



CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CÔRTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS



PRESIDENTE DE LA CORTE

**ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT
OF HUMAN RIGHTS OF AUGUST 23, 2004**

CASE OF MOIWANA VILLAGE V. SURINAME

000671

HAVING SEEN:

1. The Order of August 5, 2004, in which the President of the Inter-American Court of Human Rights (hereinafter "the President") convoked the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), the representatives of the alleged victims and their next of kin (hereinafter "the representatives") and the State of Suriname (hereinafter "the State" or "Suriname") to a public hearing to take place at the seat of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal"), beginning on September 9, 2004 at 9:00 a.m., in order to receive their final oral arguments on preliminary objections, as well as on possible merits and reparations in the present case. Furthermore, the President summoned to testify the witnesses Malai Misiedjan, Antonia Difienjo and Andre Ajintoena, as well as the expert witness H.U.E. Thoden van Velzen, all of whom had been proposed by the Commission. In addition, the President required, following the request of the Commission, in accordance with the principle of procedural economy and in exercise of the authority granted by Article 47(3) of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), that Thomas S. Polimé, who had been proposed as an expert witness by the Commission in its application, render his testimony by affidavit.

2. The communication of August 10, 2004, in which the Inter-American Commission advised the Secretariat of the Court (hereinafter "the Secretariat") of several issues relevant to the public hearing in the present case. First, the Commission stated that the witness Malai Misiedjan had died and, as a consequence, requested that Erwin Willemdam, who had been proposed as a witness to testify on the very same issues in the Commission's application, be summoned in place of witness Misiedjan for reasons of *force majeure*. Second, the Commission advised that the expert witness H.U.E. Thoden van Velzen "is undergoing treatment for a very serious health condition" and thus cannot attend the hearing. As a result, the Commission requested that Kenneth M. Bilby, who had been proposed as an expert witness in the Commission's application, be summoned in place of expert witness van Velzen, also for reasons of *force majeure*. In that regard, the Commission provided the object of Dr. Bilby's testimony, identical to that proposed originally for Dr. Bilby in the application, which nevertheless differs from the object proposed for the testimony of expert witness van Velzen. Moreover, the Commission provided a copy of Dr. Bilby's *curriculum vitae*. Finally, the Commission requested that Stanley Rensch, who had been proposed as a witness in the Commission's application as well

as within its definitive list of witnesses and expert witnesses, also be summoned to the public hearing of the present case.

3. The communication of August 11, 2004, in which the Secretariat, following the instructions of the Court's President, requested the representatives and the State to submit the observations which they deemed pertinent regarding the proposed witness and expert witness substitutions. The representatives and the State were requested to submit these observations to the Secretariat no later than August 16, 2004.

4. The communication of August 13, 2004, in which the representatives stated that the Commission's proposed substitutions were "both appropriate and necessary". Furthermore, the representatives argued that "the State of Suriname has had adequate notice of all the proposed witnesses, including those that now have been proposed as substitutes".

5. The State did not submit, as of the date of this Order, observations regarding the Commission's proposed witness and expert witness substitutions.

CONSIDERING:

1. That by means of the Order of August 5, 2004, the President convoked the parties and the witnesses and expert witness proposed by the Inter-American Commission to a public hearing to take place at the seat of the Inter-American Court, beginning on September 9, 2004 at 9:00 a.m., with regard to the preliminary objections, as well as possible merits and reparations in the present case (*supra* Having Seen 1).

2. That Article 44 of the Rules of Procedure provides:

1. Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, when appropriate, in the document setting out the preliminary objections and in the answer thereto.

[...]

3. Should any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

4. In the case of the alleged victim, his next of kin or his duly accredited representatives, the admission of evidence shall also be governed by the provisions of Articles 23, 36 and 37(5) of the Rules of Procedure.

3. That the Commission, the representatives and the State have been granted the right of defense regarding the testimonial evidence offered by the Commission in its application, in its definitive list of witnesses and expert witnesses, and in its communication of August 10, 2004 (*supra* Having Seen 2). The Commission's proposed witnesses and expert witness have not been objected to or questioned in any way.

4. That in the communication of August 10, 2004 (*supra* Having Seen 2), the Inter-American Commission requested that Erwin Willemdam be summoned in place of the recently-deceased witness Malai Misiedjan. Mr. Willemdam had been proposed as a witness in the Commission's application to testify on the very same object as witness Misiedjan (*supra* Having Seen 2).

