ORGANIZATION OF AMERICAN STATES

Inter-American Commission on Human Rights

Application in the Case of
12 Saramaka Clans
(Case 12.338)
Against the Republic of Suriname

DELEGATES:

Commissioner Paolo Carozza
Executive Secretary Santiago A. Canton

ADVISERS:

Ariel Dulitzky
Victor H. Madrigal Borloz
Oliver Sobers
Manuela Cuvi

23 June 2006

[redacted]

TABLE OF CONTENTS

I. INTRODUCTION

0000006

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Court") an application in Case 12.338, Twelve Saramaka Clans, against the Republic of Suriname (hereinafter "the Surinamese State," "Suriname," or "the State") pursuant to the terms of Article 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. This application submits to the Court's jurisdiction the violations committed by the State against the Saramaka people and its members, by not adopting effective measures to recognize their communal property right to the lands they have traditionally occupied and used; its violation of the right to judicial protection to the detriment of the said people by not providing them effective access to justice for the protection of their fundamental rights; and its non-compliance with the obligations of adopting domestic legal provisions and respecting Convention rights.

3. Consequently, the Commission asks the Court to determine the international responsibility of the State of Suriname, which has incurred in the violation of Articles 21 (Right to Property), 25 (Right to Judicial Protection), in conjunction with the non-compliance with Article 1(1) and 2 of the American Convention

4. The instant Case has been processed pursuant to the American Convention and is submitted before the Court according to Article 33 of the Rules of Procedure of the Court. A copy of Report on joint Admissibility and Merits, No. 09/06[1], drawn up in compliance with the terms of Articles 50 of the American Convention and Article 37(5) of the Commission's Rules of Procedure is attached to this application as Appendix, in keeping with Article 33 of the Rules of Procedure of the Court. The Report was adopted by the Commission on 2 March 2006, and was transmitted to the State on 23 March 2006, with a period of two months for it to adopt the recommendations contained therein.

5. The State replied on 22 May 2006 with several proposals and eventual plans for action relating to the recommendations. Considering that the matter had not been settled and according to Articles 51(1) of the Convention and 44 of the Rules of Procedure of the Commission, the latter decided to submit the Case to the jurisdiction of the Court on 19 June 2006.

II. PURPOSE OF THE APPLICATION

6. The purpose of this application is to request the Court to declare that the State is internationally responsible for the violation of

the right to property established in Article 21 of the American Convention, to the detriment of the Saramaka people, by not adopting effective measures to recognize

---

[1] See: IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1.

its communal property right to the lands it has traditionally occupied and used, without prejudice to other tribal and indigenous communities;

the right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, by not providing it effective access to justice for the protection of its fundamental rights; and

the non-compliance of Articles 1 and 2 of the Convention by failing to recognize or give effect to the collective rights of the Saramaka people rights to their lands and territories.

7. As a result of the abovementioned, the Inter-American Commission requests that the Court order the State to

remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Saramaka people exercises its right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities;

refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people;

repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and make reparation and due compensation to the Saramaka people for the damage done by the violations established;

take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used.

III. REPRESENTATION

8. Pursuant to the provisions of Articles 22 and 33 of the Court's Rules of Procedure, the Commission appoints Commissioner Paolo Carozza and Executive Secretary Santiago A. Canton as the delegates in this case; and Deputy Executive Secretary Ariel Dulitzky, and Specialists Victor H. Madrigal-Borloz, Oliver Sobers and Manuela Cuvi as legal advisors.

IV. JURISDICTION OF THE COURT

9. In accordance with Article 62(3) of the American Convention, the Court has jurisdiction to hear all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties in the case recognize or have recognized such jurisdiction.

10. The State ratified the American Convention, and accepted the Court's jurisdiction, on 12 November 1987. The Court is therefore competent to adjudicate this Case.

V. PROCESSING BY THE COMMISSION[2]

1. Petition 12.338

11. On 27 October 2000 the Commission received a petition dated 30 September 2000, which alleged that the State had violated the rights to property, cultural integrity, and due process of the Saramaka people. In addition, petitioners requested that the Commission grant precautionary measures to suspend the logging and mining activity either underway or planned in Saramaka territory, because it threatened permanent irreparable damage to the cultural and physical safety of the said people and, should the State not comply, to request provisional measures from the Court.

12. Further, petitioners indicated their desire to instigate a friendly settlement procedure, in accordance with the terms of Article 48.f of the American Convention and of Article 41 of the Commission's Rules of Procedure, and requested the Commission to carry out a visit to Suriname to investigate the situation described in the petition and the general situation of the indigenous and Maroon people of Suriname.

13. On 21 November 2000 the Commission transmitted the pertinent parts of the petition to the State and requested its observations on the allegations contained therein within a period of 90 days, along with all information concerning whether or not domestic remedies had been exhausted in this case, pursuant to the Rules of Procedure in force at the time.

14. On 6 June 2001 petitioners transmitted further information to the Commission and repeated their wish to enter a procedure for friendly settlement. In addition, since the State had not provided a response, they asked the Commission to apply Article 39 of its Rules of Procedure, presuming the facts alleged in the petition to be true. On 12 June 2001 the Commission transmitted the pertinent parts of this communication to the State, requesting its response within the following 45 days.

15. On 2 August 2001 the State requested an additional period to reply to the petition and the subsequent communications from the petitioners; on 8 August 2001 the Commission granted the extension requested for a period of 30 days.

---

[2] Representations referenced in this section can be found at the Commission's Case file, *vide* Appendix 2.

16. On 22 March 2002 the Commission informed the parties of its decision to defer its treatment of admissibility until the decision on the merits, pursuant to Article 37(3) of its Rules of Procedure, and requested them to provide their arguments on the merits within a period of two months.

17. On 8 May 2002 the State requested an extension of two months to present its observations.

18. On 15 May 2002 the petitioners provided additional observations on the merits, and repeated their request for precautionary measures. On 12 June 2002 the Commission transmitted these additional observations to the State and requested it to provide all the relevant information within the two following months.

19. On 22 July 2002 the petitioners transmitted to the Commission additional information on admissibility and the merits and made a new request for precautionary measures. Precautionary measures were adopted on 8 August 2002.

20. On 20 August 2002 the State communicated its intention to transmit an "exhaustive and detailed report on the question of the admissibility of the petition as well as on the merits," and requested an extension of two months in which to respond to the additional information sent by the Commission on 12 June 2002.

21. On 27 December 2002 the State transmitted its response, in which it stated that the petition was inadmissible because all relevant domestic remedies had not been exhausted. The State generally denied that there had been a violation of the rights of the Saramaka people.

22. On 23 January 2003 the petitioners transmitted a supplemental submission to the Commission to provide updated information and requesting the reiteration of precautionary measures.

23. On 12 February 2003 the Commission acknowledged receipt of the reply from the State and transmitted the relevant parts of the additional information provided by the petitioners on 23 January 2003. By letter of 12 February 2003 the Commission transmitted to the petitioners the relevant parts of the reply from the State.

24. On 18 March 2003 the petitioners transmitted their observations on the position of the State. On 20 March 2003 the Commission transmitted to the State the additional information from the petitioners, requesting it to respond within 30 days.

25. By note of 23 May 2003 the State transmitted its observations on the petitioners' submissions of 23 January 2003 and 18 March 2003. By communication of 10 June 2003 the Commission transmitted the pertinent parts of the State's observations of 23 May 2003 to the petitioners, requesting a response within 30 days.

26. By communications to the parties of 27 June 2003 the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement, pursuant

to Article 48 (1) (f) of the American Convention. The Commission further requested the parties to respond within 30 days.

27. By letter of 15 July 2003 the petitioners submitted a response to the State's submission of May 2003. The petitioners, in response to the Commission's note of 27 June 2003 accepted the offer of the Commission to facilitate friendly settlement, but also requested the Commission to reiterate the precautionary measures granted by the Commission in August 2002. By note of 15 July 2003 the State similarly accepted the Commission's offer to facilitate friendly settlement.

28. By note of 11 August 2003 the Commission transmitted the pertinent parts of the petitioners' observations of 15 July 2003 and requested the State to provide further information on the status of logging and mining concessions granted in Saramaka territory, together with other relevant information, with a view to considering the petitioners' request for reiteration of precautionary measures.

29. By note of 12 August 2003 the State reiterated its willingness to engage in a friendly settlement process, and indicated that it had invited the petitioners to a meeting originally scheduled for 30 July 2003 but now rescheduled for 12 August 2003.

30. By note of 20 August 2003 the State acknowledged receipt of the Commission's note of 11 August 2003 transmitting the pertinent parts of the petitioners' observations of July 15, 2003, and requested until 14 September 2003 to respond to the request for information made by the Commission in its communication to the State of 11 August 2003.

31. By letter of 22 August 2003 the petitioners submitted further observations, the pertinent parts of which were transmitted to the State by note of 29 August 2003. The Commission granted the State an extension of 20 days from the date of the correspondence to responds to the Commission's request for information.

32. By note of 22 September 2003, the State acknowledged receipt of the Commission's communication of 29 August 2003 requesting an extension to respond to the petitioners' latest submission of 22 August 2003. The Commission transmitted the pertinent parts of the State's communication to the petitioners by letter of September 30, 2003. By note of 14 October 2003 the Commission granted an extension of two months to respond to the petitioners' submissions, from 10 September 2003.

33. By letter of 15 October 2003 the petitioners requested the Commission to seek provisional measures from the Inter-American Court of Human Rights requiring Suriname to suspend all logging and other natural resource development activity on the lands and territory owned and occupied by the Saramaka clans.

34. By note of 23 October 2003 the Commission transmitted to the State the pertinent parts of the petitioners' submission of 15 October 2003.

35. By note of 23 October 2003 the State acknowledged receipt of the Commission's communication of 14 October 2003 and submitted further observations.

The pertinent parts of the State's observations were transmitted to the petitioners by letter of 30 October 2003.

36. By note of 10 December 2003 the State submitted its observations on the petitioners' submissions of 23 August 2003, the pertinent parts of which were transmitted to the petitioners by letter of 17 December 2003. By letter of 12 December 2003 at the request of the State, the Commission re-transmitted to the State, the pertinent parts of the petitioners' observations of 15 October 2003 and requested the State to supply observations within a month.

37. By letter of 7 January 2004 the petitioners submitted their observations on the State's submission of 10 December 2003. By note of 28 January 2004, the State requested an extension until 27 February 2004, to respond to the petitioners' observations of 15 October 2003. By communication of 4 February 2004, the Commission granted the requested extension to the State, and also transmitted the pertinent parts of the petitioners' submission of 7 January 2004.

38. By communications to the parties of 5 February 2004, the Commission advised that it had decided to convene a hearing during its 119th period of sessions on 5 March 2004 in relation to the petition.

39. By letter of 8 April 2004, the State submitted its observations on the petitioners' submission of 15 October 2003. By letter of 13 April 2004, the Commission informed the State that it had decided to reiterate its request for precautionary measures granted on 8 August 2002. By letter of 23 April 2004, the Commission forwarded the pertinent parts of the State's submission of 8 April 2004, to the petitioners.

40. On 23 April 2004 the Commission transmitted to the petitioners the relevant parts of the presentation from the State of 8 April 2004 and requested them to provide their observations within one month.

41. On 3 May 2004 the petitioners transmitted complementary information regarding the exhaustion of domestic remedies and comments made by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee or the United Nations Organization on Suriname.

42. On 4 May 2004 the petitioners lodged their observations to the arguments of the State dated 8 April 2004.[3]

2. Precautionary Measures

43. On 8 August 2002 the Commission granted precautionary measures in accordance with Article 25(1) of its Rules of Procedure, and requested the State to suspend all concessions, including permits and licenses for mining and logging activities, and other activities exploiting natural resources in the lands used and occupied by the

[3] The note from Suriname was in response to the petitioner's communication of December 12, 2003.

Twelve Saramaka Clans, until there had been an opportunity to investigate the substantive complaints detailed in the petition.

44. The Commission also requested the State to take the necessary steps to protect the physical safety of the Twelve Saramaka Clans.

45. On 15 October 2002 after an extension granted by the Commission, the State informed that:

1. on 27 June 2002 it had established a "Commission of Legal Experts in Human Rights;"
2. while precautionary measures had been granted, it was surprised at this decision in view of the extension granted to the State to respond to the petitioners' allegations; and
3. it considered that the granting of precautionary measures was evidence of a decision by the Commission on the merits of the Case, despite the Commission averring the contrary.

