

CORTE I.D.H.
12 JUL 2007
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No. 12.338 Twelve Saramaka Clans

0001088

IN THE
INTER-AMERICAN COURT OF HUMAN RIGHTS

Wazen Eduards ET AL.,

Petitioners,

v.

The Republic of Suriname,

Respondent

Final Written Argument of the Victims' Representatives

06 July 2007

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Final Written Arguments of the Victims' Representatives
Case of Wazen Eduards Et Al. v. Suriname

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I. Introduction

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") submitted Case 12.338 *Twelve Saramaka Clans v. Suriname* to the Inter-American Court of Human Rights (hereinafter "the Court") on 23 June 2006. The Commission's Application alleges that the State of Suriname (hereinafter "the State" or "Suriname") is responsible for violations of Articles 21, 25 and 1 and 2 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") as a result of the State's failure to guarantee and respect the property rights of the Saramaka people, its constituent clans and the members thereof (hereinafter "the Saramaka people" or "the victims"), and its failure to establish effective judicial remedies in relation to those property rights.¹

2. The victims' representatives submitted a brief containing their pleadings, motions and evidence on 03 November 2006.² They request that the Court determines Suriname's international responsibility for the violation of Articles 3, 21, 25 and 1 and 2 of the Convention. They also request that the Court interpret Article 21 of the Convention, pursuant to Article 29(b) of the same, in accordance with, *inter alia*, common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

3. On 9-10 May 2007, the Court held a public hearing on the preliminary objections and possible merits and reparations in the case. During the hearing, the Commission and the victims' representatives presented four witnesses and one expert witness. Pursuant to the Order of the Court of 30 March 2007, the Commission and the Victims' Representatives also submitted expert and witness testimony by affidavit.³ This testimony complemented the documentary proof submitted to the Court by the Commission and the victims' representatives. For its part, Suriname presented three witnesses and one expert in the hearing, as well as the testimony of one expert and one witness by affidavit.

4. In this case, the Commission and the victims' representatives have alleged and substantiated violations of Articles 21 and 25 of the Convention both in conjunction with Articles 1 and 2 of the same. In addition to these violations, and on the basis of the facts presented in the Commission's Application, the victims' representatives

¹ *Application of the Inter-American Commission on Human Rights in the Case of 12 Saramaka Clans (Case 12 338) Against the Republic of Suriname*, 23 June 2006 (hereinafter "Application of the Commission").

² *Pleadings, Motions and Evidence of the Victim's Representatives in the Case of 12 Saramaka Clans (Case 12 338) Against the Republic of Suriname*, 03 November 2006 (hereinafter "Brief of the Victims' Representatives").

³ See, Affidavit of Head Captain Eddie Fonkie, Witness; Affidavit of Silvi Adjako, Witness; Affidavit of George Leidsman, Witness; Affidavit of Dr. Robert Goodland, Expert Witness; Affidavit of Hugo Jabini, Witness, and; Affidavit of Dr. Peter Poole, Expert Witness.

additionally asserted and substantiated a violation of Article 3 of the Convention in conjunction with Articles 1 and 2 of the same.⁴

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5. The following are the final written arguments of the victims' representatives, which summarize the facts proven and the legal foundations for the conclusion that Suriname has violated Articles 3, 21 and 25 of the American Convention, all in conjunction with Articles 1 and 2 of the same.

II. Preliminary Objections

6. Suriname has interposed a number of preliminary objections in this case.⁵ These preliminary objections are addressed in detail in the prior submissions of the Commission⁶ and the victims' representatives.⁷ The victims' representatives hereby incorporate by reference their prior observations on the State's preliminary objections and rely on those observations. In particular, the victims' representatives consider that the Court has full jurisdiction to examine the merits of the present case, and that it meets all requirements of admissibility. The preliminary objections presented by the State lack any foundation as a matter of law or fact, and the victims' representatives respectfully request that they be dismissed. The victims' representatives also endorse the view of the Commission that the Commission's decision on admissibility is completely consistent with the provisions of the Convention and that there is no compelling reason for that decision to be reviewed at this stage of the proceedings.⁸

7. While the victims' representatives have submitted their observations with respect to the preliminary objections interposed by Suriname in its answer to the

⁴ The Court has explained that it "has already established that it is possible for the victims, their next of kin or their representatives to allege violation of other Articles of the Convention than those already included in the object of the demand filed by the Commission, based on the facts contained in said application, for which it refers to the "Five Pensioners" case, in which it stated that: With respect to inclusion of rights other than those already encompassed by the application filed by the Commission, the Court deems that the applicants can invoke said rights. It is they who are entitled to all the rights embodied in the American convention, and not admitting this would be an undue restriction of their status as subjects of International Human Rights Law. It is understood that the above, pertaining to other rights, adheres to the facts already contained in the application." *Myrna Mack Chang Case*, Judgment of 25 November 2003. Ser C No. 101, at para. 224, quoting, '*Five Pensioners Case*', Judgment of February 28, 2003. Ser C No. 98, paras. 153, 154 and 155.

⁵ See, *Official Response of the State of Suriname in Case No. 12.338 Twelve Saramaka Clans v. Suriname submitted to the Inter-American Court of Human Rights*, Paramaribo, 12 January 2007 (hereinafter "Official Response of the State"); *Observations of the State of Suriname to the document: "Pleadings, Motions and Evidence of the Victims' Representatives in the Case of 12 Saramaka Clans (case 12 338) against the Republic of Suriname"*, CJDM/645/07, 26 March 2007 (hereinafter "Suriname's Second Response"); and, *Written Transcript of the Public Hearing on Preliminary Objections as well as possible Merits, Reparations and Costs, May 9 and 10, 2007*, Wazen Eduards Et Al. v. Suriname (hereinafter "Written Transcript").

⁶ *Observations of the Inter-American Commission on the Preliminary Objections Proposed by the State of Suriname*, 28 February 2007.

⁷ *Observations of the Victims' Representatives in Response to the Preliminary Objections Presented by the Republic of Suriname*, Twelve Saramaka Clans v. Suriname, 01 March 2007 (hereinafter "Observations of the Victims' Representatives on Preliminary Objections").

⁸ *Observations of the Inter-American Commission on the Preliminary Objections Proposed by the State of Suriname*, 28 February 2007, para. 27.

Commission's Application, the State has raised additional points during the public hearing that may be categorized as preliminary objections. In particular, Suriname objected to any consideration by the Court of the effects and consequences of the Afobaka dam because, in its view, the Court does not have jurisdiction *ratione temporis* in this respect. Suriname also raised a number of points with regard to domestic remedies. Consequently, the victims' representatives offer the following observations on these points herein.

A. Court's Jurisdiction *ratione temporis*

8. During the public hearing in this case, the Suriname argued that the allegations of the victims' representatives with respect to the ongoing and continuous effects and consequences of the Afobaka dam and reservoir, and the associated violations of the Saramaka people's rights, are not within the Court's jurisdiction *ratione temporis* and, therefore, should be declared inadmissible.⁹

9. The Afobaka dam was constructed in the early 1960s, some 20 years prior to Suriname's acceptance of the Court's jurisdiction on 12 November 1987, and caused the forced expulsion of around 6000 Saramaka persons. However, the victims' representatives stress that they are not requesting that the Court examine the events of the 1960s, but, rather, that it consider the ongoing and continuous effects and actions associated with the dam and which also amount to extant and ongoing violations of the Saramaka people's rights under the American Convention. These effects and actions include the ongoing denial and breach of the victims' property and other rights. Because of their ongoing and continuous nature, the Court has jurisdiction *ratione temporis* to review these alleged violations.¹⁰

10. The Court has previously retained jurisdiction over a state's continuing violations even though such violations were initiated before that state's formal recognition of its jurisdiction. For example, in the *Blake Case*, the Court held that

the preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions.¹¹

11. The Court reaffirmed this approach in, *inter alia*, *Genie Lacayo*, *Plan de Sanchez*, *Alfonso Martín del Campo Dodd*, *Serrano-Cruz Sisters*, *Moiwana Village* and *Sawhoyamaya Indigenous Community*.¹² In *Moiwana Village*, for instance, the Court stated that

⁹ Written Transcript, *supra*, p. 80, 82-3. See, also, Suriname's Second Response, *supra*, 57-8.

¹⁰ *Moiwana Village Case*, Judgment of 15 June 2005. Ser C No 124, at para. 108; and *Blake Case*, Judgment of 2 July 1996. Series C No. 27, at paras. 33 and 40.

¹¹ *Blake Case*, *id.*

¹² *Genie Lacayo Case*, Judgment of 27 January 1995. Series C No. 21, para. 22-26; *Plan de Sánchez Massacre Case, Reparations*, 19 November 2004. Series C No. 105; *Case of Alfonso Martín del Campo-Dodd. Preliminary Objections* Judgment of September 3, 2004. Series C No. 113, para. 79; *Case of the Serrano-Cruz Sisters. Preliminary Objections* Judgment of November 23, 2004. Series C No. 118, para. 67; *Moiwana Village*, *supra*, at para. 39, 108, 126; and *Sawhoyamaya Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146, para. 95, 128.

in the case of a continuing or permanent violation, which begins before the acceptance of the Court's jurisdiction and persists even after that acceptance, the Tribunal is competent to examine the actions and omissions occurring subsequent to the recognition of jurisdiction, as well as their respective effects.¹³

12. The position taken by the Court is also subscribed to by other international courts and tribunals which routinely exercise jurisdiction over alleged breaches of international law that began before the date of a state's ratification and continue thereafter.¹⁴ The European Court of Human Rights, for example, has held on numerous occasions that temporal limitations do not preclude its review of continuing violations of the European Convention on Human Rights,¹⁵ as has the Human Rights Committee in relation to the International Covenant on Civil and Political Rights and its Optional Protocol I.¹⁶ The principle of continuing violations has also been codified by the International Law Commission in its Articles on State Responsibility.¹⁷

13. Of particular relevance to the Court's jurisdiction over the alleged violations of Article 21 of the American Convention that are associated with the Afobaka dam is the European Court's decision in *Loizidou v. Turkey*. In that case, the European Court found that a deprivation of property that occurred prior to acceptance of its jurisdiction constitutes a continuing violation of the European Convention provided that the applicant can, at present, be regarded as the legal owner of the land in question.¹⁸ The Court endorsed this position in *Moiwana Village*.¹⁹ As proved by the evidence before the Court, under the customary law of the Saramaka people, the victims remain the lawful owners of the lands and resources submerged by the Afobaka dam and they continue to be deprived of their property rights on an ongoing basis due to Suriname's continuing acts and omissions.

14. The Governing Body of the International Labour Organization has also held states responsible for continuing violations of indigenous and tribal peoples' land and

¹³ *Moiwana Village, id.*, at para. 39.

¹⁴ *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) (1981); *Phosphates in Morocco case (Italy v. France)*, PCIJ Series A/B, No. 74 (1938), at 28. Also see, *inter alia, X v. France*, Eur. Ct. H.R., App. no. 18020/91 (1992)(Judgment)(Merits and Just Satisfaction); *Bozano v. France*, Eur. Ct. H.R., App. no. 09990/82 (1986)(Judgment)(Merits).

¹⁵ *Inter alia, Papamichalopoulos et al v. Greece*, Eur. Ct. H.R., App. no. 14556/89 at para. 40 (1993)(Judgment)(Merits); *Agrotexim and Others v. Greece*, Eur. Ct. H.R., App. no. 14807/89 at para. 58 (1995)(Judgment)(Merits), *Loizidou v. Turkey*, Eur. Ct. H.R., App. no. 15318/89 at para. 41(1996)(Judgment), (Merits and Just Satisfaction).

¹⁶ *Inter alia, Könye v. Hungary*, Communication 520/1992, U.N. Doc. CCPR/C/50/D/520/1992 at para. 6.4 (1994); *Simunek, Hastings, Tuzilova and Prochazka v. The Czech Republic*, Communication No. 516/1992, U.N. Doc. CCPR/C/54/D/516/1992 at para. 4.5 (1995); *Dobroslav Paraga v. Croatia*, Communication No. 727/1996, U.N. Doc. CCPR/C/71/D/727/1996 at para. 9.3 (2001) and; *Vladimir Kulomin v. Hungary*, Communication No. 521/1992, U.N. Doc. CCPR/C/50/D/521/1992 at para. 11.2 (1996).

¹⁷ *The International Law Commission's Articles on State Responsibility*, annexed to GA Res. 56/83, 12 December 2001, Arts. 14 and 15.

¹⁸ *Loizidou v. Turkey (Merits)*, Judgment of the ECtHR, 18 December 1996, (40/1993/435/514), at para. 41.

¹⁹ *Moiwana Village, supra*, para. 43 and 134.

resource rights as guaranteed by ILO Convention No. 169 Concerning Indigenous and Tribal Peoples (1989), even though the original events took place decades prior to the states' ratification of that convention. One such case involved consideration of a Representation filed pursuant to article 24 of the ILO Constitution which alleged continuing violations by Mexico of indigenous peoples' land and resource rights and their right to be free from involuntary relocation, all in connection with construction of a hydroelectric dam.²⁰ Observing that Mexico's view that it was not responsible for events that occurred prior to entry into force was correct, the Committee established to review the Representation nonetheless held that

the effects of the decisions that were taken at that time continue to affect the current situation of the indigenous peoples in question, both in relation to their land claims and to the lack of consultations to resolve those claims. The Committee therefore considers that the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force.²¹

15. The Governing Body reached the same conclusion in the *Thule Case* against Denmark, where forcible relocation occurred 44 years prior to that state's accession to Convention No. 169. In this case, which, along with the preceding decision against Mexico, is highly relevant to the case at hand, the Governing Body stated that

The Committee observes that the relocation of the population of the Ummannaq settlement, which forms the basis of this representation, took place in 1953. It also takes note of the fact that the Convention only came into force for Denmark on 22 February 1997. The Committee considers that the provisions of the Convention cannot be applied retroactively, particularly with regard to procedural matters, such as whether the appropriate consultations were held in 1953 with the peoples concerned. However, the Committee notes that the effects of the 1953 relocation continue today, in that the relocated persons cannot return to the Ummannaq settlement and that legal claims to those lands remain outstanding. Accordingly, the Committee considers that the consequences of the relocation that persist following the entry into force of Convention No. 169 still need to be considered with regard to Articles 14(2) and (3), 16(3) and (4) and 17 of the Convention, examined below,

²⁰ *Report of the Committee set up to examine the representation alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, (No. 169), made under article 24 of the ILO Constitution by the Radical Trade Union of Metal and Associated Workers.* Doc.GB 273/15/6; GB.276/16/3 (1999). See, also, *Report of the Committee of Experts set up to examine the representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Confederación Ecuatoriana de Organizaciones Sindicales Libres (CEOSL).* Doc. GB.277/18/4, GB.282/14/2, submitted 2000, at para. 28 and 30 (concerning oil exploration activities in the Ecuadorian Amazon and stating that "the situation created by the signature of that agreement still prevails. In addition, the obligation to consult the peoples concerned does not only apply to the concluding of agreements but also arises on a general level in connection with the application of the provisions of the Convention (see Article 6 of Convention No. 169)").

²¹ *Report of the Committee set up to examine the representation alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, (No. 169), id.* at para. 36.

despite the fact that the relocation was carried out prior to the entry into force of the Convention.²²

16. Articles 14(2) and (3) of the ILO Convention read, respectively, that: "Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession;" and "[a]dequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."²³ In the *Thule Case*, the Governing Body concluded by observing that these and other "provisions of the Convention are almost invariably invoked concerning displacements of indigenous and tribal peoples which predated the ratification of the Convention by a member State."²⁴

17. The victims' representatives have alleged that violations of the American Convention are extant in relation to Suriname's ongoing acts and omissions in relation to the Afobaka dam. While these violations originated in the construction of the dam in the 1960s, they are of an ongoing and continuous nature and such violations, as is well established in the Court's jurisprudence, *prima facie* fall within the Court's temporal jurisdiction. The above cited jurisprudence of the Governing Body of the International Labour Organization, which concerns both the ongoing impacts of a dam and forced displacements of indigenous and tribal peoples, is also highly relevant to the situation of the Saramaka people in the instant case. This jurisprudence, at least with respect to ongoing and continuous effects and consequences, is consistent with the Court's jurisprudence and the jurisprudence of other international courts and tribunals. Consequently, the victims' representatives respectfully request that Suriname's objection to the Court's jurisdiction *ratione temporis* be rejected and dismissed.

B. Exhaustion of Domestic Remedies

18. The *jurisprudence constante* of the Inter-American system holds that should a state allege non-exhaustion it "must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness."²⁵ Suriname has failed to meet the burden of proof in this rule; in particular, and as discussed in detail in the victims' representatives' observations on Suriname's preliminary objections, the State has failed to demonstrate that adequate and effective remedies are available in the

²² Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Sulinermik Inuussutissarsiteqartut Kattuffiat (SIK). Doc. GB 277/18/3; GB 280/18/5 (2001), at para. 29.

²³ These standards are consistent with the orders of the Court in, *inter alia*, the *Awes Tingni Case*, which provide, among others, that the State establish mechanisms for delimitation, demarcation, and titling of the indigenous communities' properties, "in accordance with the customary law, values, usage, and customs of these communities." *The Mayagna (Sumo) Indigenous Community of Awes Tingni Case*. Judgment of August 31, 2001. Ser C, No. 79, at para. 164.

²⁴ Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), *supra*.

²⁵ *Cantoral Benavides case. Preliminary Objections*. Judgment of 3 September 1998. Ser C No. 40, at para. 31; *Durand and Ugarte case. Preliminary Objections*. Judgment of 29 May 1999. Ser C No. 50, at para. 33.

circumstances of the case *sub judice*.²⁶ Indeed, the State cannot meet its burden in this respect as no such remedies exist.²⁷ Additionally, a number of the alleged remedies identified by the State in its pleadings before the Court and during the public hearing were not identified in the proceedings before the Commission. On this basis, Suriname has constructively waived its right to raise these points at this stage of the proceedings and is barred from doing so extemporaneously.²⁸

1) Tacit waiver

19. Suriname has constructively waived its right to object with respect to the majority of the domestic remedies it has identified before the Court. The victims' representatives refer specifically to the State's contentions with regard to Article 221 of the Suriname Civil Code;²⁹ Article 47-48 of the 1986 Mining Decree;³⁰ Article 103, 105 and 106 of the 1987 Constitution;³¹ and the availability of a remedy under Article 1386 of the Suriname Civil Code as an appeal against the failure of the President to respond to the victims' complaints submitted pursuant to Article 41(1)(b) of the Forest Management Act.³² The State simply failed to allege that these remedies were not exhausted in the initial stages of the proceedings before the Commission, and Suriname is barred from doing so at this stage of the proceedings.³³

2) Article 1386 of the Suriname Civil Code

20. Suriname argues that Article 1386 of its Civil Code provides an effective remedy that the victims failed to invoke and exhaust.³⁴ This provision is addressed in detail in the observations of the victims' representatives on the preliminary objections interposed by Suriname and, therefore, only a few observations are offered herein.³⁵

²⁶ *Observations of the Victims' Representatives in Response to the Preliminary Objections Presented by the Republic of Suriname*, Twelve Saramaka Clans v. Suriname, 01 March 2007 (hereinafter "Observations of the Victims' Representatives on Preliminary Objections"), p. 11-27.