5. That the request of the Commission, submitted after the presentation of its definitive list of witnesses and expert witnesses, that Mr. Willemdam be summoned to testify in the present case's public hearing is admissible in application of Article 44(3) of the Rules of Procedure (*supra* Considering 2), since it arises from a supervening event, namely, the death of Malai Misiedjan, who was proposed as a witness both in the Commission's application and definitive list (*supra* Having Seen 2).

6. That in the communication of August 10, 2004 (*supra* Having Seen 2) the Inter-American Commission requested that Kenneth M. Bilby be summoned in place of the seriously-ill expert witness H.U.E. Thoden van Velzen. Dr. Bilby had been proposed as an expert witness in the Commission's application (*supra* Having Seen 2). Further, the Commission provided the object of Dr. Bilby's testimony, identical to that proposed originally for Dr. Bilby in the application, which nevertheless differs from the object proposed for the testimony of expert witness van Velzen (*supra* Having Seen 2).

7. That the request of the Commission, submitted after the presentation of its definitive list of witnesses and expert witnesses, that Dr. Bilby be summoned to testify in the present case's public hearing is also admissible in application of Article 44(3) of the Rules of Procedure (*supra* Considering 2), since it arises from a supervening event, namely, the serious illness of Dr. van Velzen, who was proposed as an expert witness both in the Commission's application and definitive list (*supra* Having Seen 2).

8. That in light of the objects of the testimonies proposed by the Commission which are not to be submitted by affidavit (*supra* Having Seen 1 and 2), the appearance of the witnesses and expert witness in an oral proceeding will contribute to the Court's elucidation of the facts in the present case; thus, it is appropriate to receive these testimonies in a public hearing, in accordance with Article 44 of the Rules of Procedure, paragraphs (1) and (3) (*supra* Considering 2).

9. That when individuals are summoned to testify before the Court, the State Party with jurisdiction over those individuals has the obligation to facilitate their appearance before the Court. In this manner, Article 24(1) of the Rules of Procedure establishes that

[t]he States Parties to a case have the obligation to cooperate so as to ensure that all notices, communications or summonses addressed to persons subject to their jurisdiction are duly executed. They shall also facilitate compliance with summonses by persons who either reside or are present within their territory.

10. That since Article 47(2) of the Rules of Procedure provides that "[t]he party proposing [...] evidence shall bear the costs of the appearance of its witness or witnesses before the Tribunal", the Inter-American Commission shall take it upon itself to advise its witnesses and expert witness that they have been duly summoned to testify before the Court pursuant to the present Order.

11. That the Commission must observe what is established in Article 46 of the Rules of Procedure, namely that "[t]he party requesting the production of an item of evidence shall cover its cost."

12. That the witnesses and expert witnesses summoned before the Court should take notice of what is provided in Article 52 of the Rules of Procedure:

[t]he Court shall inform the States when those persons summoned to appear or declare, fail to appear or refuse to give evidence without good reason, or when, in the opinion of the Court, they have violated their oath or solemn declaration, so that the appropriate action may be taken under the relevant domestic legislation.

NOW THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Articles 24(1) and 25(2) of the Court's Statute and Articles 4, 14(1), 24, 29(2), 31, 37(6), 40, 44, 46, 47, 51 and 52 of its Rules of Procedure,

DECIDES:

1. To ratify the terms of the Order of August 5, 2004, in which the President of the Court convoked the Inter-American Commission, the representatives and the State to a public hearing to take place at the seat of the Inter-American Court, beginning on September 9, 2004 at 9:00 a.m., in order to receive their final oral arguments on preliminary objections, as well as on possible merits and reparations in the present case, and to receive testimony from the witnesses Antonia Difienjo and Andre Ajintoena, both of whom had been proposed by the Commission.

2. To receive testimony, during the aforementioned public hearing, from the following additional witnesses and expert witness:

Witnesses

proposed by the Inter-American Commission:

