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ORGANIZATION OF AMERICAN STATES

**INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS**

**APPLICATION OF THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS
BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THE CASE OF:**

STEFANO AJINTOENA *ET AL.*

V.

THE REPUBLIC OF SURINAME (11.821)

DELEGATES:

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December 20, 2002
Washington, D.C.

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THE CASE OF MOIWANA:**STEFANO AJINTOENA ET AL. V. THE REPUBLIC OF SURINAME (11.821)****Introduction**

On November 29, 1986, members of the armed forces of the Republic of Suriname (hereinafter "Suriname" or "the State") attacked the Ndjuka Maroon village of Moiwana. Soldiers terrorized those present, massacred over 40 men, women and children, and razed the village to the ground. Those who escaped the massacre fled into the surrounding forest, and then into exile or internal displacement. In addition to facing the death of loved ones killed in the massacre, the survivors lost their homes, property and way of life. As of the date of this application, over 16 years from the time of the facts, there has been no adequate investigation, no one has been prosecuted or punished for these violations of the rights of the Moiwana villagers, and the survivors remain displaced from their traditional lands and unable to remake their lives as a Ndjuka community.

While the attack itself predated Suriname's ratification of the American Convention on Human Rights (hereinafter "American Convention") and acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights (hereinafter the "Honorable Court"), there are two interrelated aspects of the violations that originated with the massacre and that continue to the present day. These are, first, the failure of the State to provide the victims of the attack with the judicial protection and guarantees necessary to ensure their rights and confront impunity. This denial of justice is, in turn, closely related to the second ongoing aspect, namely the forced displacement of the community of Moiwana as a consequence of the attack. Because there has been no accountability for the massacre, the survivors remain afraid and unable to return. These aspects of the violations of Articles 25, 8 and 1(1) of the American Convention, which continue to diminish the rights and dignity of those affected, are the subject of the present application.

In accordance with the scope of temporal jurisdiction applicable in this case, and the nature of the ongoing denial of justice as a human rights violation, the victims the Commission presents in the present application are the individual residents of Moiwana village at the time of the State's armed attack. In consultation with the Petitioners, the Commission has identified 165 men, women and children who were subjected to and affected by that attack. They are named in section V.C, *infra*. These victims have been denied justice; those who survived continue to confront the consequences of that denial of justice in their daily lives.

As indicated, Moiwana village, located near the eastern border with French Guiana, was the home of a Ndjuka Maroon community. The massacre and destruction of the village were part of a practice of human rights violations committed against the Maroon population, aimed at eradicating what the military dictatorship then in power considered to be support for the actions of an armed insurgent group. In point of fact, those attacked at Moiwana were unarmed civilians, and included babies, children, and women in the late stages of pregnancy. The first of the named victims, Stefano Ajintoena, was three years old at the time he was killed. The events of the Moiwana massacre are among the most emblematic of the violations perpetrated during that era in Suriname.

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Given that those responsible for the attack, killings, displacement and denial of justice remain at large, and in important instances continue to hold positions of power in the country, the survivors have been prevented from returning to their traditional lands and re-making their life as a community bound by kinship ties. The survivors remain separated from fellow clan members, and from the sites of vital cultural and religious significance for their community. While the community had practiced shifting cultivation as its means of subsistence since its very establishment, the displacement of its members has ruptured that way of life.

I. PURPOSE OF THE APPLICATION

The object of the Commission in submitting this case before the Inter-American Court of Human Rights is to obtain the Court's decision as to the responsibility of the State of Suriname for the acts and omissions of its agents in continuing to deny justice for the human rights violations perpetrated against the residents of Moiwana village, in violation of Articles 25, 8 and 1(1) of the American Convention.

The Commission presents this application concerning the ongoing denial of justice for the Moiwana survivors and family members as the only means to ensure that these human rights violations cease. Accordingly, the Commission requests that the Honorable Court order the State to carry out a full and effective investigation of the attack, massacre and related violations, so that those responsible for these violations and subsequent and ongoing obstruction of justice will be prosecuted and punished, and order that those who have been harmed by the denial of justice are provided just reparation.

II. REPRESENTATION

The Commission has designated Clare Kamau Roberts, Member of the Inter-American Commission, and Santiago A. Canton, Executive Secretary of the Commission to act as its Delegates in the processing of this case before the Court. Delegates Roberts and Canton shall be assisted by the following Legal Advisor: Ariel Dulitzky.

In accordance with the terms of Article 33 of the Honorable Court's Rules of Procedure, the Commission hereby indicates that the original petitioner in these proceedings was Moiwana '86, a nongovernmental human rights organization based in Suriname that has provided legal counsel to victims of the attack and the families of those killed. The address of Moiwana '86 is 7-9 Molenpad, POB 2477, Paramaribo, Suriname. The following individuals serve as duly accredited representatives of the victims:

Julie Ann Fishel, Esq., Winthrop & Weinstine, P.A. 3200 World Trade Center, 30 E. 7th St., St. Paul, MN 55101 U.S.A., Ph. 651-290-8458, Fax 651-292-9347.

Fergus MacKay, Esq., Forest Peoples Programme Brantasgracht 7, 1019 RK Amsterdam, The Netherlands, Ph./Fax: 31-20-419-1746.

Maytrie Kuldip-Singh, Esq., Moiwana '86 Human Rights Organization Suriname, 7-9 Molenpad, POB 2477, Paramaribo, Suriname, Ph. 597-404410, Fax 597-404011.

Martin Misiedjan, Esq., Forest Peoples Programme, 7-9 Molenpad, POB 2477, Paramaribo, Suriname, Ph. 597-404410, Fax 597-404011.

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III. PROCESSING OF THE CASE BEFORE THE INTER-AMERICAN COMMISSION

A. Processing of the complaint

On June 27, 1997, Moiwana '86 Human Rights Organization Suriname (hereinafter "the Petitioners") presented a petition to the Commission against the State of Suriname, alleging that the State was responsible for the extrajudicial executions of more than 40 residents of the Maroon Village of Moiwana, in Suriname, and the intentional destruction of the villagers' property by soldiers of the Surinamese Army. The Petitioners also alleged that the State failed to provide the victims of the attack with a fair trial with due process guarantees, and failed to provide compensation for the acts committed by soldiers of the Surinamese Army. On October 30, 1997, in conformity with Article 34 of the then-applicable Regulations, the Commission transmitted the complaint to the State, requesting a reply within 90 days.

The State did not reply to the Commission's communication of October 30, 1997. The Commission reiterated its requests for information in two notes, dated June 2, 1998 and February 25, 1999, respectively, and informed the State that it would consider application of Article 42 of its then-applicable Regulations if a reply were not received within 30 days.

The Commission approved Admissibility Report N° 26/00 (Annex 2) on March 7, 2000, during its 106th regular period of sessions and forwarded it to the State by note of April 5, 2000. In that Report, the Commission determined that the claims with respect to Articles I (right to life, liberty and personal security), VII (protection of mothers and children), IX (inviolability of the home) and XXIII (property) of the American Declaration of the Rights and Duties of Man, and Articles 25 (judicial protection), 8 (judicial guarantees) and 1(1) (obligation to respect and ensure rights) of the American Convention were admissible. Both in that Report, and in a note of April 5, 2000, the Commission informed the State that, in accordance with Article 48(1)(f) of the American Convention, it was placing itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention. The Commission also requested that the State inform it within 30 days as to whether it was interested in pursuing a friendly settlement of the case.

On April 5, 2000, the Commission forwarded a copy of Report N° 26/00 to the Petitioners, with the same offer to facilitate a friendly settlement of the case if they wished to pursue that option. By letter dated May 19, 2000, the Petitioners expressed their clients' willingness to pursue negotiations aimed at a possible friendly settlement.

With respect to the State, the Commission reiterated its offer to facilitate a possible friendly settlement in notes of May 26 and July 25, 2000. In response, by communication dated August 4, 2000, the State indicated that it was "committed to the pacific settlement of the case but is requesting the patience of the Inter-American Commission as it makes its efforts towards this objective."

On August 11, 2000, the Petitioners addressed the Commission to reiterate their clients' interest in entering into a friendly settlement process with the State. The Petitioners asked the Commission to grant a further extension of 90 days to the State in which to initiate this

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procedure. The Petitioners indicated that if the State did not take steps to initiate this procedure within 90 days, the Commission should proceed with the processing of the case.

The Commission forwarded the pertinent parts of the Petitioners' communication to the State on August 14, 2000, and requested that the State provide all information relative to the case within 30 days. No response was received.

B. The State declined to respond to the claims raised

As indicated above, at no time during the processing of the petition before the Commission prior to the issuance of Report N° 26/00 (admissibility) and Report N° 35/02 (merits) did the State controvert either the Commission's competence to examine and pronounce upon the matter brought before it, or the Petitioners' allegations with respect to the facts and corresponding violations of the American Convention.

C. The Adoption of the Commission's Report N° 35/02 on the merits

On February 28, 2002, during its 114th regular period of sessions, the Commission approved Report N° 35/02 on the merits of this case. (Annex 3) Through its Report, the Commission established violations of Articles I (right to life, liberty and personal security), VII (protection of mothers and children), IX (inviolability of the home) and XXIII (property), VI (family), VIII (residence and movement), XI (Health and well-being) and XXII (association) of the American Declaration of the Rights and Duties of Man, and Articles 25(2) (judicial protection), 8(1) (judicial guarantees) and 1(1) (obligation to respect and ensure rights) of the American Convention, in connection with the attack, extrajudicial executions and destruction of Moiwana village, as well as the failure to provide effective judicial protection and guarantees and reparation for those harmed. The Commission recommended that the State effectuate a serious, impartial and effective investigation into the facts to ensure that those responsible for the human rights violations established be prosecuted and punished. The Commission further recommended that the State provide just compensation to those affected. Finally, the Commission recommended that the State take the steps necessary to nullify the Amnesty law that was adopted subsequent to this case, insofar as it encourages a climate of impunity for these and other violations.

Report N° 35/02 was transmitted to the State by note dated March 21, 2002, with the request that the State report on the measures adopted to comply with the recommendations contained therein within two months from the date of transmission. By a note of that same date, the Commission informed the Petitioners that it had approved Report N° 35/02, and that the Report had been sent to the State, which was required to report within two months on the measures taken to comply with the recommendations. In addition, the Commission requested that the Petitioners supply the information referred to in Article 43(3) of its Rules of Procedure relative to their position with respect to the possible sending of the Case to the Inter-American Court of Human Rights within one month.

The Petitioners submitted their response on April 20, 2002, indicating that, should the State fail to fully comply with the Commission's recommendations, it would be both "appropriate and necessary" that the case be sent to the Inter-American Court. (Annex 1) The Petitioners indicated that those affected by the attack had no other alternative through which to obtain

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justice. The Petitioners also presented information relevant for the possible presentation of the case before the Inter-American Court.

D. Response of the State to Commission Report N° 26/00 and Report N° 35/02

On May 20, 2002, the State presented a communication contesting both the admissibility of the case and the findings made by the Commission in Report N° 35/02. The State argued, first, that Report N° 26/00 (admissibility) "wrongly takes the American Convention on Human Rights [. . .] as the starting point." The State contended that "Suriname became a party to the Convention on 12 November 1987, almost one year after the incidents in Moiwana", namely on or before November 29, 1986. The State maintained that since the human rights violations occurred before it became a party to the Convention, the American Declaration of the Rights and Duties of Man was the only normative instrument applicable. The State asserted that the Commission should have declared the petition inadmissible under the Convention for that reason, and inadmissible under the Declaration for failure to exhaust domestic remedies. In this regard, the State argued that there were still available domestic remedies the Petitioners had not invoked and exhausted.