²⁷ In support of this contention, see, also, *Affidavit of Expert Witness. Mariska Muskiet. Submitted by the Inter-American Commission on Human Rights and the Victims' Representatives*, 02 May 2007, (hereinafter "Affidavit of M. Muskiet").

²⁸ *Moiwana Village*, *supra*, at para. 49 (holding that the State must raise objections to non-exhaustion of domestic remedies "at the admissibility stage of the proceeding before the Commission ... otherwise, the State is assumed to have waived constructively its right to resort to it. [And] the respondent State may waive, either expressly or implicitly, the right to raise an objection for failure to exhaust the domestic remedies"); *Indigenous Community Yakye Axa*, Judgment of June 17, 2005. Ser C No. 125, para. 91; *Acevedo-Jaramillo et al*, Judgment of February 7, 2006. Ser C No. 144, para. 124; *García-Asto and Ramírez-Rojas*, Judgment of November 25, 2005. Ser C No. 137, paras. 49 and 50, and; *Serrano-Cruz sisters*, Preliminary Objections, *supra*, para. 135.

²⁹ Official Response of the State, *supra*, para. 262. In response to these contentions, see, *Observations of the Victims' Representatives on Preliminary Objections*, *supra*, para. 88-91.

³⁰ Official Response of the State, para. 244-24. In response to these contentions, see, *Observations of the Victims' Representatives on Preliminary Objections*, *supra*, para. 92-98.

³¹ Written Transcript, *supra*, p. 91, para. 3 (contending that it is possible to seek judicial protection by directly invoking Article 21 of the American Convention).

³² Official Response of the State, *supra*, para. 141, 144, 260-61. In response to these contentions, see, *Observations of the Victims' Representatives on Preliminary Objections*, para. 65-6.

³³ *Sawhoyamaxa Indigenous Community v. Paraguay*, 29 March 2006. Ser C No. 146, para. 100.

³⁴ Official Response of the State, *supra*, para. 141, 144, 260-61; and Written Transcript, *supra*, p. 85, 89.

³⁵ *Observations of the Victims' Representatives on Preliminary Objections*, *supra*, para. 77-87.

These observations are offered primarily in response to the points raised by the State during the public hearing, where it extensively referred to Article 1386.³⁶

21. First, Suriname's arguments with regard to Article 1386 founder on the fact that Article 1386 of the Civil Code is procedurally only available to individuals and it is, therefore, unavailable in relation to the collective rights at issue in the instant case. Suriname explicitly admitted this point in its submissions before the Commission, stating that Article 1386 is only available to "individuals," whereas the rights and violations now before the Court are collective in nature.³⁷

22. This principle is set forth explicitly in Suriname's 2004 Mining Bill, which requires that indigenous and tribal peoples submit appeals to the 'executive' because, as stated in the explanatory note, "traditional rights do not lend themselves to the normal court procedure as individual rights are not involved."³⁸ The United Nations Committee on the Elimination of Racial Discrimination has expressed concern – without response by Suriname to-date – about the racially discriminatory nature of this provision in two urgent action decisions issued in 2005 and 2006.³⁹

23. Second, and consistent with the preceding point, indigenous and tribal peoples and their communities lack the requisite legal personality to pursue collective claims in the Suriname judicial system.⁴⁰ That this is the case has been verified previously by, *inter alia*, the Court itself in *Moiwana Village*,⁴¹ by the Commission,⁴² by the United Nations Committee on the Elimination of Racial Discrimination,⁴³ and by the Inter-American Development Bank.⁴⁴

24. Third, the above points are confirmed in the expert testimony of Mariska Muskiet who also states that "article 1386 involves a civil tort action and does not

³⁶ Written Transcript, *supra*, p. 85, 89.

³⁷ *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No. 12.338 "Twelve Saramaka L6s (Communities)"*, no date, at para. 28, in *Case File before the Commission*, Volume III & IV submitted with the Commission's Application.

³⁸ See, Affidavit of M. Muskiet, *supra*, at para. 48-9.

³⁹ See, *Follow-Up Procedure, Decision 3(66)*, Suriname. UN Doc. CERD/C/66/SUR/Dec.3, 9 March 2005; *Urgent Action Decision 1(67)*, Suriname. UN Doc. CERD/C/DEC/SUR/2, 18 August 2005; and *Urgent Action Decision 1(69)*, Suriname. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006.

⁴⁰ This issue is discussed in greater detail in Brief of the Victims' Representatives, *supra*, para. 159-71 and in the Observations of the Victims' Representatives on Preliminary Objections, *supra*.

⁴¹ *Moiwana Village*, *supra*, para. 86(5) (finding that "Although individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective property rights").

⁴² *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006 (finding that "indigenous and Maroon communities lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community or other traditional collective entities that possess land").

⁴³ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 14 (finding that "indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons").

⁴⁴ Observations of the Victims' Representatives on Preliminary Objections, *supra*, para. 55-6, citing, quoting and annexing, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006.

provide effective means to address the underlying problem that the Saramaka face: the lack of recognition of their communal property rights.”⁴⁵ Muskiet’s affidavit explains the nature of a series of “insurmountable problems for the Saramaka people to file and win a case under article 1386”⁴⁶ and which support her conclusion that “invoking article 1386 of Suriname’s Civil Code would be futile in the circumstances of the Saramaka people’s claims and the rights that they are seeking to protect. They would have no hope of success.”⁴⁷

3) Articles 47 and 48 of the 1986 Mining Decree

25. Suriname argues in its written pleadings and in the public hearing that its Mining Decree provides effective remedies that the victims failed to invoke and exhaust.⁴⁸ These contentions are addressed and refuted in the observations of the victims’ representatives on Suriname’s preliminary objections.⁴⁹ The State’s arguments in this respect are also directly refuted by its own expert witness, Dr. Hoever-Venoaks, who testified unequivocally that the Mining Decree “does not offer legal protection to ‘inhabitants of the interior living in tribal communities.’”⁵⁰ This statement both concurs with and verifies the views of the victims’ representatives, and directly contradicts the baseless assertions of the State.

C. Concluding Remarks

26. The preliminary objections presented by the State lack any foundation as a matter of law or fact, and the victims’ representatives respectfully request that they be dismissed. The State’s argument that the alleged ongoing and continuous violations of the rights of the Saramaka people that are associated with the Afobaka dam are beyond the scope of the Court’s temporal jurisdiction fails in light of the Court’s jurisprudence with respect to continuing or permanent violations of the American Convention. Similarly, Suriname’s contentions with respect to the exhaustion of domestic remedies are either time barred or baseless, and, in general, the State has failed to demonstrate that adequate and effective remedies are available in the circumstances of the case *sub judice*.

III. Proven Facts

27. The documentary and testimonial evidence before the Court proves the facts upon which the allegations in this case are based, and which amount to violations of the American Convention. The documentary and other evidence presented by Suriname do not refute the alleged human rights violations, but instead confirm those violations. Moreover, much of the evidence presented by the State simply does not concern the case at hand as it does not relate to the traditional territory of the

⁴⁵ Affidavit of M. Muskiet, *supra*, at para. 42.

⁴⁶ *Id.* at para. 40, 40-1, 47-9.

⁴⁷ *Id.* at para. 43.

⁴⁸ Official Response of the State, *supra*, para. 244-24 and; Written Transcript, *supra*, p. 85.

⁴⁹ Observations of the Victims’ Representatives on Preliminary Objections, *supra*, para. 92-98.

⁵⁰ Affidavit of Dr. M.R. Hoever-Venoaks submitted by the State of Suriname, 29 April 2007 (notarised 02 May 2007), at p. 2.

Saramaka people.⁵¹ Additionally, throughout the proceedings before the Court, Suriname has not expressly contested or denied the facts presented by the Commission and the victims' representatives or it has not done so with the requisite degree of specificity that could disprove the facts presented.⁵² In certain cases, Suriname has expressly or impliedly admitted to the veracity of the facts before the Court.⁵³

A. The Saramaka people and its Traditional Lands, Territory and Resources

28. The Saramaka people are one of the six Maroon peoples that live within the State of Suriname. Maroons are the descendants of African slaves who fought themselves free from slavery and established viable and autonomous societies along the major rivers of Suriname's rainforest interior between the 17th and mid-19th centuries.⁵⁴ The Saramaka people is distinct from other Maroon peoples and other ethnic groups in Suriname; it has its own language, history, religion, culture, and territory.⁵⁵ The Saramaka people's freedom from slavery and rights to territorial, cultural and political autonomy were recognized in a treaty concluded with the Dutch colonial government in 1762.⁵⁶

29. The Court has previously found that Maroon peoples in Suriname, such as the Saramaka people, are tribal peoples and that they enjoy the same rights as indigenous peoples under international law.⁵⁷ This is also the domestic practice of the American states in which both indigenous and tribal peoples live. The laws of Colombia, Ecuador and Brazil, for example, recognize that ILO Convention No. 169 Concerning Indigenous and Tribal Peoples applies to both indigenous and Maroon peoples and all have adopted constitutional and legislative measures to guarantee the property and other rights of both groups.⁵⁸

⁵¹ See, for instance, *Affidavit of S Hugo Jabini*. Submitted by the Inter-American Commission on Human Rights and the Victims' Representatives, 02 May 2007 (hereinafter "Affidavit of H. Jabini"), para. 30-1 (discussing the maps presented in *Official Response of the State of Suriname*, 12 January 2007, Annex 1, Compact Disc).

⁵² Article 37(2) of the Court's Rules of Procedure provide that "In its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested."

⁵³ See, for instance, Written Transcript, *supra*, p. 85 (where the State admits, *inter alia*, that Suriname does not have any procedure for recognizing and securing the property rights of the Saramaka people; that the rights of the Saramaka people, or indigenous and tribal peoples in general, are not recognized in nor protected by its 1987 Constitution; and that Suriname law does not allow for judicial review of legislation to ensure compliance with Constitutional principles)

⁵⁴ *Moiwana Village*, *supra*, para. 86(1).

⁵⁵ *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 58.

⁵⁶ *Report of Prof. Richard Price*, Application of the Commission, *supra*, Annex 1, para. 4.1 and; *Report of Dr. Richard Price in support of Provisional Measures*, Application of the Commission, *supra*, Annex 2, para. 2.

⁵⁷ *Moiwana Village Case*, *supra*, para. 133.

⁵⁸ For example, see, Transitional article 55, Colombia Const. 1991, Law No. 70 of 1993, and Decree 1745 of 1995.

30. There are no accurate census data on the size of the contemporary Saramaka population.⁵⁹ Estimates range from 25,000 to 34,482 persons, the latter being the number of registered Saramaka patients at clinics run by the Medical Mission, an NGO that provides health care in the large parts of the interior of Suriname.⁶⁰ This number is most likely low as not all Saramaka have access to a Medical Mission clinic and it would also not account for a percentage of the Saramaka that live in Paramaribo and elsewhere. The State has contested these estimates and asserted that, according to its last census, 21,532 Saramaka do not live on the Upper Suriname River, and that this constitutes a “great exodus” of 67 percent of the Saramaka community.⁶¹

31. The State does not explain where these 21,532 Saramaka live nor does it seem cognizant of the fact that close to 6,000 Saramaka were forced to leave the Upper Suriname River when the State flooded their traditional lands with the Afobaka dam in the 1960s.⁶² Some of these people live in 13 so-called ‘transmigration’ communities, which lie outside of traditional Saramaka territory in the Brokopondo District, and today have an estimated population of some 8-10,000 persons (by the State’s calculation, this is around 30 percent of the total Saramaka population).⁶³ These population estimates also do not account for the fact that a large percentage of the displaced Saramaka communities, particularly the youth, have moved to Paramaribo and elsewhere due to cultural disintegration, poor farming soils, and lack of employment, all in some way related to the forced displacement caused by the Afobaka dam.⁶⁴

32. The victims’ representatives wish to stress that irrespective of where they happen to live – the Upper Suriname River, Brokopondo, Paramaribo, or even The Netherlands – Saramaka law permits all Saramaka persons to live on and use the collectively held lands of their matrilineal clan or *lō*. They have this right by virtue of their membership in their *lō* and they may exercise that right in accordance with Saramaka customary law and under the supervision of traditional Saramaka authorities. This principle was explained in the testimony of Head Captain and *Fiscali* Wazen Eduards⁶⁵ and Head Captain and *Fiscali* Albert Aboikoni.⁶⁶

⁵⁹ A recent Inter-American Development Bank study on indigenous peoples and Maroons in Suriname concludes that “The census indicates the total number of indigenous persons and maroons, including those living in Paramaribo. Consequently, there are no reliable statistics on the number of indigenous people and maroons living in tribal communities. ... [And] no reliable data can be extracted from the census-results about the number of indigenous people and maroons living in certain districts.” E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006, p. 10-11.

⁶⁰ *Registered Patients of the Medical Mission*, May 2005; Observations of the Victims’ Representatives on Preliminary Objections, Annex 1, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*, *id.* p. 11.

⁶¹ Written Transcript, *supra*, p. 12.

⁶² See, *Affidavit of Expert Witness. Dr. Robert Goodland*. Submitted by the Victims’ Representatives, 02 May 2007 (hereinafter “Affidavit of R. Goodland”), para. 36, 44, 52.

⁶³ *Affidavit of Head Captain and Fiscali Eddie Fonki*. Submitted by the Inter-American Commission on Human Rights, 02 May 2007, (hereinafter “Affidavit of E. Fonki”), para. 21-2.

⁶⁴ *Id.* para. 32; *Affidavit of George Leidsman*. Submitted by the Victims’ Representatives, 02 May 2007, (“hereinafter “Affidavit of G. Leidsman”), para. 20-2, 24; and Affidavit of R. Goodland, *supra*, para. 44.

⁶⁵ *Testimony of Head Captain and Fiscali Wazen Eduards*, Written Transcript, *supra*, p. 12.

⁶⁶ *Testimony of Head Captain and Fiscali Albert Aboikoni*, Written Transcript, *supra*, p. 35.

33. The uncontested evidence before the Court demonstrates that the Saramaka people has occupied and used its traditional lands, territory and resources since at least the early 18th century.⁶⁷ As explained by the various experts and witnesses in this case, the territory (the sum total of traditionally-owned lands and waters) is vested in the Saramaka people in the form of an underlying or radical title, whereas the lands within that territory are divided among and vested in the 12 Saramaka *lō*.⁶⁸ The *lō*, who are primary land-owning entities in Saramaka society, are highly autonomous and allocate land and resource rights among their constituent *bëë* (extended family groups) and their individual members in accordance with Saramaka customary law.⁶⁹

34. Pursuant to Saramaka customary law, the Captains or members of a *lō* may not alienate or otherwise encumber the communal property of their *lō*, and a *lō* may not encumber or alienate their lands from the collectively-held corpus of Saramaka territory.⁷⁰ On the last point, Head Captain and *Fiscali* Eddie Fonki explains that “If a *lō* tried to sell its land, the other *lō* would have the right to object and to stop this because it would affect the rights and life of all Saramaka people. The *lō* are very autonomous and we do not interfere in each other’s affairs unless it affects the interests of all Saramaka people.”⁷¹ This is because the territory “belongs to the Saramakas, ultimately. ... By ultimately, I mean that it belongs to the Saramaka as a people.”⁷²

35. The Saramaka people have specific and detailed customary laws pertaining to ownership and use of lands and resources and the allocation of rights within and among the Saramaka *lō*, the *bëë*, and individuals.⁷³ The uncontested evidence further demonstrates that under Saramaka law, the Saramaka people and its twelve *lō* own all of the resources within their traditional lands and territory. Head Captain Eddie Fonki, for instance, states that “the *lō* own everything on and under their land,”⁷⁴ while Head Captain Wazen Eduards and Captain Cesar Adjako explain that the *lō* own all the land and resources from “the tops of the trees to deep into the earth.”⁷⁵

⁶⁷ For instance, *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 60.

⁶⁸ See, for example, Affidavit of E. Fonki, *supra*, para. 7-8 and; *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 61.

⁶⁹ *Testimony of Head Captain and Fiscali Wazen Eduards and Captain Cesar Adjako*, Written Transcript, *supra*, p. 9 and 17, respectively; Affidavit of Silvi Adjako. Submitted by the Inter-American Commission on Human Rights and the Victims’ Representatives, 02 May 2007 (hereinafter “Affidavit of S. Adjako”), para. 3; *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 55-8; *Testimony of Expert Witness Salomon Emanuels*, Written Transcript, *supra*, p. 68; and; Affidavit of E. Fonki, *supra*, para. 6-16.

⁷⁰ Affidavit of E. Fonki, para. 7-15; and *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 61-2.

⁷¹ Affidavit of E. Fonki, *id.* at para. 7.

⁷² *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 61.

⁷³ *Affidavit of Dr. Peter Poole*. Submitted by the Inter-American Commission on Human Rights and the Victims’ Representatives, 02 May 2007 (hereinafter “Affidavit of P. Poole”), para. 14-5; Affidavit of E. Fonki, *id.* para. 6-16; and *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 60.

⁷⁴ Affidavit of E. Fonki, *id.* at para. 16.

⁷⁵ Written Transcript, *supra*, at p. 9 and 17, respectively.

under Saramaka law, the *lö* are the owners of all resources including the sub-soil.⁷⁶ The uncontested evidence before the Court proves that the Saramaka people has traditionally owned and used the products of the subsoil within its territory, such as minerals, clays, sand, gravel and stone materials.⁷⁷

36. The Saramaka people and its constituent *lö* are the traditional owners of the forests and all timber and non-timber forest products within their lands and territory.⁷⁸ They have traditionally harvested, used, traded and sold timber and non-timber forest products, and continue to do so until the present day.⁷⁹ Indeed, such use and commerce were recognized and protected in the 1762 Treaty between the Saramaka and the Dutch.⁸⁰

37. The traditional boundaries between the lands of the various *lö* and between the Saramaka people and their indigenous and Maroon neighbours are well understood, scrupulously observed, and encoded in oral history and tradition.⁸¹ With regard to the lands of the *lö*, Professor Price states that “every knowledgeable Saramaka, knows exactly from which rock past that sand ba[nk], to the mouth of such and such a creek, that is the territory of such and such a clan, such and such a *lö*.”⁸² Head Captain Wazen Eduards also explains in his testimony that

The lines between Saramaka territory and other places like the [M]atawai territory or the Amerindian territory, are defined by the watershed. In the mountains where the creeks flow towards the Suriname River, that is Saramaka territory. Where the creeks flow away from the Suriname River is no longer Saramaka territory. It belongs to other groups. Our ancestor[s] know all this very, very precisely, because they walk these lands. They walk on their own feet. They don't take vehicles. They know this territory by having walked it entirely, and they know exactly where their land ends.⁸³

38. Despite Suriname assertions to the contrary, the evidence before the Court proves that there are no indigenous or non-Saramaka Maroon communities living within traditional Saramaka territory.⁸⁴ There are also no indigenous communities

⁷⁶ *Testimony of Expert Witness Prof Richard Price*, Written Transcript, *supra*, p. 62.

