



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 5, 2004**

CASE OF MOIWANA VILLAGE V. SURINAME

000633

HAVING SEEN:

1. The application submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") on December 20, 2002, in which the witnesses Erwin Willemdam, Leoni Pinas, Malai Misiedjan, Antonia Difienjo, Andre Ajintoena and Stanley Rensch, as well as the expert witnesses Kenneth Bilby, H.U.E. Thoden van Velzen and Thomas S. Polimé, were proposed to testify at the public hearing on preliminary objections, as well as on possible merits and reparations in the Case of Moiwana Village.
2. The communication of May 1, 2003, in which the State of Suriname (hereinafter "the State" or "Suriname") submitted its answer to the application, yet did not propose any witnesses or expert witnesses.
3. The communication of May 23, 2003, in which the representatives of the alleged victims and their next of kin (hereinafter "the representatives") requested that the Secretariat of the Court (hereinafter "the Secretariat") provide information on, *inter alia*, the deadlines for submitting briefs in the present case.
4. The communication of May 26, 2003, in which the Secretariat informed the representatives that, *inter alia*, the period for submitting their brief containing pleadings, motions and evidence had expired on February 17, 2003. Furthermore, the representatives were advised that they would nevertheless have another opportunity to present arguments and evidence during the oral proceedings of the present case.
5. The communication of June 22, 2004, in which the Secretariat requested the Inter-American Commission to submit its definitive list of witnesses and expert witnesses, in order to prepare the schedule for the present case's public hearing on preliminary objections, as well as on possible merits and reparations.
6. The communication of June 30, 2004, in which the Inter-American Commission submitted its definitive list of witnesses and expert witnesses to be summoned for the public hearing in the present case. The Commission confirmed that the witnesses Andre Ajintoena, Antonia Difienjo and Malai Misiedjan, as well as the expert witness H.U.E. Thoden van Velzen, would testify during the public hearing. In addition, in accordance with Article 47(3) of the Court's Rules of Procedure (hereinafter "Rules of Procedure"), the Commission requested permission to submit the testimony of the expert witness Thomas S. Polimé by affidavit.



CONSIDERING:

1. 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.

[...]

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.

2. That Article 47(3) of the Rules of Procedure stipulates that

[t]he Court may require, for reasons of procedural economy, that particular witnesses and expert witnesses offered by the parties give their testimony through sworn declarations or affidavits. Once the sworn declaration or affidavit is received, it shall be transmitted to the other parties in order for them to present their observations.

3. That it is essential to assure not only the determination of truth and the most complete presentation of facts and arguments from the Parties, guaranteeing them the right of defense, but also the effective management of the cases under the Court's consideration, whose number has grown considerably and in a constant fashion.

4. That, in view of the above, it is necessary to receive the greatest possible number of testimonies by affidavit and to summon to public hearings only those witnesses and expert witnesses whose in-person declaration is truly indispensable, taking into account the circumstances of the case and the object of the testimony in question.

5. That the Inter-American Commission requested permission, in accordance with Article 47(3) of the Rules of Procedure, to submit the testimony of the expert witness Thomas S. Polimé by affidavit.

6. That with regard to the Commission's request, and in accordance with the principle of procedural economy, this Presidency sees fit to receive by affidavit the testimony of Thomas S. Polimé, who was originally proposed by the Commission in its application. This affidavit will be transmitted to the State and the representatives so that they may submit the observations which they deem pertinent.

7. That the proceedings in the present case are ready for the opening of the oral phase, thus it is appropriate to convoke a public hearing on preliminary objections, as well as on possible merits and reparations, to receive the testimonies that shall not be submitted by affidavit (*supra* Having Seen 6 and Considering 6), as well as the final oral arguments of the Commission, the representatives and the State.

8. That the Commission offered testimonial evidence during the appropriate stage of the proceedings (*supra* Having Seen 1 and 6, and Considering 1, Article 44(1) of the Rules of Procedure). In contrast, neither the State nor the representatives offered testimonial evidence (*supra* Having Seen 2 and 4).

9. 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 and its definitive list of witnesses and expert witnesses (*supra* Having Seen 1 and 6). The Commission's proposed witnesses and expert witnesses have not been objected to or questioned in any way.

10. That in light of the objects of the testimonies proposed by the Commission which are not to be submitted by affidavit (*supra* Having Seen 6 and Considering 6), 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(1) of the Rules of Procedure.

11. 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.

12. 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 convoked to testify before the Court pursuant to the present Order.

13. 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."

14. 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.

15. That the Inter-American Commission, the representatives, and the State may present before the Tribunal their final oral arguments on preliminary objections, as well as on possible merits and reparations in the present case, once the witnesses and expert witness have concluded testifying.

16. That, in accordance with Article 43(3) of the Rules of Procedure, the Commission, the representatives, and the State will receive a copy of the audio recording of the public hearing, either immediately after the hearing or within 15 days of its conclusion.