Second, the State argued that the Commission used the Convention to find the "continued nature" of the alleged human rights violations, and that "Suriname is of the opinion that this view of the Commission is extreme, exceptional and incorrect." The State maintained that the "interpretation of the Commission in fact produces an expansion of human rights violations. For, according to the Commission, human rights violations which have been committed by a Declaration State and are of a 'continued nature' should be treated as violations of the Convention if the State has meanwhile become a Convention state." The State made additional arguments concerning the Commission's application of the Convention and rather the Declaration by referring to Articles 5, 28 and 31 of the Vienna Convention on the Law of Treaties, arguing that the Commission's interpretation was in violation of established principles and standards of international law.

Further, the State provided some historical background to Suriname's military dictatorship, which began on February 25, 1980 and ended when democratic elections were held on November 25, 1987, initiating the resumption of democratic rule. The State indicated that

the government of the Republic of Suriname is full of good will to take corrective measures as regards to all matters in which rights of individuals in Suriname have been violated. In the case of the village of Moiwana, the State of Suriname deems it necessary to have a thorough investigation into the facts and circumstances. Just as in other alleged human rights violations which occurred in the eighties under the military regime and which are now ready for a serious detailed investigation, which at present is held by the competent authorities, the government considers it necessary to investigate the matter relating to the village of Moiwana in the short term.

In this framework, the government will in the near future establish a Commission which will make contact with the petitioner in case No. 11.821. If it appears from the investigation that the offenders of the alleged human rights violation can be identified, the government will not hesitate to engage the judicial authorities concerned for the prosecution and trial of these persons.

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E. Efforts to negotiate a possible solution to the Moiwana case

By communication to the Commission dated June 20, 2002, the State indicated that it was "seriously interested in settling this matter" and requested a two-month extension of the time period allocated for it to comply with the recommendations issued in Report N° 35/02, with the express recognition that this would suspend the time period referred to in Article 51(1) of the Convention for submission of the case to the Inter-American Court.

In a note dated June 24, 2002, the Commission informed the Petitioners that the Government of Suriname had requested an extension of two months in which to pursue the resolution of the matter. They were informed that the State had indicated its understanding that this suspended the time period established in Article 51(1) of the American Convention for eventual submission of the case to the Inter-American Court, and that this extension consequently would not prejudice the Commission's ability to send the case to the Inter-American Court in the event of non-compliance with the recommendations issued. They were informed that the extension would commence as from June 20, 2002.

The Petitioners subsequently informed the Commission that they had met with State representatives on July 5, 2002, and that those representatives had affirmed the possibility of resolving the case through a friendly settlement procedure. The parties had agreed that Moiwana '86 would receive a copy of the formal installation and terms of reference of the commission of experts advising the State; would transmit the proposal of the Government of Suriname to reach a friendly settlement to the victims; and would inform the Inter-American Commission about the progress of the process.

By note dated August 20, 2002, the State requested that the two-month extension of the time period within which the case was required to be presented to the Court be extended by four more months. The request was granted, and in communications dated August 20, 2002 the State and the Petitioners were notified accordingly.

In a communication dated August 27, 2002, the Petitioners provided the Commission with additional information concerning their efforts to reach a settlement with the Government of Suriname. This included a request by the Petitioners that the State provide a written proposal containing information about the procedures to use in a friendly settlement and the substantive issues to be discussed in the settlement.

On September 30, 2002, the Petitioners transmitted to the Commission a copy of a communication they had addressed to the Attorney General of Suriname on the same date, in which the Petitioners reiterated their request for the State to provide, *inter alia*, draft terms of reference for the friendly settlement and the issues to be discussed during the friendly settlement. The communication also included a letter dated July 24, 2002 from the State to the Petitioners, responding to a July 9, 2002 letter from the Petitioners in connection with their July 5, 2002 meeting with the State, in which the Government of Suriname reiterated its position that the Commission's merits report in this matter was "unjustly written" and that the Commission lacks the competence to submit the matter to the Honorable Court.

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Since that time, the Commission has received no information indicating compliance by the State with the recommendations issued or concrete advances in the process of settlement negotiations opened at the express request of the State.

On the basis of its findings of law and fact set forth in Report N° 26/00 (admissibility) and Report N° 35/02 (merits), the failure of the negotiations initiated between the parties to produce concrete results toward compliance with the Commission's recommendations, and taking into full account the views of the Petitioners in representation of the victims, the Commission decided to refer the case to the Honorable Court in accordance with the applicable rules.

IV. JURISDICTION OF THE COURT

The Honorable Court is competent to rule on the present case as presently submitted with respect to violations of Articles 25, 8 and 1(1) of the American Convention on Human Rights. Suriname acceded to the American Convention on November 12, 1987. At that time, Suriname 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 provided for in Article 62(2) of the Convention.

The claims presently placed before the Honorable Court concern the ongoing failure of the State to provide effective judicial protection and guarantees. More specifically, they concern the continuing denial of justice for the attack on the residents of Moiwana, the extrajudicial executions and the destruction of the village in 1986. The events comprising the attack, executions and destruction of the village are not themselves placed before the Court.

In accordance with Article 62 of the American Convention, the Honorable Court's 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.¹ This includes jurisdiction *ratione temporis* concerning acts and omission 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.² The denial of justice presented by the Commission in this application is continuing in nature and has had effects after Suriname's accession to the American Convention and its acceptance of the Honorable Court's contentious jurisdiction. The Court is therefore properly seized of jurisdiction in this matter.

This application does not seek or require the retroactive application of the obligations of the Convention to events that predated Suriname's accession. Rather, the application seeks to invoke the Honorable Court's jurisdiction with respect to the denial of justice that existed at the time of Suriname's accession to the Convention, and that persists unabated to the present day.

¹ IACtHR, *Cantos v. Argentina*, Preliminary Objections, Judgment of September 7, 2001, Ser. C No. 85, para. 36.

² IACtHR, *Blake Case*, Preliminary Objections, Judgment of July 2, 1998, Ser. C No. 27, paras. 39-40 and 46. See *similarly* Eur. Court H.R., *Papamichalopoulos et al. v. Greece*, June 24, 1993, Ser. A N° 260-B, pp. 69-70, paras. 40, 45-46.

This application is submitted with the specific objective that Suriname meet its obligations under the Convention as from 1987 forward to provide judicial protection and guarantees to those seeking justice for the crimes committed in Moiwana village on November 29, 1986.

With respect to other requirements for admissibility, the Commission emphasizes that, as explained below, the State never controverted the admissibility of the claims raised during the procedural opportunity it was provided to do so. In this sense, Suriname tacitly waived its right to object to noncompliance with such requirements as exhaustion of domestic remedies under Article 46 of the Convention,³ and is estopped from attempting to do so extemporaneously.⁴

More particularly, as noted by the Commission in its admissibility report in this matter, Suriname did not provide the Commission with any observations on the admissibility of the Petitioners' complaint, notwithstanding repeated requests to do so.⁵ In their petition, the Petitioners invoked the exception to the requirement of exhaustion of domestic remedies based upon the non-existence of an effective remedy and an unjustified delay in the proceedings. In the absence of a reply from the State controverting these allegations, the Commission found that the State had renounced its right to invoke this exception.⁶ In its merits report, the Commission went on to determine that, notwithstanding the passage of over 16 years from the events that give rise to the current application, no one had been prosecuted or punished for the human rights violations at issue, nor had the victims received any form of reparation – thereby demonstrating that the victims had been denied effective judicial protection and guarantees. It is precisely this delay and denial of justice that provide the basis for the present application. The case itself demonstrates that domestic remedies have been neither available nor effective for the residents of Moiwana village.

The related principles of waiver and estoppel notwithstanding, the State did attempt to object to the admissibility of the case on the basis of nonexhaustion subsequent to the issuance of the Commission's report on the merits, two years after the decision on admissibility. Such

³ According to the jurisprudence of the Honorable Court, of the generally recognized principles of international law referred to in Article 46 concerning the exhaustion of domestic remedies, the foremost is that the State may expressly or tacitly waive invocation of this requirement. IACtHR, Viviana Gallardo *et al.*, Judgment of November 13, 1981, No. G101/81, Ser. A, para. 26; IACtHR, Loayza Tomayo Case, Preliminary Objections, Judgment of January 31, 1996, Ser. C No. 25, para. 40. Further, any objection asserting the non-exhaustion of domestic remedies must be made by the state concerned at an early stage of the proceedings, lest a waiver of the requirement be presumed. IACtHR, Godinez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 3, para. 90; IACtHR, Castillo Petruzzi Case, Preliminary Objections, Judgment of September 4, 1998, Ser. C No. 41, para. 56. Moreover, the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness. IACtHR, Castillo Paéz Case, Preliminary Objections, Judgment of January 30, 1996, Ser. C No. 24, para. 24; Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999, Ser. C No. 50, para. 33.

⁴ As the Honorable Court has determined: "International practice indicates that when a party in a case adopts a position that is either beneficial to it or detrimental to the other party, the principle of estoppel prevents it from subsequently assuming the contrary position. Here the rule of *non concedit venire contra factum proprium* applies." IACtHR, Neira Alegria *et al.*, Preliminary Objections, Judgment of December 11, 1991, Ser. C No. 13, para. 29.

⁵ Case No. 11.821, Report No. 26/00, Village of Moiwana (Suriname), Annual Report of the IACHR 1999, para. 15).

⁶ *Id.*, paras. 24-26.

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arguments cannot be admitted extemporaneously and are, in any case, unsupported as a matter of fact and law. The State has raised no other arguments with respect to the admissibility of the claims at issue.

The Inter-American Commission has processed this case according to the pertinent provisions of the American Convention and its Rules of Procedure. Finally, the case has been properly transmitted to the Court in accordance with Article 61, as the procedures specified in Articles 48 through 50 of the Convention have been completed. The procedural requirements for submission to the Court have thus been satisfied.

V. STATEMENT OF FACTS

As indicated above, the present application is submitted to the Honorable Court for its determination as to the responsibility of the State for failing to provide effective judicial protection and guarantees to those attacked by the armed forces in Moiwana village. Although over 16 years have passed since Moiwana village was attacked by the Surinamese army, its residents either killed or displaced, and their homes destroyed, no perpetrator has been held to account, and no victim has received reparation.

While the 1986 attack itself predated Suriname's acceptance of the Honorable Court's jurisdiction, the State's ongoing denial of justice for those crimes gives rise to international responsibility as from the date it acceded to the American Convention through the present. In order to explain the gravity of the denial of justice for those affected, it is necessary to explain the background and nature of the attack. It must be emphasized that these facts were never controverted by the State during the processing of this case before the Commission.