⁷⁷ *Testimony of Head Captain and Fiscali Wazen Eduard and Captain Cesar Adjako* Written Transcript, *supra*, at p. 9 and 17, respectively; and *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 62.

⁷⁸ *Testimony of Head Captain and Fiscali Wazen Eduards and Captain Cesar Adjako*, Written Transcript, *supra*, p. 9 and 17, respectively.

⁷⁹ *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 59; and, *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 14.

⁸⁰ Article 10 of the Treaty provides that “Every year fifty of you will be permitted to come to the Saramaka River, as far as Wanica Creek, or to Arwaticabo Creek, or to the Suriname River, as far as Victoria, to bring everything they will have to sell, such as hammocks, cotton, wood, fowl, dug-out canoes, or anything else.”

⁸¹ *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *supra*, p. 9; Affidavit of P. Poole, *supra*, para. 20-1; Affidavit of H. Jabini, *supra*, para. 34, and; *Report of Prof. Richard Price*, Application of the Commission, *supra*, Annex 1, para. 1.1-1.6.

⁸² *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 61-2.

⁸³ *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *supra*, p. 9.

⁸⁴ *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *id*; Affidavit of P. Poole, *supra*, para. 22; Affidavit of H. Jabini, *supra*, para. 34 and; *Testimony of District Commissioner Rudy Strijk*, Written Transcript, *supra*, p. 29.

living in the vicinity of the Saramaka communities that were displaced by the Afobaka dam and that are now located in the Brokopondo District.⁸⁵

39. With the exception of the approximately 50 percent of traditional Saramaka territory that was flooded by the Afobaka dam and the more recent incursions of foreign and domestic logging companies, Saramaka occupation, use and peaceful enjoyment of their traditional lands, territory and resources, in accordance with their customary laws and traditions, has been continuous, exclusive and uninterrupted, and extends from the early 18th century to the present day.⁸⁶ The evidence before the Court demonstrates that Saramaka traditional possession and use is extensive and intensive, and is firmly grounded in Saramaka tradition and custom.⁸⁷ Witness Captain Adjako states in this respect that "Our whole life is centered around the forest."⁸⁸

40. The economy of the Saramaka people is primarily subsistence based with hunting, fishing, gathering, and swidden agriculture providing for the majority of their basic needs.⁸⁹ Expert witness, Dr. Peter Poole, concludes that Saramaka land and resource use and tenure, and their level of dependence upon local resources, is typical of indigenous communities throughout the tropical forests of the Amazon Basin.⁹⁰ Agriculture is based on a long-term rotational system as the poor soils of the rainforest can only support crop yields for 2-3 years followed by a 10-20 year fallow period.⁹¹ Dr. Poole further explains that:

It is clear that the Saramaka are heavily or almost exclusively dependent upon their forests for their food supply, their medicines, their building and roofing materials, and their canoes. Even though individuals and families may be able to generate revenues from non-traditional resources, these are not regarded as substitutes; use of local material remains as intense as ever.⁹²

41. Head Captain Wazen Eduards testifies that

When we saw that we were losing our land, and that means we were losing our entire way of life, because that is where everything that is meaningful to us takes place. When you go to that territory, Saramaka territory, it's not that you bring food with you. That is where we cut trees in order to make

⁸⁵ Affidavit of E. Fonki, *supra*, para. 28.

⁸⁶ *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *supra*, p. 4; and *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 61-3.

⁸⁷ See, Affidavit of H. Jabini, *supra*, para. 32-3 (explaining the map made by the Saramaka); Affidavit of R. Goodland, *supra*, para. 30-2 (explaining the conclusions to be drawn from the map made by the Saramaka people); Affidavit of P. Poole, *supra*, para. 10-19 (explaining his personal observations of Saramaka possession and use of territory) and, *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 55-8 (describing his personal experience of Saramaka occupation and use and relations with the forest and his views on the map made by the Saramaka).

⁸⁸ *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 16.

⁸⁹ *Report of Prof. Richard Price*, Application of the Commission, *supra*, Annex 1, para. 3.1-3.6 and; Affidavit of R. Goodland, *supra*, para. 16-8, 3-2.

⁹⁰ Affidavit of P. Poole, *supra*, para. 16.

⁹¹ *Id.* para. 15, 28.

⁹² *Id.* at para. 16.

our houses, to get our subsistence, to make our boats or our house; everything that we live with.⁹³

42. The undisputed evidence before the Court further proves that the Saramaka people's lands, territory and resources are viewed holistically and their relationships therewith are intertwined with the social, ancestral and spiritual relationships that govern their daily lives.⁹⁴ Professor Price explains in his testimony before the Court that

the forest is the Saramaka's church. Their gods and spirits live in it. The spirits, the gods, the powers that they deal with on a daily basis live in particular places in the forest. Their ancestors, who they speak with at ancestor shrines, and who protect their villages and their lives, are vested in particular places.⁹⁵

43. Expert witness, Dr. Poole, concurs and explains that the Saramaka "retain strong cultural and spiritual ties" to their territory.⁹⁶ He further explains that

there are numerous sacred sites in Saramaka territory, most of which the Saramaka chose not to record on their map for religious and privacy-related reasons. In fact, there are so many of these sites that it would have been difficult to record them all on the map. I would say that the Saramaka see their entire territory as a sacred space in one way or another and they are deeply spiritual.⁹⁷

44. Finally, the *Gaama*, or paramount leader, holds the highest political office in Saramaka society. Expert witness Salomon Emanuels explains that "[the *Gaama*] is the highest official. He is not the highest authority, he is the highest official."⁹⁸ The paramount authorities within the highly autonomous *lō* are the Head Captains and Captains, who are also chosen by a combination of descent and divination.⁹⁹ As the authorities within the *lō*, which are also the primary land owning entities in Saramaka society, the Head Captains and Captains have the authority to act collectively on behalf of their *lō* and the Saramaka people as a whole, and may do so independently of any authorization from the *Gaama*.¹⁰⁰ The claim of expert witness Salomon Emanuels that the highest authority within Saramaka society is something called the *lio lanti* ("Leolanti" in the Written Transcript) is manifestly false, and the *Gaama*, the three Saramaka *Fiscali* (who all gave testimony before the Court) and all of the Head Captains are willing to provide a written statement to the Court to this effect if the

⁹³ *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *supra*, p. 6.

⁹⁴ *Report of Dr. Richard Price in support of Provisional Measures*, Application of the Commission, *supra*, Annex 2, para. 14-16.

⁹⁵ *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 62.

⁹⁶ Affidavit of P. Poole, *supra*, para. 18.

⁹⁷ *Id.*

⁹⁸ *Testimony of Expert Witness Salomon Emanuels*, Written Transcript, *supra*, at p. 68.

⁹⁹ Affidavit of E. Fonki, *supra*, para. 11-15; Affidavit of S. Adjako, *supra*, para. 3; Affidavit of P. Poole, *supra*, para. 14; *Testimony of Head Captain and Fiscali, Wazen Eduards*, Written Transcript, *supra*, p. 4 and 9; *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 17.

¹⁰⁰ *Testimony of Head Captain and Fiscali Albert Aboikoni*, Written Transcript, *supra*, p. 33; and Affidavit of E. Fonki, *supra*, para. 13.

Court so desires.¹⁰¹ Indeed, prior to the public hearing, these Saramaka dignitaries had not even heard the term *lio lanti* before.

B. The Afobaka Dam and Reservoir

45. The evidence before the Court proves that the Afobaka dam was constructed between 1959-64 and that this dam caused the flooding of approximately 50 percent of traditional Saramaka territory and the forcible displacement of around 6000 mostly Saramaka persons from 28 communities.¹⁰² Numerous sacred sites were submerged and Saramaka reported that the interred remains of their deceased kin floated to the surface of the reservoir, a deeply disturbing and traumatic occurrence.¹⁰³ The Saramaka were not consulted nor was their consent sought in relation to the dam; they were simply informed that they had to move.¹⁰⁴ Only a few persons received compensation, which was set in the amount of 3 Surinamese guilders (roughly equivalent to US\$3).¹⁰⁵ The dam is owned and operated by NV Suralco, a subsidiary of United States company, Alcoa, which also owns the water in the reservoir.

46. The uncontested evidence proves that the dam irreparably disrupted the Saramakas' traditional land tenure system and caused a substantial reduction of subsistence resources, the effects and consequences of which are still evident and causing major harm to the Saramaka today. Expert witness, Dr. Robert Goodland, describes the Afobaka dam thus: "All of the typical negative impacts on indigenous and tribal peoples documented in the literature about resettlement and indigenous and tribal peoples are present in the case of the Saramaka people and the Afobaka dam. Indeed, it can be cited an example of how not to build a dam on both environmental and social grounds;" and, "[y]ou ask if the Afobaka dam and the associated resettlement programme can be considered 'best practice'. The answer is clearly no and the ongoing and negative effects of both continue to cause significant harm to the Saramaka today."¹⁰⁶

47. The communities that were forcibly displaced either moved to the north of the reservoir to what is now Brokopondo District (outside traditional Saramaka territory)¹⁰⁷ or made their way south and (re)established their communities on the lands of their kin in traditional Saramaka territory on the Upper Suriname River.¹⁰⁸

¹⁰¹ See, *Testimony of Expert Witness Salomon Emanuels*, Written Transcript, *supra*, p. 68 *et seq*

¹⁰² Affidavit of R. Goodland, *supra*, para. 42; and *Report of Prof. Richard Price*, Application of the Commission, *supra*, Annex 1, para. 4.2.

¹⁰³ *Affidavit of George Leidsman*. Submitted by the Victims' Representatives, 02 May 2007, ("hereinafter "Affidavit of G. Leidsman"), para. 7; *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 62-3.

¹⁰⁴ Affidavit of E. Fonki, *supra*, para. 23-4; *Report of Prof. Richard Price*, *id.* See, also, *Comments to Affidavit of Dr. R. Goodland* Submitted by the Republic of Suriname (CJDM/724/07), 16 May 2007, p. 2 (citing Ben Scholtens and stating that "Gaanman Aboikoni was informed about the Brokopondo Agreement on after plans were ready").

¹⁰⁵ Affidavit of G. Leidsman, *supra*, para. 16; and Affidavit of E. Fonki, *supra*, para. 24.

¹⁰⁶ Affidavit of R. Goodland, *supra*, at para. 41, 49.

¹⁰⁷ Affidavit of E. Fonki, *supra*, at para. 27 (explaining that the Brokopondo Saramaka villages are located outside of traditional Saramaka territory and explaining that "we live on state land and the state owns all the land where we live. When mining companies come to our area they tell us we have no right to complain about what they do because we live on land that the state owns and they have permission from the government").

¹⁰⁸ See, Affidavit of G. Leidsman, Annex 1 (containing a map showing the two different areas).

Today there are 13 so-called Saramaka 'transmigration' villages outside of Saramaka territory in Brokopondo District and 12 of these transmigration villages reestablished themselves on the lands of their kin or other *lō* on the Upper Suriname River.¹⁰⁹ The displaced communities in Brokopondo were forced to move to an area without adequate farming lands and they were provided with little assistance and few services, a fact that continues to the present day.¹¹⁰

48. In common with all other Saramaka *lō* and communities, none of the displaced communities, neither in Brokopondo nor on the Upper Suriname River, hold title to their lands, nor do they otherwise have security of tenure.¹¹¹ Moreover, the lands presently occupied and used by the displaced Saramaka communities in Brokopondo have been severely degraded by small-scale mining activities,¹¹² and all of these villages are within mining concessions granted by the State in 1991 to a Canadian multinational mining company.¹¹³ In this regard, Head Captain Eddie Fonki, who is the responsible Saramaka traditional authority for the displaced villages in Brokopondo, testifies that

Nobody has consulted with me, even until today. The *Gaama* told me that he did not know anything about it either, although I know that the government talked with him after the concessions had been given, starting in 1995 or 1996 when they asked if he could help with the problems there. I did not know anything about the concessions until we started to see people putting small flags in the ground in my village. They were from Canada. Later I saw a map and it showed that all of my villages are in a concession.¹¹⁴

49. Expert witness, Dr. Robert Goodland explains that Suriname's ongoing failure to secure tenure rights for the Brokopondo Saramaka communities that lost lands to the dam has additional consequences:

The fact that they do not have secure land tenure now – which is always one of the fundamental aspects of resettlement operations – coupled with intrusive gold mining operations in the area where they now live has created a profound sense of insecurity among those who remain in the resettlement areas, and this is undoubtedly a major cause of community members leaving for Paramaribo and elsewhere.¹¹⁵

50. The Saramaka living in Brokopondo have just cause to be concerned about gold mining operations. Expert witness, Dr. Peter Poole, for example, documents a range of environmental-health and other problems caused by mining, including scientific reports that mercury contamination in the area is "thousands of times higher

¹⁰⁹ There are 12 of these so-called 'transmigration' villages on the Upper Suriname River: Gingeston, Pamboko 1 and 2, Amakakonde, Kajapatie, JawJaw, Lespansi 1+2, Adawai, Goensi, Grantatai, Bendikwai.

¹¹⁰ Affidavit of G. Leidsman, *supra*, para 9-10, 19, 22, 24; and Affidavit of R. Goodland, *supra*, para. 45.

¹¹¹ Affidavit of E. Fonki, *id* para. 29

¹¹² *Id.* para. 35 (and footnotes); and Affidavit of P. Poole, *supra*, para. 24-5.

¹¹³ Affidavit of E. Fonki, *id* para. 36 (see also works cited in the footnotes).

¹¹⁴ *Id.* at para. 37-8.

¹¹⁵ Affidavit of R. Goodland, *supra*, para. 53.

than the limits prescribed by the World Health Organization and this is a major health hazard.”¹¹⁶ Head Captain Fonki explains that “We have heard that there is a lot of mercury in the water because of these miners, but nobody has come to talk with us about it.”¹¹⁷ Suriname has not contested these facts; it has merely, as it has done in the context of logging operations on the Upper Suriname River, made unsupported allegations to the effect that the Saramaka are complicit in the destruction and poisoning of the lands and waters that they depend on for their basic subsistence.

51. The uncontested evidence before the Court proves that the forced displacement of the Saramaka from their traditional territory and the flooding of a large percentage of that territory have caused lasting, negative, severe, and ongoing and continuous impacts and consequences for the Saramaka.¹¹⁸ Captain Cesar Adjako, himself forcibly displaced by the dam, states that the problems caused by the Afobaka dam have “certainly lasted until today. We have no relief, problems are only getting worse. The problems are getting worse today, they have continued into the present time. Our whole way of life was damaged by the flooding.”¹¹⁹ Dr. Goodland states that the “ongoing and negative effects of both [the dam and displacement] continue to cause significant harm to the Saramaka today.”¹²⁰

52. One of the most pronounced and deleterious of these consequences is the severe overcrowding of what remains of traditional Saramaka territory and the resultant pressures on resource use and sustainability experienced by the Saramaka. All of the Saramaka witnesses before the Court make this point,¹²¹ as do all of the expert witnesses who addressed this issue.¹²² Head Captain Eduards, for instance, testifies that

They, the people in the villages that sank, were impoverished in very serious ways because of being moved into territory that was already occupied by other villages. It was not only the people from the villages that were sank under the lake who moved into our territory and therefore were very crowded and had a problem, but it was also ourselves who had been living in that area... Everybody was impoverished. Nobody had much to eat. We all had to share with each other to an extent that we had never done before, and then concessions were given out and allowed people to come in and ruin our lives even further. It is a very important thing for me to come here today

¹¹⁶ Affidavit of P. Poole, *supra*, at para. 25. See, also, Brief of the Victims’ Representatives, *supra*, para. 29-30 and associated footnotes. See, also, Observations of the Victims’ Representatives on Preliminary Objections, *supra*, Annex 1, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006, p. 23-5.

¹¹⁷ Affidavit of E. Fonki, *supra*, para. 35.

¹¹⁸ Affidavit of G. Leidsman, *supra*; Affidavit of E. Fonki, *supra*; Affidavit of R. Goodland, *supra*; Affidavit of P. Poole, *supra*; *Testimony of Wazen Eduards*, Written Transcript, *supra*, p. 6; *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 17-8; and *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p. 62-4.

¹¹⁹ *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 18.

¹²⁰ Affidavit of R. Goodland, *supra*, at para. 41, 49.

¹²¹ For example, Affidavit of G. Leidsman, *supra*; Affidavit of E. Fonki, *supra*, para. 21-32; *Testimony of Wazen Eduards*, Written Transcript, *supra*, p. 6; and *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 17-8.

¹²² Affidavit of R. Goodland, *supra*; Affidavit of P. Poole, *supra*; *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p. 62-4.

and speak about these problems. They are very serious problems... They are extreme.¹²³

53. Dr. Peter Poole identifies a series of ongoing and negative impacts on the Saramaka people that were initially caused by the Afobaka dam,¹²⁴ and states that the Saramaka “are rightly concerned [about] their ability to subsist from what remains of their traditional lands and resources as it is becoming more and more fragile and uncertain.”¹²⁵ He adds that that

In my view, the Saramaka are approaching, and in some areas may have already exceeded, the sustainable productive capacity of their lands. This is a function of both population density (due to growing population, greatly exacerbated by the arrival of the some of the displaced Saramaka on the Upper Suriname River in the mid-1960s) and the loss of land due to the Afobaka dam. The latter especially has caused severe problems for land and resource management among the Saramaka.¹²⁶

54. The testimony before the Court proves that the dam and displacement have had ethnocidal effects and consequences for the Saramaka. Dr. Robert Goodland, who has studied the Afobaka dam over a 30 year period, states that “I would say that the displacement, apart from the ongoing material impacts caused by loss of large percentage of their land base, is directly responsible for the destruction of the displaced communities in the Brokopondo District as collective and cultural entities.”¹²⁷ Witness George Leidsman reaches the same conclusion.¹²⁸ Head Captain Eddie Fonki additionally explains that the displacement “affects all of us still today and I would say that it has really destroyed us as communities, at least the Saramaka who live in Brokopondo. We really see how much we have lost when we spend time with Saramaka who live on the Upper Suriname River. It is like we are dying but we are still alive at the same time.”¹²⁹

55. The displaced Saramaka communities in Brokopondo were constituted without regard to the members’ previous village or *lō* affiliations.¹³⁰ Head Captain Eddie Fonki explains the consequences of this as follows: “because the *lō* are all mixed up in most of the displaced villages, we cannot own the land in the traditional way. This means that getting along with each other has become much less important and there a lot of problems in the displaced communities because of this. Many of the young people have left because they do not feel part of us anymore.”¹³¹ Expert witness Dr. Robert Goodland further explains that

A brief visit to the dysfunctional resettlement camps around Afobaka shows the dependency syndrome, apathy, poverty and communities dominated by the elderly because most of the young have left. Few people were dynamic

¹²³ *Testimony of Wazen Eduards*, Written Transcript, *supra*, p. 6.

¹²⁴ Affidavit of P. Poole, *supra*, para. 13, 17, 26-30.

¹²⁵ *Id.* at para. 26.

¹²⁶ *Id.* at para. 13.

¹²⁷ Affidavit of R. Goodland, *supra*, para. 55.

¹²⁸ Affidavit of G. Leidsman, *supra*, para. 21.

¹²⁹ Affidavit of E. Fonki, *supra*, para. 25.

