, Moengo and other areas of Suriname to inform and consult the families.

[72] Statement of Erwin Willemdam before the I/A Court H.R. on September 9, 2004, indicating that his two children by his wife who was killed in the attack participate in such activities with him, even though they were just youngsters when it happened.

twice a year the Moiwana families renew their request to the State to undertake the necessary investigations to clarify what happened and hold those responsible to account. Stanley Rensch described that, every year, on November 29, there are activities to commemorate the attack, including the publication of updates on the search for justice and a renewed request for the State to respond. He indicated that on Human Rights Day, December 10, activities routinely include pressing for the State to do justice for the Moiwana attack.

3. The investigation initiated by Inspector Gooding

In 1989, the Civilian Police Force, under the command of Police Inspector Herman E. Gooding, attempted to investigate the attack against Moiwana Village. A March 21, 1989 report from Inspector Gooding records that the investigation was opened to investigate murder and other crimes under the Surinamese Criminal Code committed during the attack on Moiwana Village.[73] Witness Stanley Rensch testified that Moiwana '86 provided Gooding with information it had collected about the attack.[74]

In April of 1989, Inspector Gooding arrested and questioned several suspects, including Frits Moesel and Orlando Swedo.[75] Those individuals were released from detention shortly thereafter, not by order of a judge, but because a contingent of military police, armed and in full battle dress, arrived at the police installation where they were being held and demanded their release.[76]

Swedo was taken back to the main military barracks (Membre Boekoe), where military commander Bouterse had convened a meeting. There, Bouterse issued a statement that the events at Moiwana Village had been a military operation; he himself had ordered it and any questions about it should be addressed to him; that he would not tolerate that military operations be subject to investigation by the police; and that he had ordered the release of Swedo. This statement was reported by the press, who had been called to the meeting for that purpose, in print and on television.[77] Witness Stanley Rensch testified that Bouterse also indicated during that meeting that he was aware of contacts between Moiwana '86 and Inspector Gooding, and warned Gooding.[78]

Police Inspector Gooding was murdered on August 4, 1990,[79] after a meeting with the Deputy Commander of the Military Police. He was reportedly leaving Fort Zeelandia when his car was stopped, and he was taken out and shot to death.[80]

While there was an initial effort to investigate and clarify the circumstances of Goodings death, those efforts were blocked. Witness Stanley Rensch described that the term "blind walls" began to be used at that time for the way that any efforts to investigate were futile.[81] The circumstances of Goodings murder have never been clarified.[82]

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[73] State's answer, annex 20, Report of Deputy Police Inspector, Herman Eddy Gooding, detailing various articles of the Criminal Code implicated.

[74] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[75] See State's answer. annex 20. containing records of statements taken.

[76] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004; application, annex 27, articles listed at a., b. and c.

[77] Annex 27, articles listed at a., b. and c.; statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[78] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[79] State's answer, p. 71.

[80] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[81] *Id.*

[82] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004; State's answer, p. 71, indicating that attempts were made to initiate investigations, but that "there was still no climate to carry out as good and objective a criminal investigation as possible."

After these events, the police investigation into the attack on Moiwana Village was suspended.

4. The amnesty law

On August 19, 1992, the Surinamese National Assembly adopted an amnesty law entitled "Amnesty Act 1989" which retroactively provided for the granting of amnesty to perpetrators of human rights and other criminal acts during the period from January 1, 1985 until August 20, 1992. This law applies to human rights violations and other specified crimes,[83] except crimes against humanity, defined under the legislation as those crimes "which according to international law are classified as such."[84]

Stanley Rensch testified before the Court that Moiwana '86 had opposed the adoption of the law, considering that it would effectively serve as a means to "legalize impunity." On behalf of victims in cases of outstanding human rights violations, Moiwana '86 filed a legal challenge against that law as a violation of constitutional and international obligations. That challenge was rejected.[85] Witness Rensch testified that he was aware of no steps taken to investigate human rights violations committed during that time period after that law was adopted.

5. The finding of human remains

On May 22, 1993 a mass grave was found containing a number of corpses of victims of the Moiwana massacre, in an area near the former Village of Moiwana, in the District of Marowijne.[86] In a letter dated May 24, 1993, Moiwana' 86 reported the discovery to the Office of the Attorney General, and formally renewed its urgent request for an investigation into the massacre.[87]

In May and June of 1993, a team consisting of the civilian police, the military police, a pathologist and his assistant from the Office of the Attorney General, and Moiwana '86, visited the site of the graves.[88] The team discovered and opened one grave during its first visit on May 28, 1993. Additional remains were found during a second visit on June 9, 1993. The remains were then taken to Paramaribo for further investigation.

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[83] This law provided amnesty for those guilty of crimes committed against the authority of the state described in the Criminal Law (Articles 128, 129, 130, 131, 132a, 133, 134, 135, 169, 170, 171, 172, 173, 174, 175, 175bis, 183 and 184) as well as all illegal acts committed in order to prevent a person from committing a crime as described above. Crimes against humanity are excepted by the Amnesty Law 1989. See application, annex 28 (Suriname Amnesty Act 1989 (August 19, 1992), Arts. 1, 2).

[84] *Id.*

[85] Moiwana '86 v. State of Suriname, No. 92/03/59, First Cantonal Court, Paramaribo, 12 December 1992.

[86] Application, annex 25 (Moiwana '86, "Moiwana Graves", June 10, 1993).

[87] Application, annex 24 (Letter from Moiwana '86 to Attorney General, May 24, 1993); Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004. The State's response, at Annex 29, records that Moiwana '86 was pressing for investigation of the remains found in connection with the large number of killings that had taken place at Moiwana Village. See application, annex 29, p. 4 of 21.

[88] *Id.*

Although the information reported by Moiwana '86 indicated that the remains appeared to correspond to victims of the attack at Moiwana Village, the only information reported by the authorities thereafter is that the remains were confirmed to be human, and corresponded to between 5 – 7 adults and 2 – 3 children.[89] The remains were never officially confirmed to correspond to victims of the Moiwana attack, nor were they ever linked to specific individuals. No further information was provided.

On August 23, 1993, Moiwana '86 directed another letter to the Procurator General, citing the written information and request for investigation it had presented on May 24, 1993, reiterating its request for investigation of the killings at Moiwana, and asking to be informed of the results of the investigation underway with respect to the remains found.[90]

Reports indicate that, at the time these bodies were found, the Minister of Justice and Police expressed that the investigation of the Moiwana attack was not a priority for the administration, and the Minister for Social Affairs and Housing, who had played a role in negotiations to end the internal conflict, had expressed in a press release that the attack should be deemed to fall within the scope of the Amnesty Law.[91]

6. The Parliamentary motion

On December 19, 1995, the Parliament of Suriname adopted a motion requiring the Executive Branch to immediately open an investigation into several notorious violations committed during the military regime, including the Moiwana massacre.[92] However, the Executive took no action to comply with the motion.[93]

7. Further written requests for investigation

In 1996, following the Parliamentary motion, Moiwana '86 filed two formal requests for investigation of the attack on Moiwana Village with the Attorney General. Having received no response, Moiwana '86 filed a formal request with the President of the Court. Under Article 4 of the Third Section of the Code of Criminal Procedure, a criminal investigation may be opened upon the request of a private party. The Attorney General may initiate the investigation, or where that is not done, the President of the Court may order the Attorney General to initiate it.

By note of August 21, 1996, the President of the Court, expressly invoking Article 4 of the Code of Criminal procedure, instructed the Attorney General to transmit to the Court his report in response to the request for investigation, as well as any criminal investigation files.[94] A copy of that request was transmitted to Moiwana '86.[95] In

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[89] State's response, annex 29 p. 18 of 21, police report.

[90] IACHR application, annex 24, letter of August 23, 1993.

[91] IACHR application, annex 25, "The Moiwana Graves" p. 4.

[92] Annex 23 (*Motie van National Assemblee Suriname* [Motion by the Parliament of Suriname on Investigation of Human Rights Abuses], December 19, 1995).

[93] Testimony of Stanley Rensch.

[94] Application, annex 26.