A. Background: the events for which the victims have been and continue to be denied justice

1. Context: the pattern of human rights violations against the Maroon population during the Bouterse regime

The attack on Moiwana village was committed in the context of a pattern of human rights violations against the Maroon population of Suriname. In 1980, a small group of non-commissioned officers of the National Army of Suriname staged a *coup d'état* under the leadership of Sergeant Desire Bouterse, who appointed himself Commander in Chief of the Army, leader of a self-proclaimed revolution, and the leader of the Surinamese Government. The military leadership appointed a civilian administration and announced that it would hold elections within 100 days. Elections and a return to democratic rule did not take place as promised, however, and elections were not held in Suriname until May 1991.⁷

⁷ In 1991, Bouterse, the head of the army, and Bruswijk, the head of the insurgents, agreed to a cease-fire to put an end to the armed conflict in Suriname. The fighting did not end until May 1992 when a peace treaty was signed between the rebels and the government, which granted a general amnesty and integration of the rebels into the civilian police force. At Moengo on August 2, 1992, Brunswijk was the first to lay down his arms before the mediators from the Organization of American States. See Annex 14 (OAS Report of the Secretary General on the OAS Action in the Peace Process in Suriname, January 15, 1993).

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The regime of Desire Bouterse was marked by gross and systematic human rights violations. The Commission closely monitored and documented the situation of human rights in Suriname during the period, particularly between 1983 and 1991.⁸ The Commission's initiatives included conducting four on-site visits to Suriname, publishing two special reports,⁹ and providing regular updates on the situation of human rights in Suriname in its annual reports.¹⁰ Further, the Commission submitted two contentious cases against Suriname to the Inter-American Court of Human Rights arising out of this period, the *Aloeboetoe Case*¹¹ and the *Case of Gangaram Panday*.¹² As with the present case, the *Aloeboetoe Case* arose out of the practice of grave human rights violations committed against members of the Maroon population.

In 1986, an armed opposition force (the Jungle Commando) supported by Surinamese exile groups in the Netherlands and lead by Ronnie Brunswijk, a former bodyguard of Desire Bouterse, began operating in Eastern Suriname in the territory of the Maroon people where Brunswijk and the majority of the Jungle Commandos resided. The Jungle Commando's operations consisted primarily of attacking military installations and military activities in the area.¹³

The Army responded to the Jungle Commando by commencing extensive military operations in the region. This included the perpetration of systematic and collective reprisals against the civilian Maroon population of Moiwana village, whom the State alleged was aiding the Jungle Commando force.

⁸ In its 1990-91 Annual Report, the Commission described its past activities with Suriname as follows:

Since the coup d'etat of 1980 the Inter-American Commission on Human Rights has followed the human rights situation in Suriname very closely. Following the still uninvestigated and unpunished murders of fifteen prominent civilian leaders in 1982 by members of the National Army, the Commission has published two special reports on Suriname and conducted four on-site human rights investigations in that country. In addition, the Commission has annually reported on human rights in Suriname in its Annual Reports to the General Assembly of the OAS.

See Annex 12 (Annual Report of the IACHR 1990-1991, Chapter IV, Situation of Human Rights in Several States, Suriname, p. 496, OEA/Ser.LV/II.79 doc. 12 rev.1).

⁹ Annex 4 (IACHR, Report on the Human Rights Situation in Suriname dated October 5, 1983, OEA/Ser.LV/II.61/doc.6 rev. 1); Annex 5 (IACHR, Second Report on the Human Rights Situation in Suriname dated October 2, 1985, OEA/Ser.LV/II. 66/doc.21 rev. 1).

¹⁰ See 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).

¹¹ IACtHR, *Aloeboetoe et al. Case*, Judgment of December 4, 1991, Ser. C No. 11 (1991); Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 10, 1993, Ser. C No. 15 (1993).

¹² IACtHR, *Gangaram Panday Case*, Preliminary Objections, Judgment of December 4, 1991, Ser. C No. 12 (1991); Judgment of January 21, 1994, Ser. C No. 16 (1994).

¹³ The OAS Secretary General described the civil conflict in Suriname as follows: "Five main illegally armed groups operated in the country: the Jungle Commando, led by Ronnie Brunswijk; the Tucayanas Amazon; the Mandelas; the Angulas, and the Koffiemakas. [. . .] The armed movement in Suriname was unique because those who went up in arms seem to have had an economic objective instead of a political (power sharing) purpose. The fighting was directed towards the goal of broadening the participation of the population of the interior in the economic activities, and enlarge its access to social benefits in the country. The discontent seem [sic] to have been much more with the distribution of the national wealth, concentrated in the urban and coastal areas, rather than with the political structure or system." See Annex 14 (OAS, Report of the Secretary General on the OAS Activities in the peace process in the Republic of Suriname, January 15, 1993, p. 4).

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Maroons are the descendants of African slaves who fought for and won their freedom from the Dutch colonial regime that ruled Suriname until 1975.¹⁴ 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 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. Moiwana village was a Djuka Maroon village located in the Cottica region.

In the context of the internal conflict, the Maroons became military targets of harassment and human rights abuses. Many of the Maroon villages in Eastern Suriname were eventually razed to the ground. 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."¹⁵

Amid a general pattern of harassment and attacks, one of the incidents reported in the period just prior to the attack on Moiwana village was the shooting of a three-year old boy in his mother's arms at Morakondre, a nearby Cottica Ndjuka village, on August 1, 1986. On November 21, 1986, two soldiers reportedly opened fire on villagers at Moiwana, without casualty, and then quickly departed. This was followed by the Moiwana massacre eight days later.

2. The attack on Moiwana village

On November 29, 1986 a military operation was executed against the Village of Moiwana. The attack began at approximately 07:00 hours. Moiwana Village consisted of ten sub-villages, each occupied by several families. Since the camps were some distance apart from each other, most were not aware that the attack had started. A National Army unit, divided into three groups, started first at the Dogodoe camp at kilometer 127; it then proceeded to destroy the Samenacamp, Agwecamp, Sajofitacamp, Antinocamp, Tjamanisting, Atemacamp, Difijon, and, finally, Apoerlobicamp at kilometer 130. The attack concluded at approximately 19:30 hours.

Accounts of the survivors presented by the Petitioners provide insights into the manner in which the attack was carried out. Resident Marai Misiedjan gave the following account of events on November 29, 1986:

I was on the way to visit my sister who lived in another camp when I heard shots. It was around 7.00 am. Some villagers who worked in the neighbourhood were asking themselves what happened. I was afraid and decided to return. When I entered my home we were suddenly surrounded on all sides. ... I

¹⁴ In Dutch the Maroons are referred to as bosnegers, and are sometimes referred to as bush negroes in English. See Annex 9 (Inter-American Commission on Human Rights, Annual Report 1986-87, Chapter IV: Political Rights, Suriname, OEA/Ser.LV/II.27 doc. 9 rev.1, p. 263).

¹⁵ 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).

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stood in my home and looked how things took place. Men who wore masks shot at unarmed inhabitants. I realized I was in big danger and I was afraid to be discovered. So I escaped through the roof of the house. The roof consisted of leaves. When I escaped I was discovered and the masked man began to shoot at me. I crawled on the ground and succeeded in bringing myself to safety in the bush. My pregnant sister died during this action. Furthermore Albert, Johan, Pepita and Sajobegi died in the direct vicinity of my house during this action. My 12 year old son was also shot dead. In total 8 persons who were close to me died that day. I spent one night in the forest before I reached the inhabitable world.

Resident Misiedian Apoerlobi described her experience as follows:

In the morning I went with my husband to my agricultural plot. When we arrived there, around 7.30 am, we heard people screaming and we also heard gunshots coming from the direction of the village. Because we found it suspicious we fled to the forest where we stayed two nights. In the meantime about 15 villagers joined us and told us what happened. I heard that my sister was shot dead during the action. At the third day we arrived at a village called Akoloikondee at Bilosi down the river.

According to resident Nocolien Sjonko:

[w]e were at home when the soldiers arrived, we fled in the forest. The others who stayed behind were shot dead. We fled with many children in the bushes without food. We stayed in the bushes two days and three nights. A French airplane [that flew] around sometimes was an orientation for us. When we arrived in a place with inhabitants it was difficult for us to eat because we were too weak, we had not eaten for days. Crossing the river a Surinamese patrol boat shot at us several times. The people of the village where we arrived after escaping helped us to reach French- Guyana. The French gave us food and clothes.

Soldiers shot unarmed villagers, while others were hacked to pieces with machetes. Victims included babies, children, women and the elderly. The victims were defenseless. Some were lined up and shot, while others were shot in their houses.¹⁶ The killings were accompanied by the terrorization of other residents and destruction of property. The soldiers then burnt the village to the ground.

The Petitioners' analysis indicates that 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.¹⁷

¹⁶ Annex 19 (Wako Report, *supra*, para. 50).

¹⁷ The ages of the victims were estimated by the Petitioners as follows:

- Victims under 1 year old – 2
- Victims between 1 and 2 years old – 2
- Victims between 2 and 5 years old – 6
- Victims between 6 and 10 years old – 8
- Victims between 11 and 18 years old – 13
- Victims between 19 and 30 years old – 3
- Victims between 31 and 49 years old – 3
- Victims between 50 and 60 years old – 3
- Victims whose ages are unknown – 3

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Reports indicated that the bodies of victims were mistreated. One witness reported that ten people were killed in and around his house. He said that after the killings, houses were burnt with bodies still inside them.¹⁸ 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.¹⁹ A large number of the bodies have never been recovered.

The survivors fled, many 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. The United Nations Special Rapporteur described the exodus of the Maroon population, including the Moiwana survivors, as follows:

Since the fighting began until August 1987, an estimate of 15,000 persons were said to have moved to the Paramaribo area from the eastern part of the country and an additional 8,500 to have fled to French Guiana. The majority of these displaced persons were "Bush Negroes" but some 1,000 Amerindians were also said to have fled the combat zone. This represents more than one third of the estimated "Bush Negro" population which by any standards is a very high percentage of the population displaced.²⁰

The events at Moiwana had the objective and effect of destroying the community by killing or terrorizing and dispersing its members. The actions of the soldiers were clearly understood by the survivors to signify that all villagers were targets, and no one would be spared. Accordingly, those killed ranged from a few months old to the elderly and infirm. For example, one survivor recounted having seen soldiers shoot a seven month old in his mother's arms.²¹ As indicated, victims included children, women, some of whom were in the final stages of pregnancy, and men. Among the men killed was a *basia*, a Maroon political official selected through internal tribal rules, and then formally appointed and given an allowance by the State. Difenjo was shot, and then hacked to death with a machete.²² Witness accounts indicate that Basia Difenjo [Divanjo] Misidjan was wearing his official uniform when he was attacked.²³ That uniform carried special status for the wearer within the Maroon community and, according to practice, should have been respected by the army since they were aware of its meaning.²⁴

The only residents who escaped being shot or hacked to death were those who hid, or were able to flee.²⁵ Survivors recounted how some attempting to seek the shelter of the surrounding forest were shot as they fled. Survivors who were able to seek refuge recounted having to hide within the cover of the forest before subsequently trying to make their way to French Guiana or the relative anonymity of Paramaribo or another large city.²⁶

¹⁸ Annex 16 (Amnesty International, *Suriname: Violations of Human Rights*, dated September 1987 [hereinafter Amnesty Report], p. 9).

¹⁹ Annex 19 (Wako Report, *supra*, para. 50).

²⁰ *Id.*, para. 34.

²¹ Annex 16 (Amnesty Report, *supra*, p. 8).