¹³⁰ Affidavit of E. Fonki, *supra*, para. 32; and Affidavit of R. Goodland, *supra*, para. 52.

¹³¹ Affidavit of E. Fonki, *id.*

and well-nourished during my 2005 and 2007 visits. I would attribute some of this to the fact that the displacement of the Saramaka divorced them from their kinship-based relations to their lands. In effect, they moved to a place without the social and spiritual framework which they understood because the displaced communities no longer functioned within a system of clan ownership of land and the kinship, social and economic relations that are embedded in that system. They became truly homeless in all senses of the word and they must have had a great deal of difficulty making real sense of their situation.¹³²

56. The Afobaka dam has caused irreparable and ongoing harm to the Saramaka people's spiritual life and well-being. The dam flooded some of the Saramaka's most important sacred sites and ancestral burial grounds. In this respect, Head Captain Fonki explains that "I cannot live in a good way now and we all cannot practice the same rituals and cultural ceremonies. These rituals can only be done in certain places and these are all now at the bottom of the reservoir."¹³³ He further explains that he is deeply concerned about retaliation from the spirit world because the Saramaka have failed to remedy the flooding of their sacred sites and burial grounds.¹³⁴ Professor Richard Price explains the basis for these concerns stating that "avenging spirits, come and get everyone in the matri-lineage for time immemorial. So they [the Saramaka] have to do rituals all the time to try to appease these spirits who are angry because of what was done to the forest."¹³⁵

57. The uncontested evidence before the Court proves that the Saramaka people continue at present to maintain a variety of spiritual and cultural relationships with their lands that were submerged by the Afobaka dam.¹³⁶ Expert witness Dr. Peter Poole, for example concludes that "From discussions that I had with Saramaka from the villages that were forced to move because of the dam and reservoir, it is clear that they also maintain strong cultural and spiritual ties to the lands submerged by the dam."¹³⁷ Professor Richard Price also testifies that the Saramaka continue to maintain a spiritual and cultural attachment to their lands flooded by the Afobaka dam.¹³⁸ Additionally, the Saramaka remain as concerned about the flooding of their land today as they were in the 1960s.¹³⁹ It is also uncontested that the inundation of their lands by the dam constitutes an ongoing impediment to the maintenance of the Saramaka's other relationships with these lands.

58. Suriname done nothing to repair the historic and the ongoing and continuous violations of the Saramaka people's internationally guaranteed rights caused by the Afobaka dam.¹⁴⁰ This dam and its ongoing effects and consequences have caused and

¹³² Affidavit of R. Goodland, *supra*, para. 52.

¹³³ Affidavit of E. Fonki, *supra*, at para. 25.

¹³⁴ *Id.* para. 26 (stating that "We have to be very careful with the spirits because of what has happened with the dam and future generations will also have to be careful").

¹³⁵ *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p.62.

¹³⁶ *Id.* p. 62-4.

¹³⁷ Affidavit of P. Poole, *supra*, at para. 19.

¹³⁸ *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p.63.

¹³⁹ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 6; *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 17; Affidavit of E. Fonki, *supra*, para. 25-6; and *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p.57.

¹⁴⁰ Affidavit of R. Goodland, *supra*, para. 62.

are still causing the ethnocide of the Brokopondo Saramaka communities.¹⁴¹ Not only has Suriname failed to repair these manifest and extreme violations, as discussed in detail in the following section, it has granted logging concessions in what remains of traditional Saramaka territory, concessions that have operated to the extreme detriment of the Saramaka people and clans and their individual and collective rights. Mining concessions have also been granted, both within traditional Saramaka territory (not operational) and in the lands presently occupied by the Brokopondo Saramaka communities (operational). Suriname has also submitted a US\$880 million project proposal to the Initiative for Integration of Regional Infrastructure in South America, entitled the Tapanahony River Diversion Project, in order to finance a project to raise the water level in the reservoir, which, if approved and implemented, will likely flood an additional five Saramaka communities.¹⁴²

59. Viewed cumulatively, Suriname's acts and omissions in relation to, *inter alia*, the Afobaka dam and the logging and mining concessions, threaten the Saramaka people's survival as a distinct cultural and territorial entity, and contravene a whole range of internationally guaranteed human rights, including the right of Saramaka people to freely dispose of its natural wealth and resources and to be secure in its means of subsistence.¹⁴³ Echoing Head Captain Fonki and other Saramaka witnesses,¹⁴⁴ Dr. Goodland concludes

Worldwide, I have rarely seen such severe damage to a tribal people or ethnic minority. This is not to say that others have not suffered more, but this is not really the point. The Saramaka are a unique people and culture that are not found anywhere else in the world. If they lose more territory, it would be no exaggeration to say that they will face a substantial risk of irreparable harm to their physical and cultural integrity and survival.¹⁴⁵

60. While Suriname generally disputes the evidence presented by the victims' representatives with regard to the Afobaka dam, it has failed to challenge and refute the veracity of any specific piece of evidence. The State has not submitted any studies or expert opinion that could tend to disprove the detailed evidence of the ongoing, continuous and severe effects caused by the Afobaka dam that has been submitted by the victims' representatives. This evidence includes the expert testimony of the world's foremost academic expert on the Saramaka, one of the world's leading experts on the environmental and social impacts of dams in tropical forests, who also acted as chief environmental advisor to the World Bank for over 25

¹⁴¹ Affidavit of G. Leidsman, *supra*, para. 20 (stating that "When the village got split up, there was no respect for the leaders anymore; our culture was destroyed and this affects all of us now and will also affect our children and our grandchildren").

¹⁴² Affidavit of R. Goodland, *supra*, para. 55-60; and Brief of the Victims' Representatives, *supra*, para. 31-7. See, also, Affidavit of H. Jabini, *supra*, para. 18-9 (discussing a (unanswered) petition filed by the Saramaka expressing concern about the State's plans to increase the water level in the reservoir).

¹⁴³ With respect to the interrelationship between property rights and a people's right to freely dispose of its natural wealth and resources and to be secure in its means of subsistence, the victims' representatives have offered the expert testimony of Prof. Dr. Martin Scheinin, a former member of the UN Human Rights Committee. See, *Affidavit of Dr. Martin Scheinin*. Submitted by the Victims' Representatives, 02 May 2007 (hereinafter "Affidavit of M. Scheinin").

¹⁴⁴ Affidavit of E. Fonki, *supra*, para. 4-5, 25.

¹⁴⁵ Affidavit of R. Goodland, *supra*, at para. 61.

years, and the expert opinion of one of the leading experts on indigenous territories and geomatics. This evidence also includes the detailed testimony of the Saramaka themselves, who are experts in their own right on their territory and situation.

61. The Afobaka dam has caused irreparable harm to the Saramaka people and continues today to cause them severe harm that contravenes their internationally guaranteed rights on an ongoing and continuous basis. The uncontested evidence further proves that the Saramaka continue to maintain a variety of spiritual and cultural relationships to their lands flooded by the dam, and the flooding constitutes an ongoing impediment to the maintenance of their other relationships therewith.

C. Logging and Mining Concessions in the Territory of the Saramaka People

62. The evidence before the Court proves that between 1997 and 2004, Suriname issued at least four logging concessions to multinational and domestic logging companies within traditional Saramaka territory on the Upper Suriname River, and that these concessionaires conducted active operations therein. The evidence also proves that Suriname granted a number of mining concessions within Saramaka territory during the same period. Maps produced by the State as well as by the Saramaka and experts showing these concessions were presented to the Court by the Commission, the State and the victims' representatives.¹⁴⁶

63. The testimonial and documentary evidence proves that logging and mining concessions were issued without prior notice to, consultation with, or any attempt to obtain the consent of traditional Saramaka authorities.¹⁴⁷ The State, however, asserts that the Saramaka people's consent is always obtained in relation to logging concessions because applications for a concession must be accompanied by a statement that is signed by the *Gaama* or Captain from the area in question proving that they have no objection to the concession.¹⁴⁸

64. Suriname has not provided – and indeed cannot provide as none exists – any evidence that it obtained the consent of the Saramaka in relation to any of the concessions complained about in the instant case. This was confirmed by District Commissioner Strijk, who testified that it was “not necessary” to consult with or obtain the consent of the Saramaka in relation to the logging concessions in question.¹⁴⁹ He also confirmed that the procedure by which consent must be obtained is not set forth

¹⁴⁶ See, *Overview of logging concessions in the Pokigron Region. Map produced by the Suriname Forestry Management Foundation, Ministry of Natural Resources, August 2003 in Official Response of the State, supra, Annex 1.1 (showing logging concessions); and Map prepared by the Ministry of Natural Resources, in Application of the Commission, supra, Annex 16 (showing mining concessions).*

¹⁴⁷ Affidavit of S. Adjako, *supra*, para. 4-5; *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 5, 9; *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 15; Affidavit of E. Fonki, *supra*, para. 37-8; and *Testimony of R. Strijk*, Written Transcript, *supra*, p. 27, 31 (responding to the question of Judge Medina Quiroga).

¹⁴⁸ Official Response, *supra*, para. 218.

¹⁴⁹ *Testimony of R. Strijk*, Written Transcript, *supra*, at p. 27, 30-1 (responding to question from Judge Medina Quiroga).

in law,¹⁵⁰ but rather is a policy instruction issued to civil servants, and that this policy instruction is unenforceable against the State.¹⁵¹

65. The concessions granted by Suriname in Saramaka territory were also issued without a prior Environmental and Social Impact Assessment (“ESIA”). ESIA is presently not required under Surinamese law. That this is the case was admitted by Suriname, which states that it “is true ... that the concessions were issued without first conducting an environmental and social impact assessment, but [the victims’ representatives] forget to state that although there are no environmental norms and standards effective in Suriname, those of the World Bank apply.”¹⁵² Witness R. Somopawiro confirmed that concessions are granted without conducting an ESIA.¹⁵³ He also refuted the assertion that Suriname employs World Bank standards in forestry or other environmental operations.¹⁵⁴ Even if these standards were employed, Dr. Robert Goodland, the person who drafted many of the World Bank standards in question, states that the logging operations in Saramaka territory violated all five of the relevant World Bank safeguard policies.¹⁵⁵

1. Logging Concessions

66. The first company to be granted a concession and to work within Saramaka territory was NV. Tacoba (also known as Topco NV and Tacoba Forestry Consultants NV), which began operations in late 1997 in a concession designated no. 326a on State-issued maps.¹⁵⁶ Two years later, at the end 1999, Tacoba withdrew and another company, Ji Shen Wood Industries (also known as Ji Shen Forestry and Timber Industry NV and Jin Lin Wood Industries) began operating in and around the concession previously worked by Tacoba, as well as in concession no. 324 granted in its own name.¹⁵⁷

67. Ji Shen, which reportedly owns Tacoba, acquired the services of the Suriname National Army to guard its concession.¹⁵⁸ A military post was established in the concession and military forces actively prevented Saramaka from accessing their

¹⁵⁰ In its submissions to the Commission, Suriname confirmed that consulting with and obtaining consent from indigenous and tribal peoples is not required by or incorporated into law: “this permission has not been incorporated in the law, but the executive power (the State) considers this to be a requirement of the decision-making process.” *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No 12 338 “Twelve Saramaka Lës (Communities)”*, no date, Annex D, at p. 1, in *Case File before the Commission*, Volume III & IV submitted with the Commission’s Application.

¹⁵¹ *Id.* p. 28.

¹⁵² Suriname’s Second Response, *supra*, at para. 70

¹⁵³ *Testimony of Witness R. Somopawiro*, Written Transcript, *supra*, p. 48

¹⁵⁴ *Id.*

¹⁵⁵ Affidavit of R. Goodland, *supra*, para. 28.

¹⁵⁶ Brief of the Victims’ Representatives, *supra*, Annex 3.4 – 3.6; and *Overview of logging concessions in the Pokigron Region. Map produced by the Suriname Forestry Management Foundation*, Ministry of Natural Resources, August 2003 in Official Response of the State, *supra*, Annex I.1

¹⁵⁷ See *Overview of logging concessions in the Pokigron Region. Map produced by the Suriname Forestry Management Foundation*, *id.* Concession No. 324 (the green line approximates the area mapped by the Association of Saramaka Authorities).

¹⁵⁸ Brief of the Victims’ Representatives, *supra*, Annex 3.1, p. 3 (explaining that Tacoba is owned by Jin Lin).

hunting, fishing and farming areas within the concession.¹⁵⁹ Silvi Adjako testified that she saw the soldiers in the Ji Shen concession and that they “were there to protect the Chinese. It made people very nervous to have soldiers around here.”¹⁶⁰ The soldiers were directly controlled by the logging company.¹⁶¹ Captain Cesar Adjako also testified that he and other Saramaka persons had been excluded from entering the concession areas.¹⁶²

68. Two additional logging concessions were issued by the State in Saramaka territory. These concessions were granted to Paramaribo resident, Dennis W. Leysner, and are designated as concession nos. 323b and 327 on State maps.¹⁶³ A map produced by expert witness Dr. Peter Poole has been presented to the Court and depicts Saramaka occupation and use of lands and resources in the concessions held by D.W. Leysner, Ji Shen and Tacoba.¹⁶⁴ Dr. Poole testified that this map shows that

the Saramaka were extensively using the areas granted to the logging companies. The map shows numerous farms inside the concessions as well as hunting, fishing and gathering of a wide variety of forest products. If even a basic environmental and social impact assessment had been conducted in connection with these concessions, it should have resulted in a decision not to grant the concessions.¹⁶⁵

69. Witness R. Somopawiro, the head of the State’s Foundation for Forest Management and Control (“SBB”) admitted in his testimony before the Court that the State had issued concessions to Ji Shen and to D.W. Leysner and that these concessions were within Saramaka territory.¹⁶⁶ He specifically identified these concessions as nos. 324 and 323b and 327, issued to Ji Shen and D.W. Leysner, respectively, showed the location of these concessions on a State-issued map, and confirmed that they were all within Saramaka territory.¹⁶⁷ These concessions are also listed in Annex 3 to the State’s pleading of 26 March 2007, which contains a list of timber concessions updated to January 2007.¹⁶⁸ District Commission Strijk also concedes that during his tenure at least one logging concession was issued by the State within Saramaka territory and that this concession was held by a non-Saramaka person or company.¹⁶⁹

70. While it made no such specific claim before the Commission, Suriname has repeatedly stated that it did not grant a concession to NV Tacoba within Saramaka territory (no. 326a as alleged by the victims’ representatives). Instead, it maintains

¹⁵⁹ *Statement of Mr. G. Huur*, in Application of the Commission, *supra*, Annex 9; Affidavit of H. Jabini, *supra*, para. 38; and Affidavit of R. Goodland, *supra*, para. 13, 27.

¹⁶⁰ Affidavit of S. Adjako, *supra*, para. 11.

¹⁶¹ *Id.*

¹⁶² *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 16.

¹⁶³ See, *Overview of logging concessions in the Pokigron Region. Map produced by the Suriname Forestry Management Foundation*, Ministry of Natural Resources, August 2003 in Official Response of the State, *supra*, Annex 1.1.

¹⁶⁴ Application of the Commission, *supra*, Annex 15.

¹⁶⁵ Affidavit of P. Poole, *supra*, para. 37.

¹⁶⁶ *Testimony of Witness R. Somopawiro*, Written Transcript, *supra*, p. 46-7, 49-50.

¹⁶⁷ *Id.*

¹⁶⁸ Suriname’s Second Response, *supra*, Annex 3 (all of the concession listed as falling within Brokopondo District (“BROKO”) are not within traditional Saramaka territory).

¹⁶⁹ *Testimony of R. Strijk*, Written Transcript, *supra*, p. 27.

that Tacoba must have been working in a concession held by a Saramaka person as this is the only explanation for its presence in the area.¹⁷⁰ While it makes these unsupported assertions, Suriname has yet to explain why the Saramaka would complain about the activities of this company if it had indeed operated pursuant to an agreement with a Saramaka authority. Nor has it explained who held concession no. 326a if it was not NV Tacoba. In this respect, the victims' representatives note that Suriname alleged that the Saramaka had fabricated all of the concessions complained about in the case *sub judice* during the October 2004 hearing before the Commission.¹⁷¹ The State's own evidence and witnesses prove that this statement is false; the claims of the State with respect to NV Tacoba are equally misplaced.

2. Impact of Logging Concessions

71. In his testimony before the Court, witness R. Somopawiro read excerpts from two letters sent by the SBB to Ji Shen in which Ji Shen was ordered to halt its operations because it had violated legal requirements contained in the Forest Management Act.¹⁷² The same witness testified that the drastic step of halting operations is only taken in "extreme" situations.¹⁷³ The first letter, dated 17 January 2001, proves that Ji Shen was operating without an approved exploration plan (the plan in question was submitted on 9 October 2000), without a management plan, and without a production plan, all of which are legal prerequisites to obtaining an exploitation permit, and that at least 700 logs had been felled but not registered at that particular point in time.¹⁷⁴

72. The second letter, dated 10 August 2004, states that concession no. 324 is "considered to be logged clear by SBB and is closed till [*sic*] further notice to allow the forest the opportunity to recover for the next sustainable logging operation."¹⁷⁵ Despite need for the forest to recover and despite the manifest breaches of Suriname law detailed in SBB's letter of January 2001, which, in Mr. Somopawiro's opinion, constituted an extreme situation, SBB's letter of August 2004 leaves open the opportunity for Ji Shen to continue logging concession 324. This was also considered possible despite the fact that the Commission issued precautionary measures to protect the Saramaka from immediate and irreparable harm in this case in August 2002 and April 2004.

73. Saramaka witnesses Head Captain Wazen Eduards,¹⁷⁶ Captain Cesar Adjako,¹⁷⁷ Silvi Adjako,¹⁷⁸ and Hugo Jabini¹⁷⁹ all testify that the activities of Tacoba

¹⁷⁰ *Inter alia, Factual Observations of the State of Suriname with regard to the affidavits submitted by the IAC and Original Petitioners in Case no. 12.338 Twelve Saramaka Clans v. Suriname*, 16 May 2007, (Observations on the Affidavit of R. Goodland), p. 5.

¹⁷¹ Remarks of S. Punwasi, Attorney General of Suriname, *Transcript of the Hearing before the Inter-American Commission on Human Rights*, 27 October 2004, Compact Disc, Application of the Commission, *supra*, Annex.

¹⁷² *Testimony of Witness R. Somopawiro*, Written Transcript, *supra*, p. 46-8 (reading letters contained in Annex 69 to the Official Response of the State, *supra*).

¹⁷³ *Id.* p. 46.

¹⁷⁴ Official Response of the State, *supra*, Annex 69, Letter of SBB to General Manager of Suriname Jishen Forestry and Timber Industry NV, 17 January 2001.

¹⁷⁵ *Id.* at Letter of SBB to General Manager of Suriname Jishen Forestry and Timber Industry NV, 10 August 2004.

¹⁷⁶ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 5.

