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Inter-American Court of Human Rights

Pleadings, Motions and Evidence of the Victim's Representatives in the Case of 12 Saramaka Clans (Case 12.338) Against the Republic of Suriname

03 November 2006

Representatives:

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I. INTRODUCTION

1. The victims' representatives submit to the Inter-American Court of Human Rights ("the Court" or "the Inter-American Court") this brief containing pleadings, motions and evidence in the Case of Twelve Saramaka Clans versus the Republic of Suriname ("Suriname" or "the State"), pursuant to Articles 23(1) and 36 of the Rules of Procedure of the Inter-American Court.

2. It is submitted herein that Suriname has violated Articles 3, 21, 25, 1 and 2 of the American Convention on Human Rights ("the American Convention" or "the Convention") to the detriment of the victims in this case, namely the Saramaka people and its members. These violations, for which Suriname is internationally liable, are based on:

a) Suriname's failure to legally recognize and secure the Saramaka people's communal property rights in and to its traditionally-owned lands, territory and resources;
b) the State's failure to address the ongoing and continuous violations of the Saramaka people's property rights caused by a hydroelectric dam and reservoir;
c) its additional and active violation of those property rights through grants of logging and mining concessions, all done without the participation and the free, prior and informed consent of the Saramaka people;
d) Suriname's acts and omissions in connection with the consequences of the logging operations it authorized in Saramaka territory;
e) its failure to provide effective judicial remedies by which the Saramaka people could seek protection for its rights;
f) Suriname's failure to recognize the Saramaka people's juridical personality; and, finally,
g) the State's non-compliance with the obligations to respect and give domestic legal effect to the Convention's guarantees.

3. It is further submitted, pursuant to Article 29(b) of the Convention, that the Saramaka people's property rights and right to juridical personality should be interpreted in the light of and without prejudice to its rights in universal human rights instruments in force for Suriname, including and especially the rights guaranteed in common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

4. The victims' representatives respectfully request that the Court determine the international responsibility of Suriname with respect to the alleged violations of Article 3, 21, 25, 1 and 2 of the American Convention. They further request that the Court additionally determine the measures required to repair these violations in accordance with Article 63 of the Convention.

II. REPRESENTATION

5. The victims in this case have authorized Messrs. Fergus MacKay and David Padilla to represent them before the Court and in any dealings with the State in relation to this case.[1]

III. JURISDICTION OF THE COURT

6. The Court has jurisdiction to hear all cases concerning the application and interpretation of the American Convention pursuant to Article 62(3) of that instrument, provided that states parties have accepted said jurisdiction. Suriname acceded to the American Convention and simultaneously accepted the Court's jurisdiction on 12 November 1987.

7. The violations of the rights guaranteed by the American Convention alleged herein all occurred within Suriname's territory. These alleged violations were all initiated subsequent to Suriname's accession to the American Convention and acceptance of the Court's jurisdiction on 12 November 1987 or, where initiated prior to that date, exhibit ongoing and continuous effects and consequences attributable to Suriname and that violate the Convention guarantees. The Court therefore has competence *ratione loci*, *ratione materiae* and *ratione temporis* to examine the alleged violations in this case.

IV. FACTS

A. The Saramaka People and its Territory

8. The Saramaka people are one of the six Maroon peoples living within Suriname's borders. Maroons are the descendants of African slaves who fought themselves free from slavery and established viable, autonomous communities along the major rivers of Suriname's rainforest interior in the 17th and 18th centuries.[2]

9. The Saramaka people's freedom from slavery and rights to territorial, cultural and political autonomy were recognized in a treaty concluded with the Dutch colonial government in 1762.[3] This treaty formally concluded a 100 year-long period of warfare between the Dutch and the Saramaka.[4] The 1762 Treaty was renewed in 1835 and amended to state that the Saramaka were to remain in their territory; to designate the northern boundary of that territory; to prohibit contacts with newly escaped slaves, who had to be "extradited;" and, to prohibit treaties of alliance

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1 *Power of Attorney Declaration*, in Annex 22 to the Application of the Inter-American Commission in the Case of 12 Saramaka Clans (Case 12.338) Against the Republic of Suriname, 23 June 2006 (hereinafter "Application of the Commission").