17. That in accordance with the Court's practice, the Inter-American Commission, the representatives, and the State may submit their final written arguments on

preliminary objections, as well as on possible merits and reparations in this case, after the conclusion of the public hearing convoked by the present Order.

18. That although the representatives did not submit their brief containing pleadings, motions and evidence (*supra* Having Seen 3 and 4), they in any event will have the procedural opportunity to present, in their final oral and written arguments, all arguments they deem appropriate concerning the present case.

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, 43(3), 44, 46, 47, 51 and 52 of its Rules of Procedure,

DECIDES:

1. To require, following the request of the Inter-American Commission, in accordance with the principle of procedural economy and in exercise of the authority granted by Article 47(3) of the Rules of Procedure, that Thomas S. Polimé, who was proposed as an expert witness by the Commission in its application, render his testimony by affidavit.

Expert witness

Thomas S. Polimé: will testify about "Cottica Ndjuka social structure, land tenure and the events before and after the [alleged] massacre, insofar as these concern the [alleged] denial of justice and its [alleged] effect on the [alleged] victims and their families."

2. To require the Commission to take all of the necessary measures so that the expert witness Thomas S. Polimé may render his testimony by affidavit.

3. To require the Commission to send Dr. Polimé's affidavit to the Inter-American Court by August 23, 2004.

4. To request the Court's Secretariat, in accordance with the rights of defense and confrontation, to transmit Dr. Polimé's affidavit to the State and the representatives, so that they may submit the observations which they deem to be pertinent, within a period of seven days from the time the affidavit is received. This period may not be extended.

5. To convoke the Inter-American Commission, the representatives and the State to a public hearing that will 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, as well as testimony from the following witnesses and expert witness:

Witnesses*A) proposed by the Inter-American Commission:*

Malai Misiedjan, Antonia Difienjo and Andre Ajintoena: will testify about "the [alleged] effect that the [alleged] ongoing denial of justice has had and continues to have on their lives. They 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."

Expert witness*A) proposed by the Inter-American Commission:*

H.U.E. Thoden van Velzen: will testify "about the political climate prior to the [alleged] massacre, the [alleged] massacre itself and its aftermath, insofar as these relate to the [alleged] denial of justice and [alleged] prevailing impunity, as well as with respect to the [alleged] effects of this [alleged] impunity for the [alleged] victims and their families."

6. 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.

7. 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.

8. 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.

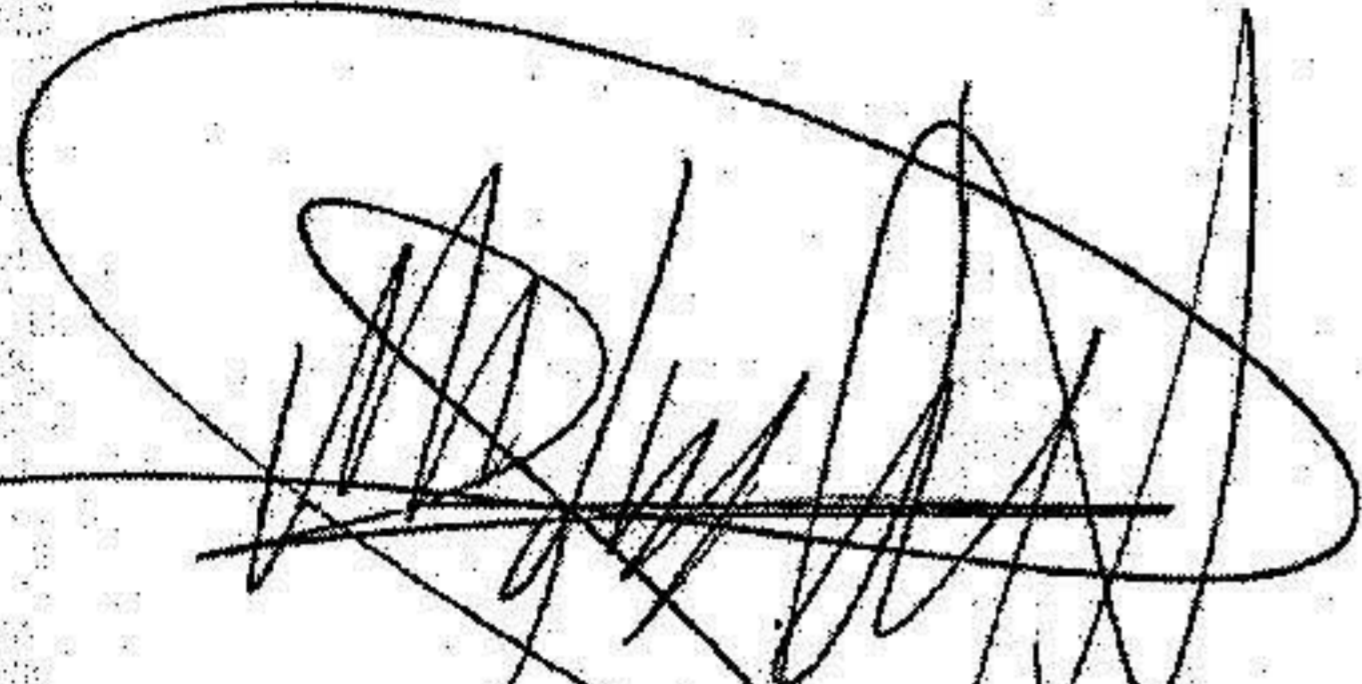
9. To inform the Commission, the representatives and the State that they may present before the Court their final oral arguments on preliminary objections, as well as on possible merits and reparations in the present case, once the witnesses and expert witness have concluded testifying.