¹⁷⁷ *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 16.

and Ji Shen were highly destructive and have caused massive damage to a substantial area of the Saramaka people's forest and the ecological and cultural functions and services it provided. Silvi Adjako, for instance, explains that Tacoba and Ji Shen "caused much destruction in our forest and made parts of our land useless because they blocked the creeks and made the water sit on the earth. Before then we were able to use the forest freely and quietly and it was a great comfort to us and supported us."¹⁸⁰ Hugo Jabini concurs: "The Chinese left a totally ruined forest where they worked. Big parts of the forest cannot be used anymore for farming and animals will stay away from these areas as well. The creeks are all blocked and the area is flooded and turning into a swamp. It is useless and the spirits are greatly offended."¹⁸¹

74. The observations of the Saramaka witnesses are corroborated by the research of expert witnesses Dr. Robert Goodland and Dr. Peter Poole, both of whom have visited the concessions and surrounding areas between 2002 and 2007.¹⁸² Dr. Goodland and Dr. Poole's findings are discussed at length in their respective affidavits, upon which the victims' representatives rely, and the State has failed to adequately contest the facts stated therein. Destruction of the forest and Saramaka subsistence resources was also documented in 2001 in a report published by the United States newspaper, *Philadelphia Inquirer*.¹⁸³

75. In general, Dr. Goodland states that "the social, environmental and other impacts of the logging concessions are severe and traumatic,"¹⁸⁴ and, the "[l]ogging was carried out below minimum acceptable standards for logging operations. I would say it was among the worst planned, most damaging and wasteful logging possible."¹⁸⁵ Dr. Poole states that it was "immediately apparent to me that the logging operations in these concessions were not done to any acceptable or even minimum specifications and sustainable management was not a factor in decision-making;" and, "from my observation and by all accounts the Saramaka were treated badly by the logging companies and the government."¹⁸⁶

76. Dr. Goodland and Dr. Poole both document that Ji Shen and Tacoba built cheap, substandard bridges in their concessions and that these bridges unnecessarily blocked numerous creeks.¹⁸⁷ Dr. Goodland explains that there are "12 creeks

¹⁷⁸ Affidavit of S. Adjako, *supra*, para. 13.

¹⁷⁹ Affidavit of H. Jabini, *supra*, para. 35, 37, 39.

¹⁸⁰ Affidavit of S. Adjako, *supra*, at para. 13.

¹⁸¹ Affidavit of H. Jabini, *supra*, at para. 39.

¹⁸² Affidavit of R. Goodland, *supra*, para. 9-35; and Affidavit of P. Poole, *supra*, para. 31-8.

¹⁸³ Brief of the Victims' Representatives, *supra*, Annex 3.1, 'Raiding the Rain Forest. For a global treasure, a new threat: Asian companies in weakly regulated countries tamper with the ecosystem to fill a growing demand for hardwood'. Mark Jaffe, *Philadelphia Inquirer*, Sunday, May 20, 2001 (stating that environmental degradation "was all too clear walking through the Jin Lin [Ji Shen] concession. The company had plowed large, muddy roads about 45 feet wide into the forest, churned up huge piles of earth, and created fetid pools of green and brown water. Upended and broken trees were everywhere and what were once plots of sweet potatoes, peanuts, ginger, cassava, palm and banana crops - planted in the forest by Maroon villagers - were muddy pits").

¹⁸⁴ Affidavit of R. Goodland, *supra*, at para. 14.

¹⁸⁵ *Id.* at para. 29.

¹⁸⁶ Affidavit of P. Poole, *supra*, at para. 33 and 38.

¹⁸⁷ *Id.* para. 34, 36; and Affidavit of R. Goodland, *supra*, para. 22-6.

dammed in this way on the first (eastern) segment alone of the logging road on the west side of the main highway;”¹⁸⁸ and that the

impact of such “bridging” (blocking of water courses) is significant. Upstream of the blockage, water accumulates and kills the forest within a few months. Downstream, the forest formerly dependent on the river dries out and dies. Thus for every river crossing there is an extensive area of dead forest in the flooded area above the logging road, and a smaller but still extensive area of dead forest downstream in the dried out area.¹⁸⁹

77. Dr. Goodland concludes that “As there are sizeable creeks every kilometer or so along the Ji Shen logging roads, as in all rainforests worldwide, the forest killed by the roads is extensive and the impacts ongoing even when the logging has ceased.”¹⁹⁰ Because these creeks are the primary source of potable water used by the Saramaka, “water necessary for drinking, cooking, washing, irrigation, watering gardens, and catching fish is not available. ... Subsistence farms become less productive or so unproductive that they have to be abandoned.”¹⁹¹ These large areas of standing water render the forest incapable of producing traditional Saramaka agricultural crops and provide fertile breeding grounds for the malaria vector.¹⁹² Dr. Poole reached the same conclusions.¹⁹³

78. Captain Cesar Adjako also testified that Tacoba and Ji Shen blocked the creeks that the Saramaka use for drinking water and other purposes, and that the water was spoiled.¹⁹⁴ He added “we have no access to any other kind of drinking water, so we drink the dirty water;” and “[w]hen you drink the water, you [are] likely to get sick. Some people don’t realize that it was the water that did it, but that’s what happens.”¹⁹⁵

79. Ji Shen and Tacoba also destroyed Saramaka subsistence farms, farms that produce the bulk of the Saramaka’s staple food throughout the year. Silvi Adjako testified that her farms and the farms of other Saramaka persons had been destroyed by Ji Shen.¹⁹⁶ This was corroborated in the testimony of Hugo Jabini,¹⁹⁷ Captain Cesar Adjako,¹⁹⁸ Robert Goodland,¹⁹⁹ and Peter Poole.²⁰⁰ Dr. Goodland explains that the loss of a farm or farms “impoverishes the whole village due the Maroon practice of exchanges among kin.”²⁰¹

¹⁸⁸ Affidavit of R. Goodland, *id.* at para. 22.

¹⁸⁹ *Id.* at para. 23.

¹⁹⁰ *Id.* at para. 25.

¹⁹¹ *Id.* at para. 26.

¹⁹² *Id.* para. 23, 26.

¹⁹³ Affidavit of P. Poole, *supra*, para. 36.

¹⁹⁴ *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 17.

¹⁹⁵ *Id.*

¹⁹⁶ Affidavit of S. Adjako, *supra*, para. 6-7.

¹⁹⁷ Affidavit of H. Jabini, *supra*, para. 37.

¹⁹⁸ *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 17.

¹⁹⁹ Affidavit of R. Goodland, *supra*, para. 16-8.

²⁰⁰ Affidavit of P. Poole, *supra*, para. 35.

²⁰¹ Affidavit of R. Goodland, *supra*, para. 18.

80. When the forest is destroyed, a variety of non-timber forest products, which are used by the Saramaka for subsistence and commercial purposes, are also destroyed. These resources include building materials, thatch for roofing, weaving materials such as rattan, wood for canoes and furniture, non-timber forest products, such as fruits, seeds, plants used in cooking (for food, flavor, preservatives, spices) decoration, or for sale such as orchids, resins, glues, rope & twine, medicinal plants, fungi/mushrooms, honey, bushmeat, companion animals, pets for sale (e.g., parrots, songbirds), basketry materials, fish-trap weaving materials, fish-stunning vines, and many other resources.²⁰²

81. The State has attempted to say that the Saramaka are responsible for the destruction of their own lands because a few Saramaka have logging concessions. The uncontested evidence before the Court demonstrates however that the Saramaka have always engaged in small-scale logging activities, both for subsistence and commerce, and that they have obtained concessions only because Suriname's law requires that they hold a concession before they can sell timber.²⁰³ The State has also said that expert witnesses Dr. Poole and Dr. Goodland at no time examined the concession held and worked by Captain Cesar Adjako (no. 325 on State-issued maps).²⁰⁴ This assertion also does not bear scrutiny. Dr. Goodland, for instance, states that

The forest that the Saramaka use for their livelihoods, such as forest that supply the mentioned [non-timber forest products], remains viable and undestroyed even when sustainably logged by the Saramaka. When the Saramaka log in their forest, they are extremely careful not to damage young trees and vital plants, and they would never destroy a farm. I saw this clearly in the concession previously worked by Captain Cesar Adjako.²⁰⁵

82. Captain Adjako also testified about the differences between traditional Saramaka logging and the operations of Tacoba and Ji Shen. He explained that there is a "very big difference, and that's what makes problems. When we cut trees, we think about our children, and grandchildren, future generations. When the companies come in they just clear cut a whole area and take what they want."²⁰⁶

3. Value of Timber Extracted from Saramaka Territory

83. Government statistics submitted into evidence before the Court prove that a considerable quantity of valuable tropical timber was extracted from the territory of the Saramaka people by the Tacoba, Ji Shen and D.W. Leysner companies.²⁰⁷ This timber is traditionally owned by the Saramaka and they in no way consented to its cutting and removal, and nor were they in anyway compensated for this arbitrary and non-consensual deprivation of their property. Not only did they receive no benefit

²⁰² *Id.* para. 30.

²⁰³ *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 14-5; and *Testimony of Expert Witness Prof. Richard Price*, Written Transcript, *supra*, p. 59;

²⁰⁴ *Factual Observations of the State of Suriname with regard to the affidavits submitted by the IAC and Original Petitioners in Case no. 12.338 Twelve Saramaka Clans v Suriname*, 16 May 2007, (Observations on the Affidavit of R. Goodland), p. 5.

²⁰⁵ Affidavit of R. Goodland, *supra*, at para. 31.

²⁰⁶ *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 15-17.

²⁰⁷ Brief of the Victims' Representatives, *supra*, para. 41-4.

from the expropriation of their timber, the Saramaka have been left with a legacy of environmental destruction, despoiled subsistence resources, and spiritual and social problems.

84. Expert witness Dr. Robert Goodland testified that he reviewed the annual timber export and harvesting statistics produced by Suriname for the years 1999-2006, the same statistics cited by the victims' representatives.²⁰⁸ On the basis of his review of these statistics, Dr. Goodland estimates that

Tacoba and Ji Shen jointly exported in the range of 62,707 cubic meters of high value tropical hardwoods with a declared export value of US\$9,788,708.00. This is most likely an extremely conservative valuation of the amount and value of timber extracted from Saramaka territory due the very common practice of under-reporting and mis-reporting log production. Additionally, there were large amounts of timber abandoned and rotting inside the Ji Shen and Tacoba concessions, some of which was valuable cedar timber. This should also be factored into the equation as well.²⁰⁹

85. With respect to the D.W. Leysner concessions, Dr. Goodland says that

government statistics specify exactly how much timber was declared by D.W. Leysner: 1,773 cubic meters in 2004 and 1,431 cubic meters in 2005. These statistics do not however specify what kind of timber nor what the declared value might be. ... If we take a conservative value of US\$35.00 per cubic meter, we can estimate that the value was at least US\$1,121,140.00.²¹⁰

86. Suriname generally refutes the victims' representatives' accounts of the amount of timber cut in Saramaka territory by the Ji Shen, Tacoba and D.W. Leysner logging companies. In particular, it argues that the statistics presented by the victims' representatives "refer to total amounts of export of wood by the State," and asserts that the victims' representatives' view that the majority of this timber was cut in Saramaka territory "is too general and unacceptable."²¹¹ Suriname has not, however, specifically contested or refuted the evidence produced by Dr. Goodland with regard to the amount of timber cut in Saramaka territory.

87. The victims' representatives have disproved the State's erroneous contention that the statistics presented by the victims' representatives "refer to total amounts of export of wood by the State" in their observations on Suriname's pleading of 26 March 2007.²¹² Moreover, information concerning logging concessions, production volumes, and the origin of timber per company and/or concession is held solely by the State. The victims' representatives have presented the statistical information that is available to them, some of which details export or production volumes for specific companies. They have also previously explained that the "State has refused to release statistics indicating the export volumes of individual companies – citing company

²⁰⁸ Affidavit of R. Goodland, *supra*, at para. 34.

²⁰⁹ *Id.* at para. 35.

²¹⁰ *Id.* at para. 36.

²¹¹ Suriname's Second Response, *supra*, para. 73.

²¹² *Observations of the victims' representatives on the State of Suriname's submission of 26 March 2007*. Submitted by the Victims' Representatives, 18 April 2007, para. 15.

confidentiality – and therefore it is not possible to specify exactly how much timber was exported by Tacoba and Ji Shen.”²¹³ As the State has failed to present this evidence, yet nonetheless attempts to dispute the evidence presented on these points, the victims’ representatives hereby reiterate their request that the Court requires that Suriname presents the relevant information.

4. Mining Concessions:

88. The uncontested evidence before the Court proves that Suriname has issued six mining concessions within traditional Saramaka territory, all of which are shown on State-issued maps.²¹⁴ Two of these are for stone mining and four are for gold mining. It is unknown who holds these concessions. No mining has taken place in the concessions to date. These concessions are in addition to those affecting the displaced Saramaka communities residing outside of traditional Saramaka territory. That these concessions exist and are shown on State-issued maps is corroborated by the testimony of Head Captain Wazen Eduards²¹⁵ and Hugo Jabini.²¹⁶

89. Head Captain Eduards testifies that “My village is in a concession, but not only my village, all the villages, from the village of Pokigon all the way to the village of Semoisi. ... I would guess more than thirty villages from that region.”²¹⁷ He further explains that even though he is the Head Captain with responsibility for the villages in question, that neither the State nor any representative of the mining company consulted with him or sought his consent or the consent of any other Saramaka authority, including the *Gaama*, in relation to these concessions.²¹⁸

90. Suriname has not explicitly denied that it has issued mining concessions within Saramaka territory. Rather, it has erroneously maintained that the Saramaka themselves are mining for gold and have polluted their own lands.²¹⁹ The State’s assertions are erroneous because the mining it is referring to is taking place in Brokopondo District near the ‘transmigrated’ Saramaka communities, not within traditional Saramaka territory, and this does not concern the concessions complained of in the instant case, two of which are stone mining concessions. Both Hugo Jabini and Dr. Peter Poole testified that there is no gold mining on the Upper Suriname River.²²⁰ The victims’ representatives do not deny that there are some Saramaka persons involved in this gold mining, some of whom live in Paramaribo and some of whom are community residents. They are, however, a small minority of the miners in this region who are predominately Brazilian and are not in anyway contracted to work with Saramaka.²²¹

²¹³ *Id.* at para. 42.

²¹⁴ See, *Map prepared by the Ministry of Natural Resources*, in Application of the Commission, *supra*, Annex 16.

²¹⁵ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 7.

²¹⁶ Affidavit of H. Jabini, *supra*, para. 7-8.

²¹⁷ *Id.*

²¹⁸ *Id.* p. 8-9.

²¹⁹ Official Response, *supra*, para. 235; and Suriname’s Second Response, *supra*, para. 64-6.

²²⁰ Affidavit of H. Jabini, *supra*, para. 32; and Affidavit of P. Poole, *supra*, para. 23.

²²¹ Affidavit of E. Fonki, *supra*, para. 35 (and works cited in the associated footnotes)

D. The Saramaka have Acted Collectively to Resolve their Problems with the Logging Companies and the State

91. The evidence before the Court proves that the Saramaka people and *lö* collectively sought to resolve the alleged violations of their rights in domestic venues and that they collectively supported and still support efforts to seek protection for their rights before the Inter-American human rights protection organs.

92. Head Captain Wazen Eduards, Captain Cesar Adjako, and Silvi Adjako testify that since the first days that they discovered the activities of the Tacoba and Ji Shen logging companies within their lands and territory that the Saramaka traditional authorities convened numerous meetings – as is Saramaka custom – to discuss how to address the situation.²²² Head Captain Eduards and Hugo Jabini also testified that the Association of Saramaka Authorities was created in 1997 to provide a focal point for Saramaka efforts to deal with the incursions of logging companies, that the Saramaka have had over 120 meetings, during which each Saramaka village hosted multiple meetings, to discuss and collectively decide on action with regard to the logging companies and their property rights.²²³ Head Captain Eduards further testifies that all 12 Saramaka *lö* are incorporated into the Association of Saramaka Authorities.²²⁴ Hugo Jabini explains that the numerous (and very costly) meetings were held in the Saramaka villages because

We wanted to ensure that all the traditional authorities of the Saramaka people knew what was happening and that we were collectively able to make informed choices about how we should deal with the problems with the logging companies and the lack of recognition of our rights by the Suriname government. We wanted to make sure that as many Saramaka leaders and persons as possible were involved in decision making and that they understood the different options that were available to us. For this reason, we would broadcast tape recordings of all of our meetings on *Radio Mujer*, which is a small UNESCO-funded radio station in a Saramaka village which broadcasts to the villages at the northern end of the Upper Suriname River. There is also a radio station at the southern end of the river that broadcast the tapes of the meetings.²²⁵

93. Head Captain Eddie Fonki and Hugo Jabini testify also that the Upper Suriname River Saramaka made concerted efforts to consult with and to act collectively together with the displaced Saramaka communities in Brokopondo.²²⁶ They also joined together with and sought the support of other indigenous and tribal peoples in Suriname to resolve their problems with the logging companies and the State.²²⁷

²²² *Testimony of Head Captain Wazen Eduards and Cesar Adjako*, Written Transcript, *supra*, p. 6-7 and 17, respectively; and Affidavit of S. Adjako, *supra*, para. 4-5, 10.

²²³ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 6-7; and Affidavit of H. Jabini, *supra*, para. 7-11.

²²⁴ *Id.* p. 10.

²²⁵ Affidavit of H. Jabini, *supra*, para. 7-10.

²²⁶ *Id.* para. 7; and Affidavit of E. Fonki, *supra*, para. 4.

²²⁷ Affidavit of H. Jabini, *id.*, para. 9.

94. The evidence before the Court proves that not only were the authorities of the 12 Saramaka *lö* and the members of all Saramaka communities fully informed about and involved in collective decision-making, but, also, that the *Gaama* of the Saramaka was consulted about, involved in, and supported decisions concerning the collective efforts to protect the Saramaka people's property and other rights.²²⁸ Head Captain Eduards and Hugo Jabini both testify that the *Gaama* was regularly consulted and supported the efforts of the Captains acting through the Association of Saramaka Authorities.²²⁹

95. The present *Gaama*, Belfon Aboikoni, in December 2006, expressly and publicly declared his support for the case at hand.²³⁰ This endorsement was made at a *Gran Krutu* (Great Gathering) of indigenous and maroon peoples held on 1-5 December 2006. The decisions of the *Gran Krutu*, signed by the leaders of all indigenous and maroon peoples in Suriname, including *Gaama* Aboikoni, state unequivocally that

All actions of Indigenous and Maroon peoples concerning their Land Rights, especially Case 12.338, 12 Saramaka *lös* versus Suriname, that is now brought before the Inter-American Court, as well as the case of the Indigenous peoples of the Lower Marowijne area (VIDS) will be supported.²³¹

96. *Gaama* Belfon Aboikoni reaffirmed his support for the instant case in a formal letter, written after a meeting of the Saramaka Captains and the *Gaama* in March 2007, and he attended the public hearing at the Court as part of the Saramaka delegation to lend his support to his people's case.²³²

97. The uncontested evidence before the Court further proves that the Saramaka people collectively filed complaints and petitions with the relevant State ministries and agencies in an attempt to seek protection for their rights in domestic venues.²³³ Complaints were filed with the President of Suriname under the procedure established by Article 41(1)(b) of the Forest Management Act on two occasions, the first in 1999, the second in 2000. While the receipt of one of these complaints was acknowledged by the State, no substantive response was received and no action was taken to investigate the complaints or to address any of the issues raised therein.²³⁴ A series of

²²⁸ See, Brief of the Victims' Representatives, *supra*, Annex 3.5, 'Saramaccaners make fist in battle for recognition land rights', *De West*, March 26, 1998 (containing a newspaper article explaining *Gaama* Songo Aboikoni's support for recognition of the Saramaka people's land and resource rights) and Annex 3.2 'Maroon tribe in Suriname produces map to claim land rights, halt logging,' *Associated Press*, 16 October 2002 (quoting Albert Aboikoni, then-acting *Gaama*).