²² *Id.*, pp. 8-9.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, pp. 8-9.

²⁶ *Id.*, p. 9.

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Having killed over 40 residents and dispersed the rest, the soldiers then burned the remnants of the village to the ground. The operation had then achieved its intended effect: to eradicate the Ndjuka village of Moiwana.

This eradication was part of the pattern of human rights violations targeting the Maroon population. Reports indicate that, between early December 1986 and February 1987, the Army systematically attacked, from the ground and air (planes, helicopter gunships and bulldozers were all used), the following Ndjuka villages in the Cottica region: Wanhati, Sabana, Mungo Tapu, Morakondee, Abaadukondee, Akalekondee, Langa Uku, Pinatjaimi, Marokokondee, Tu Kopi, Peeto Ondoo and Rikanau Mofu.²⁷ Citing a report that placed the number of dead civilians at 200 during December 1986 alone,²⁸ the Inter-American Commission indicated that in its view, "the most serious violations of human rights during the period covered by this report have been the treatment of the unarmed civilian Maroon and Amerindian populations in the eastern area of the country. These have taken on truly alarming proportions."²⁹

The UN Special Rapporteur on Summary or Arbitrary Executions visited Suriname in August of 1987, after having received information about the killings in Moiwana and other areas. Part of that visit included traveling through the eastern quarter of the country, along the main road from Paramaribo to Albina [the principal town close to Moiwana], with stops at Moengo, Moengotapae, Moiwana, Negercreek and other location. He described what he saw:

[A]ll the bridges had been damaged and tractors and other equipment destroyed. The area from Moengo to Albina was closed. All the "Bush Negro" villages and hamlets along the road had been destroyed and razed to the ground by government forces. All the buildings and property, with the exception of the church in Moengotapoe, a town which was estimated to have had a population of between 800 and 1,600 people, was completely destroyed by the government forces. All the buildings and property, with the exception of the church in Moengotapoe, a town which was variously estimated to have had a population of between 800 and 1,600 people, was completely destroyed by the government forces. All of the buildings and property in what was once the bustling town of Albina with an estimated population of about 3,000 to 4,000 people were destroyed, with the exception of the military barracks which also bore the marks of fighting. Apart from the military personnel in Albina, in this whole area from Moengo to Albina, no human being of living creature was seen apart from starving dogs in Albina. The jungle vegetation had taken over the destroyed buildings and the cultivated lands and was encroaching on the road.³⁰

²⁷ For a description of events between 1986 and 1988, see *Vluchtelingen, Opstandelingen en andere Bosnegers van Oost-Suriname, 1986-1988* [Refugees, Rebels and other Bush Negroes of East-Suriname, 1986-1988], (Utrecht: Bronnen voor de Studies van Afro-Surinaamse Samenlevingen, Centrum voor Caraïbische Studies, Instituut voor Culturele Anthropologie, University of Utrecht), pp. 33-41; R. Price, *Executing Ethnicity: The Killings in Suriname*, 10 *CULTURAL ANTHROPOLOGY* 437, 443 (1995).

²⁸ Annex 9 (Inter-American Commission on Human Rights, Annual Report 1986-87, Chapter IV: Political Rights, Suriname, OEA/Ser.LV/II.27 doc. 9 rev.1, p. 264).

²⁹ *Id.*, p. 267.

³⁰ Annex 19 (Wako Report, *supra*, para. 35.)

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B. The factual foundation for State responsibility: its unwillingness and inability to investigate, prosecute and punish the human rights violations committed against the residents of Moiwana village

As indicated above, Suriname acceded to the American Convention and the contentious jurisdiction of the Honorable Court in 1987, subsequent to the facts of the attack on Moiwana Village. The State's refusal to provide justice for that attack, however, has continued from those facts through to the present. The State has not only failed to provide justice, it has affirmatively obstructed justice in this case.

Reports indicate that, if there had been any doubt about the facts of the attack, those were dispelled in 1989, when Commander Bouterse publicly asserted responsibility for the order to execute the military operation in Moiwana. He and others indicated that other leaders had been involved in the decision-making and planning of the operation, and that any questions concerning the massacre should be directed to Bouterse.³¹

That same year, the Civilian Police Force, under the command of Police Inspector Herman E. Gooding, attempted to investigate the attack against Moiwana Village. The civilian police force arrested a number of soldiers connected with the massacre at Moiwana, including Orlando Swedo, but these soldiers were reportedly released after the civilian police force was besieged by thirty armed military policemen acting on the orders of Commander-in-Chief Bouterse.³² The military police forced the civilian police to release Swedo, and Bouterse was reported as commenting that military operations were not subject to investigation.³³ Subsequently, Police Inspector Gooding was murdered on August 4, 1990, after a meeting with the Deputy Commander of the Military Police. The circumstances of his murder have not been clarified. The investigation into the attack on Moiwana Village was then suspended.

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,³⁴ except crimes against humanity, defined under the legislation as those crime "which according to international law are classified as such."³⁵

³¹ See Annex 27 (Weekkrant Suriname Article, "Sweedo a Free Man Again", May 6-12, 1989). This Surinamese newspaper reported that, at a meeting at the Assembly of the Membre Boekoebarracks, Bouterse made clear that what he called "the military operation" at Moiwana was his order.

³² *Id.*

³³ Annex 18 (International Alert, Suriname: An International Alert Report (1989), p. 15); Annex 25 (Weekkrant Suriname Article, "Sweedo a Free Man Again", May 6-12, 1989).

³⁴ 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 Annex 28 (Suriname Amnesty Act 1989 (August 19, 1992), Arts. 1, 2).

³⁵ *Id.*

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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.³⁶ Moiwana '86 reported the discovery to the Office of the Attorney General,³⁷ and renewed its urgent request for an investigation into the massacre.³⁸

According to contemporaneous media reports, the Ministry of Justice and the police indicated that the legal investigation and prosecution of the matter were not priorities for the administration, and that the country's economic and social problems took precedence.³⁹ The Ministry of Social Affairs and Housing went further, declaring in a press conference that the Moiwana massacre should be considered to fall within the Amnesty Law.⁴⁰

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.⁴¹ The team discovered and opened one grave during its first visit on May 28, 1993. In a preliminary statement after this first visit, the police claimed to have discovered skeletons of only three or four persons. During its second visit, the team found more skeletons on June 9, 1993. Several of the corpses were identified as members of the Moiwana community.⁴²

On December 19, 1995, the Parliament of Suriname adopted a motion requiring the Executive Branch to immediately open an investigation into several infamous violations committed during the military regime, including the Moiwana massacre, but no action was taken by the State with regard to this measure.⁴³

Moiwana '86 has made numerous requests to the authorities to conduct a serious investigation of the attack designed to lead to prosecution and punishment of those responsible, but to no avail.⁴⁴ Under Surinamese law, when a private claimant makes a request that is found to be justified, the responsible authorities are required to ask the Attorney General to undertake an investigation into the matter in question.⁴⁵ In 1996, the survivors and next of kin again sought action at the domestic level by filing such a request for investigation and prosecution with the Public Prosecutor and, later, the President of the Supreme Court. Their repeated requests for investigation were ignored by the Public Prosecutor and the Minister of Justice.

³⁶ Annex 25 (Moiwana '86, "Moiwana Graves", June 10, 1993).

³⁷ Annex 27 (Algemeen Dagblad Article, "Rensch: Investigation of the Massacre in East-Suriname", May 25, 1993).

³⁸ Annex 24 (Letter from Moiwana '86 to Attorney General, May 24, 1993).

³⁹ Annex 27 (De Ware Tijd Article, "What happened in Moiwana", May 25, 1993).

⁴⁰ Annex 25 (Moiwana '86, "Moiwana Graves", June 10, 1993, p. 4).

⁴¹ *Id.*

⁴² *Id.*, pp. 1, 5.

⁴³ Annex 23 (*Motie van National Assemblée Suriname* [Motion by the Parliament of Suriname on Investigation of Human Rights Abuses], December 19, 1996).

⁴⁴ Annex 24 (Letters from Moiwana '86 to the Procurator General dated May 24, June 28 and August 23, 1993).

⁴⁵ See, e.g. Annex 26 (Letter from the President of the Court of Justice of Suriname to the Procurator General, dated August 21, 1996).

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The President of the Supreme Court informed the Petitioners that he had requested information from the Attorney General as well as any copies of police records on the matter.⁴⁶ On October 2, 1996, the President of the Court indicated that he had not received any response from the Ministry of Justice.⁴⁷ No further official action was taken.

Notwithstanding the results of the exhumations conducted in May and June 1993, as well as the subsequent requests by the Parliament of Suriname and the President of the Supreme Court, to date the State has not conducted any serious investigation to identify, prosecute and punish those responsible for the 1986 massacre of the Maroon residents at Moiwana Village and its ongoing and destructive consequences.

C. The victims who have been denied justice

The Commission presents its application with respect to all the individuals whose rights to judicial protection and guarantees have been violated as a result of the State's denial of justice in the present case. In consultation with the victims, and taking into account the difficulties in identifying the residents of a community displaced by armed attack, the Commission presently offers the 165 residents of Moiwana Village included in the list that follows as the named victims of this denial of justice. In accordance with the information provided by the Petitioners, those individuals listed from 1 to 39 are the victims who died during the massacre, numbers 40 to 54 are living in Paramaribo, Suriname, numbers 55 to 69 are living in Albina, Suriname, numbers 70 to 98 are living in Moengo, Suriname, and numbers 99 to 165 are living in French Guiana.

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

⁴⁶ *Id.*

⁴⁷ Annex 26 (Letters from the President of the Court of Justice of Suriname to the Director of Moiwana '86 dated October 2, 1996 and February 26, 1997).

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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
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

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	

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Victims now living in Albina, Suriname

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

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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	06/05/77

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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	

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VI. THE LEGAL BASIS FOR STATE RESPONSIBILITY

The failure of the State to provide the effective judicial protection and guarantees required under the Convention has denied these families justice, and has enabled those responsible to evade any sanction for their crimes. While more than 16 years have passed since the attack on Moiwana Village, and 15 years have passed since Suriname accepted to be bound by the terms of the American Convention and the Honorable Court's contentious jurisdiction, there has yet to be an effective investigation, no one has been prosecuted or punished, and the victims have not been compensated.

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).⁴⁸

The analysis that follows sets forth why the State of Suriname bears responsibility for having failed to uphold these fundamental and interconnected rights in this case. As will be addressed in more detail, 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. Even the most tentative efforts initiated toward this objective were met with institutional resistance 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."⁴⁹ 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.⁵⁰ Article 25(1) of the Convention incorporates the principle recognized in international human rights law regarding the effectiveness of procedural means aimed at guaranteeing

⁴⁸ IACtHR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 1 (1987), para. 91.

⁴⁹ IACtHR, Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/87 of Oct. 6, 1987, Ser. A No. 9 (1987), para. 24.

⁵⁰ IACtHR, Velásquez Rodríguez Case, Merits Judgment of July 29, 1988, Ser. C No. 4 (1988), para. 167.