[95] This is mentioned in the subsequent letter of October 2, 1996, Annex 26.

[redacted]

response to an inquiry from Moiwana '86, by note of October 2, 1996, the President of the Court informed the organization that the Attorney General had not responded.[96] In response to a further inquiry, by note of February 26, 1997, the President of the Court referred Moiwana '86 to the Attorney General.[97] No further official action was taken.

8. Threats and reprisals against those who collaborated in the search for justice

Those who worked with Moiwana '86 to seek justice for the attack on Moiwana Village and related human rights violations often faced threats, reprisal and grave risk in connection with their efforts. A number of those who collaborated with Moiwana '86 during the visit of UN Special Rapporteur Amos Wako to Eastern Suriname shortly after the attack on Moiwana Village found it necessary to leave the country to protect themselves. Stanley Rensch was himself subjected to arbitrary and illegal arrest on four different occasions, and also faced an attempt against his life.[98] He confirmed that those who sought justice in the Moiwana Case knew that they faced risk.[99]

The killing of Inspector Gooding, detailed above, has never been clarified. The police officers who worked on the Gooding investigation "couldn't continue" because it was "a life threatening situation." Many found it necessary to leave the country as well.[100] One of the suspects Gooding arrested and questioned, Frits Moesel, who confessed to having killed unarmed women and children at Moiwana, was found shot to death in circumstances the State itself characterizes as strange.[101] That death has never been clarified either.

The denial of justice itself in this case is a source of fear for those involved.[102] The perpetrators remain free, and apparently beyond the reach or control of the law.[103] Family members testified that the lack of clarification and accountability are factors that preclude their return to Moiwana Village, as there are no guarantees against the repetition of what happened.[104]

The State itself indicates that, even after the Parliamentary motion in 1995 requiring the Executive to investigate the Moiwana attack and other human rights violations, conditions were not in place to carry out a successful investigation of the Moiwana Case, or the killing of Inspector Gooding.[105] In its answer, the State notes that,

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[96] *Id.*

[97] Application, annex 26, letter of February 26, 1997.

[98] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004; see also application, annex 11, Annual Report of the IACHR 1989-90, reporting the attempt against Mr. Rensch's life.

[99] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[100] *Id.*

[101] State's answer, p. 71. Moesel, who had been arrested and questioned by police in 1989 as a suspect in the Moiwana attack, was found dead on December 10, 1993. State's answer, annex 29.

[102] Statements of E. Stanley Rensch and Erwin Willemdam before the I/A Court H.R. on September 9, 2004.

[103] Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[104] Statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[105] State's answer, p. 71.

in taking on such questions, "adequate caution had to be exercised to not once again end up in a situation in which people, or worse population groups, would become the victims of violence." Even the State acknowledges that there was risk, and that it had not provided the conditions to combat or protect against it.

9. Impunity

It has been demonstrated that the State has yet to carry out an effective investigation of the attack on Moiwana Village to clarify the facts, hold those responsible to account, and provide reparation to those harmed as a result. During the public hearing before the Honorable Court, the State's representatives suggested that an investigation had been opened or reopened, but were unable to report particular measures taken, or even the precise stage of investigation.[106]

Nor has the State carried out an effective investigation of the efforts to obstruct justice for the Moiwana attack, including the military operation carried out to obtain the release of suspects in police custody; the killing of Inspector Gooding; the threats against individuals who collaborated in the search for justice; and the death of confessed suspect Moesel. Even when the State was required to confront human remains found near Moiwana Village and exhumed them, it took no further steps to identify them or their relationship to the attack.

The impunity in this case is not, however, unusual. Witness Stanley Rensch testified that during his many years of work with Moiwana '86, he was not aware of any case of human rights violation that had reached the stage of prosecution or punishment before the courts of Suriname.

Recent press reports quote the Attorney General as opining that the statute of limitations for the crimes committed at Moiwana Village may lapse in November of 2004, and that there was not sufficient information available to initiate a preliminary judicial investigation against any particular suspect so as to interrupt the running of the statute.[107] These comments confirm that there has yet to be an effective investigation of the attack at Moiwana.[108]

E. The damages the survivors and family members have suffered as a result of the denial of justice

Prior to the massacre for which justice has been denied, Moiwana Village was a community that sustained itself materially, culturally and spiritually through the traditional N'djuka way of life. Because virtually all members of a traditional N'djuka village such as Moiwana share clan and kinship links, all have been profoundly and permanently affected by the attack, killings and subsequent denial of justice.[109] Because the

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[106] Response of State's representative to question posed by Judge Medina during the hearing of September 9, 2004.

[107] These reports were referred to during the September 9, 2004 hearing, and transcriptions of those reports along with English-language translations were provided to the Court by the petitioners.

[108] Statements of State representatives before the I/A Court H.R. on September 9, 2004.

[109] See statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004. The clan and kinship links are referred to in the affidavit of Thomas S. Polimé before the I/A Court H.R., dated August

community has been denied justice, they are unable to return to Moiwana, and unable to remake their lives as individuals or as an N'djuka community. As the witnesses and experts confirmed, the survivors and next-of-kin feel they can only repair their own lives when they have obtained justice for those killed.[110] Until then, they feel they must "relive the massacre every day because there is no closure to the event," and they have failed to discharge their obligation to obtain justice.[111]

An N'djuka village is based on clan and kinship ties, ties that remain fractured for the Moiwana families. In order for a community to function normally in N'djuka tradition, members must come together regularly in their homeland. Even if they leave, for example to find wage labor, people and shrines remain in the homeland, and life cycles and life rituals must periodically be observed in that place. It is that periodic contact that maintains cultural integrity. Where there is no longer the possibility to return to that homeland, members of the community become scattered. Without the material and spiritual base of their home territory, it becomes very difficult for them to maintain their culture and fulfill social obligations that require being together.

For the Moiwana families and community, the fact that the State has failed to provide any measure of clarification or accountability means they feel they have failed in their obligations to right the wrongs done. The pursuit of justice is not a choice for the Moiwana families, it is something that must be done.[112] According to N'djuka belief, if a member of the matrilineage is killed, all members of the matrilineage are obliged to work for justice – to right the wrong done. If this is not done, the spirit of the person killed suffers, and the descendents suffer. Because those from Moiwana Village are obliged to pursue justice collectively,[113] they suffer the failure to obtain it collectively as well.

In the N'djuka belief system, the failure to obtain justice for the wrongs done in this case carries severe consequences, not only for the person wronged, but also for his or her ancestors and descendents. The inability of the Moiwana families to discharge that obligation with respect to those killed gives rise to spiritual consequences, initially for the closest descendents. Those consequences do not lessen over time, but rather "multiply out" to affect additional members of the matrilineage. The spiritual problems created give rise over time to physical and other kinds of problems.

Many in the Moiwana community are suffering the spiritual and other effects of their inability to obtain justice. Thomas Polimé noted that many survivors and next of kin still suffer insomnia or terrifying dreams, and many suffer illnesses they attribute to the anger of the spirits.[114] Witness Andre Ajintoena mentioned a specific example of an 18 year old girl considered by her community to be suffering precisely these kinds of

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20, 2004, and were also referred to in the statement of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[110] Statements of E. Stanley Rensch, Antonia Difienjo, Erwin Willemdam and Andre Ajintoena, expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004; Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 65.

[111] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 65.

[112] Statements of E. Stanley Rensch, Antonia Difienjo, Erwin Willemdam, Andre Ajintoena, and expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[113] Statements indicated *id.*

[114] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, paras. 68, 70.

adverse effects.[115] As long is there is no justice, the Moiwana families will "never be able to live a normal type of existence."[116]

The fact that the Moiwana families don't know where the remains of their loved ones are located gives rise to specific problems and suffering. Providing a proper burial has special significance. In an N'djuka community, a death requires a series of complex rituals that can take up to a year to complete. It requires the mobilization of the entire community to perform the ceremonies necessary to help the deceased person make the transition to the world of the ancestors. The proper discharge of burial and mourning rituals requires the presence of the remains. The treatment accorded to the remains is one expression of honor and respect. In the N'djuka tradition, this is also part of the preparation for the deceased to pass to the world of the ancestors. The inability to perform these rituals is considered to be a moral offense shared by the deceased, the ancestors, and the descendents – but gives rise to specific consequences for the descendents.