46. On 23 January 2003 the petitioners transmitted to the Commission an additional note in which they stated, amongst other things, that the State had not complied with the precautionary measures issued in August 2002 and therefore requested the Commission to re-impose precautionary measures on the State or, in the alternative, to seek provisional measures before the Court.

47. On 11 August 2003 the Commission requested specific information from the State concerning

1. the current situation of all logging concessions granted and active in the lands used and occupied by the twelve Saramaka communities;
2. the current situation of all mining concessions currently granted and active in the lands used and occupied by the Saramaka communities, including all operations assumed to be in the hands of Brazilian goldminers;
3. the current situation of any proposal or plan to extend the Central Suriname nature reserve; and
4. the current situation of any proposal or plan to increase the water levels in the Van Blommestein Reservoir.

48. The Commission asked for this information to be transmitted within a period of 10 days.

49. On 20 August 2003 the State requested an extension until 14 September 2003 in order to respond to the request for information on compliance with the precautionary measures. The Commission granted the State an extension of 20 days, and on 9 September 2003 the State responded to the request for information from the Commission regarding the situation of the logging and mining concessions. On 30 September 2003, the Commission transmitted the relevant parts of the note from the State to the petitioners.

50. On 15 October 2003 the petitioners repeated their request for provisional measures, requesting the State to suspend all logging and other natural resource development in the lands and territories traditionally owned or occupied in other ways by the twelve Saramaka clans.

51. On 23 October 2003 the Commission transmitted to the State the relevant parts of the additional information supplied by the petitioners and requested the government to "provide information of the measures or mechanisms established by the government to suspend all illegal gold mining in the Saramaka area, within the period granted in the Commission's letter of 14 October 2003."

52. On 4 December 2003, the State informed the Commission that the Departments of Justice and Labour in Suriname were studying the question of illegal mining. The State claimed that in some cases, "Brazilians and other third parties are contracted by the indigenous Maroon people in order to engage in mining and logging activities." In the same note, the State also transmitted its observations on the relevant parts of the information presented by the petitioners on 22 August 2003. The State claimed that it remained willing to continue conversations with the petitioners and expressly rejected the claims made by the petitioners regarding non-compliance by the State with the precautionary measures, and stated that no new concessions had been granted since August 2002.

53. On 5 February 2004 the Commission informed the parties that, at the request of the petitioners, a hearing would be held on 5 March 2004 during the 119th regular session of the Commission. On 11 February 2004 the State asked for the hearing to be postponed and stated that one month's notice was insufficient for it to prepare its case. On 18 February 2004 the Commission communicated that due notice having been made to the parties, the hearing would be held in accordance with Article 62(4) of its Rules of Procedure. On 2 March 2004 the State expressed its dissatisfaction with the Commission's decision not to postpone the hearing and claimed that it had not been given even one month's notice.

54. On 5 March 2004 the hearing was held before the IACHR, attended by the petitioners. At the hearing, the Commission heard evidence and arguments. The summary of the minutes was sent to the State on 26 October 2004.

55. On 22 September 2004 the State requested a hearing before the Commission during its 121st regular session. On 23 September 2004 the Commission informed the parties that it had agreed to the State's request. The hearing was held on 27 October 2004 and was attended by the State and the petitioners. On 29 October 2004 the State lodged a written version of its presentation to the hearing (transmitted to the petitioners on 15 November 2004). On 7 November and 7 December 2004 the petitioners transmitted a written summary of their arguments, and comments on the information presented by the State during the hearing.

3. Procedure for Friendly Settlement

56. On 27 June 2003 the Commission placed itself at the disposal of the parties to facilitate a friendly settlement, in accordance with Article 48(1) (f) of the Convention. The Commission further requested the parties to respond within 30 days.

57. On 15 July 2003 the petitioners declared their willingness to enter into such conversations, and requested the Commission to reiterate the precautionary measures granted in August 2002. On 15 July 2003 the State similarly accepted the Commission's offer to facilitate friendly settlement.

58. On 12 August 2003 the State reiterated its willingness to engage in a friendly settlement process, said that a meeting with the petitioners had been agreed for 30 July 2003, and had been reprogrammed for 12 August 2003.

59. On 22 August 2003 the petitioners reported that a meeting had been held with the State on 15 August 2003 during which their doubts as to the usefulness of the procedure for friendly settlement had grown. The petitioners reported that during the meeting, the State had been reluctant to consider any judicial or administrative reform that might lead to recognizing the property rights of the Saramaka people in the form proposed by the petitioners.

60. On 22 September 2003, the State acknowledged receipt of the note from the Commission dated 29 August 2003, and confirmed that, despite the fact that the petition had still not been declared admissible, it was willing to enter into conversations with the petitioners. The State confirmed that it had met with a delegation of the petitioners on 15 August 2003, and stated that at the beginning of September, the acting Attorney General and the Commission of Legal Experts on Human Rights of Suriname had met the President in order to discuss the complaints made by the petitioners and other human rights issues. The State further requested two months in which to respond to the observations made by the petitioners on 22 August 2003.

61. On 14 October 2003, the Commission acknowledged receipt of the State's note of 22 September 2003, and granted an extension of two months, from 10 September 2003, in which to respond to the observations of the petitioners of 22 August 2003.

62. On 23 October 2003, the State transmitted to the Commission the minutes of the meeting held with the petitioners, which state, among other things, that

1. it is unlikely that the government would issue the Saramaka people (or any other group) collective titles to land, and it was unlikely to amend Surinamese constitutional law to do so; and
2. Suriname is similar to other countries in that its law permits the State to own all the land and does not recognize the right of indigenous and tribal people to complete ownership of the land."

63. On 17 December 2003, the Commission transmitted to the petitioners the relevant parts of the additional information supplied by the State in its note of 10

December 2003. On 7 January 2004 the petitioners responded to the additional information provided by the State and transmitted to the Commission on 10 December 2003.

64. On 28 January 2004 the State said that it was gathering information in order to respond to the petitioners' note and that its reply would be transmitted within four weeks, requesting an extension until 27 February 2004 in order to present its response. On 4 February 2004 the Commission granted the extension requested, and indicated that no further extensions would be granted.

65. On 27 May 2004 the Commission reiterated its availability and willingness to facilitate a procedure for reaching a friendly settlement, and requested the parties to respond within 15 days. On 25 June 2004 the State accepted the Commission's offer, and on 6 July 2004 the petitioners transmitted a revised draft agreement concerning the conditions for the negotiation and requested Suriname to transmit the respective response by 26 July 2004 at the latest.

66. On 26 July 2004 the State informed that it would not be in a position to begin the negotiations until between 4 October 2004 and 17 December 2004[4], stated that the period proposed by the petitioners was "practically impossible", and suggested to the petitioners several amendments to the draft agreement.

67. On 3 August 2004 the petitioners declared that they were no longer interested in taking part in a procedure for friendly settlement, and stated that "the changes proposed by Suriname and its comments on the draft agreement of conditions suggested that the probability of reaching a mutually acceptable agreement ... were remote."

68. On 2 November 2005, by note dated 14 September 2005, the State communicated to the Commission that it was still interested in "achieving a friendly settlement" concerning the Case, and informed of alleged difficulties in contacting the petitioners.

4. Issuance of Report 09/06 and follow-up

69. On 2 March 2006, during its 124th period of sessions, the IACHR considered the positions of the parties and approved the admissibility and merits report 09/06, pursuant to Articles 46, 47 and 50 of the American Convention and Articles 31, 32, 33, 34 37(3) and 42 of its Rules of Procedure, among others. In such report, the IACHR concluded that the case was admissible[5]. It also concluded, in relation to the merits, that the State of Suriname had violated

> the right to property established in Article 21 of the American Convention to the detriment of the Saramaka people by not adopting effective measures to recognize its communal property right to the lands it has traditionally occupied and used, without prejudice to other tribal and indigenous communities.

---

[4] In the (revised) draft of conditions for the negotiations, the petitioners had proposed that these should be held between August 2 and 6, 2004.

[5] IACHR, Report 09/06, Twelve Saramaka Clans, adopted 2 March 2006; Appendix 1.

> the right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, by not providing it effective access to justice for the protection of its fundamental rights.
>
> Articles 1 and 2 of the Convention by failing to recognize or give effect to the collective rights of the Saramaka people rights to their lands and territories.

70. In accordance with the analysis and conclusions contained in the said report, the Commission recommended the State to

> 1. Remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Saramaka people exercises its right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities.
>
> 2. Refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people as established in this report.
>
> 3. Repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and make reparation and due compensation to the Saramaka people for the damage done by the violations established in this report.
>
> 4. Take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used.

71. On 22 March 2006 the Commission forwarded the State the Report issued and requested that it report back, within two months, on the steps taken to comply with the recommendations. On that same date, in compliance with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that a report had been adopted and transmitted to the State, and asked them to inform, within the following month, their position regarding whether or not to refer the case to the Court.

72. On 21 March 2006 the State informed the Commission of several initiatives in connection with the land rights, and requested that the Commission "give the parties involved the possibility to deal with this issue on a national level". The Commission acknowledged receipt on 24 March 2006.

73. On 3 April 2006, the petitioners addressed the Commission to request the adoption of provisional measures, based upon an allegation that the State was excluding them from discussions pertaining to the Case and in violation of due process guarantees.

74. On 26 April 2006, the petitioners informed the Commission that, after receiving the information on adoption of the Report, they had held a series of meetings with other Saramaka traditional authorities and at community level, the result of which was unanimous expression that "should Suriname fail to fully comply with the recommendations of the Commission as set forth in the Report, it will be both appropriate and necessary to transmit th[e] case to the Court for adjudication therein", and furthered that they believed that this "is the only way that the Saramaka people's rights will be recognized and effectively secured in law and fact". Petitioners further presented the Commission the information in accordance with Article 43(3) of the Commission's Rules of Procedure.

75. On 22 May 2006 the State informed the Commission that it had adopted the following actions:

a. the National Assembly had been requested in writing to take the necessary steps to amend the legal regulations involved;
b. shortly a law on Illegal Occupation would be in the National Assembly;
c. on February 2006 a National Commission on Land Rights had been installed, with the mandate of identifying the issues in respect of land rights and making an inventory of these; and formulating subsequent recommendations to the President of the Republic;
d. instructions had been issued to all relevant bodies and institutions not to grant any timber or mining concessions in the territory of the Saramaka population, as well as in the territory of other tribal peoples;
e. an order has been issued to the Ministry of Labour, Technological Development and Environment to identify and inventory the location in the territory traditionally inhabited and used by the Saramaka people where possible environmental damage has occurred and to determine the magnitude of the damage, and that the "State will, if necessary, attempt to rehabilitate the area to its original condition".

76. The State further requested a three-months extension in the timeframe referred to in Article 51.1 of the Convention; it indicated that "this period w[ould] be used effectively to monitor the observance of the measures issued by the State to implement the recommendations". By note dated 15 June 2006, the State presented an additional information note, in which it informed having published an announcement for a vacancy of Project Officer in Land Rights, and announced that "the State of Suriname hereby complies with the relevant recommendations of the Commission".

77. After analyzing the State's communications to the recommendations contained in its Report, the Commission decided to submit the Case to the Court.

VI. STATEMENT OF THE FACTS

1. The Saramaka people

78. It is fact already established by the Court that "[d]uring the European colonization of present-day Suriname in the XVIIth Century, Africans were forcibly taken to

the region and used as slaves on the plantations. Many of these Africans, however, managed to escape to the rainforest areas in the eastern part of Suriname's present national territory, where they established new and autonomous communities; these individuals came to be known as Bush Negroes or Maroons. Eventually, six distinct groups of Maroons emerged: the N'djuka, the Matawai, the Saramaka, the Kwinti, the Paamaka, and the Boni or Aluku."[6]

79. Further, the Court has already found in a previous Case relating to a Maroon people that "[t]hese six communities individually negotiated peace treaties with the colonial authorities."[7] Like the N'djuka people to whom related the cited finding, in 1762 the Saramaka signed a treaty, renewed in 1837, that established their freedom from slavery, a century before slavery was formally abolished in the region.[8]

80. The Maroons consider themselves, and are culturally perceived to be different from other sectors of Surinamese society and they apply their own laws and customs.[9]

81. Saramaka society is essentially organized in 12 matrilineal clans (*lö*), who are the primary possessors of land in Saramaka society.[10] A Captain, who heads each clan, is in Saramaka terms the appropriate representative to act in moment of grave threat against the polity and culture as a whole.[11]

82. The members of the Saramaka community are not native to the region. Nevertheless, they form a tribal people, with specific cultural characteristics, and an identity made up of a complex network of relations with spirits, the land, and kinship

---

[6] IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124; paragraph 86.1; *see also for reference* Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[7] IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124; paragraph 86.2.