²²⁹ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 7; and Affidavit of H. Jabini, *supra*, para. 12-16.

²³⁰ This fact is admitted by the State, see, Official Response of the State, *supra*, para. 152.

²³¹ Official Response of the State, *supra*, Annex 63, *Decisions taken during the grankrutu on Land Rights of Indigenous and tribal peoples in Suriname held at Diitabiki from 1 to 5 December 2006*.

²³² Affidavit of H. Jabini, *supra*, Annex A (containing the letter of *Gaama* Belfon Aboikoni).

²³³ See, Application of the Commission, *supra*, Annex 17, (containing copies of these complaints and petitions).

²³⁴ Brief of the Victims' Representatives, *supra*, Annex 2.2, (containing *Letter of I.E.A. Krolis, Director of the Suriname Forestry Management Foundation*, 22 November 1999, acknowledging receipt of Article 41 complaint submitted by the Association of Saramaka Authorities and received by the State on 4 November 1999).

petitions seeking relief with respect to the logging activities and the failure of the State to secure the Saramaka people's property rights were also submitted pursuant to Article 22 of the 1987 Suriname Constitution which provides (in the fundamental rights chapter) for a right to petition public authorities. No response was received to any of these formal petitions.

98. The Saramaka attempted "time and time again" to meet with State officials to resolve the alleged violations of their rights.²³⁵ Head Captain Eduards explains that "We did our very best to speak with them about the problem, but they would not talk with us. They do not regard us as human beings. They think we are animals. If somebody were to tell you that they considered, that they treated us with respect, you have to know that they are lying"²³⁶ When the Saramaka were able to meet with the State, Hugo Jabini explains that "they just kept saying that we do not have any rights and they always took a very long time responding to us, more than 8 months on one occasion. ... While this was happening, the logging companies were busy cutting the forest in our territory."²³⁷

99. Since the Saramaka first discovered the presence of Tacoba and the other logging companies, they have held extensive meetings in order to reach consensus and have collectively sought protection for their rights at both the domestic level and before the Inter-American protection organs. All of the traditional Saramaka authorities, including the *Gaama*, have been involved in and supported this collective decision-making and action, as have a large percentage of the general Saramaka population, both through attendance at village meetings and by listening to those meetings on the radio in Saramaka territory. The Saramaka people's efforts to resolve their problems with the State have fallen on deaf ears or have been summarily rebuffed.

E. Material Harm Inflicted on the Saramaka People

100. The evidence before the Court proves that Suriname's acts and omissions have resulted in substantial material harm inflicted on the Saramaka people. First, the expert and witness testimony is unanimous that the significant impoverishment of the Saramaka people, both those displaced and those Saramaka who have seen a substantial reduction in their available resources due to enforced sharing with the displaced, is one of the ongoing and continuous consequences of the Afobaka dam and the loss of some 50 percent of the Saramaka people's natural wealth.²³⁸ As Dr. Goodland states, the Saramaka have "lost forty years of normal livelihoods."²³⁹ Professor Price also details the impoverishment of all Saramaka because of the dam and explains that "suffering is very, very real for everybody, for all Saramakas up and down the river, and in many ways is only increasing because the population continues to increase and the pressures on the land continue to increase."²⁴⁰

²³⁵ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, at p. 12 (responding to a question by *Ad hoc* Judge Baarh).

²³⁶ *Id.* at p. 5.

²³⁷ Affidavit of H. Jabini, *supra*, at para. 21-2, 21-25.

²³⁸ Affidavit of G. Leidsman, *supra*; Affidavit of E. Fonki; *Testimony of Wazen Eduards*, Written Transcript, *supra*, p. 6; and *Testimony of Cesar Adjako*, Written Transcript, *supra*, p. 17-8; Affidavit of R. Goodland, *supra*, and Affidavit of P. Poole, *supra*.

²³⁹ Affidavit of R. Goodland, *supra*, para. 62.

²⁴⁰ *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p. 63.

101. Second, the evidence before the Court also proves that Saramaka crop yields have been reduced because of shortened fallow periods caused by a substantial reduction in their farm lands, which, in turn, was caused by the loss of lands to the Afobaka dam and the resulting population increases around fertile land on the Upper Suriname River.²⁴¹ In the Brokopondo area, the Saramaka communities lack sufficient and adequate farm lands to support their population and their ability to hunt for much need protein is greatly reduced due to the mining in that area.²⁴²

102. Third, the Saramaka lost farms and farming lands because of the operations of the logging companies in their territory. While they are generally associated with an individual or a family, these farms nevertheless serve a collective function and are highly valued among the Saramaka, women especially. Silvi Adjako, for instance, explains that

Because my farms were destroyed, I lost enough food for my family for more than one year and money for supplies that I cannot get from the forest. I had to ask my relatives for food and I was ashamed that I did not have a farm of my own. ... It hurt me very much what Ji Shen did and it also hurt my community because what one of us suffers we all suffer when our land is involved and when our food supplies and the forest are destroyed.²⁴³

103. Fourth, the Saramaka people have been deprived of valuable timber resources which are conservatively estimated to be worth US\$10,909,848.00.²⁴⁴ This does not account for timber that was not declared, was misreported or that was simply left to rot on the ground by the logging companies, nor for timber that was sold in domestic markets rather than exported.²⁴⁵ Because of the substandard and ill-planned nature of the logging in the concessions, economically valuable timber will be absent from these areas for many decades and the expected income that the Saramaka would have obtained by sustainably harvesting this timber is similarly lost.

104. Fifth, the logging operations in Saramaka territory destroyed non-timber forest products that have both a subsistence and commercial value to Saramaka. Valuable ecological services were also lost in the destroyed areas of Saramaka forest and the Saramaka now experience substantially increased labour and other costs associated with making long journeys to find potable water and to find suitable farm lands due to the blocking of creeks and flooding in the concessions.²⁴⁶

105. Sixth, the Saramaka have been deprived of the access to and use of areas that are fundamental to meeting their basic subsistence needs by the logging companies on the Upper Suriname River and by mining operations in Brokopondo. Mercury poisoning and substantial and unmitigated destruction of forest lands by both miners

²⁴¹ Affidavit of P. Poole, *id.* para. 26-8.

²⁴² Affidavit of E. Fonki, *supra*, para. 34.

²⁴³ Affidavit of Silvi Adjako, *supra*, at para. 9. Ms. Adjako further explains that "It affects my clan because all of us own the land that the Chinese destroyed; just because my farm was there does not change the fact that it is the land of my clan that belongs to all of us." *Id.* at para. 13.

²⁴⁴ Affidavit of R. Goodland, *supra*, para. 34-5.

²⁴⁵ *Id.*

²⁴⁶ Affidavit of R. Goodland, *supra*, para. 26, 31-3.

and loggers has greatly reduced or eliminated the productive yields of these forest lands. Also, the roads built by the logging companies are now used by hunters and animal traders from Paramaribo, which is further reducing the resources available to the Saramaka.²⁴⁷

106. Finally, neither the State nor the logging companies nor the mining company that owns and operates the Afobaka dam have provided any meaningful compensation for the material damages listed above. Nor have any of these entities sought to mitigate these damages or to engage in remediation or restoration works. The Saramaka are substantially worse off today than they were prior to the flooding of their lands and the logging operations. Where health and education services exist in Saramaka areas, these are qualitatively and quantitatively inferior to those enjoyed by the non-Saramaka/indigenous and Maroon Surinamese population, a conclusion that has been verified by United Nations human rights treaty bodies and rapporteurs, and by the Inter-American Development Bank.²⁴⁸ In this respect, Head Captain Wazen Eduards testifies that

not only did they block the river and caused problems in the first place, but they made things worse. They exacerbated the problem by then sending concessions into our territory to cause even greater problems. Not only that but we have terrible problems with schools. The schools are not functioning. The medical facilities are not functioning. Electricity, they built a dam for electricity, but we don't have electricity. Our problems are only getting worse and worse. Even if a couple of people may have a little bit of electricity, that's only because they struggled and struggled to get it. These are not things that are offered to us. Our water is polluted.²⁴⁹

F. Non-Pecuniary Harm Inflicted on the Saramaka People

107. The evidence before the Court proves that, by virtue of Suriname's acts and omissions, the Saramaka people and its members have suffered non-pecuniary harm and that this harm is both severe and pervasive. Consequently, on the basis of the proven facts in this case, it is both demonstrated and may be presumed that the victims have suffered moral damages, which may include "suffering and affliction, detriment to very significant personal values, as well as non-pecuniary alterations to a victim's living conditions."²⁵⁰ These moral damages concern Suriname's acts and omissions in relation to the ongoing and continuous effects of the Afobaka dam as well as the logging operations that were authorized by the State, and which took place in the traditional territory of the Saramaka people.

²⁴⁷ Affidavit of S. Adjako, *supra*, para. 13.

²⁴⁸ *Inter alia, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 19 (finding that The Committee is disturbed at the continuing lack of health and education facilities and utilities available to indigenous and tribal peoples. It regrets that no special measures have been taken to secure their advancement on the grounds that there are no available data suggesting that they need special protection;") and, Observations of the Victims' Representatives on Preliminary Objections, Annex 1, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006.

²⁴⁹ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 10.

²⁵⁰ *Moiwana Village case*, *supra*, at para. 191.

108. All of the Saramaka witnesses and the experts presented by the Commission and the victims' representatives accentuate the pain and suffering inflicted on the Saramaka by the Afobaka dam and its associated and ongoing impacts and consequences. They all also emphasize that this pain and suffering is very real and present today and that in some respects it has increased in intensity with the passage of time.

109. The witnesses and experts have also explained that the Saramaka are deeply fearful about retaliation from the spirit world due to their inability to remedy the flooding of the forest and the destruction of their sacred sites and burial grounds, and the destruction of the forest caused by the logging operations.²⁵¹ Head Captain Fonki, for example, states that

We are very worried today that the spirits are angry with us and are punishing us for what happened with the dam. Every year we have a special ceremony to appease the spirits as well as the regular offerings we make. People get afflictions because the spirits are angry. It is also possible that our farms will not be fertile and that village life will be damaged. We have to be very careful with the spirits because of what has happened with the dam and future generations will also have to be careful.²⁵²

110. Expert witness Professor Richard Price verifies the existence of the deep fears and concerns identified by Head Captain Fonki and the other Saramaka witnesses, and he adds that these fears also arise in relation to the forest areas destroyed by the logging companies.²⁵³ He explains that the Saramaka today suffer terribly because of the flooding of their villages and sacred sites "and in very specific ways, these spirits, which are avenging spirits, come and get everyone in the matri-lineage for time immemorial. So they have to do rituals all the time to try and appease these spirits who are angry because of what was done to the forest."²⁵⁴ These avenging spirits affect all members of the various *lō* and their vengeance is multigenerational and continues and intensifies until the wrong has been corrected.

111. Expert witness Dr. Robert Goodland provides in some detail his views on the damages suffered by the Saramaka in relation to both the logging and the Afobaka dam.²⁵⁵ With regard to the displacement caused by the dam, he explains that it "converted once dynamic and independent Maroon communities into traumatized and dysfunctional communities;" and that these communities are "dysfunctional even now -- four decades after being displaced."²⁵⁶ Dr. Goodland also states that "We saw a demoralized people [in the Brokopondo villages] during our visit in 2005, forty years after they had been displaced. The society is dysfunctional even today after such a long time; the society has not healed."²⁵⁷

²⁵¹ Affidavit of S. Adjako, *supra*, para. 13; Affidavit of H. Jabini, *supra*, para. 39; and *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p. 62-4.

²⁵² Affidavit of E. Fonki, *supra*, para. 26.

²⁵³ *Testimony of Prof. Richard Price*, Written Transcript, *supra*, p. 62.

²⁵⁴ *Id.*

²⁵⁵ Affidavit of R. Goodland, *supra*, at para. 42-54, 61-7.

²⁵⁶ *Id.* at para. 44.

²⁵⁷ *Id.* at 48.

112. Dr. Peter Poole similarly testifies about

how traumatic the flooding remains to the Saramaka today. They feel violated on a very fundamental level, and they speak about the flooding and their displacement with great emotion and obvious pain. They express enormous outrage that the graves of their ancestors and their sacred sites were desecrated. They are clearly deeply affected by the flooding even today and this was also true for the young people I met who were not even alive when the dam was built.²⁵⁸

113. The Saramaka are truly traumatized by the Afobaka dam and their displacement, and this remains true today. This trauma is a direct result of Suriname's ongoing acts and omissions, including its failure to provide meaningful reparations and security of tenure to the Saramaka. Head Captain Fonki explains that "I can never forget what happened to us. Our lives have not been the same and have not been good since we were forced from our lands. ... It affects all of us still today and I would say that it has really destroyed us as communities, at least the Saramaka who live in Brokopondo. ... It is like we are dying but we are still alive at the same time."²⁵⁹ He also states that the mining activities, large- and small-scale, that are taking place in the area they now occupy are a source of constant anxiety and fear:

Maybe one day someone will tell us that they have to move again because we are on top of a gold mine, like what happened with the N'djuka people at Nieuw Koffiekamp. We worry about this all the time and especially when we see those little flags that the Canadians put in the ground. Mining has brought very few benefits and many problems. What we need is security. If they mine here the people in the city and in Canada will benefit and the Saramaka will lose again just like what happened with the dam. How is it possible that we can live like this? It is very hard.²⁶⁰

114. George Leidsman further details that "They did not even let us move the cemeteries. That is something that is really painful for us, whenever we talk about it, the old people from my village, we still cry."²⁶¹ He also explains that he had to leave behind the grave of his father and

We cried and we cried, my mother, the children and grandchildren, because we had to leave him behind under the water. That is what happened to all the people who were transmigrated. We could not take our loved ones with us. We had to leave them behind. Some of the coffins started floating on the lake and we could not even take those because by the time we heard about it, they had sunk again.²⁶²

115. Mr. Leidsman asks and makes clear that: "Do you know what that is like to lose the place where your umbilical is buried, where the umbilical cords of your ancestors for many generations are buried? We still talk about it today, we still cry

²⁵⁸ Affidavit of P. Poole, *supra*, at para. 29.

²⁵⁹ Affidavit of E. Fonki, *supra*, at para. 25.

²⁶⁰ *Id.* at para. 39.

²⁶¹ Affidavit of G. Leidsman, *supra*, at para. 6.

²⁶² *Id.* at para. 7.

about it today. It makes us very sad to think of our old village. It is really a source of great sadness.”²⁶³ He further explains that “Whenever we get together, at funerals or other gatherings, we, the people from Ganzee, we always talk about this. We talk about old Ganzee, and what we had to leave behind in order for us to become practically like beggars today. We cry because it hurts us very much.”²⁶⁴

116. Head Captain Wazen Eduards and Captain Cesar Adjako also testify about the pain and suffering that the Saramaka continue to experience because of the Afobaka dam and its ongoing consequences and effects. Head Captain Eduards explains that “Everybody in my surroundings has been touched by this tragedy;”²⁶⁵ while Captain Adjako, himself one of the displaced, states that “[o]ur whole way of life was damaged by the flooding.”²⁶⁶

117. Head Captain Wazen and Captain Adjako also describe the extreme anguish and distress and the sense of violation and helplessness suffered by the Saramaka, individually and collectively, due to the operations of the logging companies within their territory.²⁶⁷ In the same vein, Hugo Jabini and Silvi Adjako, respectively, state that

Without our territory we cannot live, our culture will be destroyed, and we will cease to be who we are. You only need to see the Saramaka transmigration villages in Brokopondo to see what will happen to us if we lose what is left of our territory. Our culture will be lost forever. The forest is a part of our life, our traditions and our spiritual life. The failure of the government to recognize and protect our property rights harms our existence and causes us damage, not the least because of the pain that we have experienced due to the invasion of our land and the destruction of our forest by the Chinese logging companies. We do not have much land left after the dam took away so much from us.²⁶⁸

I have a very bad feeling about this; it makes me sick when I think about it and I am afraid of what will happen to us now. Our land and the forest is everything for us. It’s our life. What the Chinese did threatens our future, the future of all Saramaka people. Our descendents will face enormous problems because of this. I know what it is like to lose land; I am from a transmigration village, we cannot let this happen again or there will be no more Saramaka people, we will be like ghosts.²⁶⁹

118. All of the witnesses and experts also stress that the protection provided to the logging companies by the National Army of Suriname, and the presence of these soldiers in Saramaka territory, separately and cumulatively aggravated and intensified the degree of anxiety and fear inflicted on the Saramaka people.²⁷⁰ The victims’

²⁶³ *Id.* at para. 18.

²⁶⁴ *Id.* at para. 25.

²⁶⁵ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 6.

²⁶⁶ *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 18.

²⁶⁷ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 6; and *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 16.

²⁶⁸ Affidavit of H. Jabini, *supra*, at para. 40.

²⁶⁹ Affidavit of S. Adjako, *supra*, at para. 12.

²⁷⁰ *Inter alia*, Affidavit of R. Goodland, *supra*, at para. 64.

representatives observe in this respect that the last time the National Army of Suriname entered Saramaka territory in 1987 that it massacred seven Saramaka men, an incident that gave rise to the *Aloeboetoe Case* decided by the Court in 1993. The fears expressed by the Saramaka, therefore, have a basis in very recent memory.

119. Professor Price testifies that “the idea of having soldiers coming in is a very, very frightening thing for Saramakas” and;

[t]he use of Suriname army troops to “protect” the Chinese laborers who are destroying the forests that Saramakas depend on for their subsistence, construction, and religious needs is an extraordinary insult to Saramaka ideas about their territorial sovereignty. ... Their presence in the sacred forest of the Saramakas, with explicit orders to protect it *against* Saramakas, on behalf of the Chinese, is an ultimate affront to cultural and spiritual integrity.²⁷¹

120. Dr. Goodland also stresses the fear and anxiety experienced by the Saramaka due to the presence of soldiers in their territory and he relates this also to moral damages caused by the prevailing state of impunity that characterizes the violations of the Saramaka people’s rights in Suriname:

Equally significant is the social and psychological reminder that the Saramaka have no rights. The logging reminds Saramaka that the government can penalize them as it did during the civil war. Logging by outsiders is harmful enough, but logging supported by the army constitutes a massive threat to Saramaka society. Army-supported logging is worse than intimidation. Such contemptuous treatment creates a sense of inferiority and exacerbates feelings of helplessness. ... Logging shows that Saramaka still do not have any rights over the forests they have possessed and sustainably used for centuries. This translates into a feeling that the Saramaka have no control over their own lives and livelihoods.²⁷²

121. This impunity is not imagined; Suriname’s laws fail to provide any effective remedies by which the Saramaka people may assert and seek protection for their rights. Additionally, the Saramaka, together with all indigenous and tribal peoples in Suriname, have been seeking recognition and protection for their property rights for many decades, always without result due to the intransigence of the State.²⁷³ Agreements made with the State have not been honored, including the Lelydorp Accord of 1992, which concluded the Interior War and contained a specific commitment by the State that indigenous and tribal property rights would be addressed.²⁷⁴ The Saramaka people’s attempts to seek protection for their rights at

²⁷¹ *Report of Richard Price in support of Provisional Measures*, Application of the Commission, *supra*, Annex 2, at para. 18.