For the Moiwana families, the fact that some remains were left abandoned, mutilated or burned is a source of particular anguish. The fact that some bodies were burned in Moiwana, and that the mortuary in Moengo was burned along with a number of bodies from Moiwana is considered especially repugnant according to N'jduka norms.[117] Erwin Willemdam testified that the fact that he doesn't know what happened to his wife's body is the worst thing that he feels about the attack.[118] In the N'djuka culture, only evildoers are not accorded a burial with dignity. It is a source of great suffering for the Moiwana families that their loved ones' bodies were treated like those of criminals, and they consider that it heightens the anger of the spirits.[119] In trying to explain the burden imposed for the failure to provide a proper burial, Antonia Difienjo testified that "it is as if we don't exist on earth."[120]

The suffering experienced by the Moiwana families in being unable to obtain justice, and unable to provide a proper burial for those killed remain very present. Rather than lessening over time, the consequences of what are in their culture unmet obligations begin to affect more and more members of the matrilineage. In the N'djuka belief system, the failure to comply with these kinds of obligations gives rise to the creation of an avenging spirit that is not temporary but eternal. In their belief system, with proper resolution, the spirit can be controlled and even become a source for good.

Within their belief system, the inability of the Moiwana families to obtain any measure of justice for the attack has been and remains catastrophic. The suffering they have endured since the attack, and in particular their displacement from their lands "is reminiscent of the time of slavery."[121]

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[115] Statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[116] Statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[117] Expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[118] Statement of Erwin Willemdam before the I/A Court H.R. on September 9, 2004.

[119] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 63.

[120] Statement of Antonia Difienjo before the I/A Court H.R. on September 9, 2004.

[121] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 60.

The N'djuka history in the Cottica region of Suriname dates back to the early 18th century.[122] An N'djuka community "is inextricably tied" to its lands and sacred sites;[123] its lands are an "embodiment of their social identity as a community." It is also an important repository of N'djuka history because it includes a series of landmarks that record that history and are linked to their oral history. The land produces what is necessary for survival; it is the basis for planting, fishing, hunting and gathering food and materials for construction.

At Moiwana, the community pursued a traditional N'djuka pattern of farming, fishing, hunting and gathering that depended on a complex system of reciprocal relations and exchanges. As a result of their forced displacement, they have been cut off from their very way of life. At Moiwana, as with other N'djuka villages, land rights were passed through the matrilineage. The contribution and social standing of women in the N'djuka tradition is closely linked to access to land to farm; access the displaced women of Moiwana do not have.

The Moiwana families remain cut off from this aspect of their identity and history, and from their traditional way of life that was based on the land. They are unable to go back for two reasons: First, because justice has been denied and no one has been held to account, the perpetrators remain at liberty. They have no guarantees for their safety, and no guarantees against the repetition of similar facts. Second, according to N'djuka tradition, because justice has not been done for the killings at Moiwana, the place itself is impure and uninhabitable.[124] N'djuka tradition requires that justice be done before the rituals can be performed that would enable villagers to return.[125]

Those who live in exile in French Guiana live in a foreign country, with all the difficulties that entails. Those who are scattered in different areas of Suriname must follow a way of life that is foreign to their traditions. Being displaced, many live in precarious conditions, without access to basic services. In more general terms, many share the feeling that witness Antonia Difienjo expressed, that "where I am now is not my place."[126]

For those affected, the denial of justice in this case is also an expression of discrimination. They consider that their rights as individuals are not accorded the same worth as other Surinamers.[127] Both Antonia Difienjo and Andre Ajintoena expressed that the lack of response leads them to believe that, for the State, those shot and killed were no better than animals.[128]

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[122] Statement of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[123] Affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004, para. 60.

[124] Statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004, referring to both reasons as precluding return.

[125] Statements by Antonia Difienjo, Erwin Willemdam and Andre Ajintoena, expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[126] Statement of Antonia Difienjo before the I/A Court H.R. on September 9, 2004.

[127] Statements by Antonia Difienjo, Erwin Willemdam and Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

[128] Statements by Antonia Difienjo and Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

The denial of justice in the present case is for a massacre committed against an N'djuka community in the context of gross and systematic violations against the Maroon peoples of Suriname. The gravity of the violations committed, involving an attack on both the individuals and the collectivity of the community and their identity and very way of life, necessarily gives rise to an aggravated impact insofar as the rights of the victims are concerned, as well as with respect to the responsibility of the State.[129] The Moiwana Case has an emblematic importance in this regard, so that other Maroon peoples in Suriname consider that what happens in the case has significance for them as well.[130]

IV. THE STATE IS RESPONSIBLE FOR VIOLATIONS OF THE RIGHTS TO JUDICIAL PROTECTION AND GUARANTEES UNDER ARTICLES 25 AND 8, IN CONJUNCTION WITH ITS OBLIGATION TO RESPECT AND ENSURE PROTECTED RIGHTS UNDER ARTICLE 1(1)

A. Introduction

Although almost 18 years have passed since the attack on Moiwana Village, the State has provided no clarification, no accountability and no reparation for the human rights violations that took place there. As the Honorable Court clarified many years ago, the obligation to do justice is one of means not ends.[131] The case presented before the Honorable Court does not base itself on the lack of a particular result, but on the State's failure to effectively carry out the processes designed to achieve clarification, accountability and reparation.

Article 25 of the American Convention establishes that: "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...." Article 8 of the Convention stipulates that every person has the right to be heard "with due guarantees" by a "competent, independent and impartial tribunal" when seeking to vindicate a right. As the Honorable Court has established, these provisions perform complementary functions:

> Under the Convention, State Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[132]

It has been amply demonstrated in the present case that the State of Suriname bears responsibility for having failed to uphold these fundamental and interconnected

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[129] See generally I/A Court H.R., Case of Plan de Sánchez, Judgment of April 29, 2004, Ser. C No. 105, para. 51.

[130] Statement of E. Stanley Rensch, expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004.

[131] I/A Court H.R., Velásquez Rodriguez Case, Judgment of July 29, 1988, Ser. C No. 4, para. 177.

[132] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 1 (1987), para. 91.

rights. First, the victims and their families were unable to effectively invoke and exercise their right under Article 25 to simple, prompt, effective judicial recourse for the protection of their rights. Their repeated efforts to insist on investigation were met with either silence or with affirmative steps to obstruct justice, and failed to produce substantive results. Consequently, the surviving victims and the families of those killed have been denied their right to be heard with due guarantees in the substantiation of their right to justice. As a result of the State's failure to provide the effective judicial protection and guarantees required under the Convention, the families have been denied not only their right to an effective investigation designed to establish the violations and corresponding responsibility, but also their right to seek reparation for the consequences of those violations.

In broad terms, Article 25 requires that States Parties provide a judicial remedy "truly effective in establishing whether there has been a violation of human rights and in providing redress."[133] The obligation to provide judicial protection is not met simply by the formal existence of legal remedies; rather, States must take specific measures to ensure that judicial protection is effective.[134] Article 25(1) of the Convention incorporates the principle recognized in international human rights law regarding the effectiveness of procedural means aimed at guaranteeing protected rights.[135] Consequently, as the Court has established, "[a] remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective."[136] The judicial remedies theoretically available through the legal system have proven completely illusory in the present case, as the victims have never even succeeded in obtaining an adequate investigation of the facts of the attack on Moiwana Village.

The right to simple and prompt recourse before a competent judicial authority to protect against the violation of a fundamental right under either the Convention or national law "constitutes one of the basic pillars, not only of the American Convention, but also of the rule of law in a democratic society." The period during which these violations occurred, a period of de facto military rule, was characterized by the absence of the rule of law. The State itself has confirmed this, and acknowledged that it was unable to provide judicial protection and guarantees to its inhabitants during that period. However, Suriname continues to invoke that past as a justification or excuse for failing to remedy these human rights violations in the present. In the first place, violations of the past do not excuse violations of the present. In the second place, it is precisely because of the need to overcome anti-democratic practices under the de facto regime that it is essential that Suriname ensure that judicial protection and guarantees are fully in place.