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protected rights.⁵¹ 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."⁵²

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. That attack included multiple crimes requiring investigation *de officio*, including, but not limited to murder, battery and destruction of property. The only reported efforts to carry out an investigation, those headed by Police Chief Gooding, reached a stage at which a number of members of the Armed Forces were arrested, only to be aborted by a siege of the military police on the civilian police. Notwithstanding that the siege carried out by the Army to obtain the release of those soldiers was an open and notorious breach of the role and authority of the civilian police, it was not met with any official sanction. The investigation of the attack on Moiwana Village was subsequently suspended following the murder of Chief Gooding in circumstances that have themselves never been clarified.

In addition to the obligation of the State to investigate presumed human rights violations *de officio*, 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."⁵³ That right cannot be realized when the investigation process is obstructed.

When Moiwana '86 has attempted to pressure the police and judicial authorities to investigate, in accordance with the law, they have been met with obstruction and denial. For example, while their formal petition for investigation before the Supreme Court produced a request for information by that Court to the Attorney General and police, the initiative was aborted by the non-response of the authorities in question. Again, the notorious failure of the officials responsible to respond was met not with official sanction, but with silence.

Initial steps toward an investigation were aborted by State agents acting under orders from State authorities in positions of political power. The authorities responsible for carrying out an investigation have either been intimidated or directly prevented from applying due diligence to investigate the attack. There have been no concrete results in terms of clarifying the human rights violations that took place during the attack, holding those responsible accountable, and repairing the consequences.

The amnesty law adopted by the State is a further manifestation of the climate of impunity for the human rights violations committed at the time of the attack on Moiwana Village. The Surinamese Amnesty Law of August 19, 1992, known as "Amnesty Law 1989," provides for the granting of Amnesty to persons who have committed certain punishable acts described in the law during the period from January 1, 1985 until August 19, 1992. Since any initiatives to

⁵¹ See, e.g. IACtHR, OC-9/87, *supra*, para. 24; IACtHR, Case of Suárez Rosero, Judgment of November 12, 1997, Ser. C No. 35 (1997), para. 63.

⁵² IACtHR, OC-9/87, *supra*, para. 24.

⁵³ Report N° 28/92 (Argentina), Annual Report of the IACHR 1992-93, OEA/Ser.LV/II.83, Doc. 14, corr. 1, March 12, 1993, pp. 35, 48.

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investigate never reached the stage of prosecution, the amnesty law was never applied in the instant case. Nevertheless, evidence suggests that the law was intended to have, and in fact had, the effect of indicating to relevant officials that those responsible for the violations committed during that time period were not to be held accountable. For example, as indicated previously a Government Minister was reported in 1993 as having stated that the Moiwana attack should be considered to fall within the amnesty law.

Given that the amnesty law contains an exception that excludes its applicability to crimes against humanity, it is difficult to say how or whether it could have been applied in practice to bar the prosecution of the Moiwana attack. What is significant in the present proceeding, however, is the fact that the law was and continues to be interpreted by many as precluding any measures to identify, prosecute and punish those responsible for the attack and thereby contributes to the perpetuation of impunity, in the present case and others.

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."⁵⁴ Family members are entitled to know the facts and circumstances with respect to the fate of their loved one.⁵⁵ They are also entitled to a judicial investigation by a criminal court designed to establish the perpetrators of and to sanction human rights violations.⁵⁶

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.

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."⁵⁷ 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."⁵⁸

⁵⁴ Velásquez Rodríguez Case, Merits Judgment, *supra*, para. 166.

⁵⁵ See, e.g. Annual Report of the IACHR 1985-86, OEA/Ser.LV/II.88 doc. 8 rev. 1, at 193, 28 Sept. 1986.

⁵⁶ See generally, Report N° 28/92 (Argentina), *supra*, p. 35; Report N° 29/92 (Uruguay), Annual Report of the IACHR 1992-93, OEA/Ser.LV/II.83, Doc. 14, corr. 1, March 12, 1993, p. 154.

⁵⁷ IACtHR, *Bámaca Velásquez Case*, Judgment of November 25, 2000, Ser. C No. 70 (2000), para. 211, *citing* Paniagua Morales et al. Case, Judgment of March 8, 1998, Ser. C No. 37, para. 173. See also IACtHR, *Blake Case*, Reparations, Judgment of January 22, 1999, Ser. C No. 48 (1999), para. 64.

⁵⁸ *Id.*

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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).

Moiwana village was a civilian village. The attack was a premeditated action calculated to kill some residents and terrorize the others into abandoning the area. The plan was completed with the destruction of the village and the burning of its remnants to the ground. 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.

It is precisely because of the impunity in which the massacre has languished, as well as the fact that, according to the Petitioners, the intellectual authors of the attack continue to hold positions of power and influence in the country, that the Moiwana survivors remain fearful and unable to return to their traditional lands. The forced displacement of the community of Moiwana brought about by the massacre and the absence of any accountability for these violations continues to deny its members protection for their basic rights and human dignity.

VII. REPARATIONS AND COSTS

The present section sets forth the measures of reparation that the Commission considers necessary to discharge the responsibility of the Surinamese State for the ongoing denial of justice suffered by the survivors of the Moiwana massacre and their family members. Over 16 years after the massacre, those directly affected by the massacre continue to be deprived of their right to investigation and clarification, and to ensure that those responsible are held accountable. As set forth in the foregoing sections, the village of Moiwana was obliterated and the surviving community fragmented through exile or internal displacement as part of a State practice of human rights violations against the Maroon community. That practice included obstructing efforts to clarify what happened and bring those responsible to justice.

Given this impunity, and the awareness of all affected that those responsible for the massacre continue in many instances to occupy positions of power and influence in the country, the surviving residents and the families of those killed have been prevented from returning to the seat of their community or reconstructing their cultural life as a Ndjuka community. As a result of this impunity and continued displacement, the Moiwana survivors have been and remain doubly victimized and defenseless.

As detailed below, the Commission considers that the reparations necessary to discharge the State's international responsibility in this case must include (1) measures of satisfaction and guarantees of non-repetition; (2) just compensation; and, (3) costs and legal fees.

A. Obligation to make reparations

In keeping with the general principles of international law, the violation of international norms attributable to a State gives rise to the international responsibility of that State, and, consequently, the duty to make reparation. In this regard, the Honorable Court has expressly and repeatedly held in its case-law that "any violation of an international obligation that has

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produced damage entails the obligation to make adequate reparation."⁵⁹ As demonstrated in the preceding sections of this application, the violations giving rise to the obligation to make adequate reparation in the present case are the denial of judicial protection and guarantees to the Moiwana survivors in relation to Articles 25, 8 and 1(1) of the American Convention, including their related displacement from and inability to return to their community.

This general principle is reflected in Article 63(1) of the American Convention, which provides that, once the Honorable Court has established a violation, it shall rule that the injured parties be ensured the enjoyment of their rights and freedoms that were violated. This Article further provides that the Honorable Court "shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach ... be remedied and that fair compensation be paid to the injured part[ies]."

As the Court has indicated, Article 63(1) of the American Convention "codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law."⁶⁰ The obligations incurred pursuant to Article 63(1) are governed by international law in all pertinent aspects, and a judgment rendered thereunder imposes "international legal obligations, compliance with which shall not be subject to modification or suspension by the respondent State."⁶¹

Measures of reparation are meant to provide those harmed by a violation with an effective remedy. The essential objective is to provide "full restitution for the injury suffered."⁶² When, as in the present case, it is not possible to enforce the rule of *restitutio in integrum* due to the irreversible nature of certain damages suffered, the payment of fair compensation must be fixed in "sufficiently broad terms" to repair the harm "to the extent possible."⁶³ Such compensation is aimed primarily at remedying the actual damages – both material and moral – sustained by the injured parties.⁶⁴ The quantification of the damages must be proportionate to "the gravity of the violations and the resulting damage."⁶⁵ Reparations have the additional and no less fundamental objective of deterring future violations.

⁵⁹ See IACtHR, Villagrán Morales et al. Case (The "Street Children" Case), Reparations, Judgment of May 26, 2001, Ser. C No. 77 (2001), para. 59.

⁶⁰ See IACtHR, Aloeboetoe Case, Reparations, Judgment of September 10, 1993, Ser. C No. 15, para. 43, citing, *inter alia*, IACtHR, Velásquez Rodríguez Case, Compensatory Damages, Judgment of July 21, 1989, Ser. C No. 7, para. 25; IACtHR, Godínez Cruz Case, Compensatory Damages, Judgment of July 21, 1989, Ser. C No. 8, para. 23. See also, IACtHR, El Amparo Case, Reparations, Judgment of September 14, 1996, Ser. C, No. 28, para. 14, citing, *inter alia*, Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Ser. A, No. 9, p. 21; Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Ser. A No. 17, p. 29, Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J., Reports 1949, p. 184.

⁶¹ See El Amparo Case, Reparations Judgment, *supra*, para. 15, Aloeboetoe Case, Reparations Judgment, *supra*, para. 44 (other citations omitted).

⁶² IACtHR, Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990, Ser. C No. 9, para. 27.

⁶³ Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, *supra*, para. 27.

⁶⁴ See Aloeboetoe Case, Reparations Judgment, *supra*, paras. 47, 49.

⁶⁵ "Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law," prepared by Mr. Theo van Boven, U.N. Doc. E/CN.4/Sub.2/1996/17 [hereinafter van Boven, *Revised Principles*], para. 7.

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The application of reparations is crucial to ensuring that justice is done in an individual case. It is the mechanism that elevates the decision of the Court beyond the sphere of moral condemnation.⁶⁶ "The remedial task is to convert law into results, to deter violations and restore the moral balance when wrongs are committed."⁶⁷ The very efficacy of law rests on the principle that the violation of a protected right requires a remedy.⁶⁸ In the present case, it is critical that the application of these principles takes into account that the massacre at Moiwana village and the lack of judicial protection and guarantees presently at issue before the Honorable Court arose as part of a calculated practice of human rights violations against the Maroon population – a practice fueled and perpetuated by impunity.

B. The persons entitled to reparations

Article 63(1) of the American Convention calls for the consequences of a violation to be remedied, and for "fair compensation [to] be paid to the injured party." The persons entitled to such an indemnity are generally those directly injured by the facts of the violation in question.⁶⁹ Where the victim has been killed, his or her rights must necessarily pass to the family.

As the Honorable Court has indicated, it may be assumed that a serious human rights violation causes actual and moral damages to the decedent's successors at law, and the burden would be on the opposing party to show that such damages had not been sustained.⁷⁰ The Honorable Court's recent jurisprudence indicates that, in accordance with the nature of family life and links, this presumption of harm applies not only to children, spouses and parents, but also to siblings.⁷¹ In the present case, given the effects of the denial of justice and related inability of the Moiwana survivors to return to their community, the Commission considers that the members of each affected nuclear family necessarily suffered harm that entitles them to reparation.

The Commission presently submits the names of the beneficiaries it considers entitled to reparations, in accordance with the information it has been able to gather with the assistance of the Petitioners. This list includes those killed (with their rights to pass to their families) and the survivors of the massacre who have been denied justice. The list of the 165 individuals who were subjected to attack is set forth above in section V.C.

⁶⁶ See Rafael Nieto Navia, *La Corte Interamericana de Derechos Humanos: Su jurisprudencia como mecanismo de avance en la protección y sus límites*, pág. 14 (IIDH, San José, 1991).

⁶⁷ Dinah Shelton, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (1999), p. 54.