2 *Case of Moiwana Village v. Suriname*, Judgment of 15 June 2005. Ser. C, No. 124, para. 86(1).

3 *Id.* para. 86(2). See, also, *Report of Prof. Richard Price*, annex D of the petition of 30 September 2000, in Annex 1 to the Application of the Commission, para. 4.1; and *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 2.

4 A detailed description of Dutch-Saramaka hostilities and the events leading to the Treaty of 1762 can be found in, R. Price, *To Slay the Hydra. Dutch Colonial Perspectives on the Saramaka Wars*, Karoma, Ann Arbor, 1983; and R. Price, *First-Time. The Historical Vision of an Afro-American People*, Johns Hopkins, Baltimore, 1983. For events subsequent to the Treaty, see, R. Price, *Alabi's World*, Johns Hopkins, Baltimore, 1990.

between different Maroon tribes.[5] The northern boundary of Saramaka territory specified in the 1835 Treaty is on the Upper-Suriname River at a distance of two day's paddle by canoe to the south of Post Victoria.

10. The Saramaka consider themselves and are perceived to be culturally distinct from other sectors of Surinamese society and for the most part regulate themselves according to their own laws and customs.[6] The Court has previously found that Maroon peoples in Suriname, such as the Saramaka, are tribal peoples and that they enjoy the same rights as indigenous peoples under international law.[7]

11. Saramaka society is primarily organized into 12 *lö* (matrilineal clans). Every Saramaka belongs to one and only one *lö*, a group which shares descent (through the female line) from members of a named early 18th century fighting band. The *lö* are the primary land owning entities within Saramaka society.[8] These *lö* are spread over 63 communities on the Upper Suriname River and a number of displaced communities located to the north and west of traditional Saramaka territory.

12. There are no accurate census data on the size of the contemporary Saramaka population. Estimates range from 25,000 to 34,000 persons.[9]

13. The *Gaama*, or paramount leader, holds the highest political office in Saramaka society. The *Gaama*, first established and installed in the 1760s pursuant to the treaty concluded with the Dutch colonial authorities, is chosen by a combination of descent and divination. The paramount authorities within the highly autonomous *lö* are the Head Captains and Captains, who are also chosen by a combination of descent and divination.

14. The Saramaka have their own internal judicial and administrative systems that operate through the *Gaama's* Council (comprised of the Gaama and three *Fiscali*), and the various Captains. These systems are highly effective and for almost three centuries have largely operated to the exclusion of the judicial and administrative systems of the State.[10]

15. While the *Gaama* is the paramount leader of the Saramaka people, under Saramaka law it is the *lö* that own land and therefore have authority over matters pertaining to lands and resources. The *Gaama* has no direct authority over land and

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5 The full text of the 1762 Saramaka treaty is published in R. Price, *To Slay the Hydra. Dutch Colonial Perspectives on the Saramaka Wars*, Karoma, Ann Arbor (1983), at 159-165. The text of the 1835 treaty with the Saramaka is printed in: van Vollenhoven, Politieke Contracten met de Boschnegers in Suriname [Political Contracts with the Bushnegroes in Suriname]. In: *Verspreide Geschriften*, part 3, 1916, at 374-80.

6 *Aloeboetoe et al. Case, Reparations (Art. 63(1) of the American Convention on Human Rights)*, Judgment of September 10, 1993, para. 58. See, also, *Transcript of the Testimony of Richard Price in the Aloeboetoe Et Al Case*, Inter-American Court of Human Rights (1993), para. 93-4.

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

8 R. Price, *Saramaka Social Structure. Analysis of a Maroon Society in Suriname*. Institute of Caribbean Studies, University of Puerto Rico, 1975.