The evidence presented in this case demonstrates the denial of judicial protection and guarantees on a number of different levels. The State failed to use due diligence to investigate the attack, or to prosecute and punish those responsible. In fact, state agents affirmatively obstructed justice. The facts clearly demonstrate that

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[133] I/A Court H.R., Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/87 of Oct. 6, 1987, Ser. A No. 9 (1987), para. 24.

[134] I/A Court H.R., Velásquez Rodriguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4 (1988), para. 167.

[135] *See, e.g.* I/A Court H.R., OC-9/87, *supra*, para. 24; I/A Court H.R., Case of Suárez Rosero, Judgment of November 12, 1997, Ser. C No. 35 (1997), para. 63.

[136] I/A Court H.R., OC-9/87, *supra*, para. 24.

there has been an unjustified delay in the State's response to the attack. The consequence of these acts and omissions of the State is impunity for an attack that resulted in the massacre of at least 39 people, and the continued forced displacement of the entire Moiwana community.

B. The failure to apply due diligence and the affirmative obstruction of justice

As the State acknowledged before the Honorable Court, it was on notice of the attack and massacre at Moiwana Village from the time of its commission, because state agents participated in it.[137] The petitioners, for their part, requested investigation, clarification and accountability repeatedly, before the Ministry of Justice, the police, the Attorney General and the President of the Court. Independently of those requests for justice, once on notice of the crimes committed during that attack, the State was obliged to apply due diligence to investigate what had happened. The State has yet to complete an effective, impartial investigation.

While the attack took place in 1986, the first steps of investigation were not initiated until 1989. The investigation initiated at that time under the direction of Police Inspector Gooding included some initial steps, such as questioning suspects who provided chilling details about the murder of unarmed women and children. Those steps did not, however, comply with the dictates of due diligence, nor has the State reported on any subsequent steps to undertake a thorough and impartial investigation.

As the Honorable Court has confirmed, "in cases where there have been extra-legal executions the State must conduct a serious, impartial and effective investigation of what happened."[138] The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, or Minnesota Protocol sets forth basic guidelines on what due diligence requires in such cases.[139] The Protocol indicates that the broad purpose of an inquiry into a suspicious death is to discover the truth about the events leading up to that death. That should include, inter alia, the identification of the victim; the recovery and preservation of relevant evidence; the identification of possible witnesses and taking of their statements; the determination of the "cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;" as well as measures to confirm the cause of death and identity of any suspect(s) so as to bring them to justice.[140] The procedures set forth in the Protocol emphasize the importance of recovering and preserving evidence, particularly in connection with the body of the victim(s), and the processing of the crime scene.

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[137] State representative's response to a question from Judge Medina during the September 9, 2004 hearing.

[138] I/A Court H.R., Juan Humberto Sánchez Case, Judgment of June 7, 2003. Ser. C. No. 99, para. 127.

[139] U.N. Doc E/ST/CSDHA/.12 (1991) (hereinafter cited as "Manual"). This Protocol has been cited by both the Honorable Court and the Commission in this regard. See for example, I/A Court H.R., Case of Juan Humberto Sánchez, supra, paras. 127-28, 133; IACHR, Report No. 10/95, Case 10.580, Ecuador, Sept. 12, 1995, paras. 32-33. Having been adopted in 1989, the State was on notice of the Protocol over the course of 15 years of the proceedings at issue before the Honorable Court.

[140] Manual, *supra*, p. 16.

These most basic steps have never been completed in the instant case. In particular, the lapse of over two years prior to any measures of investigation meant that important evidence was lost, particularly that linked to the physical remains and the crime scene. Even once the Gooding investigation was initiated, there is no indication that the bodies of those who were killed were sought to determine the cause and circumstances of death, or that the crime scene was closely examined for evidence. Most of the remains have never been recovered. As the Honorable Court has emphasized, an exhaustive investigation of the scene, the preservation of evidence, and rigorous autopsy are crucial elements for a serious and effective investigation designed to lead to the punishment of those responsible.[141]

In addition to failing to carry out basic steps of investigation, state agents have affirmatively obstructed justice. As was the situation in the Genie case, military authorities and other officials either obstructed or refused to cooperate with even the most initial steps of investigation.[142] As in the Bámaca Case, high level State officials have taken direct actions to prevent any investigations from having positive results, and this has undeniably prevented the survivors and families of those killed from knowing the truth about those violations.[143] A measure that obstructs or prevents a person from availing him or herself of judicial recourse is a violation of the right of access to the justice.[144] In this sense, the Case of Moiwana Village is about what happens when basic respect for the rule of law is allowed to break down.

One of the dramatic examples of obstruction of justice is what happened in response to Gooding's action to arrest and detain suspects in connection with the attack and killings at Moiwana Village. Not only did the military command send armed military troops in full battle dress to demand the release of suspects from police custody, commander Bouterse publicly confirmed that he had ordered that action, that he had ordered the attack on Moiwana, and that he would not tolerate police investigation of that or any other military action.[145] This kind of obstruction of justice demonstrates a severe, and in this case insurmountable interference with the independence of the judiciary.[146]

Witness Stanley Rensch recalled in his testimony that Bouterse warned Inspector Gooding at that time about his attempts to investigate. Inspector Gooding was found shot to death outside a military installation, Fort Zeelandia, just over a year later.[147] The police

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[141] See for example, I/A Court H.R., Case of Juan Humberto Sánchez, *supra*, para. 128.

[142] See generally, I/A Court H.R., Genie Lacayo Case, Judgment of January 29, 1997, Ser. C No. 30, para. 76.

[143] See generally, I/A Court H.R., Bámaca Velásquez Case, Judgment of November 25, 2000, Ser. C No. 70, para. 200.

[144] See I/A Court H.R., Cantos Case, Judgment of November 28, 2002, Ser. C No. 97, para. 50.

[145] See section III.D.3, *supra*, detailing these facts. As reflected in the Minnesota Protocol, due investigation of a presumed extra-legal execution requires that the investigating authority have the power to obtain all necessary information, and to oblige officials allegedly involved and witnesses to appear and testify. Manual, *supra*, p. 44.

[146] See generally, Case of Myrna Mack-Chang, Judgment of November 25, 2003, Ser. C No. 101, para. 216.

[147] See section III.D.3, *supra*, detailing these facts.

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investigators who worked on the Moiwana Case "could not continue" because it was a "life threatening situation," and left the country in fear for their safety.[148]

The only effort ever undertaken to recover any of the victims' remains was a response to the 1993 presentation of information by Moiwana '86 about the finding of human remains near the Village. Two trips were reportedly made to the area identified by Moiwana '86, and sets of human remains were exhumed and taken back to Paramaribo for examination. The remains corresponded to 5 – 7 adults and 2 – 3 children. There was evidently no further effort to link the remains to the killings at Moiwana Village, or to try to identify the victims. There was evidently no further effort to return to that site or to the Village area to ascertain whether additional human remains could be recovered. The recovery and due analysis of remains is obviously a central step in any investigation of an extra-legal execution. As the Minnesota Protocol indicates, due diligence calls for an autopsy establishing the identity of the deceased, cause and manner of death and time and place of death.[149] The Moiwana families' inability to recover the remains of their loved ones contributes significantly to their inability to know the truth about what happened.[150]

The remains exhumed in 1993 corresponded to particular victims. In view of the totality of the circumstances, the remains almost certainly corresponded to victims of the Moiwana attack. However, given that the State never took any measures to establish the identity of the deceased, those remains have never been returned to the corresponding family and community for burial.

There is a fluid relationship between the lack of due diligence and the affirmative obstruction of justice. After the petitioners saw the Gooding investigation aborted, after the 1993 exhumations produce no results, and after the Parliament exhorted the Executive to investigate in 1995, the petitioners again approached the authorities. In accordance with the terms of the Code of Criminal procedure, they addressed the Attorney General to request investigation, and in view of his silence, then addressed the President of the Court. The President of the Court then addressed the Attorney General to require information and any police files. Neither Moiwana '86 nor the President of the Court managed to get a response from the Attorney General. No measures were taken to sanction the Attorney General for failing to perform his job, nor were any measures taken to follow through on the request for investigation.