[8] IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124; paragraph 86.2.

[9] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[10] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2. Recent studies register the Saramaka population at 34.482 persons, although this would also include persons not living in the Upper Suriname River. *Vide* Kamble, Ellen Rose; *Policy Note on Indigenous Peoples and Maroons in Suriname*; Final Report, 14 November 2005; The Inter-American Development Bank's 2004 Overview of Indigenous and Tribal Peoples of 2004 establishes the Saramaka population living in "central Suriname" in *circa* 25.000. Petitioners have informed the Commission that the Saramaka population in the Upper Suriname River would amount to some 20.000 persons. The former study warns that no reliable data can be extracted from the census-results about the number of indigenous peoples and maroons living in certain districts.

[11] Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2

structures. The lands and resources of the Saramaka are considered as an all-embracing whole and intertwined with the social, ancestral, and spiritual relations, which govern their daily life.[12]

2. The Saramaka territory

83. The occupation of the Saramaka territory dates back to the beginning of the XVIII[th] Century.[13]

84. Currently, the Saramaka people are scattered over some 58 communities along the Upper Suriname River.

85. Through agriculture, hunting, fishing, and other traditional ways of using the land and resources, the Saramaka people have occupied large areas of land in the Upper Suriname River region, over and above specific villages.[14]

86. The Saramaka territory includes lands that the Saramaka people occupied and traditionally used, for the most part to the exclusion of other groups, be they indigenous, Maroon, or other.[15]

87. During the 1960's, the flooding derived from the construction of a hydroelectric dam displaced Saramakas and created the so-called "transmigration" villages.[16]

88. Even if the State is the owner of the territories and resources occupied and used by the Saramaka people, through tacit approval by the State, the Saramaka people have attained a certain degree of autonomy to govern its lands, territories, and resources.[17]

---

[12] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[13] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 150.

[14] See, *for example* Professor Richard Price Report, "Report in Support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[15] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[16] Report of Professor Richard Price; annex D of petition of 30 September 2000; Annex 1

[17] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1. This report documents the social, political, and geographical history of the Saramaka people. Specifically, the report addresses: (1) The political geography of Saramaka territory (2) ownership of Saramaka land; (3) Saramaka land use; (4) Saramaka sovereignty. The report also cites numerous articles and books put together by Dr. Price on Saramaka and Maroon culture and history. Indeed, in its note to the Commission dated December 27, 2002, the State expressly recognizes the "*sui generis* nature" of the Saramaka people, which, for the State constitutes the basis for granting it "certain privileges" under which it can exploit its territories and preserve its culture. In the same note, the State asserts that "it does not interfere in the use of these lands given that these privileges must be exercised collectively by the communities." Although it denies the existence of communal property rights, through what it calls "privileges" the State recognizes the collective management of the territories

89. The woods in Saramaka territory are necessary for physical survival, because they are hunting ground and are used for farming and the creeks are used as a source of water.[18]

3. The Saramaka culture and its connection to the territory

90. Land use practices are essential to the Saramaka people, not just for the subsistence of the members of the communities, but also because they cement the life and cultural continuity of the Saramaka people.[19]

91. Lands are possessed collectively by the clans (*los*), whereby the individuals and extended family units in the clan enjoy subsidiary use and occupation rights.[20]

92. Saramaka culture and identity form a complex network of ongoing relations with ancestral and other spirits, with the land and with kinship structures. The lands and resources of the Saramaka are considered in their entirety and intertwined with social, ancestral, and spiritual relations, which govern their daily life. In particular, their identity is inextricably linked to their struggle to free themselves from slavery, which they call the "first time".[21]

---

that the Saramaka people has traditionally possessed and occupied and it also recognizes the structure of authority within the Maroon communities, including the Gaama. However, in none of its submissions does the State identify any legal framework to recognize these so-called privileges or to mediate between them and the State's prerogative to subordinate them to a wider social or public interest. *See also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[18] Declaration of Saramaka Captain Wanze Eduards, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 10.

[19] Report of Richard Price, annex D of petition of 30 September 2000; Annex 1.; *see also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2.

[20] Expert opinion of Dr. Richard Price before the Court in the *Aloeboetoe et al* Case, (1993); *vide* request for inclusion of this opinion to the evidence of this Case, *infra* Section XI.3. In his testimony, Dr. Price describes Saramaka land tenure as follows: "The Saramaka people, the Saramaka nation, if we can call it that, as a whole, have a particular territory that you can see on that map. In terms of agricultural land, and the land in which they have their houses, they are held communally, by large kinship groups, of which there are 13 or 14 in Saramaka, and the whole river is divided into large areas of several miles long, owned by one of this particular groups. Every Saramaka belongs to one of these groups, through his or her mother, these groups are called Lo. They are what anthropologists call matrilineal clans, but you belong, every Saramaka belongs to one, and only one Lo. A person's Lo owns particular land, and any member of the Lo's has rights to work, to ask the Village Captain, in the area where the Lo owns lands, for an area to cut gardens. Any member of the Lo has a right to pick food from trees that grow in that area. Members of other Lo's, other Saramaka have to ask permission in order to pick food. But land is held communally, and it's held for posterity, so that if I am given a particular garden, for the present, I do not have rights to pass that particular place on to my children, rather the matrilineal group as a whole..."

[21] Richard Price, *First time, The historical vision of an African-American People,* publisher John Hopkins University, Baltimore, 1983.

4. Relevant legislation

93. Suriname is a former Dutch colony, whose legal system is based on the civil law tradition. When Suriname became fully independent in 1975, it adopted a Constitution, which was subsequently replaced (in 1987) and amended (in 1992).

a. Constitution[22]

94. Article 34 of the Constitution provides for an individual right to property, subject to the State's right to expropriate, in the following terms:

> 1. Property, both of the community and of private persons, shall fulfill a social function. Everyone has the right to undisturbed enjoyment of his property, subject to the limitations which originate in the law.
> 2. Expropriation shall take place only in the general interest, pursuant to rules to be laid down by law and against compensation guaranteed in advance.
> 3. Compensation need not be previously assured if, in case of an emergency, immediate expropriation is required.
> 4. In cases determined by or pursuant to the law, the right to compensation shall exist if, in the public interest, the competent authority destroys or renders property unusable or restricts the exercise of property rights.

95. Ownership of natural resources pertains to the State by virtue of Article 41 of the Constitution:

> Natural riches and resources are the property of the nation and shall be used to promote economic, social and cultural development. The nation has the inalienable right to take complete possession of its natural resources in order to utilize them to the benefit of the economic, social and cultural development of Suriname.

96. The Constitution of Suriname neither explicitly recognizes nor guarantees the rights of the indigenous and tribal peoples of Suriname to own their lands, territories, and resources.

b. Decree L-1 of 1982 on Basic Principles of Land Policy[23]

97. Almost all the land in the inland provinces of Suriname is currently classified as State property, and all land rights in Suriname must derive from a concession awarded by the State.[24]

98. Decree L-1 of 1982 on Basic Principles of Land Policy governs land titling, leasing, and occupation on a permit basis. According to this law, any Surinamese citizen

---

[22] The Constitution of the Republic of Suriname; Annex 3.

[23] The reference is to Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (translation); Annex 5.

[24] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; par. 228, on the consensus registered in the process before the Commission in relation to this fact.

and any legal person is entitled to ask the government for a plot of uncommitted state land. [25]

99. These land titles are issued on an individual basis and are granted as leases *vis-à-vis* the State, renewable for periods of 15 to 40 years.[26]

100. The aforementioned Decree L-1 of 1982 partially recognizes the rights of tribal and indigenous peoples, but subject to the "general interest" of the State. Article 4 establishes that in allocating privately owned land, the rights of the "tribal Bushnegroes and [Indigenous Peoples] to their villages, settlements and agricultural plots are respected, provided that this is not contrary to the general interest"; and that "general interest includes the execution of any project within the framework of an approved development plan".[27]

c. Activities classified as being in the general interest

101. According to Suriname's laws, mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights.[28]

102. In practice, the classification of an activity as being in the "general interest" is not actionable and constitutes a political issue that cannot be challenged in the courts. What it does, in effect, is to remove land issues from the domain of judicial protection. The "general interest" exception with respect to the rights of the indigenous and Maroon communities could include any action that the State deems in the public interest or any project in a development plan. The effect of this provision is to substantially limit the

---

[25] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; par. 166. The reference is to Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (translation); Annex 5.

[26] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; par. 166. The reference is to Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (translation); Annex 5.

[27] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; par. 167. The reference is to Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (translation); Annex 5.

[28] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 242 and previous, for the conclusions of the Commission to this respect. *See also*, Declaration of Expert Mariska Muskiet, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 12. The Commission is further offering the Expert opinion of Ms. Musket in support of this contention, *vide infra* Section XI.

fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favour of an eventual interest of the State that might compete with those rights.[29]

d. Forestry Management Act of 1992[30]

103. Article 41(1) (a) of the Forestry Management Act of Suriname of 1992 establishes that the customary rights of tribal inhabitants of the interior to their villages, settlements, and agricultural plots will be respected as much as possible.[31]

104. Article 41(1) (b) establishes that, if these rights are violated, appeals may be lodged with the President of Suriname.[32]

e. Collective property title for indigenous or tribal peoples

105. 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.[33]

106. There is no domestic legal regime that establishes or recognizes a collective property title for indigenous or tribal peoples. In the absence of any such recognition, it follows that there is no legal regime in Suriname charged with mediating between the right of the State to appropriate (collective) property in the public interest and the right to collective ownership *per se*.[34]

5. The granting of forestry and mining concessions in the Upper Suriname River region

a. Forestry concessions

---

[29] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 240 and previous, for the conclusions of the Commission to this respect.

[30] The reference is to Forestry Management Act of 1992 (translation); Annex 6.

[31] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 231. The reference is to Forestry Management Act of 1992 (translation); Annex 6.

[32] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 231. The reference is to Forestry Management Law of 1992 (translation).

[33] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 230 and previous, for the conclusions of the Commission to this respect. *See also*, Declaration of Expert Mariska Muskiet, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 12. The Commission is further offering the Expert opinion of Ms. Musket in support of this contention, *vide infra* Section XI.

[34] The Committee for the Elimination of Racial Discrimination observed that over 10 years after the Peace Accord of 1992, Suriname had not adopted an appropriate framework to govern legal recognition of the rights of indigenous and tribal peoples to their communal land, territories, and resources. Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname, CERD/C/64/CO/9/Rev.2, 12 March 2004 (CERD).

107. The State has granted concessions to third parties for forestry activities in the area of the Upper Suriname River and Saramaka territory.[35] The State did not consult the affected people beforehand regarding those activities, nor did it obtain its free and informed consent.[36]

108. The logging concessions awarded by the State encompass areas that include vital parts of the natural environment which the Saramaka people depend on for their subsistence, including vulnerable soils, the growth of primary forests, and major basins.[37]

109. Logging concessions to private enterprises were operating at the time of presentation of the petition[38] and have continued to operate[39].

110. Some members of the Saramaka community have obtained forestry concessions from the Government.[40]

---

[35] NFP. *See also* Declaration of Saramaka Captain Wanze Eduards, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 10; Declaration of Mr. Peter Poole before the Commission (Hearing No. 49, 119th Period of Sessions, 05.03.06); Annex 11; *cfr.* Map I, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions); Annex 14; Map II, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions, 05.03.06); Annex 15. In its submission of 23 May 2003 before the Commission, the State presented maps showing the territory and the concessions granted. *See also* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 216 and previous, for the conclusions of the Commission to this respect.

[36] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 219.

[37] Statement by Mr. G. Huur, a Saramakan, of 7 May 2002, Annex A of petitioner's submission of 15 May 2002; Annex 9. *See also* Declaration of Saramaka Captain Wanze Eduards, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 10; Map II, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions, 05.03.06); Annex 15.

[38] Declaration of Saramaka Captain Wanze Eduards, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 10. *See also* Declaration of Mr. Peter Poole before the Commission (Hearing No. 49, 119th Period of Sessions, 05.03.06); Annex 11; Map I, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions); Annex 14; Map II, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions, 05.03.06); Annex 15.

[39] *See* Declaration of Saramaka Captain Wanze Eduards, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 10.