⁶⁸ "Donde hay violación sin sanción o daño sin reparación, el Derecho entra en crisis, no sólo como instrumento para resolver cierto litigio, sino como método para resolverlos todos, es decir, para asegurar la paz con justicia". Sergio García Ramírez, "Las reparaciones en el sistema interamericano de protección de los derechos humanos", trabajo presentado al Seminario "El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI", San José, Costa Rica (Noviembre de 1999).

⁶⁹ See generally, *El Amparo, Reparations Judgment*, *supra*, paras. 38, 40; IACtHR, *Neira Alegria Case, Reparations, Judgment of September 19, 1996*, Ser. C No. 29 (1996), paras. 59-60.

⁷⁰ *Aloeboetoe Case, Judgment on Reparations*, *supra*, para. 54.

⁷¹ *Villagrán Morales Case, Reparations Judgment*, *supra*, para. 68; IACtHR, *The "Panel Blanca" Case, Reparations, Judgment of May 25, 2001*, Ser. C No. 76 (2001), para. 86.

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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 flight of the survivors, with many going to French Guiana and some going to Paramaribo, Albina, Moengo or other towns in Suriname – make it especially difficult to proffer full information as to all beneficiaries.⁷²

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

Given the severity of the violations in this case and the corresponding gravity of the ongoing harm being suffered as a result, measures of satisfaction and guarantees of non-repetition are essential to bring an end to the denial of justice the survivors continue to confront. The identification and sanction of those responsible is necessary to break the impunity in which this case has been locked, to enable those affected to vindicate their dignity and the memory of those killed, and to prevent the repetition of such violations in the future. "Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations."⁷³

Based on the gravity of the violations established by the Honorable Court in the present case and the need to restore the protection of the rights at issue, particularly those concerning the denial of justice and forced displacement of the survivors – rights that are integrally linked in this case -- the Commission considers that guarantees of satisfaction and non-repetition constitute an integral component of the required reparations.⁷⁴ The Commission further notes the critical importance of taking the needs and wishes of the Moiwana survivors fully into account in the determination of reparations.⁷⁵

With due regard for the indications of the Petitioners to date, 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) Effectuate the return of any former members of Moiwana village, their family members, and any family members of those killed who wish to resume life in that community. This must include:

⁷² See Annex 18 (Wako Report, *supra*, para. 30, indicating in respect of the 1986 attacks by the military against civilians that "precise figures and the identities of the victims are difficult to establish, mainly due to the unknown number of victims in the jungle where many civilians fled, the confusion of the affected population and the consequence absence of identification of those who fled west to Paramaribo, east to French Guiana and south into the interior").

⁷³ van Boven, *Revised Principles*, *supra*, para. 7.

⁷⁴ See e.g., Draft UN Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, para. 7.

⁷⁵ See van Boven, *Revised Principles*, *supra*, para. 137.4.

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- (a) formal legal recognition of their right to own and occupy the traditional seat of the community;
 - (b) guarantees to ensure their personal security; and,
 - (c) the construction, furnishing, and staffing of fully functional education and health facilities in the community.
- (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.
 - (4) Erect a monument to memorialize the massacre in 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 Ndjuka community.

1. Justice is an essential requirement for the Moiwana community

With respect to the first measure requested, it is a paramount consideration for the Moiwana survivors that justice be done. They are entitled to official clarification as to who committed the crimes against them and their loved ones, and why. The goal of ensuring accountability for the violations that have taken place -- thereby reestablishing the value of human dignity, requiring the judiciary to fulfill its role as guarantor of individual rights and liberties, and providing an irreplaceable means of guarding against future violations -- can only be met if measures of investigation, prosecution and punishment are implemented effectively. In this sense, those affected have indicated before the Commission 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, the suffering experienced by their loved ones, and for their obligations under law.

Additionally, as indicated, the survivors are acutely aware that the perpetrators of the crimes have not been brought to justice. As the Honorable Court has repeatedly emphasized, "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."⁷⁶

This impunity has a special significance for members of the Ndjuka culture, which attributes a central role to justice. In the case of a killing, for example, according to Ndjuka tradition, it is important that the dead be able to rest in peace. Until justice has been done, however, members of the culture consider that the dead cannot rest. The survivors and next of kin are therefore obligated by Ndjuka law to seek justice for the victim so that the spirit can rest.

⁷⁶ *Id.*

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If this is not done, according to tradition, it is considered within the Ndjuka culture that the spirit becomes very angry and causes great difficulties for the survivors and next of kin. Ndjuka tradition considers that, in such a situation, the spirits of the dead will not perform their traditional function of protecting the relatives, and will instead cause them illness and ill-fortune. A noted anthropologist has explained that within Ndjuka tradition, ancestral spirits "are believed to be generally well disposed towards their descendants, but once their anger is roused by some improper action they can bring illness or death to a member of the lineage, not necessarily always the person against whom their anger is directed."⁷⁷ Avenging spirits, known as *kunu*, also take action to punish those guilty of transgressions: "The *kunu* tries to take revenge for the injustice suffered, causing the illness or death of members of the guilty lineage. ... Like the ancestors, the *Kunu* does not necessarily punish the actual offender, but rather just any members of the lineage."⁷⁸

The Petitioners have provided information to the Commission confirming that, for the survivors, since the massacre nothing has been the same. They bear the trauma of having been subjected to the attack, and having lost loved ones. The fact that the attack remains in impunity, more than 16 years later, makes this situation worse as the survivors and next of kin believe their loved ones' spirits are in limbo and angry with them. The descendants fear that the massacre can be repeated, especially as those who ordered the crime remain free. The Petitioners report that the survivors "ask themselves why this had to happen to them after their ancestors suffered slavery. For them, the massacre is a throw back to the time of slavery when they were treated like animals, without any human dignity and respect and without any mercy or justice."

Obtaining justice and reparation for past wrongs is of very great importance to the individuals concerned, both in their relationship to their Ndjuka cultural traditions, laws and history, and as relatives obliged to ensure the peaceful rest of the spirits of the dead. The Petitioners emphasize that the "Ndjuka have a proud history where courage, fighting against oppression and for freedom, equality and other human rights are central to their identity and view of the world. The righteousness of their fight was in the past accepted in peace treaties made by their ancestors with the Dutch slave masters." The survivors and next of kin perceive the denial of justice to them and their loved ones as "a cruel and degrading disturbance of the course of history and as a denial of their existence and value as human beings and as a people with their own laws, traditions and customs."

The Petitioners further emphasize that the survivors believe their standing as a community is very low because when their village was destroyed they were not able to fight back and they fled. This is contrary to a strong tradition of resistance in Maroon culture. Indeed, resistance to slavery and conclusion of peace treaties confirming their freedom and autonomy are fundamental to Maroon identity, and are often used to distinguish themselves, in a positive way, from other Surinamese. The Petitioners report that, if the survivors argue with other Maroons, the fact that their kin were killed and they were forced to flee is often used to denigrate them and sometimes forces community members to refrain from taking contrary positions. Similarly, the fact that they have not received justice and reparations for the

⁷⁷ A.J.F. Köbben, *Unity and Disunity: Cottica Djuka Society as a Kinship System*, in *MARON SOCIETIES. REBEL SLAVE COMMUNITIES IN THE AMERICAS* (R. Price, ed., 3d, 1996), p. 328.

⁷⁸ *Id.*, pp. 329-30.

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massacre is seen as deeply shameful by other Ndjuka as it is perceived as a failure to honor their obligations to the dead and their ancestors.

The Petitioners indicate that, for the survivors, their loss of standing within Ndjuka society is a constant source of pain and embarrassment. While the survivors believe this will not go away entirely, they are certain that obtaining justice will substantially improve their standing in the eyes of other Maroons and appease their ancestors and kin killed in the massacre.

Moreover, full compliance with this aspect of reparations would be essential for the Moiwana survivors, 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

The second measure requested seeks to remedy the fact that the denial of justice and impunity that characterize this case continue to impede the survivors and family members of those killed from returning to their community. Accordingly, the second measure requested, that the State be ordered to effectuate the return of those who wish to avail themselves of this possibility, is aimed at restoring a right that is being violated on a continuing basis.

The former residents of Moiwana Village were traumatized – physically, psychologically and emotionally – by the circumstances of the attack that forced them to flee in terror, and which resulted in the destruction of their homes and the community as a whole. They remain insecure, both with respect to their feelings of personal security, as well as with respect to their living conditions. Given that they had practiced shifting agriculture as a means of sustenance, when they were forced to flee they lost their homes, possessions and means of subsistence. Their culture, community and families were fractured, as the community became fragmented with members in different towns, and some in French Guiana. Because they have received neither justice nor compensation in the intervening years, their situation of insecurity continues.

Perhaps the most profound impact of the forced displacement was the loss of their traditional lands. The former inhabitants Moiwana are members of the Cottica Ndjuka people. Their ancestors were originally members of the Tapanahoni River Ndjuka people, who established villages in the Cottica region in the mid- to late-19th century. Over time, Cottica Ndjuka culture has evolved to where it is today referred to by anthropologists as similar to, but distinct from Tapanahony Ndjuka culture.⁷⁹ The members of the Moiwana community understand their village to have been founded at around 1900.

Moiwana was composed of ten sub-villages stretched out for approximately 4 kilometers along the Paramaribo-Albina road, constructed in the 1910s to facilitate bauxite mining in the region. The ten sub-villages were: Dogodoecamp, Samenacamp, Agwecamp, Sajofitacamp, Antinocamp, Tjamanisting, Atemacamp, Difijon, and Apoerlobicamp. Traditional territory for hunting, farming, fishing and other activities extended for tens of kilometers either side of the road. While Moiwana, at least in terms of land ownership, is most identified with the Misiedjan

⁷⁹ *Id.*, pp. 321-69.

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clan, it was composed of members of a number of different clans living in the various sub-villages. Each sub-village was occupied by several extended families. The members of the different sub-villages and clans were linked primarily through inter-marriage, kinship and self-identification as a community.

The founders of Moiwana were Da Djemesie of the Misiedjan /ö and Da Geleng and Da Adawna of the Djoe /ö. The present members of the village are overwhelmingly the descendants, through the male and female lines, of these founding members. Members of other /ö also came to live at Moiwana, inter-married and produced off-spring. Subsequent marriages between these off-spring and other community members created a complex kinship system that is fundamental to Ndjuka social, political and territorial relations and established strong kinship bonds and reciprocal rights and duties between all members of the community. As stated by Köbben, a Dutch anthropologist who did extensive fieldwork with Cottica Ndjuka: "The inhabitants of a Djuka village will say: 'We are all kinsman,' and in most cases this is actually true...."⁸⁰

Because of the attack, massacre, and ongoing impunity, the survivors and next of kin continue to be afraid to return to their traditional lands, and have consequently been unable to practice fundamental cultural and religious ceremonies, rituals and activities. These ceremonies and rituals are mostly associated with specific sites within their ancestral domain. The Petitioners emphasize that their lands are fundamentally related to the practice of their religion and culture, and rituals cannot be practiced in other places and environments. There were sacred places, trees, for instance, where they offered libations and gifts to their ancestors and spirits. Sacred objects and sites for worshipping ancestors such as graves, holy trees, prayer poles and bundles, all were left behind as a result of the forced displacement of the community. Prayer houses and other sites were damaged with the destruction of the Village. Consequently, former residents have been unable to practice certain rituals or, at a minimum, could not practice rituals in the prescribed manner.