Over time, the failure to clarify the Moiwana case, and the failure to investigate a number of related acts of threat or reprisal have created a web of fear around this case that itself contributes to the denial of justice. Herman Gooding, a police inspector, was killed, but the police were never able to clarify the killing of one of their own. The investigators who worked with Gooding on the Moiwana case had to drop it, and a number left the country in fear for their lives. A suspect who had been arrested and questioned in connection with the killings at Moiwana was found shot to death in circumstances the State itself has characterized as "strange."[151] His death has never been clarified. Individuals working with Moiwana '86 received threats, and some left the country in fear for their lives. Stanley Rensch was subjected to arbitrary and illegal arrest and detention while working on

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[148] Statement by E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[149] Manual, *supra*, p. 44.

[150] See generally, Bámaca Case, *supra*, para. 200.

[151] State's Answer, p. 71.

These most basic steps have never been completed in the instant case. In particular, the lapse of over two years prior to any measures of investigation meant that important evidence was lost, particularly that linked to the physical remains and the crime scene. Even once the Gooding investigation was initiated, there is no indication that the bodies of those who were killed were sought to determine the cause and circumstances of death, or that the crime scene was closely examined for evidence. Most of the remains have never been recovered. As the Honorable Court has emphasized, an exhaustive investigation of the scene, the preservation of evidence, and rigorous autopsy are crucial elements for a serious and effective investigation designed to lead to the punishment of those responsible.[141]

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[148] Statement by E. Stanley Rensch before the I/A Court H.R. on September 9, 2004.

[149] Manual, *supra*, p. 44.

[150] See generally, Bámaca Case, *supra*, para. 200.

[151] State's Answer, p. 71.

the Moiwana Case. The lack of investigation and clarification of these events transmits the message that the authorities are either unwilling or unable to address the Moiwana attack according to the law. This continues to generate fear,[152] as well as lack of trust and confidence in the very authorities responsible for investigating all of these crimes.[153]

The amnesty law adopted in 1992 to cover certain crimes committed from 1985 to 1992 has also contributed to the situation of impunity for the human rights violations committed at Moiwana Village. Because the present case has never reached the stage of prosecution, the amnesty law was never directly applied. At the same time, it has been proven that the law had the effect of indicating to relevant officials that they either shouldn't or couldn't investigate the human rights violations committed by the military in the context of the internal conflict. Stanley Rensch confirmed in his testimony before the Honorable Court that State officials understood the adoption of the Amnesty law to mean no further steps toward investigation.

Without basic investigation with due diligence to clarify the facts in order to move forward with prosecution, punishment and reparation for the victims, the victims have no possibility to move forward with judicial remedies. If the burden were on the victims to produce the evidence, this would mean that justice, and particularly criminal justice, would be permitted to depend on the initiative of the victim. The Honorable Court has repeatedly confirmed that the State is required to use due diligence to carry out prompt and effective investigations of human rights violations, and that this cannot be made to depend on the impetus or initiative of the victim.[154]

In addition to the obligation of the State to investigate presumed human rights violations *de oficio*, Surinamese law establishes the right of a victim to petition as a party for a criminal investigation. The victims' families "had a fundamental civil right to go to the courts," and thereby "play an important role in propelling the criminal case and moving it forward."[155] That right cannot be realized when the investigation process is obstructed.

The State of Suriname has failed to honor its obligation to provide simple, swift and effective legal recourse to the victims and the families of those killed, so that they can know the full truth as to why they were subjected to these violations. This duty flows from the obligation of the State under Article 1(1) to "use all the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction [in order] to identify those responsible."[156] Family members are entitled to know the facts and circumstances with

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[152] See Statement of E. Stanley Rensch before the I/A Court H.R. on September 9, 2004, confirming that those involved in the search for justice have faced great risk, and that the denial of justice itself generates fear.

[153] See Statement of Erwin Willemdam before the I/A Court H.R. on September 9, 2004, indicating that he does not have confidence or trust in the actions of the police. As reflected in the Minnesota Protocol, due investigation of an extra-judicial investigation requires that complainants, witnesses and investigators and their families be protected from any form of intimidation. Further, those potentially implicated must be removed from any position of direct or indirect authority over complainants, witnesses or investigators." Manual, *supra*, p. 45. See also, statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004 indicating his lack of confidence in the capacity of the State to carry out a due investigation.

[154] See, *inter alia*, I/A Court H.R., Juan Humberto Sánchez, *supra*, para. 132.

[155] IACHR, Report Nº 28/92 (Argentina), Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, Doc. 14, corr. 1, March 12, 1993, pp. 35, 48.

[156] Velásquez Rodríguez Case, Merits, *supra*, para. 166.

respect to the fate of their loved one.[157] They are also entitled to a judicial investigation by a criminal court designed to establish the perpetrators of and to sanction human rights violations.[158]

This right to know the truth about what happened is also based on the need for information to vindicate another right. In this case, due to the absence of an effective investigation, there has been no determination of responsibility with respect to the crimes that were committed against the residents of Moiwana Village. The victims and family members of those killed have been denied the foundation in fact and law necessary to pursue their right of access to compensation under Articles 25 and 8 of the Convention. The right to a process designed to identify and sanction the perpetrators of human rights violations, and the right to have access to a civil process for reparation are distinct. Both have been frustrated in the instant case.

C. Undue delay in providing an effective response

As noted above, the Moiwana families will commemorate the 18th anniversary of the attack and killings on November 29, 2004, and are still awaiting justice. The facts clearly demonstrate that they have not had access to prompt judicial protection, or to be heard with due guarantees within a reasonable time in the disposition of their rights as survivors of the attack and family members of those killed. While the State acceded to the American Convention almost 17 years ago, there has been no official clarification of the facts, no one has been tried, no one has received reparation, and the remains of those killed have not been recovered.

The State recognized before the Honorable Court that there has yet to be a complete investigation of the events at Moiwana. The State acknowledged in its Response that the one investigation initiated with a view toward eventual prosecution and punishment – this investigation pursued by Police Inspector Gooding – came to a halt after the Inspector was killed. The State indicated before the Honorable Court that another investigation had been initiated within this past year, but was unable to report specific measures taken or the current procedural stage.

Under no criteria could the inaction in the present case be considered to meet the requirements of a timely response.[159] Over the 17 years since Suriname acceded to the American Convention, some initial measures of investigation were taken in 1989, and measures were taken to exhume certain remains in 1993. The investigation may have been reopened in 2004, although no proof of that has been provided before the Honorable Court. Many years have passed with no measures taken whatsoever. The interminable wait for justice is a tremendous source of anguish for the Moiwana families, and, as explained above, causes specific consequences in the N'djuka culture. Some

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[157] *See, e.g.* I/A Court H.R., Case of the Gómez-Paquiyauri Brothers, *supra*, para. 230; Case of Myrna Mack-Chang, *supra*, para. 209. Case of Bulacio, Judgment of September 18, 2003, Ser C No. 100, para. 114; IACHR, Annual Report of the IACHR 1985-86, OEA/Ser.L/V/II.68 doc. 8 rev. 1, at 193, 26 Sept. 1986.

[158] *See generally*, Report N° 28/92 (Argentina), supra, p. 35; Report N° 29/92 (Uruguay), Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, Doc. 14, corr. 1, March 12, 1993, p. 154.

[159] See I/A Court H.R., Case of 19 Merchants. Judgment of July 5, 2004, Ser. C No. 109, para. 191, indicating that undue delay may, in and of itself, constitute a violation of these rights, and that it corresponds to the State to attempt to explain and justify why an undue delay has elapsed without effective results.

survivors of the attack have died without seeing any measure of justice.[160] In practical terms, the passage of time leads to the deterioration of material, testimonial and documentary evidence, further eroding their possibilities to vindicate their right to justice. While the State has repeatedly indicated that it was waiting for the right moment, almost 18 years have passed and that moment still hasn't come.