[40] In the process before the Commission, the petitioners asserted that the fact that these concessions have been obtained by members of the Saramaka people is consistent with the right of the Saramaka people to use and develop the raw materials within their traditional lands and territory, in accordance with Saramaka customary law, and in order to provide for their subsistence and other needs; and that the Saramaka people are obliged to obtain logging concessions in order to be able to use their own resources freely and to safeguard their ancestral lands from persons who are not members of their community and from the State. The State asserted that some of these concessions have been sublet or in some way transferred to third parties, who are unaware of social relations in the provinces of Suriname, or the role of traditional authorities, but provided no documentary support for this assertion. *See* IACHR, Report on Admissibility and Merits No. 09/06

b. Mining concessions

111. The State has granted concessions to third parties for mining activities in the area of the Upper Suriname River and Saramaka territory.[41] The State did not consult the affected people beforehand regarding those activities, nor did it obtain its free and informed consent.[42]

112. Mining activities have so far not been carried out as a result of concessions awarded by the State.[43]

113. Illegal gold mining is practices in Saramaka territory.[44] This has led to mercury contamination in traditional food supply areas.[45]

114. Illegal gold mining is, by definition, not regulated, and is not effectively been subject to State control, although is a situation that the State is aware of.[46]

c. Environmental damage caused

115. The forestry concessions awarded by the State in the Upper Suriname River lands have damaged the environment and that the deterioration has a negative impact on lands that in whole or in part are within the limits of the territory to which the Saramaka community has a communal property right.[47]

---

on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 207 and accompanying references.

[41] Map prepared by the Ministry of Natural Resources. Annex F4 of the petition. *See also* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 216 and previous, for the conclusions of the Commission to this respect.

[42] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 219.

[43] *See also* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 216 and previous, for the conclusions of the Commission to this respect.

[44] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 212 and previous, for the conclusions of the Commission to this respect.

[45] Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname. CERD/C/64/CO/9/Rev.2, 12 March 2004 (CERD); paragraph 21. Mercury appears to be used in the small-scale mining carried out by the so-called *"garimpeiros"*.

[46] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 217 and previous, for the conclusions of the Commission to this respect.

[47] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 212 and previous, for the conclusions of the Commission to this respect. *See also* Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation); Annex 2. This report documents the threat of irreparable destruction of the means of subsistence, spiritual assets, and culture of the Saramaka. See also the Declaration of Mr. Peter Poole before the Commission

6. Judicial remedies

116. The rights of indigenous and Maroon peoples, such as the Saramaka, to their lands, territories, resources, and cultural identity are not explicitly recognized or guaranteed in the 1987 Constitution and, for that reason, there are no provisions contemplating judicial recourse if they are violated.[48]

117. Article 22 of the Constitution of Suriname establishes the right of petition in the following manner:

1. Everyone has the right to submit written petitions to the competent authority.
2. The law regulates the procedure for the treatment thereof.[49]

118. Article 1386 of the Civil Code of Suriname establishes that any lawful action causing harm to another person obligates the person causing the harm to indemnify the person harmed.[50]

119. Article 41(1) (b) of the Forestry Management Act of Suriname of 1992 establishes that, if the customary rights of tribal inhabitants of the interior to their villages, settlements, and agricultural plots are violated, appeals may be lodged with the President of Suriname.[51]

120. The Saramaka people have lodged official complaints with the President of Suriname, and have received no reply from the Office of the President[52].

VII. CONSIDERATIONS OF LAW

1. Preliminary considerations

(Hearing No. 49, 119th Period of Sessions, 05.03.06); Annex 11, in which he presented maps and photographs of the effects of the three concessions operating in Saramaka territory. *See also* Statement by Mr. G. Huur, a Saramakan, of 7 May 2002, Annex A of petitioner's submission of 15 May 2002; Annex 9, in which he declared having been prevented from hunting and fishing by a Chinese forestry enterprise.

[48] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 212 and previous, and 243 and previous. *See also,* Declaration of Expert Mariska Muskiet, before the Commission (Hearing no. 49; 119th Period of Sessions, 05.03.06); Annex 12. The Commission is further offering the Expert opinion of Ms. Musket in support of this contention, *vide infra* Section XI.

[49] The Constitution of the Republic of Suriname; Annex 3.

[50] The reference is to Civil Code of Suriname (translation), *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; par. 249; Civil Code of Suriname (relevant – translation); Annex 4.

[51] The reference is to Forestry Management Act of 1992 (translation); Annex 6. *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1.; par. 231

[52] *See* IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006; Appendix 1; pars. 231 and 244.

121. The Commission submits that in determining the human rights norms, principles and sources applicable in the instant Case, it must be taken into account that the claims relate to persons who identify themselves as members of a community forming part of a tribal people and who live in a specific territory, that is to say, the Saramaka community, which inhabits the region of the Upper Suriname River. Accordingly, the Commission contends that the jurisprudence developed by the organs of the Inter-American System concerning indigenous peoples and their relationship to the land applies to the instant Case, and therefore the Saramaka clans hold rights to communal property to their land.

122. Further, according to the jurisprudence of the Inter-American System, the provisions of its governing instruments, including the American Convention, should be interpreted and applied in the context of developments in the field of international human rights law since those instruments were first composed and with due regard to other relevant rules of international law applicable to member states against which complaints of human rights violations are properly lodged[53]. This approach is also reflected in Article 29(b) of the American Convention which provides that "[n]o provision of this Convention shall be interpreted as: [. . .] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party."

123. In the context of the Inter-American System, both the Court and the Commission have recognized, promoted and protected the rights of the indigenous peoples of the Hemisphere. In the resolution the Commission adopted in 1972, for instance, on "Special Protection for Indigenous Populations – Action to Combat Racism and Racial Discrimination," the Commission proclaimed that "for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states."[54] This concept of special protection has also been considered in a series of countries and in individual reports approved by the Commission and it has been recognized and applied in connection with numerous rights and freedoms of the American Convention, including the right to life, the right to humane treatment, the right to judicial protection, the right to a fair trial, and the right to property.[55] In its 1997 report on the human rights situation in Ecuador, the Commission declared that

---

[53] See I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights; paragraph 37; I/A Court H.R., The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law; paragraph 114 (endorsing an interpretation of international human rights instruments that takes into account developments in the corpus juris gentium of international human rights law over time and in present-day conditions; Report N° 52/02, Case N° 11.753, Ramón Martinez Villareal (United States), Annual Report of the IACHR 2002 [hereinafter "Martinez Villareal Case"], paragraph 60.

[54] Resolution on "Special Protection for Indigenous Populations. Action to Combat Racism and Racial Discrimination," cited in IACHR, IACHR; Yanomami Case, Report 12/85, 1984-1985 Annual Report; paragraph 8.

[55] See, for instance IACHR; Yanomami Case, Report 12/85, 1984-1985 Annual Report; IACHR, Report on the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, Doc. 10 rev. 3 (November 29, 1983); IACHR, Second and Third Reports on the Situation of Human Rights in Colombia 1993, 1999; Draft American Declaration on the

> [w]ithin international law generally, and Inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.[56]

124. The Commission's criterion in recognizing and giving effect to particular protections in the context of the human rights of indigenous peoples is consistent with developments in the field of international human rights law in a broader sense. The Court has likewise recognized and applied special measures to guarantee the human rights of the indigenous[57], as have the International Labour Organization,[58] the United Nations through its Human Rights Committee,[59] the Committee for the Elimination of All Forms of Racial Discrimination,[60] and the domestic legal systems of States.[61]

125. Accordingly, in its submissions in the instant Case, the Commission will, to the extent appropriate, refer to the pertinent provisions of the American Convention in light of current developments in the field of international human rights law, including development relating to indigenous peoples, as evidenced by treaties, custom and other relevant sources of international law.

126. In this respect, a study of treaties, legislation, and international jurisprudence reveals since the beginning of the 20th century, an evolution human rights provisions and principles applicable to the situation of indigenous and tribal peoples.[62]

127. The Commission therefore submits that in pronouncing on the violations by the State of Suriname of the American Convention to the detriment of the Saramaka

---

Rights of Indigenous Peoples, approved by the IACHR, 95th regular session, February 26,1997; Annual Report of the IACHR 1997, Chapter II.

[56] IACHR, Report on the Situation of Human Rights in Ecuador, OAS/Ser.L/V/II.96.Doc.10 rev 1, April 24, 1997, Chapter IX [hereinafter, "Ecuador Report"].

[57] See, for example: IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; Plan de Sanchez; IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124; IA Court HR. Case of the Yakye Axa Indigenous Community vs. Paraguay. Judgment of 17 June 2005. Series C No. 125; IA Court HR. Yatama Case vs. Nicaragua. Judgment of 23 June 2005. Series C No. 127.

[58] *See, for example,* ILO Convention No. 169, *supra.*

[59] *See, for example,* United Nations Human Rights Committee, General Comment 23, PIDCP, Article 27, UN Doc. HRI/GEN/1/Rev.1, 38 (1994) [hereinafter, "General Comment 23 of the UN Human Rights Committee], paragraph 7.

[60] *See, for example,* CERD General Recommendation XXIII (51) regarding indigenous peoples (August 18, 1997).

[61] For a compendium of domestic laws governing the rights of indigenous peoples in numerous OAS member states, see IACHR, International and National Law Sources for the Draft American Declaration on the Rights of Indigenous Peoples, OEA/Ser.L/V/II.110 Doc. 22 (March 1, 2001).

[62] For a historical overview of the evolution of international human rights with regard to indigenous peoples, see IACHR, *The Human Rights Situation of Indigenous Peoples in the Americas,* OEA/Ser.L/V/II.108, Doc. 62 (October 20, 2000), pp. 21-25.

people, the Court ought to attach special consideration to the particular principles of international human rights law governing the individual and collective interests of indigenous and tribal peoples, including consideration of any special measure that may be appropriate and necessary to assert those rights and interests.

128. Having made that observation, the Commission submits to the Court the violation of the following rights protected by the American Convention to the detriment of the Saramaka people: the right to property (Article 21); the right to judicial protection (Article 25); and the non-compliance with the obligation of respecting those rights and of adopting domestic legal provisions (Articles 1 and 2).

2. Right to property (Article 21)

129. Article 21 of the American Convention establishes:

> 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
> 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
> 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

130. In its submission concerning the right to property in the context of this Case, the Commission will describe how this right is addressed in the domestic legal system in Suriname. The Commission will provide a more specific analysis of the rights that the members of the Saramaka people of the Upper Suriname River claim in the territory in question, according to the applicable provisions and principles of international human rights law, as well as any corresponding obligations of the State to recognize and protect such rights. This submission addresses the juridical balance between the rights that the Saramaka people are entitled to under Article 21 of the Convention, and the prerogative of the State to subordinate those rights to "the interest of society" or "for reasons of public utility or social interest". Finally, the Commission will explain why, in its view, the State is responsible for violating Article 21 of the Convention to the detriment of the Saramaka people.

a. The right to property and tribal and indigenous peoples in the context of contemporary international human rights law

131. In assessing the nature and content of the right to property in Article 21 of the American Convention, in the context of the case at hand, the Commission submits that certain aspects in the evolution of international protection of the human rights of tribal and indigenous peoples are particularly relevant.

132. Among the facts to emerge from advances in the human rights of the indigenous is the recognition that indigenous and tribal communities frequently exercise rights and freedoms collectively, in the sense that those rights and freedoms can only be

guaranteed when the guarantee concerns a community as a whole.[63] The right to property has been recognized as one such collectively exercised right. As noted, the State has acknowledged that the Saramaka people live collectively in communities and has recognized its collective cultural identity in connection with the land.

133. It is, furthermore, significant that the organs of the Inter-American human rights system have specifically recognized that indigenous peoples enjoy a special relationship with the land and resources they have traditionally occupied and used, whereby these lands and resources are regarded as the property and enjoyment of the indigenous community as a whole[64] and the use and enjoyment of the land and its resources form an integral part of the physical and cultural survival of the indigenous communities and of the fulfilment of their human rights in the broader sense.[65] As the Court observed in its judgment in the case of the (Sumo) Community of Awas Tingni v. Nicaragua,

> [f]or indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[66]

134. In its reports on individual petitions and on the overall human rights situation in member states, and in precautionary measures, the Commission has pronounced on the need for states to adopt measures designed to restore, protect, and preserve the rights of indigenous peoples to their ancestral lands.[67] It has also maintained that respect for the collective rights to property and possession of the indigenous peoples vis-à-vis their lands and ancestral territories constitutes an obligation of the member states of the OAS and

---

[63] See the IACHR, Report on Merits No. 99/99 on the Case of Mary and Carrie Dann; 27 September 1999; paragraph 128, which cites the IACHR, *The Human Rights Situation of the Indigenous Peoples of the Americas*, 2000, OEA/Ser.L/V/II/108, Doc. 62 (October 20, 2000), page. 125; IACHR; Yanomami Case, Report 12/85, 1984-1985 Annual Report. *See also* ILO Convention N° 169, *supra*, Article 13 (which establishes that "In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.").