9 *Registered Patients of the Medical Mission*, May 2005; Inter-American Development Bank, *Policy Note on Indigenous Peoples and Maroons in Suriname*, 14 November 2005.

10 Aloeboetoe et al. Case. Reparations, *supra*, at para. 58; and Testimony of Dr. Richard Price in the Aloeboetoe Et Al Case, *supra*, at 93-4.

resource rights and allocation thereof within and between the *lö*. This authority is vested in the Captains as the authorities and representatives of the various *lö*.[11]

16. The Saramaka people's traditional ownership of its territory extends back to the first days of the ancestral escape from slavery when Saramakas first entered the forest and established their communities. With regard to Saramaka law, anthropologist Dr. Richard Price, the pre-eminent academic authority on the Saramaka people, states that "It was the migratory patterns of the First-Time people [the first escapees from the plantations and the ancestors of today's *lö*] that established land rights for posterity...."[12] They did this by walking across the heads of creeks as these creeks entered the Suriname River and thus secured ownership rights for their respective *lö*.[13]

17. Saramaka territory is vested collectively in the Saramaka people and comprises the sum of those lands and resources that the Saramaka people have traditionally occupied and used in accordance with its customary law.[14] The various lands and resources within Saramaka territory are vested collectively in the twelve *lö* with individual members and extended family units (*bëë*, in Saramakan) enjoying subsidiary rights of use and occupancy.[15] The traditional boundaries between the lands of the various *lö* and between the Saramaka people and their indigenous and maroon neighbours are well understood, scrupulously observed, and encoded in oral history and tradition.[16]

18. Richard Price describes Saramaka land tenure thus:

> The Saramaka people, the Saramaka nation, if we can call it that, as a whole, have a particular territory.... In terms of agricultural lands, and the lands in which they have their houses, they are held communally by large kinship groups ... and the whole river is divided into large areas of several miles long owned by one of these particular groups. Every Saramaka belongs to one of these groups called Lö. ... A person's Lö owns particular lands, and any member of the Lö has rights to work, to ask the village Captain in the area where the Lö owns lands for an area to cut gardens. Any member of the Lö has a right to pick food from trees that grow in that area. Members of other Lös, other Saramakas, have to ask permission in order to pick food. But the land is held communally ... 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....[17]

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11 *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 6.

12 R. Price, *First-Time. The Historical Vision of an Afro-American People*, Johns Hopkins, Baltimore, 1983, at p. 7.

13 *Id.* p. 65.

14 A map depicting contemporary Saramaka occupation and use of the Upper Suriname River region is contained in Annex 1.2.

15 *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 3-4.

16 *Report of Prof. Richard Price*, annex D of the petition of 30 September 2000, in Annex 1 to the Application of the Commission, para. 1.1-1.6.

17 *Testimony of Richard Price in the Aloeboetoe et. al Case*, Inter-American Court of Human Rights (1993), at 91-2.

19. The economy of the Saramaka people is largely subsistence based, with hunting, fishing, gathering, and swidden agriculture providing for the majority of their basic needs.[18] Agriculture is based on a long-term rotational system as the poor soils of the rainforest can only support crop yields for 2-3 years followed by a 10-20 year fallow period. While some Saramaka, especially young men, find employment and a cash wage on the coast of Suriname or in French Guiana, this only supplements the subsistence economy.

20. While some Saramaka communities have adopted Christianity, the great majority maintain their traditional religious beliefs and spirituality. Both in the case of Christian villages and traditional villages, Saramaka spirituality is inextricably related to their lands and the forest.[19] Numerous religious and other sacred sites are prominent landmarks in Saramaka territory.[20]

21. Saramaka lands, territory and resources are viewed holistically and are intertwined with the social, ancestral and spiritual relationships that govern their daily lives.[21] Expropriation of or threats to their lands or the resources pertaining to those lands are indistinguishable and deeply offensive on a number of levels.[22] In particular, Saramaka identity is inextricably connected to the struggle against slavery, which they refer to as the "First-Time." First-Time ideology pervades all aspects of Saramaka consciousness and is so powerful that it cannot be discussed openly or directly for fear of serious spiritual and other repercussions.[23] First-Time ideology is also integral to Saramaka understandings of political and territorial autonomy.[24] Perceived threats to this autonomy are directly related to fears about a return to the First-Time and a new era of slavery.