During the public hearing, one of the facts brought out was that the Acting Attorney General had been quoted in the press as indicating his view that the statute of limitations will expire in the Moiwana case in November of 2004. Whether that interpretation is correct as a matter of national law may be subject to dispute. In any case, the Commission considers that the potential expiration of the statute of limitations provides a particularly graphic confirmation of unjustified delay in the present case. The possibility that the statute of limitations could be extended, also raised during the public hearing, would be a necessary step to comply with the State's obligations under the American Convention,[161] but would in no way alleviate the State's responsibility for the delay and denial of due process that have already occurred.

D. Impunity

As a consequence of the denial of judicial protection and guarantees, the Moiwana attack -- the killing of at least 39 men, women and children, the injuring of many others, the destruction of the residents' property and village and their forced displacement -- have been left in complete impunity.

The Moiwana Village attack, the killing of over forty residents, the destruction of the residents' property and their forced displacement have been left in complete impunity. As the Honorable Court has defined, impunity is "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."[162] The Honorable Court has emphasized in this connection that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."[163]

This Court has clearly stated that the obligation to investigate must be fulfilled:

> in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their

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[160] As the Honorable Court will recall, Malai Misiedjan wanted to offer her testimony during the public hearing held in this case, but died before she was able to do so.

[161] See I/A Court H.R., Barrios Altos Case, Judgment of March 14, 2001, Ser. C No. 75, para. 41; Case of Myrna Mack-Chang, *supra*, para. 276.

[162] I/A Court H.R., Bámaca Velásquez Case, *supra*, para. 211, *citing* Paniagua Morales et al. Case, Judgment of March 8, 1998, Ser. C No. 37, para. 173. *See also* I/A Court H.R., Blake Case, Reparations, Judgment of January 22, 1999, Ser. C No. 48 (1999), para. 64.

[163] I/A Court H.R., cases cited *id.*

offer of proof, without an effective search for the truth by the Government.[164]

With respect to the provisions of both the 1992 Amnesty law and the statute of limitations referred to above, insofar as either could potentially be read to bar investigation, prosecution and punishment in this case, the jurisprudence of the system firmly sets forth that:

> all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.[165]
>
> Dispositions of internal law may not be invoked to evade compliance with obligations under international treaty law.[166]

As the Honorable Court indicated in the Bámaca case, "Any State which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the Convention."[167]

The denial of justice in this case has made it impossible for the survivors to return to their traditional lands and way of life. What prevents their return is precisely the impunity in which the attack has remained over these many years. This impunity sends the message that such human rights violations do not deserve or require investigation, prosecution, punishment and reparation. This impunity is interpreted by the Moiwana families as signalling that such abuses will be tolerated, and could be repeated. The survivors feel fear because of the gravity of the massacre, and because those responsible remain free, and in a number of cases hold positions of significant political power. The impunity enjoyed by those responsible for the attack manifests and confirms that the rights and dignity of the Maroon residents have not been and are not fully respected and ensured by the State.

This impunity has also prevented the Moiwana families from complying with their obligations as N'djuka to put right the wrongs done, and this in turn precludes taking the steps culturally necessary to prepare for any visit or return to Moiwana Village. The three witnesses from Moiwana confirmed that, according to N'djuka tradition, justice

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[164] Cf. I/A Court H.R., Juan Humberto Sánchez Case, *supra*, para. 144, citing Bámaca Velásquez Case, *supra*, para. 212; "Street Children" Case (Villagrán Morales et al.), Judgment of November 19, 1999, Ser. C No. 63, para. 226; Godínez Cruz Case, Judgment of January 20, 1989, Ser. C No. 5, para. 188; and Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C No. 4, para. 177.

[165] I/A Court H.R., Barrios Altos Case, supra, para. 41. With respect to the question of prescription specifically, see Case of the "Gómez-Paquiyauri Brothers," Judgment of July 8, 2004, Ser. C No. 110, para. 150; Case of Bulacio, Judgment of September 18, 2003, Ser. C No. 1000, para. 116.

[166] Article 27, Vienna Convention on the Law of Treaties, 1969; see e.g., Case of the "Gómez-Paquiyauri Brothers," supra, paras. 151-52, applying this principle to the possible extinction of responsibility through the expiration of a statute of limitation.

[167] I/A Court H.R., Case of Bámaca-Velásquez, *supra*, para. 194.

must be done first, only then can the necessary cultural steps to rehabilitate Moiwana be taken, and only then will return become possible.

The foregoing analysis demonstrates that Suriname has failed to uphold the obligation it undertook on becoming a Party to the American Convention to respect and ensure all rights protected thereunder pursuant to Article 1(1). With respect to this obligation to respect and ensure protected rights, it must be underlined that the Moiwana families consider that the impunity for the massacre is an expression of discrimination against them as an N'djuka Maroon community. They consider that their rights are not accorded the same level of respect as enjoyed by other Surinamers. The lack of response leads them to consider that, for the State, those killed were no better than animals.

V. REPARATIONS

Each of the kinds of reparations requested in the Commission's Application has a direct relation to the specific characteristics of the present case. The Commission outlined the principles that inform the general obligation to make reparation for a human rights violation in its application; accordingly, those are not repeated here.

There is one consideration, however, that bears further emphasis. That is the need for the reparation established to correspond to the gravity of the violation and the severity of the resulting harm.[168] While the State's responsibility for the massacre itself is not before the Honorable Court in this case, the massacre nonetheless forms the context for examining what would be required to investigate, prosecute and punish it with due diligence. It is also relevant in considering what forms of reparation are appropriate to remedy the denial of judicial protection and guarantees for the survivors and family members.

As a matter of international law, the attack and massacre at Moiwana Village violated norms of *ius cogens* giving rise to obligations *erga omnes*. The context of the denial of justice is thus one of special gravity. As the Honorable Court specified in the Case of Plan de Sánchez,[169] facts of such gravity, occurring in the instant case within a pattern of human rights violations against the Maroon population in Eastern Suriname cause an aggravated impact that the Court may take into account when determining reparations.

In terms of the beneficiaries, the Commission considers that those who have suffered harm as a result of the denial of justice in the present case are the survivors of the attack and the families of those who were killed. Given the effects of the denial of justice and the consequent inability of former residents of Moiwana and their families to return to their community, the Commission considers that these affected families necessarily suffered harm that entitles them to reparation. The names that have been identified in this regard are numbered from 40 to 165 in the list contained in section III, above.

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[168] Revised set of basic principles and guidelines on the right to reparation for the victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117 (hereinafter "revised set of basic principles"), E/CN.4/Sub.2/1996/17, 24 May 1996, principle 7.

[169] Case of Plán de Sánchez Massacre, Judgment of April 29, 2004, Ser. C No. 105, para. 51.

The Commission asks that the Honorable Court take into account that the facts that gave rise to the denial of justice at issue – namely the massacre and burning of the village, followed by the forced flight of the survivors – make it especially difficult to proffer full information as to all beneficiaries. Consequently, the Commission respectfully requests that the Court take into account the victims of denial of justice identified, and the possibility that other victims may be identified subsequently.[170]

A. The measures of satisfaction and guarantees of nonrepetition necessary to repair the denial of justice

Based on the gravity of the violations established in the present case and the need to restore the protection of the rights at issue, particularly those concerning the denial of justice and the forced displacement of the survivors, the Commission considers that guarantees of satisfaction and non-repetition constitute an integral component of the required reparations.[171] The Commission further notes the critical importance of taking the needs and wishes of the Moiwana families fully into account in the determination of reparations.[172] With due regard for the indications of the families, the Commission considers that the required measures of satisfaction and guarantees of non-repetition include, *inter alia*, that the State be ordered to:

(1) Adopt all measures required to ensure the prompt and effective investigation of the Moiwana attack and subsequent denial of justice in order to ensure that those responsible are tried and punished with due diligence.

(2) Put in place the conditions necessary to enable the return of any former members of Moiwana village, their families, and the families of those killed who wish to visit or live in that community. This must include:

   (a) formal legal recognition of their right to own and occupy their traditional lands in and around Moiwana;

   (b) guarantees to ensure their personal security; and,

   (c) the construction, furnishing, and staffing of fully functional institutions for the provision of basic social services to the community, such as education and health facilities.