[64] See, for example, IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 149 (which observes that" Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community.").

[65] The Commission has noticed, for instance, that continued use of traditional collective systems for controlling and using territory are frequently essential for individual and collective wellbeing and, indeed, for the survival of indigenous peoples; and that this control over the land has to do with their capacity to obtain life-sustaining resources and the geographical space needed for the cultural and social reproduction of the group. Ecuador report, *supra*, page. 115.

[66] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 149.

[67] See, for example, IACHR; Yanomami Case, Report 12/85, 1984-1985 Annual Report, *supra*; IACHR, Report on Merits No. 99/99 on the Case of Mary and Carrie Dann; 27 September 1999.

that the states incur international liability if they fail to meet that obligation.[68] According to the Commission, the right to property set forth in the American Convention must be interpreted and applied in connection with indigenous peoples with due consideration of the principles relating to protection of traditional forms of property and cultural survival and of the rights to land, territories, and natural resources[69].

135. The Court has adopted a similar criterion with regard to the right to property in connection with indigenous peoples, in recognizing the communal form of indigenous land tenure as well as the special relationship of an indigenous people with its land. According to the Court,

> [a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.[70]

136. On numerous occasions the Court has emphasized that the close relationship between indigenous peoples and their land must be recognized and understood as the fundamental basis of their culture, spiritual life, integrity, economic survival and their preservation and transmission to future generations.[71] It added that the culture of members of the indigenous communities corresponds to a special way of life, of being, seeing, and

---

[68] See, for example, IACHR, Report on Merits No. 99/99 on the Case of Mary and Carrie Dann; 27 September 1999.

[69] See IACHR, Report on Merits No. 99/99 on the Case of Mary and Carrie Dann; 27 September 1999; paragraphs 129-131, which cite the Draft American Convention on the Rights of Indigenous Peoples, *supra*, Article XVIII; Ecuador report, *supra*; IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraphs 134-139; PICDP, Article 27; PIDCP, General Comments 23, *supra*, paragraph 7; CERD General Recommendation XXIII (51) regarding the indigenous peoples (August 18, 1997) in which the states parties to the Convention on Racial Discriminating are called upon to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."); ILO Convention No. 169 *supra*, Article 14(1) (which states that: The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect "); Article 15(1) (which establishes that "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources").

[70] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 149.

[71] IA Court HR, Case of the Plan de Sanchez Massacre vs. Guatemala. Reparations (art. 63(1) American Convention on Human Rights). Judgment of 19 November 2004. Series C. No. 116; paragraph 85; and IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 149; IA Court HR. Case of the Yakye Axa Indigenous Community vs. Paraguay. Judgment of 17 June 2005. Series C No. 125; paragraph 131.

acting in the world, based on their close ties to their traditional territories and the resources found therein, not just because these are their principal means of subsistence, but also because they constitute an integral part of their vision of the cosmos, religiosity, and, consequently, their cultural identity.[72]

137. The organs of the inter-American system of human rights have therefore recognized that rights to property are not restricted to the property interests already recognized by states or defined in domestic laws, but have an autonomous significance in international human rights law.[73] Accordingly, the jurisprudence of the system has recognized that the rights to property of the indigenous peoples are not exclusively defined by the rights assigned under the State's formal legal system, but also include the indigenous communal property derived from and founded upon custom and indigenous tradition. Based on this criterion, the Court has held that

> indigenous peoples' customary law must be especially taken into account for the purpose of [defining indigenous property rights]. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.[74]

138. This interpretative approach is supported by the language of other instruments and other international deliberations that constitute new indications of international views of the incidence of the traditional land tenure system on modern human rights protection systems[75].

---

[72] IA Court HR. Case of the Yakye Axa Indigenous Community vs. Paraguay. Judgment of 17 June 2005. Series C No. 125; paragraph 135.

[73] The European Court of Human Rights has applied a similar interpretation of the concept of "possessions" in the context of Article 1 of Protocol N°1 of the European Convention on Human Rights. See Matos E Silva, Ltd v. Portugal (1997) 24 E.H.R.R. 573. The Court declared that "the notion of "possessions" in Article 1 of Protocol N° 1 has an autonomous meaning. In the present case the applicants' unchallenged rights over the disputed land for almost a century and the revenue they derive from working it may qualify as "possessions" for the purposes of Article 1." *See also* Latridis v. Greece (1999) E.C.H.R. 31107/96 Hudoc REF00000994, of March 25, 1999 (in which interests are asserted in connection with the possession and running of a movie theatre over 11 years, even though under domestic legislation there was a dispute over the title to the movie theatre); The Holy Monasteries v. Greece, (1995) 20 E.H.R.R. 1 (in which rights to property are recognized on the basis of occupation over centuries).

[74] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 151.

[75] For example, Convention N° 169 of the International Labour Organization on the rights of indigenous and tribal peoples, asserts the rights of the indigenous and tribal peoples to ownership and possession of the lands they traditionally occupy and requires governments to safeguard those rights and provide appropriate mechanisms for solving their land disputes. Moreover, the Draft American Declaration on the Rights of Indigenous Peoples and the Draft United Nations Declaration on the Rights of Indigenous Peoples expressly or implicitly assert the rights of the indigenous peoples to possess, develop, control, and use the lands and resources that they have traditionally possessed, or occupied, and otherwise used. Furthermore, Article XI of the CARICOM Charter of Civil Society (adopted by the CARICOM states on February 19, 1997) also obliges member states – including Suriname -- to "recognize the contribution of the indigenous peoples to the development

139. The organs of the inter-American system attach special importance to protection of the right of indigenous peoples to own their ancestral territories because its effective protection implies not only protection of an economic unit, but protection of the human rights of a collective unit whose economic, social, and cultural development is based on its relation to the land. The Commission has long argued that protecting the culture of tribal peoples includes preservation of factors related to the organization of production, which includes, *inter alia*, the question of ancestral and communal lands.[76]

b. The right to property and traditional territory of the Saramaka people

140. In the context of the provisions and principles outlined above, the Commission submits before the Court that the Saramaka people of the Upper Suriname River enjoy a right to property in accordance with Article 21 of the Convention, with respect to the lands, territories, and resources it has traditionally occupied and used.

141. As indicated above, the Commission has submitted that, based on the information available, the members of the Saramaka communities constitute a tribal people, whose ancestors have inhabited this region since the XVIIth century, when Suriname was a Dutch colony.

142. Also in support of its position, the Commission notes that in the proceedings before it, the State accepted that the Saramaka people have historically inhabited the territory of the Upper Suriname River, but applied Surianme's legal and constitutional framework to defend its position that the Saramaka people do not have property rights *per se*, but rather just a privilege or permission to use and occupy the lands at the discretion of the State. This position appears to be echoed in Suriname's primary legislation, which provides for respect for the customary rights of the indigenous and the Maroons, unless they conflict with the 'general interest'. It is not apparent, however, how this general interest is balanced, if at all, with these customary indigenous and tribal 'privileges' or rights, particularly in respect to the grant of logging and mining concessions exercisable by third parties over lands and territories used and occupied by the Saramaka people.

143. The Commission also notes that, in its concluding observations on Suriname in March 2004, the Committee for the Elimination of Racial Discrimination observed that over 10 years after the Peace Accord of 1992, Suriname had not adopted an appropriate framework to govern legal recognition of the rights of indigenous and tribal peoples to their communal land, territories, and resources.[77]

144. In addition, the Commission relies upon the general acknowledgement by the State of a very longstanding presence of the Saramaka people in the Upper Suriname River

---

process and to undertake to continue to protect their historical rights and respect the culture and way of life of these peoples"

[76] Miskito Case, *supra*, 81, Part II, paragraph 15. See also the IACHR; Yanomami Case, Report 12/85, 1984-1985 Annual Report; 24, 431; Ecuador Report, *supra*, 103-4.

[77] Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname. CERD/C/64/CO/9/Rev.2, 12 March 2004 (CERD), paragraph 16.

region, which the Commission submits is formidable proof of lasting ties between the Saramaka people and the lands of the Upper Suriname River. That view is also supported by experts in the traditional and modern land use practices of the Saramaka people, who confirm that this people, through its farming, land tenure, and other systems has, continuously and over a very long period of time, occupied vast areas of land, over and above the specific villages.

145. Consequently, in the Commission's submission, there is substantial evidence that, through agriculture, hunting, fishing, and other traditional ways of using the land and resources, the Saramaka people have occupied large areas of land in the Upper Suriname River region, over and above particular villages, since colonial times, and that the dates on which they settled in specific Saramaka villages are not in themselves what determines the existence of communal property rights of the Saramaka to those lands.

146. Based on the arguments and evidence outlined above, the Commission submits that the Saramaka people have, in accordance with current international law, a right to communal ownership of the land it currently inhabits in the Upper Suriname River region. The Commission also submits that these rights derive from the use and occupation of the territory by the Saramaka people: a use and occupation that the parties agree has existed for centuries, ever since Suriname was a Dutch colony.

147. In addition, the Commission also submits that this communal right to property of the Saramaka people qualifies for the protection of Article 21 of the American Convention, interpreted in accordance with the aforementioned principles regarding the situation of tribal and indigenous peoples, including the obligation to adopt special measures to guarantee recognition of an individual and collective interest of indigenous peoples in the occupation and use of their traditional lands and their resources.[78] In this respect, the Commission contends that the communal right to property of the Saramaka people has a significance and autonomous foundation in international law.

148. Further, the Commission submits that parallel to the existence of a communal property right of the Saramaka people, according to Article 21 of the Convention, the State has the corresponding obligation to recognize and guarantee the enjoyment of this right. Accordingly, the State must adopt appropriate measures to protect the right of the Saramaka people to its land.[79] In the Commission's submission, this necessarily includes conducting effective and informed consultations with the Saramaka people regarding possible uses of its territory and taking into account in that process the traditional forms of land use and customary land tenure systems.

---

[78] See, similarly, IACHR, Report on Merits No. 99/99 on the Case of Mary and Carrie Dann; 27 September 1999.

[79] In its judgment on the Awas Tingni Case, the Inter-American Court ruled that the fact that the State did not define the borders or effectively demarcate the collective assets of the Mayagna community of Awas Tingni created a climate of permanent uncertainty among the members of this community in as much as they have no certainty as to the geographical extension of their communal goods, and hence do not know the extent to which they can use and freely enjoy them. IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79.

149. To further illustrate this position, in the *Moiwana Case*, the Court concluded that Suriname had violated the right of the members of the community to communal use and enjoyment of their traditional property and it therefore considered that the State had violated Article 21 of the American Convention, in conjunction with Article 1.1 of the same, to the detriment of the members of the Maroon community. In substantiating its conclusion, the Court reasoned as follows:

> [t]he parties to the instant case are in agreement that that the Moiwana community members do not possess formal legal title – neither collectively nor individually – to their traditional lands in and surrounding Moiwana Village. According to submissions from the representatives and Suriname, the territory formally belongs to the State in default, as no private individual or collectivity owns official title to the land.
>
> Nevertheless, this Court has held that, in the case of indigenous communities who have occupied their ancestral lands in accordance with customary practices – yet who lack real title to the property – mere possession of the land should suffice to obtain official recognition of their communal ownership and consequent registration.
>
> That conclusion was reached upon considering the unique and enduring ties that bind indigenous communities to their ancestral territory. The close relationship of an indigenous community with its land must be recognized and understood as the fundamental basis of its culture, spiritual life, integrity, and economic survival. For such peoples, their communal nexus with the ancestral territory is not merely a matter of possession and production, but rather consists of material and spiritual elements that must be fully integrated and enjoyed by the community, so that it may preserve its cultural legacy and pass it on to future generations.
>
> In this way, the Moiwana community members, a N'djuka tribal people, possess an 'all-encompassing relationship' to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole. Thus, this Court's holding with regard to indigenous communities and their communal rights to property under Article 21 of the Convention must also apply to the tribal Moiwana community members: their traditional occupancy of Moiwana Village and its surrounding lands – which has been recognized and respected by neighbouring N'djuka clans and indigenous communities over the years (*supra* paragraph 86(4)) –, however, may only be determined after due consultation with said neighbouring communities *(infra* paragraph 210).
>
> Based on the foregoing, the Moiwana community members may be considered the legitimate owners of their traditional lands; as a consequence, they have the right to the use and enjoyment of that territory.[80]

150. In the instant case, the Commission submits that according to the evidence before the Court, the State has not established any legal mechanism for clarifying and protecting the property rights of the Saramaka people with regard to their territory. In that regard, the evidence indicates that the current system for land titling, leasing, and granting permits under Suriname law does not either recognize or adequately protect the communal rights of the Saramaka people to the land they have traditionally used and occupied: the rules governing private property do not recognize or take into account the traditional collective system under which the Saramaka people uses and occupies its traditional lands. In the Commission's submission, it is evident that ownership of the lands possessed by the Saramaka people resides with the State and that there are no provisions recognizing or

---

[80] IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124; paragraphs 130, 131, 133 and 134.

protecting the communal interests of the Saramaka in those lands. Further, there is no legal framework for regulating those interests or balancing them against the prerogative of the State to subordinate them to a clearly defined public or general interest. The Commission submits that the imperative for such a framework is inherent in the provisions of Article 21 when read in conjunction with Articles 1 and 2 of the American Convention.