22. Under Saramaka law, ownership of all resources, including waters, within, subjacent or otherwise pertaining to Saramaka territory are vested in the Saramaka people and, on a subsidiary basis, the various *lö*.[25] Saramaka ownership of resources and their rights to trade in resources are recognized in the 1762 Treaty. With regard to timber, for example, Article 10 of the Treaty provides that "Every year fifty of you will be permitted to come to the Saramaka River, as far as Wanica Creek, or to Arwaticabo Creek, or to the Suriname River, as far as Victoria, to bring everything they will have to sell, such as hammocks, cotton, wood, fowl, dug-out canoes, or anything else."

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18 *Id.* para. 3.1-3.6.

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

20 *Id.*

21 *Id.*

22 *Id.* para. 18

23 In general, see, R. Price, *First-Time. The Historical Vision of an Afro-American People*, Johns Hopkins, Baltimore, 1983.

24 *Id.*

25 *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 14.

B. Disregard for the Rights of the Saramaka People in Practice

1. The Afobaka Dam and Reservoir

23. In the early 1960's, the government of Suriname began construction of the Afobaka dam on the Suriname River in order to provide electricity for a bauxite refinery. This refinery was and remains wholly owned and operated by ALCOA, a United States company. The Saramaka were not consulted nor was their consent sought in relation to the dam; they were simply informed that they had to move.[26]

24. When completed, this dam and its reservoir flooded some 1,400 square kilometers of traditional Saramaka territory and caused the forced expulsion of approximately 6000 mostly Saramaka persons from 28 communities.[27] The communities that were forcibly displaced either moved to the north and north-west of the reservoir or made their way south and (re)established their communities on the lands of their kin on the Upper Suriname River.[28] Only a few persons received compensation, which was set in the amount of 3 Surinamese guilders (roughly equivalent to US$3). To date, only those villages to the north of the reservoir, none of which are on the Upper Suriname River, have access to electricity.

25. This forced displacement remains acutely painful to the Saramaka, individually and collectively, and they still today recount how the government mounted a major operation to rescue animals from the rising waters, yet paid scant attention to the rights or needs of the Saramaka.[29] Numerous sacred sites were submerged in the reservoir and Saramaka reported that the interred remains of their deceased kin floated to the surface of the water, a deeply disturbing occurrence for the Saramaka.

26. Ifna Vrede explains the traumatic nature of the flooding and relocation:

> The forced relocation ... has led to a crisis in the beliefs of the Maroon society. The gods and the ancestors, who are expected to protect the community, were unable to prevent these disasters. Traditional leaders who had ensured [*sic*] their people that the water would not swallow their villages were proven wrong. Traditional medicine men and women stood helpless against forces from outside.[30]

27. Additionally, the dam irreparably disrupted the Saramakas' traditional land tenure system and caused a substantial reduction of subsistence resources, the effects and consequences of which are still evident and of major concern to the Saramaka

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[26] *Report of Prof. Richard Price*, annex D of the petition of 30 September 2000, in Annex 1 to the Application of the Commission, para. 4.2.

[27] *Id.*

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

[29] The victims' representatives offer the testimony of a number of Saramaka persons in support of this and related contentions.

[30] I. Vrede, *Facing Violence Against Women in Indigenous Communities. The Case of Maroon Communities in Brokopondo District, Suriname*. Symposium 2001 "Gender violence, health and rights in the Americas" Cancun, Mexico, 4-7 June 2001, at p. 1. Available at: http://www.paho.org/english/hdp/hdw/Suriname.pdf

today. Some two thirds of the persons forcibly displaced moved to the Upper Suriname River, which today has a population of over 20,000 persons all of whom largely depend on traditional subsistence resources. Consequently, the capacity of the land to sustainably provide for present and future Saramaka needs is severely reduced and stressed.