10. To require the Secretariat of the Court, in accordance with Article 43(3) of the Rules of Procedure, to send to the Commission, the representatives and the State a copy of the audio recording of the public hearing, either immediately after the hearing or within 15 days of its conclusion.

11. To inform the Commission, the representatives and the State that they must submit their final written arguments on preliminary objections, as well as on possible merits and reparations in the present case no later than October 11, 2004. This deadline may not be extended and is independent of the issuing of the public hearing's audio recording.

12. To notify the Inter-American Commission, the representatives of the alleged victims and their next of kin and the State of the present Order.

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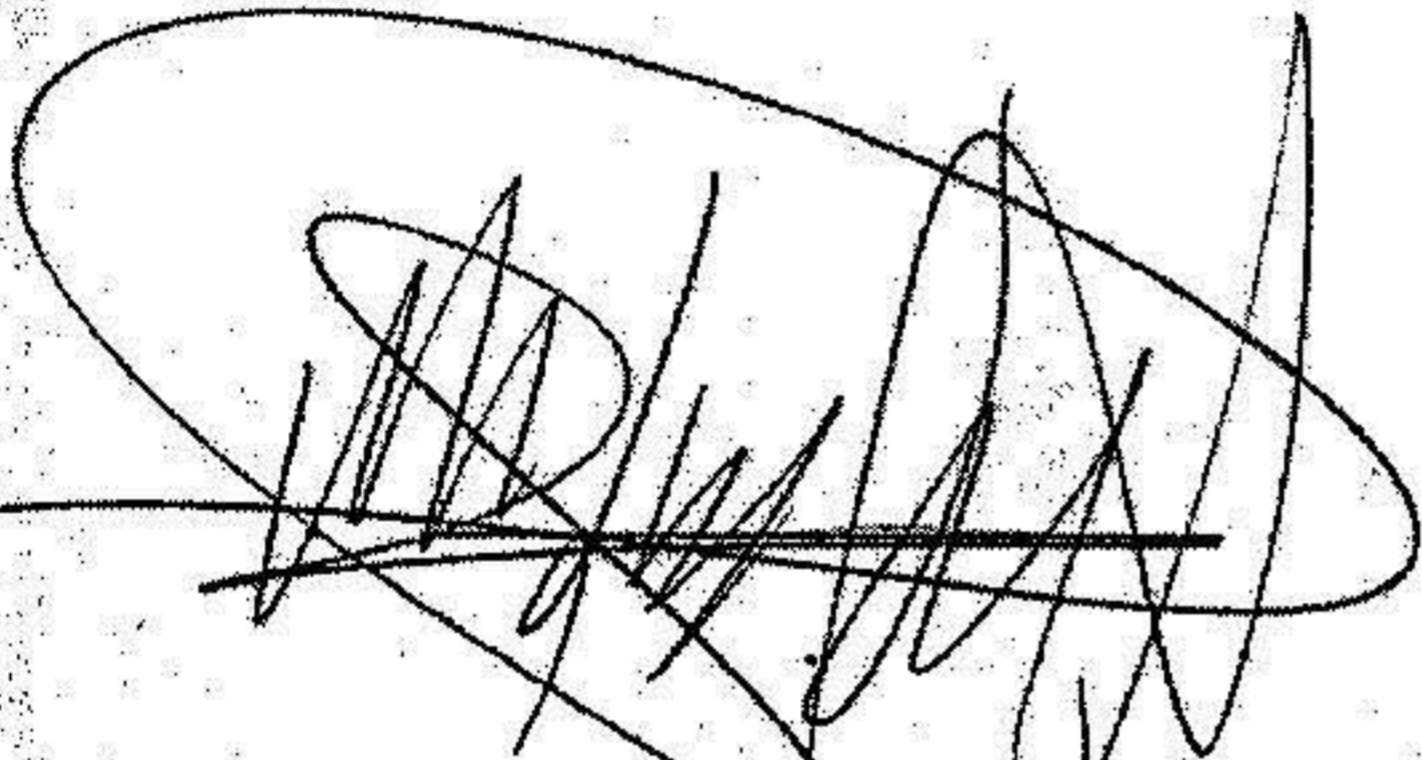


Pablo Saavedra-Alessandri
Secretary



Sergio Garcia-Ramirez
President

So ordered,



Pablo Saavedra-Alessandri
Secretary



Sergio García-Ramírez
President