151. Likewise, the Commission submits that the State has not established in domestic law a mechanism for recognizing and protecting the territory of the Saramaka people, in full and effective consultation with the Saramaka people and in accordance with its customary law, values, habits, and customs.

152. Consequently, the Commission requests the Court to declare, that the State of Suriname violated the right to property established in Article 21 of the American Convention on Human Rights, in conjunction with the non-compliance of the general obligations enshrined in Articles 1(1) and 2 of the same.

c. Mining and forestry concessions in the area of the Upper Suriname River

153. The Commission recognizes the importance of economic development for the prosperity of the peoples of the Hemisphere. As the Inter-American Democratic Charter proclaims: "the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the status of the Hemisphere"[81]. At the same time, development activities must be accompanied by appropriate and effective measures to guarantee that they are not conducted at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous and tribal communities, or at the expense of the environment on which they depend for their physical, cultural, and spiritual wellbeing.[82]

154. The Commission observed in the past that "[t]he norms of the Inter-American System neither prevent nor discourage development; rather they require that development take place under conditions that respect and ensure the human rights of the individuals affected."[83] In this respect, in 1997, the IACHR recommended to one OAS Member State that it "ensure that the exploitation of natural resources found at indigenous lands should be preceded by appropriate consultations with and, to the extent legally required, consent from the affected indigenous communities. The State should also ensure that such exploitation does not cause irreparable harm to the religious, economic or cultural identity and rights of the indigenous communities"[84]. The Commission also submits, in light of the way international human rights legislation has evolved with respect to the rights of

---

[81] Inter-American Democratic Charter, approved by the OAS General Assembly at the special session held in Lima, Peru, on September 11, 2001, Article 13.

[82] See also the Report on the Situation of Human Rights in Ecuador (OEA/Ser.L/V/II.96 Doc. 10 rev. 1 of April 24, 1997).

[83] Report on the Situation of Human Rights in Ecuador (OEA/Ser.L/V/II.96 Doc.10 rev. 1, April 24, 1997), Chapter VIII.

[84] Report on the Human Rights Situation in Colombia, (OEA/Ser.L/V/II.102 Doc. 9 rev.1, February 26, 1999), Chapter X (j) (3).

indigenous peoples, that the indigenous people's consent to natural resource exploitation activities on their traditional territories is always required by law.

155. In relation to this position, the Commission notes that, in a complaint involving the Ogoni people and their communities in the State of Nigeria,[85] the African Commission on Human and Peoples' Rights addressed issues related to the impact of resource exploitation activities on the indigenous community. In that case, it was argued that the Nigerian Government caused grave environmental harm to the Ogoni people's rights to property and to their own culture by participating in irresponsible oil exploration activities in their communities and by allowing private oil companies to destroy the homes, villages, and food sources of the Ogoni people. In concluding that the State of Nigeria was guilty of violating several articles of the African Charter on Human and Peoples' Rights (the Banjul Charter),[86] including the right to property protected by Articles 14[87] and 21[88] of that instrument, the Commission indicated that it did not "wish to fault governments that are labouring under difficult circumstances to improve the lives of their people."[89], but at the same time emphasized that

---

[85] Communication N° 155/96, African Commission on Human and Peoples' Rights, 30th ordinary session, held in Banjul, Gambia on October 13 to 27, 2001 [hereinafter, the "Ogoni Case").

[86] 27 June 1981, 21 I.L.M. 59 (1981).

[87] Article 14 establishes: "The right to property shall be guaranteed. It may only be encroached upon in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws. "

[88] Article 21 of the African Charter establishes that:

> 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
> 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
> 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
> 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
> 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

[89] Communication N° 155/96, African Commission on Human and Peoples' Rights, 30th ordinary session, held in Banjul, Gambia on October 13 to 27, 2001; paragraph 69.

> [t]he intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities.[90]

156. The State awarded forestry and mining concessions to third parties so that they could carry out activities in Saramaka territory, but only the forestry concessions have begun activities, and that illegal gold mining is practiced in Saramaka territory, a situation that the State is aware of.

157. Regarding the illegal gold mining activities in particular, the Commission notes that the State in its submissions before the Commission, acknowledged that most of these activities are not regulated and have not effectively been subject to State control, that damage is being done to the environment by the use of mercury, and that a joint project with the Brazilian government is being processed with a view to addressing the issue of mercury use in gold mining and to ensuring that "the least possible damage is done to the environment."[91]

158. With respect to the natural resources found in the territories of indigenous peoples, this Court has established that the close ties of the indigenous peoples with their traditional territories and the natural resources related to their culture that are found therein, as well as the intangible elements arising from them must be safeguarded under Article 21 of the American Convention. On other occasions, the Court has considered that the term "property" used in said Article 21 concerns "material objects that may be appropriated, and also any right that may form part of a person's patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value."[92]

159. The Commission contends in this respect that Article 21 of the Convention does not *per se* preclude the exploration and exploitation of natural resources in indigenous territories. However, in this case, the State did not consult the affected people beforehand regarding those activities, nor did it obtain its free and informed consent.

160. Furthermore, the State did not regulate those activities or effectively supervise the way they would be carried out, all of which violates the right to property established in Article 21 of the American Convention, to the detriment of the Saramaka people.

161. Finally, as regards the environmental damage caused by the concessions, the Commission submits that according to the evidence presented to the Court, the forestry concessions awarded by the State in the Upper Suriname River lands have damaged the

---

[90] Communication N° 155/96, African Commission on Human and Peoples' Rights, 30th ordinary session, held in Banjul, Gambia on October 13 to 27, 2001; paragraph 69.

[91] See the submission of the State before the Commission at the 121st session, page 9, paragraph 18.

[92] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 144; Ivcher; paragraph 122; IA Court HR. Case of the Yakye Axa Indigenous Community vs. Paraguay. Judgment of 17 June 2005. Series C No. 125; paragraph 137.

environment and the deterioration has had a negative impact on lands that in whole or in part are within the limits of the territory to which the Saramaka community has a communal property right. The Commission considers that the harm partly resulted from the State's failure to put in place adequate safeguards and mechanisms, or to supervise or control the concessions, as well as its failure to ensure that the logging concessions would not cause major damage to Saramaka lands and communities.

162. Accordingly, the Commission submits that the State's failure to comply with its obligation to respect the communal right of the Saramaka people to ownership of the land it has traditionally used and occupied has been exacerbated by the environmental damage by some forestry concessions awarded in these lands, which in turn had a damaging impact on the members of such communities.

163. For these reasons, the Commission requests the Court to declare, that the State of Suriname violated Article 21 of the American Convention to the detriment of the Saramaka people.

3. Right to Judicial Protection (Article 25)

164. Article 25 of the American Convention establishes that

> [e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> [. . . and that] State Parties undertake:
>
> a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
> b. to develop the possibilities of judicial remedy; and
> c. to ensure that the competent authorities shall enforce such remedies when granted.

165. Article 25.1 of the Convention establishes, in broad terms, the obligation of States to afford all persons subject to their jurisdiction effective judicial recourse against acts that violate their fundamental rights. It also establishes that the guarantee established therein applies not only to the rights contained in the Convention, but also to those recognized in the Constitution or the law.[93]

166. In this connection, State parties to the Convention are bound to provide effective judicial remedies to victims of human rights violations; safeguarding the individual from arbitrary exercise of public authority is the paramount objective of international protection of human rights.

---

[93] I/A Court H.R., Case of Tibi v. Ecuador. Judgment of September 7, 2004; paragraph 130; I/A Court H.R., Case of Cantos v. Argentina. Judgment of November 28, 2002; paragraph 52; IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 111.

167. The non-existence of effective domestic recourse renders persons defenceless. In this connection, the Court has declared that

> [t]he inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs[94].

168. According to these principles, the non-existence of effective recourse in the case of violations of rights recognized by the Convention is in itself a violation of the Convention by the State in which such remedy does not exist.[95]

169. As mentioned above, Suriname's legislation regarding State-owned lands consists of the decrees of the military era, which establish that the customary "rights" of the indigenous and the Maroons to land shall be respected unless they conflict with the "general interest". The "general interest" exception with respect to the rights of the indigenous and Maroon communities could include any action that the State deems in the public interest or any project in a development plan. The effect of this provision is to substantially limit the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favour of an eventual interest of the State that might compete with those rights.

170. The Commission has submitted evidence to the Court, described above, that mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights, and that the said classification constitutes a political decision that cannot be challenged in Court. The Commission contends, therefore, that what this does in effect is to remove land issues from the domain of judicial protection.

171. Further, the rights of indigenous and Maroon peoples, such as the Saramaka, to their lands, territories, resources, and cultural identity are not explicitly recognized or guaranteed in the 1987 Constitution[96] and, for that reason, there are no provisions contemplating judicial recourse if they are violated.

172. These limitations notwithstanding, the Saramaka people have lodged official complaints with the President of Suriname, without receiving a reply. The Commission submits, therefore, that these "remedies", in their current form, are intrinsically ineffective

---

[94] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79; paragraph 113; Ivcher; paragraph 136; IA Court HR. Yatama Case vs. Nicaragua. Judgment of 23 June 2005. Series C No. 127; paragraph 168. In connection to the Commission's position see, *for example, Case* 11.233, Report N° 39/97, Martín Javier Roca Casas (Peru), 1998 Annual Report of the IACHR, paragraphs 98, 99.

[95] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights); paragraphs 27, 28.

[96] According to Article 41 of the Constitution of Suriname: "Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation has the inalienable right to take complete possession of its natural resources in order to utilize them to the benefit of the economic, social and cultural development of Suriname."

for guaranteeing the rights of the Saramaka, given the balancing of interests that the State has to establish in considering land issues and their rights.

173. In this connection, as Court has previously held, the State's obligation to provide judicial recourse is not simply met by the mere existence of courts or formal procedures, or even by the possibility of resorting to the courts. Rather, the State has to adopt affirmative measures to guarantee that the recourses it provides through the justice system are "truly effective in establishing whether there has been a violation of human rights and in providing redress."[97]

174. In accordance with Article 25 of the American Convention, the State has the duty to adopt positive measures to guarantee the judicial protection of the individual and collective rights of indigenous communities. With respect to the right to collective property, the State should provide in its judicial regime, suitable and effective judicial remedies, which should provide some special guarantee/compensation depending on/in accordance with the social dimension of the violated right. These remedies should offer an adequate procedural framework to deal with the collective dimension of the conflict, conferring on the affected group the possibility of claiming, through its representatives or authorized persons, the guaranteed right to participate in the process and to obtain compensation.

175. Based on the foregoing considerations, the Commission requests the Court to declare, that there are no effective domestic remedies available to the Saramaka people for the protection of their rights under Article 21 of the American Convention and, consequently, the State of Suriname violated the right to judicial protection established in Article 25 of this instrument.

4. Obligation to respect rights and Domestic Legal Effects (Articles 1(1) and 2)

176. Article 1 of the American Convention provides that the State parties

> undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

177. Article 2 establishes that:

> [w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

178. In complying with the general obligation to respect and guarantee fundamental rights, the States are obliged to "take affirmative action, avoiding taking

---

[97] See, for example, I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights); paragraph 24.

measures that restrict or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right"[98].

179. The Court has also declared that

> [i]n international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted, and is supported by jurisprudence. The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of *effet utile)*. This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention's rules on protection[99].