28. Some of the displaced Saramaka were forced to establish their communities to the north and west of the borders of traditional Saramaka territory. These communities today have a population of approximately 6,000 persons. While the state has established schools in some of these communities, they remain physically separated from their traditional lands and kin, and the State has failed to secure their tenure rights. It has also failed to otherwise provide meaningful reparations for the loss of their traditional lands, on an ongoing basis. They are thus forced to live in a constant state of uncertainty and insecurity.

29. In addition to failing to secure tenure rights over alternative lands and resources, Suriname has also granted all of the lands that the communities residing outside of traditional Saramaka territory presently occupy and use in concession to a Canadian mining company (initially Golden Star Resources, now Cambior Inc).[31] These same lands also have been invaded by small-scale miners (mostly Brazilian) licensed by the State.[32] This has further increased the displaced communities' deep sense of insecurity and loss, and resulted in massive environmental degradation.

30. As a result of small-scale mining activities, mercury contamination is a major health hazard. A United States Army Corp of Engineers report on water quality in Suriname, for example, concludes that due to "mercury contamination in the surface water, the water is in danger of becoming unusable in areas;"[33] and that the "expansion of the gold mining industry has polluted many creeks and rivers, which the indigenous population uses for water supply."[34] The same report further concludes that mercury contamination levels in the Suriname River are 2.97

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31 The mining concessions in this area are discussed extensively in OAS/UPD, *Natural Resources, Foreign Concessions and Land Rights: A Report on the Village of Nieuw Koffiekamp*. Unit for Promotion of Democracy, General Secretariat, Organization of American States, Washington D.C., 1997.

32 The impact of the small-scale miners is discussed in I. Vrede, *Facing Violence Against Women in Indigenous Communities. The Case of Maroon Communities in Brokopondo District, Suriname*. Symposium 2001 "Gender violence, health and rights in the Americas" Cancun, Mexico, 4-7 June 2001, at p. 1. Available at: http://www.paho.org/english/hdp/hdw/Suriname.pdf This report states that "The present gold mining activities started after the civil war, particularly in the Districts of Brokopondo and Sipaliwini, and involve some 10,000 to 20,000 small gold miners, the majority of whom are city-dwellers and Brazilians and only a small portion local Maroons. The presence of these 'migrants' has exposed local communities to all the hazards involved with unregulated gold mining: environmental degradation, violence, crime and prostitution."

33 US Army Corp of Engineers, *Water Resources Assessment of Suriname*, December 2001, at i. Full report is available at: http://www.sam.usace.army.mil/en/wra/Suriname/Suriname%20Water%20Resources%20Assessment.pdf. See, also, *Sectoral Analysis of Drinking Water Supply and Sanitation in Suriname*, Paramaribo 1999. Plan Regional de Inversiones en Ambiente y Salud. Serie Análisis No. 1 Part 9, Pan American Center for Sanitary Engineering and Environmental Services/Pan American Health Organization/World Health Organization.

34 *Id.* at 9 (footnotes omitted).

milligrams per litre, some 2,970 times higher that the WHO limit of 0.001 milligrams per litre.[35]

31. Suriname has not only failed to address the ongoing effects of the Afobaka dam and reservoir as they affect the rights of the Saramaka people, as well as their territorial rights in areas that were not flooded, it is actively considering raising the level of the reservoir to increase power supplies for bauxite refining and the capital city, further threatening the Saramaka people's available land and resource base and its means of subsistence.