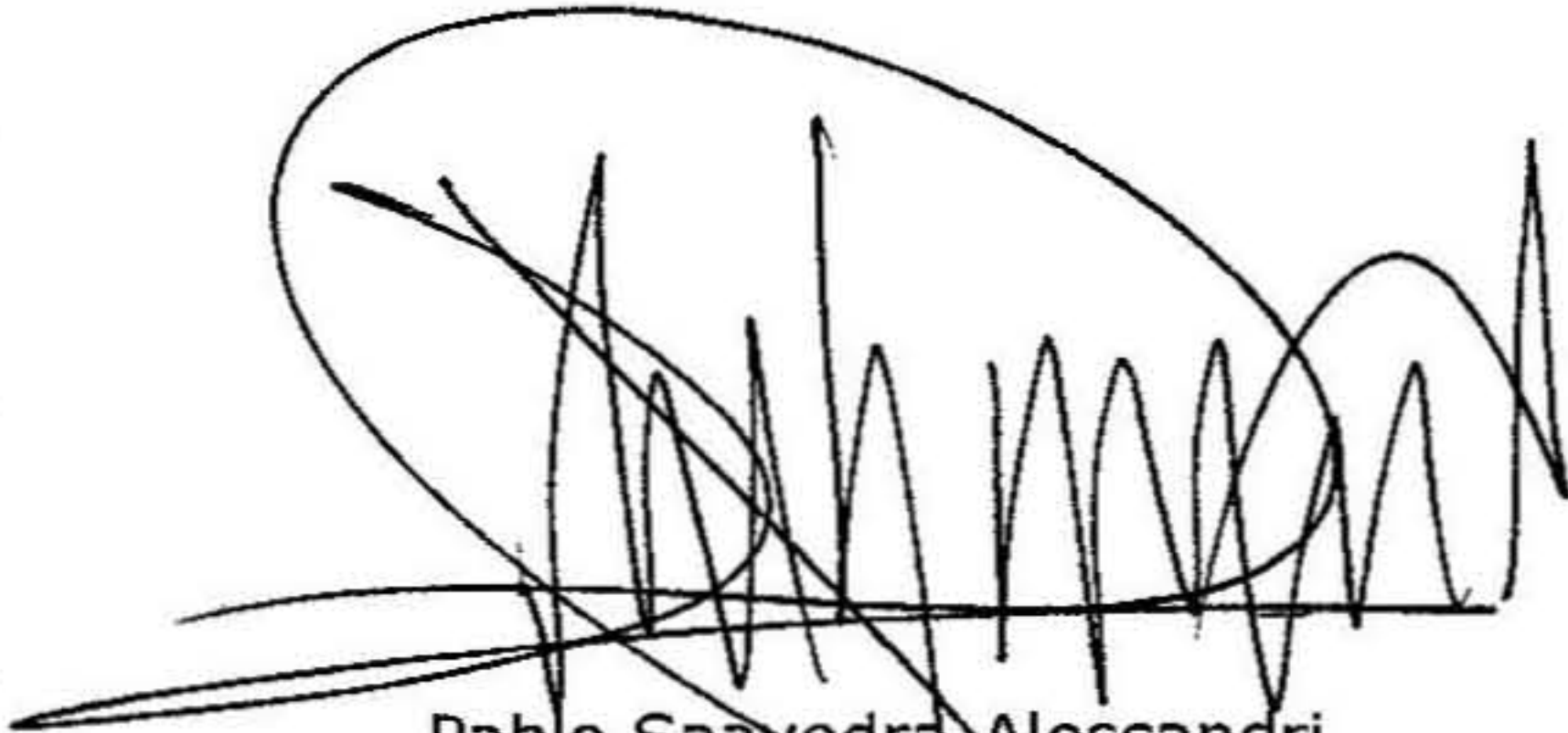
- 1) *Erwin Willemdam*: will testify about "the [alleged] effect that the [alleged] ongoing denial of justice has had and continues to have on their lives. [He] will testify about the attempts of the [alleged] victims to obtain justice in Suriname and the situation of the [alleged] victims and their families since the [alleged] attack"; and
- 2) *Stanley Rensch*: will testify "based on his extensive knowledge of the [alleged] attack, the subsequent [alleged] denial of justice, and the [alleged] past and present effects on the [alleged] victims and their families."

Expert witness

proposed by the Inter-American Commission:

Kenneth M. Bilby: will testify about "the events after the [alleged] massacre [...], Ndjuka kinship structures for the purposes of reparations, and the [alleged] effects of the [alleged] ongoing denial of justice on the [alleged] victims and their families."

3. To require the State to facilitate the departure and return of the witnesses and expert witness who reside therein and have been summoned by the present Order to testify in the public hearing on preliminary objections, as well as on possible merits and reparations in this case.
4. To require the Inter-American Commission to notify the present Order to each witness and expert witness it has proposed and to advise each one that he or she has been summoned to testify, in accordance with Article 47(2) of the Rules of Procedure.
5. To inform the Commission that it must cover the costs incurred in the production of the evidence that it has requested, in accordance with Article 46 of the Rules of Procedure.
6. To notify the Inter-American Commission, the representatives of the alleged victims and their next of kin and the State of the present Order.



Pablo Saavedra-Alessandri
Secretary



Sergio García-Ramírez
President

So ordered,



Pablo Saavedra-Alessandri
Secretary



Sergio García-Ramírez
President