(3) Locate the remains of the victims who were killed in the massacre at Moiwana whose bodies have not been recovered, and exhume them and/or take the other measures necessary to effectuate the wishes of their families with respect to an appropriate final resting place.

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[170] See, id., para. 48 accepting this possibility due to the complexities and difficulties of making the determination in the given case.

[171] *See e.g.*, Draft UN Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, para. 7.

[172] *See Revised Principles, supra*, para. 137.4.

(4) Erect a monument to memorialize the attack on Moiwana village and the victims thereof, in consultation with and taking fully into account the wishes of the survivors and family members of those killed.

(5) Issue a formal apology for the denial of judicial protection and guarantees and forced displacement to the designated Graanma (leader) of the N'djuka community.

1. Justice is an Indispensable requirement for the Moiwana families and community

The witnesses who testified in the present case explained what they consider to be essential to begin righting the wrongs they, their families and community have suffered in the present case. It is indispensable for them, individually and collectively as an N'djuka community, that justice be done. It is indispensable that the State complete a serious investigation in order to clarify what happened, ensure that those responsible are held to account, and to provide a basis for reparation of the survivors and family members who have suffered.

In the N'djuka culture, the impunity that reigns in the present case causes deep and severe suffering, to the point of crossing generations. The witnesses and experts confirmed that seeking justice for wrongs done is not an election in the N'djuka culture; rather, it is a necessity and an obligation. Justice is a necessary precondition for beginning to repair the damages they have suffered, and specifically for being able to take the steps necessary to rehabilitate Moiwana Village for the visit or return of the families.

The relation between the living and the dead in N'djuka culture has special characteristics and gives rise to special obligations.[173] As explained in the hearing before the Court, and confirmed by experts Bilby and Polimé, in the case of an unjust death, the descendents in the matrilineal line are obliged to seek justice and right the wrong that has been done. According to N'djuka culture, until justice is done the dead cannot rest in peace. If justice is not done, the N'djuka belief is that the spirits of the dead create an avenging spirit known as *kunu*. This avenging spirit, once created, is considered to exist forever, and continues to exact retribution on additional members of the matrilineage, and with increasingly more severe consequences until justice is done. N'djuka tradition indicates that the consequences of these disturbances are manifested in various forms of illness, spiritual, mental and even physical, as well as other types of problems. The Moiwana families consequently consider that they have been suffering the consequences of the denial of justice in this case for almost 18 years, and will continue to suffer until justice is done or they die (in which case the obligation will pass, if it has not already done so, to their children). They consider that they cannot live a normal existence until the wrongs done have been corrected.[174]

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[173] For example, Andre Ajintoena explained that, according to N'djuka tradition the spirits of the dead accompany the living; it was therefore his belief that the spirits of those killed were present with him for the hearing before the Court. Statement of Andre Ajintoena before the I/A Court of H.R. on September 9, 2004.

[174] See statements of Statements of E. Stanley Rensch, Antonia Difienjo, Erwin Willemdam, Andre Ajintoena, and expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004; affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004. As expressed by Andre Ajintoena, in the absence of justice, "the deceased will suffer, and you will suffer until you die."

Because they have been unable to recover or even confirm where the remains of their loved ones rest, and have therefore been unable to bury and honor the dead in accordance with their traditions and responsibilities, they have been unable to move forward with the cycle of mourning. Because they have been unable to observe the required burial and mourning rituals, they feel that the spirits of those killed have been unable to rest in peace these last 17 years.

The families have also expressed that they feel an obligation to ensure that the dignity of those killed is vindicated through the clarification of and imposition of accountability for the violations they suffered. They have indicated in the strongest terms that they feel the impunity that marks this case manifests the contempt of the relevant authorities for the lives of those killed in the massacre, as well as for their own rights under the law.

This aspect of reparations is essential for the Moiwana families, N'djuka and, Maroon society, and Surinamese society as a whole. Clarification and accountability constitute important means to disqualify the false moral vision asserted by the perpetrators, and play a key role in society's ability to extract lessons from the past for application in the present.

2. Return to their traditional lands is a fundamental aspect of restitution

A crucial aspect of the present case is that because the People of Moiwana have been denied justice, they feel that they cannot return to Moiwana Village, and therefore live the lives of refugees or displaced persons. Accordingly, an essential part of restoring what was taken from them is that they no longer feel obliged to live as refugees and displaced persons. The Commission's petitions concerning the return of the community to Moiwana, as well as the formal recognition of their property rights and the provision of minimum social services seek nothing more than the restitution of what has been denied to them because of the impunity in this case.

The Moiwana families want and need the possibility to go back to Moiwana Village.[175] They need guarantees to be able to go back, in order to begin the rituals that would be necessary to purify it and make it habitable again, in order to visit sites of cultural and spiritual significance, and for some, to be able to eventually live there. It is, as Dr. Bilby testified, extremely important to put in place the conditions that would enable them to return to Moiwana to visit or to live; to enable them to survive with their cultural integrity intact on their own terms.

Because they are unable to return to Moiwana, members of the Moiwana community live separated from their clan and kin, their traditional means of subsistence, and from sites of cultural and religious significance. As Professor Bilby explained, the Maroons of Suriname have developed in relation to a very specific history, and have developed a unique set of traditions and way of life that is intimately tied to their relationship with their traditional lands and settlements.

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[175] Statements of E. Stanley Rensch, Antonia Diffenjo, Erwin Willemdam, Andre Ajintoena, and expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004; affidavit of Thomas S. Polimé before the I/A Court H.R., dated August 20, 2004.

It has become manifest in the proceedings in this case, and the hearing before the Honorable Court that the denial of justice and resulting damages in the present case have a particular collective dimension.[176] The attack on Moiwana was committed against an entire community, with the objective of killing and terrorizing the residents and eradicating the village. It was carried out in the context of a pattern of such attacks. However, because the killings at Moiwana were of such a scale and brutality, and the events as a whole so catastrophic, in contrast to other villages, the community has not been able to re-establish life there. The attack and denial of justice have been suffered by the community as such, and the resulting damages have necessarily affected the community as well. The inability of the N'djuka community of Moiwana, joined by specific clan, kinship, cultural and historical ties, to be able to live together as a community is one of the most grave and far reaching results of the denial of justice.

It is for the foregoing reasons that putting in place the conditions necessary for return is a critical measure of reparation in the present case.

3. The location and final disposition of the remains of those who were killed in the massacre at Moiwana village is a necessary measure of investigation, and of reparation for the family members

Reparation in the present case requires that the remains of those killed be located, both as a necessary measure of clarification, as well as to facilitate the wishes of the families with respect to a proper final disposition. With respect to the first aspect, the recovery and examination of the remains would provide important information about the circumstances under which those victims were killed. This is a basic step of investigation that should have been taken at the time of the killings.

With respect to the second aspect, it must be emphasized that the survivors have suffered and continue to suffer a sense of responsibility and even failure for having been unable to bury their loved ones according to N'djuka culture and religion. In most cases, the survivors do not even have clarification as to what happened to the bodies or where the remains rest.

The rituals of commemoration and burial are, in any society, a visible manifestation of respect of family and others for one who has died. They play a critical role in enabling the family to honor and feel they have honored the individual, as well as in creating a sense of support and solidarity within the family that aids each member in coping with the loss.

In N'djuka society these rituals are accorded tremendous significance. They involve the single largest mobilization of the community and its resources. According to N'djuka tradition, the proper observance of these rituals plays a fundamental role in the transition of the deceased to the world of the ancestors. The nonobservance of these cultural responsibilities is understood to cause suffering to the spirit of the deceased, as well as to the descendents. Expert Kenneth Bilby explained that problems with carrying out these kinds of customs are always resolved, because they must be. The obstacles presented by the denial of justice in the present case are in this sense unprecedented

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[176] See Revised set of basic principles, supra, principle 6: "reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

since the times of slavery, and considered catastrophic. Reparation requires that these problems be resolved in full consultation with the Moiwana families.