The Petitioners note that Ndjuka cultural and religious obligations must be repeated at certain intervals without interruption. Because of the attack and massacre, the survivors have not been able to conduct the prescribed rituals of their culture at the correct times, or with due regularity. As a result, they feel that their spiritual world has been disturbed and angered. Because the survivors have not been able to set right what has been disturbed in the spiritual world, they feel this has created problems with the spirits of those died in the massacre.

The Petitioners report that

many survivors are not ready to return to Moiwana permanently at present, due to their traumatic and intensely painful memories of and experiences at Moiwana, experiences that most are unable to discuss even today. Some are unable to even travel past the former village site without reliving the past. They would however like to guarantee the rights of their children and future generations to live at Moiwana because of their profound cultural and spiritual bond with that place and its ancestral and other spirits. Some of the survivors would also like to do agriculture in their traditional farm lands even though they would not want to live there permanently.

A number of survivors do wish to return to their traditional lands to live. Further, the Petitioners report that:

⁸⁰ *Id.*, p. 321.

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[All] have indicated a strong desire, often expressed as a cultural and spiritual imperative, that the village site be set aside, and their ownership rights recognized and restituted, for their children and generations to come. All survivors and next of kin ... say that it would be just and proper if their ownership rights were recognized because of their obligations to the land and spirits and to their ancestors to pass down their lands to their children. Their children must have a place where they can live as their ancestors lived and can care for the sacred places in the correct manner.

In summary, some would like to return to Moiwana to live, others to conduct agriculture but not to live, and all to maintain spiritual and cultural obligations and to ensure that future generations can return at some point with security of tenure and person guaranteed.

As described above, following the attack and massacre, the survivors fled to Paramaribo, to other places in the bush and to neighboring French Guiana. The survivors who fled to French Guiana were placed in a refugee camp. After the war ended in 1992, some of the survivors decided to return to Suriname in early 1993. The Government of France supplied them with a small amount of money to return. As provided for by agreement with France, when they arrived in Suriname they were placed in a reception center in Moengo, at which time Suriname promised to rebuild their villages and otherwise provide for them. The reception center was a temporary residence in which the returnees were to stay until the villages were rebuilt. This promise was never honored, further contributing to the survivors' feelings of invisibility, and many remain in the reception center today.

All reports indicate that the survivors presently remain very afraid to return to Moiwana permanently. The Petitioners report that they are afraid that the massacre could be repeated. They indicate that the author of the massacre, Desi Bouterse, maintains a prominent and powerful position in Surinamese public life – he is a member of parliament and leader of the National Democratic Party, the largest opposition party sitting in parliament. When the survivors hear the name Bouterse they are immediately afraid and feel very unsafe. This is further compounded by the fact that they have never received an explanation for why the attack and massacre occurred, nor do they have the sense that Surinamese society and leaders care about or condemn what happened to them. Taken together with the ongoing trauma that many of the survivors continue to experience, these factors have created a perception that it would be unsafe, if not foolhardy to return now. It is for the foregoing reasons related to the forced displacement of the community from their traditional lands, and destruction of their homes and Village, that the Commission considers return to the land to constitute a necessary means of restitution. Secure return to the land further requires that it be titled to the community, and that certain guarantees be made with respect to assistance to and security for those who return.

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

The third measure requested, concerning the location and disposition of the remains of the victims of the massacre whose bodies have not been recovered, relates both to the State's duty to carry out an effective investigation aimed at ensuring accountability, and the remediation of the moral suffering of the families of these victims, who have been unable to effectuate their familial, cultural and religious obligation to provide their loved ones with a proper burial.

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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. Efforts to seek investigation of the massacre in 1993, when a mass grave was identified, were not dealt with in an effective manner by authorities. The Petitioners have indicated that some officials accused survivors of "muck-raking" or exaggeration because "only" nine bodies were identified. The relevant authorities reportedly refused further action citing the need to prioritize Suriname's economic development or the applicability of the 1992 amnesty law.

With respect to the second aspect, it must be emphasized that the survivors have suffered and continue to suffer a sense of responsibility or even failure for having been unable to bury their loved ones according to the ways of their culture and religion. In most cases, the survivors do not even have clarification as to what happened to the bodies. The rituals of commemoration and burial are 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.

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 – to 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 a Ndjuka community.

The Petitioners have emphasized to the Commission that the survivors are very dissatisfied with 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. They feel that they have been almost completely ignored by the State, which has rarely acknowledged that the massacre occurred. When it has done so, it is usually as an afterthought to the December Murders of 1982 and lumped together with 'other violations during the military era.'⁸¹

The Petitioners report that the survivors feel discriminated against because of their status as Maroons relative to the victims of the December Murders. While neither group has received justice, a monument to the victims of the December Murders is located in a prominent position in Paramaribo, and an annual memorial service, attended by members of the ruling coalition, is held in the cathedral in Paramaribo. Moreover, they report that the State has acted

⁸¹ See, for instance, Annex 23 (Motie van de National assemblee Suriname [Parliamentary Motion on Investigation of Human Rights Abuses], December 19, 1995, annexed to *Petition 11.821*. The December Murders involved the killings of prominent citizens from Paramaribo. The Petitioners indicate that many of the relatives of those killed continue to hold prominent positions in the professional classes, business and the media and are therefore able to exert some amount of pressure on the authorities to address the December Murders. Even so, no concrete action has been taken to resolve the December Murders through due prosecution and punishment. Maroons, including the Moiwana survivors, on the other hand, reportedly have little if any influence on the attitudes of the authorities in Paramaribo.

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to ensure that the statute of limitation has been extended specifically and exclusively in the case of the December Murders.

While the survivors who fled to French Guiana established their own monument there to honor the victims of the attack and massacre at Moiwana, there is no monument in Suriname. In sum, when they have had any contact with State authorities, the survivors feel that they have not been treated with respect. Indeed, they feel invisible and excluded from the justice system in Suriname. Because of the prevailing impunity, they perceive that their dignity is repeatedly degraded and their suffering ignored whenever the Moiwana attack and massacre are discussed or when human rights in general are discussed in Suriname.

D. 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.

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**

Both the survivors and the family members of those killed in the massacre have experienced moral suffering as a result of the ongoing denial of justice and displacement set forth above. The purpose of the present section is to draw attention to the specific circumstances that should be taken into account in assessing such damages, focusing on the nature of the obligations breached, and gravity of the violations and resulting harm.

As the Honorable Court has recognized, "it is characteristic of human nature" that a person subjected to serious aggression and abuse "will experience moral suffering."⁶² Accordingly, "no evidence is required to arrive at this conclusion."⁶³ Damages for non-patrimonial harm are provided for under international law, and have previously been calculated by the Honorable Court on the basis of principles of equity.⁶⁴ The Court has further indicated that the assessment of non-patrimonial damages must take into account the circumstances of the case, most particularly the gravity of the violations and the emotional suffering produced as a result.⁶⁵

The failure of the State to provide the effective judicial protection and guarantees required under the Convention has denied and continues to deny the Moiwana survivors justice. As the Honorable Court has determined, the failure of the authorities to clarify grave violations may

⁶² See Aloeboetoe Case, Reparations Judgment, *supra*, para. 52; El Amparo Case, Reparations Judgment, para. 36.

⁶³ *Id.*

⁶⁴ See Velásquez Rodríguez Case, Reparations Judgment, *supra*, para. 27; Godínez Cruz Case, Reparations Judgment, para. 25; Aloeboetoe Case, Reparations Judgment, *supra*, paras. 86-87. See also El Amparo Case, Reparations Judgment, *supra*, para. 37; Neira Alegria Case, Reparations Judgment, *supra*, para. 58.

⁶⁵ See El Amparo Case, Reparations Judgment, *supra*, para. 37; Neira Alegria Case, Reparations Judgment, *supra*, para. 58.

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generate great suffering and anguish on the part of family members, as well as feelings of "insecurity, frustration and impotence."⁸⁶ The impunity in the present case has caused those connected with it a palpable sense of insecurity. The survivors are well aware that those who ordered and orchestrated the massacre and related violations continue, in important instances, to occupy positions of power and influence in the country. The Moiwana survivors have yet to receive even minimal clarification from the State, and the continuing uncertainty about many aspects of the events is an ongoing source of damage.

The emotional consequences of the denial of justice are numerous. The Petitioners report that most relevant is the feeling of the survivors and next of kin that they have to relive the massacre every day because there is no closure to the event. This is more focused for some individuals than others – one man lost his wife and all of his children on November 29, 1986. The Petitioners report that he has vivid nightmares on a regular basis and cannot talk about the massacre without breaking down. They indicate that he thinks often about suicide and suffers frequently from depression. All must relive the massacre and the pain and suffering of seeing or knowing that their loved ones were killed and tortured every time there is a discussion about human rights in Suriname and every time they must meet to discuss progress on obtaining justice. They also suffer because they were unable to bury their loved one in the traditional ways and, in most cases, are unaware of what happened to the bodies. They seek justice in part because of the need to bring the massacre to an end in their own minds and lives, 16 years after the event.

As mentioned above, the Petitioners have emphasized that, in the context of their culture, the survivors must live with the knowledge that their failure to obtain justice has caused anger in the spirit world that can and, in their perspectives, has manifested itself in the physical world in the form of illness, disease and misfortune. They are generally unable to return to their sacred sites to offer libations to their ancestors and the dead traditionally understood as reducing this anger and retribution due to their fear and the knowledge that those who perpetrated the massacre are still at large. Not only are they still at large, they occupy positions of privilege, power and prestige. Moreover, they have never had an explanation for why the massacre took place, which has left them in the dark about the killers' motivations and uncertain about the future.

Their inability to maintain their relationship with their ancestral lands and its sacred sites has deprived them of a fundamental aspect of their identity and sense of well being. Without regular commune with these lands and sites, they are unable to practice and enjoy their cultural and religious traditions further detracting from their personal and collective security and sense of well being. This adds to their sense of loss and uncertainty about the future, and the future well being of their children and the generations to follow. Their loss of lands and struggles in a foreign place are reminiscent of the time of slavery – a time that pervades their consciousness and identity and remains very real today – when they were regarded as animals, without dignity and worth. The massacre and subsequent denial of justice are a direct throw back to the time of slavery and raise the Ndjuka's most powerful fear: a return to slavery. The treaties made with the Dutch are viewed as sacred and immutable guarantees of security, peace and freedom intended to secure Ndjuka autonomy and well being for all time. This vision was shattered

⁸⁶ *Bámaca Velásquez Case, Reparations Judgment, supra*, para. 160, citing IACtHR, *Blake Case, Judgment of January 24, 1998, Ser. C No. 36 (1998)*, para. 114.

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forever by the massacre. Even though the refugee camps are now closed, many still feel that they are refugees without a home and without security.

2. Material Damages

The denial of justice at issue in the present case has given rise to diverse economic consequences for the survivors of the attack. Notwithstanding that their quest for justice has been continuously obstructed by the State, the survivors have continued to meet and to pressure local authorities to comply with their duties under the law. Much of that work has been done in conjunction with *Moiwana '86*. The initiatives and efforts of the survivors have implied time and costs.

Because the attack has been left in impunity, the survivors have been denied the foundation of fact and law necessary to seek compensation – to which they were entitled – for the wrongs they suffered. There is, in this sense, a material consequence associated with the denial of justice that the Commission considers should be appreciated by the Honorable Court in equity.