²⁷² Affidavit of R. Goodland, *supra*, at para. 64.

²⁷³ See, Official Response of the State, *supra*, Annex 63, *Decisions taken during the grankrutu on Land Rights of Indigenous and tribal peoples in Suriname held at Diitabiki from 1 to 5 December 2006*.

²⁷⁴ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev 2, 12 March 2004, at para. 11 (stating that the Committee is “concerned that, more than 10 years after the 1992 Peace Accord, the State party has not adopted an adequate legislative framework to govern the legal recognition of the rights of

the domestic level in light of the logging operations were ignored, they were belittled and chastised for presenting them, and they were repeatedly told by high ranking State officials that they do not have any rights.²⁷⁵ Such prolonged impunity and denial of effective remedies is a recognized cause of suffering and anguish in the Inter-American human rights system.²⁷⁶

122. Suriname has not denied or otherwise contested that the Saramaka have suffered both material and moral damages as a result of its acts and omissions in relation to the Afobaka dam and the logging operations. It has simply argued that these damages are overstated and exaggerated, and it has sought to blame the Saramaka for the destruction of their own lands.²⁷⁷ Yet, Suriname fails to submit any evidence to show that its views in this respect are valid or that the damages identified, substantiated and proven by the victims' representatives are not of the alleged quantity and quality.

G. Suriname Law and Practice with Respect to the Saramaka People's Rights

123. The evidence before the Court proves that Suriname has failed to adopt any measures to recognize, secure and protect the property and other rights of the Saramaka people. It has also failed to establish any effective remedies by which the Saramaka people and its members can seek protection for their individual and communal rights.²⁷⁸ This evidence also proves that the Saramaka people and its traditional land holding entitles, the *lō*, and its communities lack legal personality in Suriname law and are therefore incapable of holding and enforcing their internationally guaranteed property and other rights. Additionally, the uncontested evidence demonstrates that Suriname has adopted constitutional and other measures that have extinguished the Saramaka people's natural resource rights and unilaterally transferred ownership over these resources to the State itself, all without the consent of the Saramaka and, as typified by the activities of the logging companies authorised by the State, to the extreme detriment of the Saramaka.

1. Suriname has not adopted legislative or other measures to recognize, secure and protect the property rights of the Saramaka people

124. As of the time of this writing, Suriname has failed to adopt legislative, administrative or other measures to recognize, secure and protect the property rights

indigenous and tribal peoples (Amerindians and Maroons) over their lands, territories and communal resources").

²⁷⁵ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*, p. 5; and Affidavit of H Jabini, *supra*, para. 39-43. See, also, Application of the Commission, *supra*, Appendices Vol. IV, Information submitted pursuant to Article 43(3) of the Rules of Procedure of the Inter-American Commission on Human Rights, 21 April 2006, at para. 20-29.

²⁷⁶ *Inter alia*, *Moiwana Village*, *supra*, para. 94; and *Case of the Serrano-Cruz Sisters*, *supra*, paras. 113-115.

²⁷⁷ See, for instance, *Factual Observations of the State of Suriname with regard to the affidavits submitted by the IAC and Original Petitioners in Case no 12.338 Twelve Saramaka Clans v Suriname*, 16 May 2007, (Observations on the Affidavit of R. Goodland).

²⁷⁸ See, Affidavit of M. Muskiet, *supra*; *Observations of the Victims' Representatives in Response to the Preliminary Objections Presented by the Republic of Suriname*, *Twelve Saramaka Clans v. Suriname*, 01 March 2007, p. 11-27; and *infra*, paras. 17-25.

of the Saramaka people. This remains the case notwithstanding the Court's 2005 order in *Moiwana Village* that Suriname adopt such measures. That this is the case is confirmed by the State's admissions in this case, in expert and witness testimony, and in the findings of United Nations human rights bodies.²⁷⁹ This evidence further confirms that not one single indigenous or tribal people or community or any of their traditional land-owning entities hold any form of communal title to all or part of their traditional lands, territory or resources.

125. Expert witness Mariska Muskiet explains that there is no mechanism for indigenous and tribal peoples to obtain title, that not one indigenous or tribal people or community presently holds title, and that there is no possibility of obtaining a communal title, which is a form of title unknown in Suriname law.²⁸⁰ That indigenous and tribal peoples and communities, including the Saramaka people specifically, do not hold title and that there is no legal protection for their traditional rights is also stated in the testimony of District Commissioner Rudy Strijk,²⁸¹ Salomon Emanuels,²⁸² and Head Captain Albert Aboikoni.²⁸³

126. The affidavit of witness Dr. van Dijk Silos, submitted by the State, confirms that Suriname has to-date failed to legally recognize and guarantee the rights of indigenous and tribal peoples, including the Saramaka people, to own and peacefully enjoy their traditionally-owned lands, territories and resources. First, the affidavit states that one of the tasks of the Presidential Land Rights Commission ("PLRC"), of which she is the Chairperson, is to develop a "draft legislative framework" for addressing indigenous and tribal peoples' property rights. It additionally makes clear that the PLRC "was given the task to formulate for the inhabitants of the interior living in tribal communities a solution model [(draft legislative framework)] that should recognize and regulate the land rights of these target groups."²⁸⁴ Second, the affidavit explains that the PLRC "has conceptualized the issue of land rights and chose a new type of title, more in particular the collective right of ownership, for which as much as possible a link will be made with legally known titles" (emphasis added).²⁸⁵

²⁷⁹ Copies of the observations and decisions of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination are located in the Brief of the Victims' Representatives, Annex 4. See, also, Observations of the Victims' Representatives on Preliminary Objections, Annex 1, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006 and; United Nations Special Rapporteur, Rodolfo Stavenhagen, similarly concluded that "Legally, the land they occupy is owned by the State, which can issue land property grants to private owners. Indigenous and tribal lands, territories and resources are not recognized in law. . . . Despite petitions to the national Government and the Inter-American system of protection of human rights (Commission and Court), the indigenous and Maroon communities have not received the protection they require." *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65*. UN Doc. E/CN.4/2003/90, 21 January, at para 21.

²⁸⁰ Affidavit of M. Muskiet, *supra*, at para. 26-9, 34

²⁸¹ Written Transcript, *supra*, p. 29-30.

²⁸² Written Transcript, *supra*, p. 71.

²⁸³ Written Transcript, *supra*, p. 36-7.

²⁸⁴ *Affidavit of Jennifer Victorine van Dijk-Silos as witness of the State of Suriname in the case of the 12 Saramaka L6s [sic] vs. Suriname* Submitted by the Republic of Suriname, 27 April 2007 (notarised on 02 May 2007), at p 1.

²⁸⁵ *Id.*

127. Dr. van Dijk Silos' statements confirm and verify that it is not possible to obtain a communal title under extant Suriname law – a fact also acknowledged as proven by the Court in *Moiwana Village*²⁸⁶ – and that there is no extant legislative framework that recognizes and protects the property rights of indigenous and tribal peoples, including the Saramaka people.

128. In its pleading of 26 March 2007, Suriname acknowledges that it has failed to recognize the property rights of the Saramaka people by stating: i) that the victims' traditional lands and territory is “not theirs but belongs to the State...;”²⁸⁷ and, ii) that “[a]ll land is State owned land. All the property belongs to the State. There is no Saramaka law pertaining to own[ing] state property and there is no separate law, under the Constitution there is only one law and that is the law of the State of Suriname, minority groups or indigenous populations living in Suriname have no separate law or legislation, because all falls [*sic*] with Suriname's legislation.”²⁸⁸ These statements are admissions against interest that also confirm statements to the same effect made by the State before the Inter-American Commission.²⁸⁹

129. Finally, Suriname has asserted that the “community forests” that may be established under its 1992 Forest Management Act could provide effective protection for the property rights of Saramaka communities. However, the evidence before the Court contradicts and disproves this assertion. In the first place, and as demonstrated in the testimony of Captain Adjako and R. Somopawiro, the vast majority of indigenous and tribal peoples and communities have not even been informed about the possibility of obtaining these community forests.²⁹⁰ Second, the implementing laws required to issue community forests have yet to be adopted and thus it is technically not possible to establish these areas at present.²⁹¹ Third, community forests are not issued as a matter of right, but at the sole discretion of the Minister responsible for forests and subject to any conditions the Minister may impose.²⁹² Fourth, and most importantly, community forests are essentially revocable forestry concessions that convey limited and restricted use rights, they are non-exclusive, and they are inconsistent with traditional Saramaka tenure and custom.²⁹³ Finally, at present, not one single Saramaka community has been issued a community forest.²⁹⁴

130. That these community forest concessions are ineffective is further illustrated by Suriname's 2003 *National Forest Policy*, which, in addition to erroneously linking community forests with recognition of property rights, states that

In some cases the community forest [HKV or Wood Cutting Permit in English as no community forests have been issued to date] is situated at a

²⁸⁶ *Moiwana Village*, *supra*, para. 86(5).

²⁸⁷ Suriname's Second Response, *supra*, at para. 23.

²⁸⁸ *Id.* at para. 55.

²⁸⁹ See, *inter alia*, Report 09/06, Case 12.338, paras. 168-70 (recording statements made by Suriname to the effect that the Saramaka people do not have any legal property rights under its domestic law).

²⁹⁰ *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*, p. 18-20; and *Testimony of R. Somopawiro*, Written Transcript, *supra*, p. 54.

²⁹¹ *Testimony of R. Somopawiro*, Written Transcript, *id.* p. 49, 53

²⁹² *Id.*

²⁹³ *Id.* p. 44-5.

²⁹⁴ *Id.* p. 49.

large distance from the village center so that subsistence use is hampered. Judging from what we see in practice, it is not clear what the criteria were/are for determining the size and the location of HKVs already issued and the communal forests yet to be issued. Such arbitrariness causes tensions. Lack of clarity about the boundaries of HKVs and communal forests and inadequate delineation gives rise to conflicts with other forest users and the government.

Deeper in the interior [i.e., the Upper Suriname River] ... the use of the forest is determined exclusively by the traditional authorities. However, this does not mean that the people there are not preoccupied with the resolution of the land rights issue, as everywhere else. So far a structured dialogue between the government and the people of the interior that holds the prospect of a resolution has not yet come about. However, the government is aware of the importance of this issue. The lack of clarity and conformity partly hampers the participatory development and implementation of policy regarding the natural resources.²⁹⁵

2. Suriname has Failed to Establish Effective Remedies to Protect the Rights of the Saramaka people.

131. The evidence before the Court proves that Suriname has failed to provide effective judicial and other remedies by which the Saramaka people can seek protection for its communal property and other rights.²⁹⁶ Suriname has identified nothing more than speculative and hypothetical remedies to refute the overwhelming evidence before the Court on this point. The State's primary argument is that Article 1386 of its Civil Code offers a judicial remedy that is both available and effective. However, for the reasons stated in paragraphs 19-23 *infra* this argument is unfounded and fundamentally flawed. As stated by the Commission in the public hearing, "it's uncontested that the provision, in its application, does not and conceptually could not be a remedy for the creation and recognition of collective rights to land. That is the fundamental issue that is not being protected for which the Commission found and asks the Court to find a violation of Article 25."²⁹⁷

3. Denial of the Right to Legal Personality

132. Suriname's contentions in relation to the existence of effective judicial or other remedies for the protection of the communal rights of the Saramaka people ultimately founder in light of the proven fact that the Saramaka people and its constituent *lö* and communities are denied legal personality under Suriname law. They are therefore incapable of holding and seeking protection for their rights in domestic venues. This is confirmed in the expert testimony of Mariska Muskiet who states, *inter alia*, that, "the Saramaka are not recognized as legal persons, therefore, just as in the Pierrekondre case, the judge will deny their standing to challenge

²⁹⁵ Application of the Commission, *supra*, Case File before the Commission, Volume III & IV, *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights*, no date, Annex A(II), National Forest Policy of Suriname 2003, at Sec. 5.1.

²⁹⁶ See, Affidavit of M. Muskiet, *supra*; *Observations of the Victims' Representatives in Response to the Preliminary Objections Presented by the Republic of Suriname*, Twelve Saramaka Clans v. Suriname, 01 March 2007, p. 11-27; and *infra*, para. 17-25.

²⁹⁷ Written Transcript, *supra*, p. 86.

logging and mining concessions and to seek protection for their communal property rights.”²⁹⁸

133. That indigenous and tribal peoples, including the Saramaka, lack legal personality under Suriname law has been verified previously by the Court itself,²⁹⁹ by the Commission,³⁰⁰ by the United Nations Committee on the Elimination of Racial Discrimination;³⁰¹ by the Inter-American Development Bank;³⁰² and by the UN Food and Agriculture Organization.³⁰³ The FAO, for instance, states in a 1996 report that “Since the [Suriname] legal system currently has no way of recognizing traditional tribal groups and institutions as legal entities, they are effectively invisible to the legal system and incapable of holding rights.”³⁰⁴

134. Suriname has not denied or disproved the evidence that shows that the Saramaka people and its constituent *lö* and communities lack and are denied legal personality under its law.

4. Article 41 of Suriname’s 1987 Constitution unlawfully extinguished the Natural Resource Rights of the Saramaka People

135. Article 41 of Suriname’s 1987 Constitution vests ownership of all resources in the State and provides for an inalienable right of the State to exploit those resources. This provision unilaterally extinguished the rights of indigenous and tribal peoples, including the Saramaka people, to the resources pertaining to their traditional territories, and transferred ownership of these resources to the State. The Saramaka people have thus been deprived, on an ongoing and unmitigated basis, of their property rights in and to their natural resources without their consent and without compensation.

136. The uncontested evidence before the Court proves that Article 41 of Suriname’s 1987 Constitution entered into force in December 1987.³⁰⁵ This provision thus post-dates Suriname’s accession to the American Convention and its simultaneous acceptance of the Court’s jurisdiction. It is similarly uncontested that,

²⁹⁸ Affidavit of M. Muskiet, *supra*, at para. 39 (see, also, para. 28, 30-1, 40-1, 47-9).

²⁹⁹ *Moiwana Village*, *supra*, para. 86(5) (finding that “Although individual members of indigenous and tribal communities are considered natural persons by Suriname’s Constitution, the State’s legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective property rights”).

³⁰⁰ *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006 (finding that “indigenous and Maroon communities lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community or other traditional collective entities that possess land”).

³⁰¹ *Concluding Observations of the Committee on the Elimination of Racial Discrimination Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 14 (finding that “indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons”).

³⁰² Observations of the Victims’ Representatives on Preliminary Objections, para. 55-6, citing, quoting and annexing, E-R. Kambel, *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006.

³⁰³ UN Food and Agriculture Organization, *Strengthening National Capacity for Sustainable Development of Forests on Public Lands; Report of the Legal Consultant, Cormac Cullinan*, FAO Project TCP/SUR/4551 (1996), at sec. 4.6.2.

³⁰⁴ *Id.*

³⁰⁵ Affidavit of M. Muskiet, *supra*, at para. 35.

prior to 1987, and with the major exception of the Afobaka dam, the Saramaka people exercised and enjoyed its natural resource ownership rights in its traditional territory without hindrance or impediment in domestic law and in accordance with its customary laws and values.³⁰⁶

137. Suriname has not denied or otherwise contested that Article 41 of its Constitution unilaterally extinguished the Saramaka people's ownership rights to the natural resources within its traditional territory and transferred ownership of these resources to the State. It has instead argued that the Saramaka consented to this expropriation because a public referendum was held at the time the Constitution was adopted. The evidence before the Court however proves that the Saramaka were not aware of and nor did they participate individually or collectively in said referendum. Indeed, as expert witness Ms. Muskiet testifies, "it would have been very difficult for them to participate fully or effectively in any referendum because the Interior war was raging at that time and the majority of the interior was simply cut off from the rest of Suriname."³⁰⁷ She further explains that "I also have not heard of any consultations or referend[a] organized in the Interior to seek opinions on the Constitution adopted in 1987."³⁰⁸

IV. The Proven Facts Establish Violations of the American Convention

138. In this case, the Commission and the victims' representatives have alleged and, on the basis of the proven facts, substantiated violations of Articles 3, 21 and 25 of the Convention, all in conjunction with Articles 1 and 2 of the same. On the basis of the proven facts and as a matter of law, Suriname is internationally responsible and liable for these violations of the Saramaka people's rights. Suriname has presented scant evidence to disprove these alleged violations; on the contrary, the evidence that it has presented is either irrelevant to the case at hand or tends to prove the allegations made by the Commission and the victims' representatives.

139. Suriname has also failed to offer applicable points of law and argumentation that could prove, as a matter of law, that it has not violated the rights of the Saramaka people guaranteed by the American Convention or that the State is not internationally liable for those violations. For these reasons, and with the exception of the points below, the victims' representatives hereby reiterate, incorporate by reference and rely upon their arguments pertaining to the applicable law in their prior submissions, which they believe are sufficient and do not require further elaboration at this time.³⁰⁹ The points of applicable law and arguments set forth below are intended to bolster the arguments set forth in the victims' representatives' prior pleadings or to clarify certain issues raised during the public hearing.

³⁰⁶ *Testimony of Head Captain Wazen Eduards*, Written Transcript, *supra*; and *Testimony of Captain Cesar Adjako*, Written Transcript, *supra*; *Testimony of Prof. R. Price*, Written Transcript, *supra*; Affidavit of E. Fonki, *supra*

³⁰⁷ Affidavit of M. Muskiet, *supra*, at para. 36.

³⁰⁸ *Id.*

³⁰⁹ Brief of the Victims' Representatives, *supra*, para. 70-208.

A. Invocation of Article 3 in the Proceedings before the Commission

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140. Before turning to the substantive points, during the public hearing and in response to a question posed by Judge Macaulay, the victims' representatives offered to provide the Court with citations demonstrating that they had invoked the alleged violation of Article 3 during the proceedings before the Commission. The victims' representatives observe that they first invoked a violation of this article in the October 2004 hearing before the Commission, and then in each and every formal written submission thereafter.³¹⁰

B. The effective protection of the Saramaka people's property rights requires that the Saramaka people enjoys effective possession of and effective control over its territory and resources

141. The victims' representatives have averred that the rights of the Saramaka people are guaranteed by common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and that Article 29b of the American Convention requires that the Convention not be interpreted so as to restrict said rights.³¹¹ They have further averred that the rights set forth in common Article 1 are highly relevant to interpreting the nature and scope of the property rights of the Saramaka people pursuant to Article 21 of the American Convention.

142. The victims' representatives will not repeat their prior arguments with respect to common Article 1, but refer to and incorporate by reference the arguments and the points of law set forth in the Brief of the Victims' Representatives of 03 Nov 2006, paragraphs 106-58. They do however believe that it is important to clarify why common Article 1 is being invoked in the case *sub judice* and to highlight why the rights set forth in that article and the property rights guaranteed by Article 21 of the Convention should be read together so as not to restrict and also so as to fully inform the rights of the Saramaka people.