180. As regards indigenous peoples in particular, several international studies conclude that, historically, indigenous peoples have endured racial discrimination, and that one major manifestation of such discrimination has been the failure of state authorities to recognize customary indigenous forms of land possession and use.[100] The Commission also noted that:

> Within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.[101]

181. As previously submitted by the Commission, the Constitution of Suriname neither explicitly recognizes nor guarantees the rights of the indigenous and tribal peoples of Suriname to own their lands, territories, and resources. Further, neither the Constitution, nor any law of Suriname confers legal status on the Saramaka people -or any of the indigenous or tribal peoples of Suriname, and therefore they 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.

---

[98] See I/A Court H. R., Juridical Condition and Rights of the Undocumented Migrants; paragraph 81.

[99] Five pensioners; paragraph 164; and *cf.* I/A Court H.R., Case of Cantos v. Argentina. Judgment of November 28, 2002; paragraph 59; and the I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Judgment of June 21, 2002; paragraph 213; and *cf. also "principe allant de soi"*; Exchange of Greek and Turkish Populations, Advisory Opinion, 1925, P.I.C.J., Collection of Advisory Opinions. Series B. N° 10.

[100] For example, the UN Committee for the Elimination of Racial Discrimination has noted: in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized." (Committee for the Elimination of Racial Discrimination, General Recommendation XXIII, on the rights of indigenous populations, approved by the Committee at its 1,235th meeting, August 18, 1997, CERD/C51/Misc. 13/Rev. 4(1997), paragraph 3.

[101] Ecuador Report, *supra*, Chapter IX.

182. In the circumstances of this case, the Commission has contended that the Saramaka people constitute a separate group which merits special protection by the State, and submits that the lack of constitutional and legislative recognition or protection of the collective rights of the Saramaka communities reflects unequal treatment in the law, which is not compatible with the guarantees of the American Convention.

183. Further, it has been shown that Surinamese legislation establishes that the citizens of Suriname, including the indigenous and Maroons, and other legal persons, are entitled to request a plot of state-owned land. According to this procedure, the titles issued are of an individual nature. The indigenous and Maroon communities of Suriname do not enjoy legal status in Suriname and are not eligible to receive communal titles on behalf of the community or of other traditional collective entities that possess land."[102]

184. In this context, the indigenous and tribal peoples that cannot show a title granted by the State are regarded by the latter as occupants with permission to inhabit state lands, but whose interests are subordinate to the "general interest."[103] Titles are only granted to individuals, unless a community registers itself as a legal entity: a foundation, for instance.

185. The Commission has also concluded that, unlike the treatment of rights to property derived from the formal system of titling, leasing, and awarding of permits contemplated in Suriname's own domestic law, the State has not established the legal mechanisms needed to clarify and protect the communal property rights of the Saramaka people. Indeed, in the proceedings before the Commission, the State expressly denied that the Saramaka people have an internationally recognized right to the lands and resources it has occupied and used for over three centuries.

186. As regards the forestry concessions, before the Commission the State maintained that the Forestry Management Law of Suriname of 1992 affords protection for the rights of the Saramaka people. However, the petitioners have filed at least two official complaints with the President of Suriname based on that provision (regarding the effects of logging concessions), without having received any reply, and in the proceedings before the Commission, the State did not challenge this allegation or indicated what remedy would have been available to them in the event that no answer is received to the complaints lodged with the President. In this connection, the Commission submits that, as with all fundamental rights and freedoms, it is not enough for States to provide for equal

---

[102] *Ibid.* paragraph 33. The petitioners add that an (indigenous/Maroon) community can only obtain an individual title if it registers as a foundation (*Stichting*).

[103] Suriname's primary legislation on state lands are the L Decrees of the military era, which establish that the customary "rights" to land of the indigenous and the Maroons shall be respected unless they conflict with the general interest. Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions. The "general interest" includes execution of any project contained in an approved development plan, which includes the granting of concessions. NFP. As regards mining activities, Article 25 (1) (b) of Decree E-58, 1986 requires a mention of the indigenous and Maroon peoples and that exploration permits must contain a list of all the tribal communities located in or near the area to be explored. Decree E58.

protection in the law. The State must also adopt legislative, political, and other measures to guarantee the effective exercise of these rights.

187. Therefore, in the circumstances of the instant case the Commission requests the Court to declare that Suriname failed to comply with its obligations under Articles 1 and 2 of the American Convention on Human Rights, by failing to provide the necessary protection for full exercise of the right to property.

VIII. REPARATIONS AND COSTS

188. The Commission holds that the failure to guarantee the right of property of the Saramaka people over their territory and the human rights violations described above inflicted material and non-material harm on the victims. In this section, the Commission will present the Court with its considerations concerning the measures of redress that the State must adopt on account of its responsibility in the violations committed against the Saramaka people.

189. Without prejudice to the terms of Articles 23 and related provisions of the Court's Rules of Procedure, the Commission has taken into account, in specifying its reparations claims, the arguments offered in this connection by the petitioners.

1. Obligation to make reparations

190. In compliance with the basic principles of international law, a State's violation of international standards gives rise to its international responsibility and, consequently, its duty to make reparations. In this regard, the Court has expressly and repeatedly maintained[104] in its jurisprudence "that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation."[105]

191. The aforesaid principle of international law has been incorporated into the American Convention, Article 63(1) of which states that when it is decided that a right or freedom protected by the Convention has been undermined, the Court "shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

192. Article 63(1) of the American Convention is, the Court has maintained, one of the basic principles of international law governing the responsibility of States.

---

[104] I/A Court H.R., Case of Castillo-Páez v. Perú. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998; paragraph 50. I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Judgment of June 21, 2002; paragraph 201.

[105] I/A Court H.R., Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001; paragraph 59 (Secretariat translation).

> This provision codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs that may be attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease.[106]

193. The Court has also ruled that "reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution *(restitutio in integrum),* which entails re-establishing the situation as it previously stood." If this is not possible, "it falls to the international court to determine a series of measures to guarantee the violated rights and to repair the consequences arising from the violation and to order payment of reparations in compensation for the damage caused. The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation of making reparation – all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law."[107]

194. In the instant application, the question of making amends acquires a special dimension on account of the collective nature of the rights infringed by the State to the detriment of the Saramaka people. Compensation cannot be seen from an individual perspective, since the victims are members of a community and the Community itself has been affected.

195. The relationship among a Community's members, and of those members with the Community, is what gives meaning to their indigenous existence; it gives meaning not only to their ethnic origin but to their ability to possess and transmit their own culture, which embraces their language, spirituality, lifestyles, customary law, and traditions. As has already been stated, being and belonging to the Saramaka people involves the notion of a culture and a lifestyle that are different and independent, based on ancient knowledge and traditions and fundamentally bound to a specific territory.[108]

196. Although in due course during the proceedings, witnesses and experts will be able to speak about the significance of reparations for the Saramaka people in accordance with their own customs and traditions, the Commission asks the Court, in reaching its decision, to give consideration to the fact that the victims in the case at hand are members of the Saramaka people and that the violation of their basic rights has caused them serious harm and has even affected their right to preserve their cultural heritage and to pass it on to future generations.

---

[106] I/A Court H.R., Case of Bámaca-Velásquez v. Guatemala. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002; paragraph 38; (Secretariat translation).

[107] I/A Court H.R., Case of Bámaca-Velásquez v. Guatemala. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002; paragraph 39; (Secretariat translation).

[108] Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples, by Mrs. Erica-Irene Daes, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chairperson of the Working Group of Indigenous Populations. E/CN.4/Sub.2/1993/28. July 28, 1993. United Nations, paragraph 1.

197. In its judgment in the Mayagna (Sumo) Awas Tingni Community Case, the Court explored the *intertemporal* dimension of community property that prevails among indigenous peoples, thus approaching an integral interpretation of the indigenous worldview. In Aloeboetoe *et al.* versus Suriname, in determining the amount of compensation owed to the victims' families, the Court already paid attention to the customary laws of the Saramaka community (the Maroons, to which the victims belonged), wherein polygamy was the norm, in order to extend the compensation paid to several widows and their children. Similarly, in Bámaca Velásquez versus Guatemala, the Court paid due attention to the right of the relatives of a forced disappearance victim to bury their loved one's mortal remains properly and to the repercussions of this question within Maya culture.[109]

198. Reparations are the mechanism that takes the Court's decision beyond the sphere of moral condemnation. "The task of reparations is to turn the law into results, to halt violations, and to restore moral balance when an illicit act has taken place"[110]. The true effectiveness of the law lies in the principle that the violation of a right makes a remedy necessary.[111]

199. Reparations are intended to provide victims with effective remedies; the desired aim is "full restitution for the injury suffered."[112] When, on account of the irreversible nature of the damages suffered, the *restitutio in integrum* rule cannot be applied, it is appropriate to fix the payment of fair compensation in "sufficiently broad terms" to compensate, "to the extent possible," for the loss suffered.[113] The principal aim of this compensation is to repair the actual harm, both material and moral, suffered by the injured parties.[114] Its calculation shall be proportionate "to the gravity of the violations and the resulting damage."[115] Likewise, reparations have the additional, and no less essential, role of preventing and halting future violations.

---

[109] IA Court HR, Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of 31 August 2001. Series C No. 79, Joint Separate Opinion by Judges A.A. Cançado Trindade, M. Pacheco Gómez, and A. Abreu Burelli, paragraphs 12 and 13.

[110] Dinah Shelton, *Remedies in International Human Rights Law* (1999); (Secretariat translation).

[111] "Where there are unpunished violations or unrepaired damages, law enters into crisis: not only as an instrument for resolving a specific litigation, but as a method for resolving them all – in other words, for ensuring peace with justice." Sergio García Ramírez, "Reparations in the inter-American system for the protection of human rights," paper presented at the seminar "The inter-American system for the protection of human rights on the threshold of the 21st century," San José, Costa Rica (November 1999).

[112] I/A Court H.R., Case of Velásquez-Rodríguez v. Honduras. Interpretation of the Compensatory Damages Judgment (Art. 67 American Convention on Human Rights). Judgment of August 17, 1990; paragraph 27.

[113] I/A Court H.R., Case of Velásquez-Rodríguez v. Honduras. Interpretation of the Compensatory Damages Judgment (Art. 67 American Convention on Human Rights). Judgment of August 17, 1990; paragraph 27.

[114] I/A Court H.R., Case of Aloeboetoe et al. v. Suriname. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993; paragraphs 47 and 49.

[115] *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law*, E/CN.4/Sub.2/1996/17, paragraph 7.

200. In the case at hand, the victims have suffered violations of rights protected by the American Convention as a result of the State's failure to comply with its obligations.

201. Therefore, the Commission asks the Court to conclude that the State has the international obligation of restituting, as far as possible, the affected rights and of making amends to the Saramaka people for the human rights violations incurred.

202. Pursuant to the norms that grant autonomous representation to the injured party, the Commission will present the general criteria concerning redress. The Commission understands that the injured party will concretize its claims, in conformity with Article 63 of the Convention and the Rules of Procedure of the Court. Should the injured party not use that right, the Commission requests the Court to offer an opportunity to quantify and further qualify its claims in this relation.

2. Beneficiaries

203. The Commission notes that the victims in this application who are entitled to reparations under Article 63(1) of the Convention are members of an identifiable[116] community: the Saramaka people.

204. In the instant case, the Commission deems that, given the collective nature of violations and the resulting harm, the Saramaka people must be deemed to be the injured party; all reparations must have a nature that is collective as well. This claim finds basis in the jurisprudence of the Court in the cases of Massacre of Plan de Sánchez[117], Yakye Axa[118] and Moiwana Village[119].

205. In keeping with the nature of the reparation and the violations it must redress, the Commission also asks the Court to ensure that all reparation measures in the case at hand be implemented by the State in accord with the Saramaka people.

3. Reparation measures

---

[116] I/A Court H.R., Case of the Communities of Jiguamiando and Curvarado (Provisional Measures). Order of 6 March 2003.; paragraph 9.

[117] IA Court HR, Case of the Plan de Sanchez Massacre vs. Guatemala. Reparations (art. 63(1) American Convention on Human Rights). Judgment of 19 November 2004. Series C. No. 116; paragraph 110, in conjunction with paragraph 62.

[118] IA Court HR. Case of the Yakye Axa Indigenous Community vs. Paraguay. Judgment of 17 June 2005. Series C No. 125; paragraphs 185 and 186.

[119] IA Court HR. Case of the Moiwana Community vs. Suriname. Judgment of 15 June 2005. Series C No.124, paragraph 201.