4 & 5. Reparation of the denial of justice in this case requires honoring the victims and apologizing for the violations as a means of vindicating the dignity of those harmed

The fourth and fifth measures requested as means of satisfaction and guarantees of nonrepetition are the establishment of a monument to memorialize and vindicate the dignity of those who were killed and manifest respect for the community that was destroyed, and an official apology by the State to manifest its respect for the dignity of the Moiwana survivors as individuals and as members of an N'djuka community.

As was reflected in testimony, the survivors and family members are very clear that the starting point for obtaining justice in this case is that the State recognize the wrongs committed at Moiwana, and that justice was denied. In this regard, it would hold tremendous significance for the survivors and families for the Government to be required to establish a monument to the victims of the attack, and to issue a formal apology for the denial of justice.

The families have been deeply affected by the way the Government has treated them. In their opinion, the Surinamese authorities have never given them any support, have not apologized for what happened and have not shown them any respect. Antonia Difienjo expressed that she felt that the authorities had considered them like dogs – that they could be killed and one didn't have to pay that much attention.[177] Andre Ajintoena similarly expressed that those killed were treated like animals, and that the State has manifested a complete lack of respect for those killed and for their families.

The massacre at Moiwana was "one of the most notorious violations" of the time period. As noted, it has been reported over the intervening years, with calls for due clarification and accountability, both nationally by organizations such as Moiwana '86 and Association Moiwana, and internationally by the Inter-American Commission and various United Nations mechanisms. The Moiwana families feel that the complete absence of an effective response under these circumstances is a manifestation of contempt for their rights.

It is for the foregoing reasons that honoring those killed and the survivors and families has great importance as a form of reparation and vindication in this case.

B. Just Compensation

When the restoration of the rights concerned is no longer possible because of the irreparable nature of the damages suffered, as is the situation with respect to certain aspects of the present case, the quantification of losses in pecuniary terms becomes the necessary alternative. The Commission explained the importance of compensation for moral and material damages, as well as costs in its Application. That importance is both symbolic and practical. The Moiwana families consider that compensation for what they

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[177] Statement of Antonia Difienjo before the I/A Court H.R. on September 9, 2004.

have been through over the years since the attack is a necessary part of a just resolution.[178]

1. An award of moral damages is required to repair the suffering experienced by the survivors and the family members of those killed due to the denial of justice by the State

The Moiwana families have suffered the denial of justice and related consequences for over 17 years. That prolonged suffering necessarily has consequences for the assessment of moral damages. They live with the consequences of the massacre and denial of justice, and their forced displacement every day, and the passage of time has not lessened that suffering. In accordance with N'djuka tradition, in fact, the passage of time has only compounded their suffering.

To summarize the grave situation of the community: prior to the massacre for which justice has been denied, Moiwana Village was a community that sustained itself materially, culturally and spiritually through the traditional N'djuka way of life. Because virtually all members of a traditional N'djuka village such as Moiwana share clan and kinship links, all have been profoundly and permanently affected by the attack, killings and subsequent denial of justice. Because the community has been denied justice, they are unable to return to Moiwana, and unable to remake their lives as individuals or as an N'djuka community. As the witnesses and experts confirmed, the survivors and next-of-kin feel they can only repair their own lives when they have obtained justice for those killed. Until then, they feel they must "relive the massacre every day because there is no closure to the event," and they have failed to discharge their obligation to obtain justice.

It is important to take into account that for the N'djuka members of the Moiwana community, being forcibly displaced from their traditional lands is understood as taking them back to the time of suffering endured by their ancestors to escape slavery and create a territorial haven in the interior.

2. Material Damages

The Commission considers that the recognition of material damages is a necessary component of what has been lost due to the denial of justice in the present case. As a form of compensation, an award for material damages has both a practical and symbolic importance.

The inability of the Moiwana families to retake their life as a community generates not only moral suffering but material damage as well. As a traditional N'djuka Village, the material wellbeing and sustenance of the residents of Moiwana depended on their relation to the land, and a complex system of exchanges and bartering. The fragmentation of the community has left residents divorced from their traditional means of material support and sustenance. They have, in many cases been reduced to living in precarious and impoverished conditions.

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[178] See statements of Antonia Difienjo and Erwin Willemdam before the I/A Court H.R. on September 9, 2004, affirming this position, and the expert opinion of Kenneth M. Bilby before the I/A Court H.R. on September 9, 2004, noting that material compensation constitutes an important form of reparation in the N'djuka tradition, all of September 9, 2004.

The life the Moiwana families have been obliged to follow, that of refugees or displaced persons, entails losses that are both material and nonmaterial. Because they have been unable to obtain justice through the legal system, and unable to discharge their obligations under N'djuka tradition to those killed, they are unable to retake the trajectory of their own lives (their life projects). This clearly has material consequences for them as individuals and as a community. Antonia Difienjo indicated, for example, that she has not been able to proceed with her life since the attack. French Guiana, where she still lives, "is not my place," and there "I can do nothing." From the time of the attack to the present, the situation for her has remained the same.[179] Andre Ajintoena confirmed that, for the families the lapse of time has done nothing to ease the burden of the attack and denial of justice; to the contrary, it has only deepened it.[180]

These losses are complicated to calculate in this case, but merit recognition and recompense. Given the difficulties inherent in offering more specific data, the Commission asks for an award of material damages based on the considerations set forward above and in its application, and the principles of equity.

C. Legal Costs and Fees

The Commission set forth its position that an award of legal costs and fees in the present case is reasonable and necessary in its application, and reiterates those considerations. Neither the Moiwana survivors nor their representatives should be obliged to bear the costs associated with legal representation which is necessary to seek justice when that has been denied by the State concerned. The award should take into account past and current legal costs and fees, as well as those that will be necessary to pursue the matter before the Honorable Court through all stages including compliance with an eventual sentence.

VI. PETITION

On the basis of the foregoing analysis of fact and law, the Inter-American Commission on Human Rights respectfully requests that the Inter-American Court of Human Rights declare:

That the State of Suriname bears responsibility for having violated the rights of the victims to judicial protection and guarantees, as set forth in Articles 25 and 8 of the American Convention, and for having violated its obligation to respect and ensure protected rights as set forth in Article 1(1).

In terms of reparations, the Commission respectfully requests that the Honorable Court order:

That the State of Suriname is required to carry out the following measures of satisfaction and non-repetition:

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[179] See statement of Antonia Difienjo before the I/A Court H.R. on September 9, 2004.

[180] See statement of Andre Ajintoena before the I/A Court H.R. on September 9, 2004.

Adopt all measures required to ensure the prompt and effective investigation of the Moiwana attack and subsequent denial of justice in order to ensure that those responsible are tried and punished with due diligence.

Put in place the conditions necessary to enable the return of any former members of Moiwana village, their families, and the families of those killed who wish to visit or live in that community. This must include:

formal legal recognition of their right to own and occupy their traditional lands in and around Moiwana;

guarantees to ensure their personal security; and,

the construction, furnishing, and staffing of fully functional institutions for the provision of basic social services to the community, such as education and health facilities.

Locate the remains of the victims who were killed in the massacre at Moiwana whose bodies have not been recovered, and exhume them and/or take the other measures necessary to effectuate the wishes of their families with respect to an appropriate final resting place.

Erect a monument to memorialize the attack on Moiwana village and the victims thereof, in consultation with and taking fully into account the wishes of the survivors and family members of those killed.

Issue a formal apology for the denial of judicial protection and guarantees and forced displacement to the designated Graanma (leader) of the N'djuka community.

That the State of Suriname is required to effectuate the following measures of monetary compensation:

The payment of reasonable and justified material and moral damages related to the denial of justice suffered by the victims;

The payment of reasonable and justified legal costs and fees required to pursue justice at the domestic level and before the Inter-American Commission and the Honorable Court;

The payment of that compensation shall be made in U.S. dollars or the equivalent sum in Surinamese currency, and shall be free of taxes in effect or which may be levied in the future;

Finally, the Commission respectfully requests that the Honorable Court order that the State is required to comply with the dispositions of an eventual sentence within six months from the date of issuance; and,

That the Honorable Court dispose in its sentence that it shall maintain competence over this matter until compliance with all measures of reparation awarded has been certified.