Finally, in this regard the Commission notes that economic losses related to medical or psychological treatment required as a consequence of harm caused by the denial of justice and displacement resulting from the violations set forth above also fall within this heading. The Commission considers that the testimony that may be offered before the Honorable Court during an eventual hearing on the merits, as well as the information submitted by the family's representatives in their memorial will serve to establish a foundation for this aspect of damages.

E. Legal Costs and Fees

Given that the objective of reparations is to repair the damage suffered as a result of the violation of a protected right,⁸⁷ victims should generally be awarded the reasonable legal costs and fees that were required to pursue justice, including before the inter-American system. Accordingly, the Honorable Court has awarded such costs and fees for the pursuit of justice before national courts, as well as before the Inter-American Commission and Court of Human Rights.⁸⁸ Such costs "are a natural consequence of actions taken by the victim, [his or] her heirs or [his or] her representatives to obtain a Court resolution recognizing the violation committed and establishing its legal consequences [this] involves or can involve financial outlays and commitments for which the victim must be compensated when a judgment of condemnation is delivered."⁸⁹ The quest for justice in the present case arose as a direct result of the violations perpetrated by agents of the State of Suriname, in obstructing justice, and failing to provide the judicial protection and guarantees required under the American Convention.

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

⁸⁷ See *Aloeboetoe Case*, Reparations Judgment, *supra*, para. 49.

⁸⁸ See *inter alia*, IACtHR, *Loayza Tamayo Case*, Reparations, Judgment of November 27, 1998, Ser. C, No. 42 (1998), para. 178 (awarding costs and fees for the pursuit of justice before the national courts, as well as before the Commission and Court); *Blake*, Reparations Judgment, *supra*, para. 69 (awarding costs and fees before the Commission and Court); IACtHR, *Suárez Rosero Case*, Reparations, Judgment of January 20, 1999, Ser. C No. 44, paras. 90-100 (awarding costs and fees before the national courts and the Honorable Court).

⁸⁹ *Loayza Case*, Reparations Judgment, *supra*, para. 176.

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been denied by the State concerned. In the present case, the Commission considers that an award of costs and fees that is reasonable and justified, on the basis of the information to be submitted by the Petitioners, is essential. The Commission notes that 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.

VIII. 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 order:

That a hearing be convened in order to present the testimony of witnesses and experts as to the denial of justice at issue in the present application, as well as to receive oral arguments;

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

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

If deemed pertinent, that a hearing be convened for the purpose of receiving testimony on the reparations to be awarded.

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

Effectuate a prompt, thorough and effective investigation designed to clarify the circumstances of the attack on Moiwana village, and prosecute and punish those responsible;

Facilitate the return of all members of the Moiwana Village community who wish to remake their lives in their traditional homelands through the adoption of the measures necessary to demarcate those lands and title them to the community, and to provide guarantees of security;

Locate the remains of those who were killed in the attack on Moiwana Village and facilitate the wishes of their families as to the appropriate final resting place;

Honor the victims of the Moiwana attack through the establishment of a monument, and apologize for the ensuing denial of justice as a means of vindicating the dignity of the victims.

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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.

IX. SUPPORTING EVIDENCE

A. Documentary Evidence

See list of annexes, *infra*, section X.

B. Testimonial Evidence

1. Witnesses

Erwin Willemdam, Leoni Pinas, Malai Misiedjan, Antonia Difienjo and Andre Ajintoena were present during the attack on Moiwana Village, and will provide testimony about the effect that the ongoing denial of justice has had and continues to have on their lives. They will testify about the attempts of the victims to obtain justice in Suriname and the situation of the victims and their families since the attack.

Mr. Stanley Rensch is the former Director of Moiwana '86. He will testify based on his extensive knowledge of the attack, the subsequent denial of justice, and the past and present effects on the victims and their families.

2. Experts

Dr. Kenneth Bilby, an anthropologist presently based at the Smithsonian Institute in Washington, D.C., will address the events after the massacre (he was in St Laurent when the first refugees came over), Ndjuka kinship structures for the purposes of reparations, and the effects of the ongoing denial of justice on the victims and their families.

Prof. Dr. H.U.E Thoden van Velzen, retired professor of anthropology, University of Utrecht/University of Amsterdam, The Netherlands, has written numerous articles about Ndjuka Maroons and co-authored a book on the situation of Maroons in eastern Suriname during the period 1986-1988. *Vluchtelingen, Opstandelingen en andere Bosnegers van Oost-Suriname, 1986-1988* (Refugees, Rebels and other Bush Negroes of East-Suriname, 1986-1988). Utrecht: Bronnen voor de Studies van Afro-Surinaamse Samenlevingen, Centrum voor Caraibische Studies, Instituute voor Culturele Anthropologie, University of Utrecht. He will testify about the political climate prior to the massacre, the massacre itself and its aftermath, insofar as these relate to the denial of justice and prevailing impunity, as well as with respect to the effects of this impunity for the victims and their families.

Thomas S. Polimé witnessed events following the massacre and co-authored a book on the situation of Maroons in eastern Suriname during the period 1986-1988. *Vluchtelingen, Opstandelingen en andere Bosnegers van Oost-Suriname, 1986-1988* (Refugees, Rebels and other Bush Negroes of East-Suriname, 1986-1988). Utrecht: Bronnen voor de Studies van Afro-Surinaamse Samenlevingen, Centrum voor Caraibische Studies, Instituute voor Culturele Anthropologie, University of Utrecht. Mr. Polimé collected evidence about the attack and the situation of the refugees in French Guiana. He will testify about Cottica Ndjuka social structure, land tenure and the events before and after the massacre, insofar as these concern the denial of justice and its effect on the victims and their families.

X. LIST OF ANNEXES

Annex 1. Statement of the Petitioner, Victims, Survivors, and Dependents of the Moiwana Massacre Made Pursuant to Article 43(3) of the Rules of Procedure of the Inter-American Commission on Human Rights.

Annex 2: Inter-American Commission on Human Rights. Case N° 11.821 (Village of Moiwana) Suriname. Admissibility Report N° 26/00 dated March 7, 2000 approved by the Commission during its 106° Regular Session.

Annex 3: Inter-American Commission on Human Rights. Case N° 11.821 (Village of Moiwana) Suriname. Report on the Merits (Article 50) N° 35/02 dated February 28, 2002, approved by the Commission during its 114° Regular Session.

Annex 4: Inter-American Commission on Human Rights. Report on the Human Rights in Suriname dated October 5, 1983, OEA/Ser.LV/II.61 doc. 6 rev. 1.

Annex 5: Inter-American Commission on Human Rights. Report on the Human Rights in Suriname dated October 2, 1985, OEA/Ser.LV/II.66 doc. 21 rev. 1.

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Annex 6: Inter-American Commission on Human Rights. Annual Report 1982-1983 dated September 27, 1983, chapter II: Situation of Human Rights in the Member States of the OAS, Political Rights, p. 28, OEA/Ser.LV/II.61 doc. 22 rev. 1.

Annex 7: Inter-American Commission on Human Rights. Annual Report 1984-1985 dated October 1, 1985, chapter II: Activities of the IACHR, On-site Observation in Suriname, p. 15, OEA/Ser.LV/II.66 doc. 10 rev. 1.

Annex 8: Inter-American Commission on Human Rights. Annual Report 1985-1986 dated September 26, 1986, chapter IV: Situation on Human Rights in Several States, Suriname, pp. 185-188, OEA/Ser.LV/II.68 doc. 8 rev. 1.

Annex 9: Inter-American Commission on Human Rights. Annual Report 1986-1987 dated September 22, 1987, chapter IV: Political Rights, Suriname, pp. 262-267, OEA/Ser.LV/II.71 doc. 9 rev. 1.

Annex 10: Inter-American Commission on Human Rights. Annual Report 1988-1989 dated September 18, 1989, chapter IV: Situation on Human Rights in Several States, Suriname, pp. 212-214, OEA/Ser.LV/II.76 doc.10 rev. 1.

Annex 11: Inter-American Commission on Human Rights. Annual Report 1989-1990 dated May 17, 1990, chapter IV: Situation on Human Rights in Several States, Suriname, OEA/Ser.LV/II.77 doc.7 rev. 1.

Annex 12: Inter-American Commission on Human Rights. Annual Report 1990-1991 dated February 22, 1991, chapter IV: Situation on Human Rights in Several States, Suriname, OEA/Ser.LV/II.79 doc. 12 rev. 1.

Annex 13: Inter-American Commission on Human Rights. Annual Report 1991 adopted February 14, 1992, chapter IV: Situation on Human Rights in Several States, Suriname, OEA/Ser.LV/II.81 doc. 6 rev. 1.

Annex 14: OAS, Report of the Secretary General on the OAS Action in the Peace Process in Suriname, January 15, 1993, pp. 1-27.

Annex 15: Americas Watch Report: *Human Rights in Suriname*, March 30, 1983.

Annex 16: Amnesty International Report, *Suriname: Violations of Human Rights*, dated September 1987.

Annex 17: United States Committee for Refugees Report, *Flight from Suriname: Refugees in French Guiana* (1987).

Annex 18: International Alert Report: *Suriname*, March 1988.

Annex 19: United Nations, *Summary of Arbitrary Executions*, Report by the Special Rapporteur, Mr. Amos S. Wako, pursuant to Economic and Social Council Resolution 1987/60, U.N. Doc. E/CN. 4/1988/22.

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Annex 20: United States Department of State, Country Reports on Human Rights Practices, Suriname, 1997, 1998, 1999, 2000 and 2001.

Annex 21: *Parties and Revolutionary Movements, Suriname*, Yearbook on International Communist Affairs (R.F. Staar, ed., 1987).

Annex 22: Mr. Adiante Franszoon, "The Suriname Maroon Crisis", from a country visit in December 1987.

Annex 23: Motie van de National Assemblée Suriname [Motion by the Parliament of Suriname on Investigation of Human Rights Abuses], December 19, 1995.

Annex 24: Letters from Moiwana '86 to the Procurator General of Suriname, dated May 24, June 28 and August 23, 1993.

Annex 25: Moiwana '86, "Moiwana Graves", June 10, 1993.

Annex 26: Letters from the President of the Court of Justice of Suriname:

- a) to the Procurator General, dated August 21, 1996.
- b) to the Director of Moiwana 86, dated October 2, 1996.
- c) to the Director of Moiwana 86, February 26, 1997.

Annex 27: Newspaper Articles:

- a) Weekkrant Suriname, "Sweedo a free man again", May 6-12, 1989.
- b) Weekkrant Suriname, "Arrest in connection with the massacre in Moiwana, April 22-28, 1989.
- c) Weekkrant Suriname, "Bouterse violates the Constitution; The President disfigured; Government attitude very weak", April 29, 1989.
- d) Algemeen Dagblad, "Rensh: Investigation of the massacre in east-Suriname", May 25, 1993.
- e) De Ware Tijd, "What happened in Moiwana?", May 28, 1993.

Annex 28: Amnesty Act 1989, Statutes of the Republic of Suriname, No. 68, August 19, 1992, determined to take effect August 20, 1992.

Annex 29: Videotape concerning the Moiwana massacre.

Annex 30: Declaration of Power of Attorney.