206. The Court has said that reparations tend to eliminate the effects of violations committed.[120] These measures cover the different ways in which a state can meet the international responsibility in which it incurred and, in accordance with international law, can be measures of cessation, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[121]

207. In the case at hand, in consideration of the proven facts, the dimensions of the violations to rights protected by the Convention, and the particularities of the victims, the Commission believes, as it has already stated, that the reparations should be collective and that, for determining them, due attention should be paid to the customary law of the affected community.[122]

4. Measures of cessation and guarantees of non-repetition

208. The Commission submits that the violation to the Saramaka people's rights will continue until there is an adequate legal framework in place to ensure their protection. Therefore, given developments in property law, as the organs of the inter-American human rights system have recognized, the State must eliminate the legal and regulatory impediments to the protection of the Saramaka people's property rights or adopt the necessary legal provisions to ensure protection.

5. Measures of satisfaction

209. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.[123] Satisfaction takes place when three events occur, generally one after the other: apologies, or any other gesture showing acknowledgement of responsibility for the act in question; prosecution and punishment of the guilty; and the adoption of measures to prevent the harm from recurring.[124]

210. In the case at hand, given the nature of the violations incurred, the Commission respectfully requests the Court that, once evidence on harm has been received, it determine the satisfaction measures that are in order.

6. Measures of compensation

---

[120] I/A Court H.R., Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001; paragraph 63.

[121] See: Report by Theo Van Boven, United Nations Special Rapporteur on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, UN Doc. E/CN.4/Sub2/1990/10 (July 26, 1990).

[122] I/A Court H.R., Case of Bámaca-Velásquez v. Guatemala. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002; paragraph 36.

[123] Brownlie, *State Responsibility,* Part 1, Clarendon Press, Oxford, 1983, p. 208.

[124] Brownlie, *State Responsibility,* Part 1, Clarendon Press, Oxford, 1983, p. 208.

211. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for the harm arising from rights violations. The Court has ruled that indemnification is merely compensatory in nature, and that it is to be granted in volume and fashion sufficient to repair both the material and the moral harm inflicted.

212. The jurisprudence of the inter-American system regarding reparations has consistently included material damages in economic reparations: in other words, consequential damages and future losses, together with immaterial and moral damages.

a. Material damages

213. Consequential damages have been defined as the direct and immediate effect of the incident on property. This covers the property damage suffered as a result of the State's violations and the expenses incurred by the victims as a direct result of the facts.

214. The Commission requests that to determine, fairly and equitably, both consequential damages, in its decision the Court consider the worldview of Saramaka people and the impact on the Community of, *inter alia,* being prevented from possessing their traditional habitat or ancestral territory and of being kept from pursuing their traditional subsistence activities.

b. Moral damages

215. The Court has established an assumption regarding the moral damages (pain and suffering) inflicted on the victims of human rights violation and their families. Thus, it has ruled that:

> This non-pecuniary damage may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms. A common feature of the different forms of non-pecuniary damage is that, since it is not possible to assign them a precise monetary equivalent, for the purposes of making integral reparation to the victims they may only be compensated and this can be done in two ways. First, by the payment of a sum of money or the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity. And, second, by the execution of acts or works of a public nature or repercussion, which have effects such as recovering the memory of the victims, re-establishing their reputation, consoling their next of kin, or transmitting a message of official condemnation of the human rights violations in question and commitment to the efforts to ensure that they do not happen again.[125]

216. For years, the members of the Saramaka people have experienced the rejection of their legitimate claim and suffer constant pressure, from private citizens and the State alike. The Commission therefore requests that the Court order reparation for moral damages.

---

[125] I/A Court H.R., Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001; paragraph 84.

7. Costs and expenses

217. The Court has stated that costs and expenses must be understood as being covered by the concept of reparations defined in Article 63(1) of the American Convention.

218. Since the steps taken by the victims and their attorneys and representatives to secure international justice imply economic disbursements and expenses that must be compensated when a conviction is handed down, the Court holds that the costs referred to in Article 55(1) of the Rules of Procedure also include the various necessary and reasonable expenses that victims incur in accessing the inter-American human rights protection system, and that these expenses should include the fees of those who provide legal assistance. Consequently, the Court must prudently assess the scope of costs and expenses, bearing in mind the particular circumstances of the case, the nature of the international jurisdiction for the protection of human rights, and the characteristics of the respective case, which are unique and could well differ from those of other national or international proceedings.[126]

219. The Court has said that the concept of costs includes both those corresponding to the stage of access to justice at the national level and those that refer to justice at the international level before the two instances: the Commission and the Court.[127]

220. In the case at hand, the Commission asks the Court, once it has heard the petitioners, to order the State to pay the costs incurred at the national level in pursuing the judicial processes brought by the victims or their representatives in domestic venues, together with those incurred at the international level in pursuing this case before the Commission and before the Court, subject to the petitioners' submitting due evidence thereof.

IX. CONCLUSIONS

221. Based on the previous analysis, the Commission requests the Court to declare that the State is internationally responsible for the violation of

> the right to property established in Article 21 of the American Convention, to the detriment of the Saramaka people, by not adopting effective measures to recognize its communal property right to the lands it has traditionally occupied and used, without prejudice to other tribal and indigenous communities;

---

[126] I/A Court H.R., Case of the "Panel Blanca" v. Guatemala. (Paniagua-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001; paragraph 212.

[127] I/A Court H.R., Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001; paragraphs 107 and 108.

the right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, by not providing it effective access to justice for the protection of its fundamental rights; and

the non-compliance of Articles 1 and 2 of the Convention by failing to recognize or give effect to the collective rights of the Saramaka people rights to their lands and territories.

X. DEMANDS

222. As a result of the abovementioned, the Inter-American Commission requests that the Court order the State to

remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Saramaka people exercises its right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities;

refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people;

repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and make reparation and due compensation to the Saramaka people for the damage done by the violations established;

take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used.

XI. EVIDENCE

223. The Inter-American Commission offers the following supporting evidence:

1. Documentary Evidence

Appendixes

1. IACHR, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans; 2 March 2006.
2. Case File

0000052

Annexes

Reports

1. Report of Professor Richard Price; annex D of petition of 30 September 2000.
2. Professor Richard Price, "Report in support of Provisional Measures", 15 October 2003 (mimeograph – restricted circulation).

Legislation

3. The Constitution of the Republic of Suriname (English translation)
4. Civil Code of Suriname (relevant – translation).
5. Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (relevant – translation).
6. Forestry Management Law of 1992 (relevant - translation).
7. National Forest Policy (relevant - translation)
8. Decree E-58 of May 8, 1986 (relevant - translation).

Testimonials and declarations

9. Statement by Mr. G. Huur, a Saramaka, of 7 May 2002, Annex A of petitioners' submission of 15 May 2002.
10. Declaration of Saramaka Captain Wanze Eduards before the Commission (Hearing No. 49; 119th Period of Sessions, 05.03.06).
11. Declaration of Mr. Peter Poole before the Commission (Hearing No. 49; 119th Period of Sessions, 05.03.06).
12. Declaration of Professor Mariska Musket before the Commission (Hearing No. 49; 119th Period of Sessions, 05.03.06)

Technical studies

13. Draft Report on Assessment of the Impacts of Industrial Logging Upon the Saramaka Territory, Suriname, January 2004.

Maps

14. Map I, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions, 05.03.06).
15. Map II, submitted by Peter Poole to the Commission during public hearing (Hearing No. 49; 119th Period of Sessions, 05.03.06).
16. Map prepared by Ministry of Natural Resources. Annex F4 of the petition.

Legal Documents

17. Transcript of Petition presented by the Petitioners before the President of the Republic of Suriname on 15 January 2003, pursuant to Article 22, 1987 Constitution.
18. Transcript of Petition presented by the Petitioners before the President of the Republic under the Forestry Management Act in 1999.

CV's

19. Professor Price
20. Jurist Muskiet
21. Mr. Poole

22. Power of Attorney

2. Documents sought from the State

224. The Commission requests the Court to request the State to present copies of complete official translations to English of the following documents:

1. Decree L-1 of 1982 on Basic Principles of Land Policy. Annex to Suriname's written presentation submitted at the hearing before the Commission on 27 October 2004; hearing No.43, 121st Regular Period of Sessions (relevant – translation).
2. Forestry Management Law of 1992 (relevant - translation).
3. National Forest Policy – Annex of Suriname's presentation to the Commission during hearing n. 43, 27 October 2004, 121 Regular Period of Sessions (relevant - translation)

3. Transfer from other Cases

225. The Commission requests the Court to transfer the following evidence available in the evidence file of other Cases:

1. Aloeboetoe Case: transcript of the expert opinion rendered by Dr. Richard Price before the Court during the public hearing held on 7 July 1992.

4. Testimonial and Expert Evidence

a. Witnesses

226. The Commission asks the Court to summon the following witnesses:

Head Captain Wazen Eduards, Chairperson of the Association of Saramaka Authorities, authorized representative of the Dombi clan and recently appointed *Fiskalie* by the Gaama of the Saramaka people. He will testify about the work of the Association to counter the incursion of logging

companies, the impact of the companies' operations and the lack of prior consultation and consent in relation to those operations; Saramaka efforts to protect their rights domestically including the steps taken by the Saramaka to reach consensus internally; and Saramaka customary laws concerning the ownership rights of the 12 clans and the importance of the land and security of tenure for the maintenance of Saramaka cultural integrity, identity and spiritiuality.

Mr. Hugo Jabini, founding member of the Association of Saramaka Authorities and its representative in Paramaribo. He will testify about the Saramaka people's efforts to seek protection for their rights and the attempts to settle the Case with the State; logging activities in Saramaka territories and their impact; and the measures employed by the Saramaka people to document their traditional occupation and use of their territories.

Captain Ceasar Adjako, of the Matjau clan. He will testify about the arrival of the logging companies on the lands of his clan, destruction of the forest and Saramaka subsistence farms and resources, and the violation of Saramaka sacred sites. He will also testify about the involvement of the Surinamese army in protecting the loggers, the lack of consultation or consent for the logging operations and the impact of these operations in cultural, physical, emotional and other terms for his clan and the Saramaka people; and

Head Captain Eddie Fonkel, authorized representative of the Abaisa clan and *Fiskalie* by the Gaama of the Saramaka people. He will testify about the nature of Saramaka customary law as it pertains to land and resource ownership, Saramaka treaty rights, and contemporary occupation of lands and resources.

Ms. Silvi Adjako (by affidavit), member of Kajapati village, directly affected by logging activities when her subsistence farm was bulldozed. She will testify about the personal and communal impact of the logging operations and the efforts to obtain redress for the destruction of subsistence resources.

b. Expert witnesses

227. The Commission asks the Court to summon the following expert witnesses:

Professor Richard Price, Professor of American Studies, Anthropology and History at the College of Willian & Mary and authority on the history and culture of the Saramaka people, to present opinion on the Saramaka social structure, traditional land tenure systems and customary law; Saramaka economy, hunting, gathering, fishing and farming; spiritual relation to land,

territory and resources; and Saramaka rights and relations with the Surinamese State.[128]

Mariska Muskiet, Jurist and Acting Director of *Stichting Moiwana* and authority on Surinamese law, to present opinion generally on the latter, and particularly on property law and domestic remedies.[129]

Peter Poole, Geomatics expert, to present opinion on the processes of making maps relating to the Saramaka territory, conclusions that can be drawn from the maps and aerial photos, and the evidentiary probity of aerial photographs in particular relation to logging operations and settlement patterns.[130]

XII. DATA ON THE ORIGINAL PETITIONERS, THE VICTIMS AND REPRESENTATIVES

228. In compliance with Article 33 of the Court's Rules of Procedure, the names of the original petitioners, of the victims, and of their next of kin are listed below.

229. The original petitioners in the case, and the representatives of the victims, are the Association of Saramaka authorities (*Vereniging van Saramakaanse Gezadgragers*) and 12 Saramaka captains on behalf of the Saramaka people of the Upper Suriname River.

230. In its turn, the Association of Saramaka authorities has conferred Power of Attorney to Mr. Fergus McKay, Counsel of Record; and David Padilla, Co-Counsel, who are therefore the representatives for the purposes set in Article 23.1 of the Rules of Procedure of the Court. The representatives have requested that notifications be made at the address of Mr. McKay [redacted]

[redacted]
23 June 2006

---

[128] Professor Price's CV is included as Annex.

[129] Jurist Muskiet's CV is included as Annex.

[130] Mr. Poole's CV is included as Annex.