143. The victims' representatives also note that they have submitted the expert testimony of Professor Dr. Martin Scheinin, a former member of the UN Human Rights Committee, in support of the preceding and related contentions.³¹² Professor Scheinin states that common Article 1 of the Covenants applies to indigenous and tribal peoples and that it is in his view directly relevant to interpreting the rights set forth in Articles 3 and 21 of the American Convention.³¹³ He also explains that common Article 1 "supports an interpretation of article 21 of the American

³¹⁰ See, for instance, *Summary of Petitioners' Arguments in the Oral Hearing of 27 October 2004 in Case 12 338 Twelve Saramaka Clans (Suriname)*, 07 November 2004, at para. 20 (stating that "... amount to violations of article 3 of the American Convention and Petitioners specifically invoked violation of this article on these grounds during the hearing"); and *Submission of the Petitioners*, 06 December 2004, para. 24, in Application of the Commission, *supra*, Case File before the Commission.

³¹¹ *Inter alia, Massacres of Ituango Case*, Judgment of 1 July 2006. Ser C No. 148, para. 207.

³¹² Affidavit of M. Scheinin, *supra* (discussing the relationship between indigenous and tribal peoples' property and cultural rights and the rights guaranteed by common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

³¹³ *Id.* para. 5-8 and 11-2.

Convention to the effect of calling for effective rights of participation by indigenous communities in the control of lands and natural resources and prohibiting the denial of the means of subsistence through property regimes that undermine the relationship of an indigenous group with its traditional lands.”³¹⁴ He further explains that the rights contained in common Article 1(2), “definitely supports the conclusion that consent or other modalities of effective control are required for a people to be able to freely dispose of its natural wealth and resources,” and that the term ‘effective participation’ should be understood consistently.³¹⁵

144. The victims in this case are the Saramaka people, its constituent land-owning clans, and the members thereof. The victims as a group number more than 35,000 persons, from 12 clans, and living in at least 76 villages on the Upper Suriname River and in the Brokopondo District. This figure does not take into account the Saramaka who live elsewhere and who, by virtue of and in accordance with Saramaka law, maintain a right to occupy and use the traditional lands of their respective *lò*.

145. The Saramaka people is more than the aggregate of its individual members and more than the aggregate of its 12 clans; it is a legal person in its own right that is vested with internationally guaranteed collective property and other rights. These collective rights are set forth in common Article 1 of the international Covenants and in general international law pertaining to the right to self-determination. The right to self-determination is a complex of interdependent rights – addressing both material (territorial) and immaterial matters (governance interests) and both substantive and procedural matters – the full exercise of which are essential to the exercise and enjoyment of the individual rights of the members of the collectivity.³¹⁶ Put another way, without the effective exercise of the collective right to self-determination, the individual rights of the Saramaka are greatly weakened and fundamentally insecure.

146. The uncontested evidence before the Court proves that the Saramaka people has been deprived, on an ongoing basis and by virtue of Suriname’s acts and omissions, of approximately 60 percent of its traditional territory.³¹⁷ Fifty percent was lost to the Afobaka dam and another ten percent has been lost or substantially degraded by the logging concessions issued by the State. The Saramaka people has thus been deprived of 60 percent of its natural wealth and a corresponding percentage of its traditional means of subsistence in the 47 years since the closing of the dam.

147. It is also uncontested that Suriname, by virtue of Article 41 of its Constitution, has unilaterally extinguished the ownership rights of the Saramaka to all of its traditionally owned natural resources and transferred these rights to itself. Under domestic law, therefore, the Saramaka people has lost all of its natural resource rights in the past 20 years and the State has permitted third parties to exploit and dispose of the natural resources that belong to the Saramaka people to the Saramakas extreme and enduring detriment. Professor Scheinin makes clear that such unilateral

³¹⁴ *Id.* at para. 11.

³¹⁵ *Id.* at para. 18.

³¹⁶ Human Rights Committee, *General comment 12, The right to self-determination of peoples* (Art. 1): 13/04/84, at para. 1 (explaining that the right of self-determination “is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”).

³¹⁷ Testimony of Expert Witness Richard Price, Written Transcript, *supra*, p. 62.

extinguishments “would appear to be *prima facie* incompatible with [International Covenant on Civil and Political Rights (“ICCPR”)] articles 1 and 27,” the latter protecting cultural rights, and would also be prohibited pursuant to the property rights protected by the Convention on the Elimination of All Forms of Racial Discrimination.³¹⁸

148. The uncontested evidence before the Court proves that the Saramaka people, individually and collectively, has suffered and continues to suffer great hardship and pain because of the abovementioned non-consensual deprivations of its natural wealth and resources and its means of subsistence. This has led to ethnocide among the displaced Saramaka in the Brokopondo communities.³¹⁹ The evidence further proves that the Saramaka people is now living in an extremely precarious situation – a situation that is the source of great anxiety and fear among the Saramaka³²⁰ – where the sustainability of their traditional economy and culture hangs in the balance. Dr. Poole testifies that “the Saramaka are approaching, and in some areas may have already exceeded, the sustainable productive capacity of their lands.”³²¹ Moreover, three experts and the Saramaka witnesses who addressed this point testify that if the Saramaka lose any more territory, “it would be no exaggeration to say that they will face a substantial risk of irreparable harm to their physical and cultural integrity and survival.”³²²

149. Thus, the present situation of the Saramaka people transcends simple violations of property rights and rises to the level of violating the right of peoples to freely dispose of their natural wealth and resources and to be secure in their means of subsistence. The very survival of the Saramaka people as a collective cultural and territorial entity has been greatly abused by Suriname in contravention of the American Convention, common Article 1 of the Covenants, and the cultural rights protected by Article 27 of the ICCPR. Professor Scheinin explains in this respect that

Whether a particular interference with or the cumulative effect of different interferences amounts to a violation of article 27 should in my view not be assessed primarily through percentages of lands or other quantitative comparisons. What is decisive is the sustainability of the indigenous economy. The group in question must “continue to benefit”.... Flooding even a part of traditional indigenous lands may often cover strategically important resources and locations and therefore already a much smaller percentage than 50 would be likely to amount to a violation of article 27. In its concluding observations on Chile the Committee held that due to the culturally constitutive importance of the vegetation in a particular river valley, its flooding together with relocation and compensation would not be an appropriate way to comply with article 27 of the Covenant....³²³

³¹⁸ Affidavit of M. Scheinin, *supra*, at para. 21 and 22.

³¹⁹ Affidavit of R. Goodland, *supra*; Affidavit of E. Fonki, *supra*; Affidavit of H. Jabini, *supra*; Affidavit of G. Leidsman, *supra*, Testimony of Expert Witness Richard Price, Written Transcript, *supra*.

³²⁰ Affidavit of P. Poole, *supra*, para. 13, 15, 17.

³²¹ *Id.* at 13.

³²² Affidavit of R. Goodland, *supra*, at para. 61.

³²³ Affidavit of M. Scheinin, *supra*, at para. 25.

150. The victims' representatives note that the Human Rights Committee issued observations on Chile's most recent periodic report on 18 May 2007. At that time, it also revisited the situation described above by Professor Scheinin and observed, with a specific reference to the right to self-determination, that it was "dismayed to learn that 'ancestral lands' are still threatened by forestry expansion and megaprojects in infrastructure and energy (arts. 1 and 27)."³²⁴

151. The rights of the Saramaka people under common Article 1 of the Covenants are also relevant to determining the nature and scope of the permissible restrictions on its property rights as guaranteed by Article 21(1) of the American Convention. Suriname has asserted before the Court, and its domestic law mandates, that the State may take, without any possibility of judicial review, the "de facto" property rights of the Saramaka people by a simple declaration that an activity, such as logging or mining, is in the public interest, and in the name of its national development. However, the rights protected by common Article 1 and by Article 27 of the ICCPR, which may not be restricted when interpreting the American Convention, limit and condition the ability of the State to subordinate the property rights of the Saramaka people.

152. In relation to the preceding point, Professor Scheinin states that the jurisprudence of the Human Rights Committee holds that interferences with the resource rights of indigenous and tribal peoples "must not be addressed on the basis of the economic benefit to the majority population, or by affording the state a 'margin of appreciation' in regulating economic activity. Rather, focus must be on the continued sustainability of the indigenous economy and the effective participation of the indigenous community in deciding on the interference and its design."³²⁵ As noted above, indigenous or tribal consent is the requisite measure of 'effective participation' in this context. He also explains with respect to permissible restrictions on property rights that "to the extent rights to lands and natural resource belong to a people pursuant to the right to self-determination, the situation may be different as [] the state does not necessarily have a legitimate authority to impose its view of the public interest on a group that constitutes a people in the meaning of article 1 of the two Covenants."³²⁶

153. An additional reason that the right to self-determination is relevant to interpreting the rights of the Saramaka people pursuant to Article 21 of the American Convention is because the former requires that tribal peoples' consent be obtained in relation to activities that affect territorial and natural resource rights. For indigenous and tribal peoples to freely pursue their economic, social and cultural development, they must be in a position to determine how best to utilize their territories and resources.

154. That indigenous and tribal peoples have a right to consent to activities that affect their traditional lands, territories and resources is well established in the jurisprudence of the Commission, the Committee on the Elimination of Racial

³²⁴ *Concluding Observations of the Human Rights Committee- Chile*. UN Doc. CCPR/C/CHL/CO/5, 18 May 2007, at para. 19.

³²⁵ Affidavit of M. Scheinin, *supra*, at para. 25.

³²⁶ *Id.* at para. 19.

Discrimination, and others.³²⁷ Indeed, in its report in the instant case, the Commission confirmed, “in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples that the indigenous people’s consent to natural resource exploitation activities on their traditional territories is always required by law.”³²⁸ This right of consent, which is inherent to indigenous and tribal peoples’ property rights and their right to freely dispose of natural wealth and resources, is an additional limitation on the ability of the State to subordinate indigenous and tribal peoples’ property rights.

155. Indigenous and tribal peoples’ right to consent is not, as Suriname appeared to argue during the public hearing in the instant case, simply the play-thing of human rights advocates. This right is also reflected in the binding policies of the vast majority of international finance institutions and development agencies. The public sector arm of the World Bank Group, for instance, requires that indigenous and tribal peoples “broad community support” be obtained subsequent to “a culturally-appropriate and collective decision-making process” as a prior condition to project financing.³²⁹ The World Bank Group’s private sector arm, the International Finance Corporation, requires that project proponents negotiate and reach agreement with indigenous peoples.³³⁰ The so-called Equator Principles Banks, more than 40 commercial banks that finance around 80% of global private sector project finance, have also adopted the IFC’s standards, including the one pertaining to indigenous peoples.³³¹ The Inter-American Development Bank’s binding 2006 policy on indigenous peoples requires that indigenous peoples’ “agreement” be obtained for any project that may have adverse impacts.³³² Likewise, the United Nations Development Programme’s official policy on indigenous peoples provides unequivocally that the “UNDP promotes and supports the right of indigenous peoples to free, prior informed

³²⁷ For jurisprudence upholding indigenous and tribal peoples’ right to consent, see, *inter alia*, Report No. 40/04, Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize), 12 October 2004, para. 142; Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee’s 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador. 21/03/2003*. UN Doc. CERD/C/62/CO/2, at para. 16; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. 30/11/2001*. UN Doc. E/C.12/Add. 1/74, at para. 12; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ecuador. 07/06/2004*. UN Doc. E/C.12/1/Add.100; and, *Concluding Observations of the Human Rights Committee Canada, 20/04/2006*. UN Doc. CCPR/C/CAN/CO/5.

³²⁸ Report 09/06, Twelve Saramaka Clans Case, *supra*, at para. 214.

³²⁹ World Bank, Operational Policy 4.10 on Indigenous Peoples, May 2005, at para. 1 (providing that the Bank “will provide project financing only where free, prior and informed consultation results in broad community support to the project by the affected Indigenous Peoples”), para. 6 (requiring a process of free, prior and informed consultation with indigenous peoples “at each stage of the project” to identify their views and to ascertain whether there is broad community support for the project).

³³⁰ International Finance Corporation, *Performance Standard 7 on Indigenous Peoples*, para. 13, available at: <http://www.ifc.org/ifcext/enviro.nsf/Content/EnvSocStandards>

³³¹ See, <http://www.equator-principles.com>

³³² Inter-American Development Bank, *Operational Policy 7-65 on Indigenous Peoples*, adopted 22 February 2006. secs. IV.B.4.4.a.iii (the Borrower must provide, “no later than by the date of consideration of the operation by the Board”, evidence of the agreements reached with the affected people. (V.5.3.c)) and IV.B.4.4.e. Available at: http://www.iadb.org/sds/ind/site_401_e.htm

consent with regard to development planning and programming that may affect them.”³³³

156. In conclusion, the rights of the Saramaka people pursuant to common Article 1 of the Covenants are highly relevant to interpreting the scope and nature of Saramaka property rights pursuant to Article 21 of the American Convention. The victims’ representatives urge the Court to fully consider these rights, both so as not to restrict them and also to positively inform the content of the rights guaranteed by Article 21 of the Convention. Suriname’s claims that the right to self-determination is solely a right of states or that state sovereignty precludes recognition of the Saramaka people’s rights held pursuant to common Article 1 are manifestly unfounded. The State’s assertion that the Saramaka seek to establish a state-within-a-state is equally unfounded. As Professor Scheinin explains, common Article 1 “supports such forms of self-determination that do not require the establishment of an independent state. Typically, this would entail the right of an indigenous people to exercise effective control over its lands and their natural resources.”³³⁴

V. Reparations and Costs

A. Reparations

157. Article 63(1) of the American Convention codifies a canon of customary law and a fundamental principle that “every violation of an international obligation which results in harm creates a duty to make adequate reparation.”³³⁵ On the basis of the proven facts and as a matter of law, Suriname is responsible for violations of the victims’ rights guaranteed and protected by Articles 3, 21 and 25 of the American Convention in the instant case, all in conjunction with Articles 1 and 2 of the same. Pursuant to article 63(1) of the Convention, it has the duty to repair these violations. This obligation to repair requires *restitution in integrum* and where this is not possible, as in the instant case, measures that will safeguard the violated rights, redress the consequences of the violations and compensate for damages sustained.³³⁶ The nature and amount of reparations depend on the damage caused at both the pecuniary and non-pecuniary level.³³⁷

158. Suriname has not offered any evidence or points of applicable law that tend to refute or qualify the facts and law upon which the alleged violations in this case and the associated obligation to make reparations are based. Nor has it offered any evidence that disproves the gravity of the harm and damage suffered by the Saramaka people and which has been, and continues to be, caused by Suriname’s unmitigated acts and omissions. This is the case with respect to both the State’s pleadings before the Court and the evidence and arguments offered by the State at the public hearing. The victims’ representatives, therefore, hereby reiterate, incorporate by reference, and rely upon their prior submissions with respect to reparations, which they believe are sufficient and do not require further elaboration at this time.³³⁸

³³³ *UNDP and Indigenous Peoples: A Policy of Engagement*, paras. 26-30 (2001).

³³⁴ Affidavit of M. Scheinin, *supra*, at para. 27.

³³⁵ *Velasquez Rodriguez Case*, Judgment of July 21, 1989. Ser C No. 7, at para. 25.

³³⁶ *Cantoral Benavides Case*, Judgment of December 3, 2001. Ser C No. 88, para. 41.

³³⁷ *Villagrán Morales et al., Case*, Judgment of May 26, 2001. Ser C No. 77, para. 63.

³³⁸ Brief of the Victims’ Representatives, *supra*, para. 209-30.

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B. Costs

159. The victims' representatives seek an award of all costs incurred in preparing and pursuing this case domestically and before the Commission and the Court. They are not however seeking an award of attorney's fees in this case, which are hereby waived. The victims' representatives request that costs be apportioned as follows:

1. The Association of Saramaka Authorities

160. The Association of Saramaka Authorities has worked on Case 12.338 since its inception and has incurred considerable expense in the more than 10 years since that time. These costs are summarized per year for the period 2000-2007 in the table below, and verifying receipts, organized by year, are contained in Annex A hereto (bound separately).

<u>Year</u>	<u>Costs (US\$)</u>
2000	1,258.64
2001	11,896.53
2002	13,454.00
2003	33,242.07
2004	28,942.87
2005	723.97
2006	6,006.73
2007	13,245.46
TOTAL:	108,770.27

2. The Forest Peoples Programme

161. Fergus MacKay of the UK-based NGO, the Forest Peoples Programme ("FPP"), has provided legal counsel to the Saramaka since 1997 when he was authorized by them to write the petition that initiated Case 12.338. Since that time he has acted as counsel of record in this case. In this capacity, the FPP incurred costs traveling to and from Suriname to meet with the victims, staying in Suriname, communicating by phone with the victims, and with the Commission and the Court, and expenses in relation to meetings with the Commission in Washington DC and the Court in San José. The FPP paid all of the expenses in relation to the hearing before the Court.

162. Since 1997, the FPP has expended large amounts of scarce financial resources prosecuting the case at hand (estimated to be over US\$200,000), and Mr. MacKay has devoted considerable time to Case 12.338. Unfortunately, the FPP is not able to provide receipts verifying these costs in time to meet the deadline imposed by the Court. Therefore, the victims' representatives request that the FPP be awarded an equitable sum of US\$30,000.00.

VI. PRAYER

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163. Based on the proven facts and the points of law presented above and in their prior submissions, the victims' representatives respectfully request that the Court declare that Suriname is internationally responsible for violations of

- a) the right to property in Article 21 by not adopting effective measures to recognize and secure the Saramaka people's communal property rights to the lands, territory and resources it has traditionally owned, without prejudice to other indigenous and tribal peoples;
- b) the right to property in Article 21 by granting logging and mining concessions within Saramaka territory and by authorizing destructive logging operations therein without obtaining the free, prior and informed consent of the Saramaka people;
- c) the right to property in Article 21 in relation to the ongoing and continuous effects of the Afobaka dam and reservoir and its failure to recognize and respect the associated right of the Saramaka people to restitution or, where not possible, compensation and the provision of alternative lands;
- d) the right to property in Article 21 for failing to recognize and protect the Saramaka people's property and governmental interests in its natural wealth and resources and for failing to secure and protect its effective possession of and control over these resources, rights that are guaranteed and protected by common Article 1 of the Covenants, all in connection with Suriname's unilateral extinguishment of these rights in its Constitution and subsequent expropriation of the Saramaka people's resources;
- e) the right to juridical personality enshrined in Article 3 of the Convention by failing to recognize the legal personality of the Saramaka people;
- f) the right to judicial protection guaranteed by Article 25 of the Convention due to its failure to provide the Saramaka people effective access to justice for the protection of its fundamental rights; and
- g) Suriname's non-compliance with Articles 1 and 2 of the Convention in connection with its failure to recognize and give effect to the Saramaka people's property and other rights.

164. To remedy these violations, the victims' representatives request that the Court order the measures specified in paragraph 230 of the Brief of the Victims' Representatives of 03 November 2006, as well as any additional measures that the Court considers appropriate.