32. This was officially announced in the Surinamese Parliament by the President on 23 November 2005 as part of the Government Declaration 2005-2010. This states that by 2010 the Government intends to increase electricity production, including by exploring "the expansion of hydropower from the Brokopondo reservoir."[36] This is part of the Tapanahony River Diversion project, which, if completed as planned, will involve the forced displacement of numerous indigenous and N'djuka Maroon communities living along the Tapanahony River.[37]

33. Expansion of the reservoir will almost certainly directly affect five Saramaka villages with a population of around 1000 persons.[38] These villages are located on the Upper Suriname River at the southern edge of the reservoir. According to a feasibility study conducted in 2000 by the operating company, water levels in the reservoir will be increased by one to two meters[39] and will "result in a zone around the edge of the reservoir that would be periodically flooded and provide poor habitat for the inhabitants of either terrestrial or aquatic environments."[40]

34. The study continues that the "effects could include flooding of homes and productive or infrastructure assets as well as disruption of economic activities."[41] It concludes by observing that

> ... the impacts of the project on the directly affected people of the region in which the project is located could also be significant and are likely to be negative on balance unless vigorous pro-active impact mitigation actions are taken. Even if mitigation measures that would be consistent with international best practice were implemented ... the project is likely to be very controversial, especially among residents of the impact region, and will be highly scrutinized by environmentalists. This is true not

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35 *Id.* at 12 (footnotes omitted), citing, Pan American Health Organization, *Assessment of Drinking Water and Sanitation 2000 in the Americas*. Available at: http://cepis.opsoms.org/enwww/eva2000/eva2000.html

36 *Government Declaration 2005-2010*, Presented by President R.R. Venetiaan to the National Assembly of Suriname, 23 November 2005.

37 *Tapanahoni River Diversion Project, Phase 1 Study Report*. Alcoa-Kvaener Alliance, August 2000, at 157 – "The issue that is potentially most sensitive is that of physical and economic displacement of residents in both the reservoir area and downstream communities. ... The impacts of the filling and operation of the reservoir will adversely affect both the upstream Amerindian Trio peoples (Palemeu, Tepoe and their hinterlands) but also downstream Wayana people in the area of Apetina and numerous downstream Ndjuka Maroon peoples and their communities."

38 The villages are: Baikutu, Pikipada, Banafookondee, Bekijookondee and Duwata

39 *Tapanahoni River Diversion Project, Phase 1 Study Report*. Alcoa-Kvaener Alliance, August 2000, at p. 149.

40 *Id.* at 153.

41 *Id.* at 161.

only because the project location is currently isolated and relatively undisturbed primary tropical forest, but also because it will affect indigenous people, their rights, land, culture and livelihood.[42]

35. These observations were confirmed in a 2006 report by Dr. Robert Goodland,[43] the former head of the World Bank's Environment Department.[44] In addition to observing generally that increasing the capacity of the reservoir "looks likely to provoke major involuntary displacement of Indigenous Peoples," he also states that "[r]aising the water level of Afobaka reservoir itself may impact lake-side Saramaka maroon communities, including those that previously lost their lands when the Afobaka dam was constructed in the 1960s."[45]

36. Suriname has submitted a US$880 million project proposal to the Initiative for Integration of Regional Infrastructure in South America, entitled the Tapanahony River Diversion Project, in order to finance the project to raise the water level in the reservoir.[46]

37. The affected Saramaka communities officially complained about the Tapanahony project in February 2003 via a formal petition submitted pursuant to Article 22 of Suriname's 1987 Constitution.[47] No response was received to this petition.

2. Logging and Mining Concessions

38. As noted above, the flooding of Saramaka lands and forced displacement of Saramaka communities caused by the Afobaka dam has placed a severe pressure on the Saramaka people's remaining lands and resources. This land and resource base has been further reduced and degraded by the activities of logging concessionaires authorized by the State between 1997 and 2003. A number of mining concessions have also been issued within Saramaka territory, although no mining operations have taken place therein to date. These concessions were issued without prior notice or any attempt to obtain the consent of the affected Saramaka *lö*, and the activities that took place in the logging concessions were conducted without regard for their property and other rights. The concessions were also issued without first conducting an Environmental and Social Impact Assessment, which is presently not required under Surinamese law.

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42 *Id.* at 163.

43 The victims' representatives are will offer Dr. Goodland's expert testimony in relation to the ongoing effect and consequences of the Afobaka dam and the environmental impact of logging operations in Saramaka territory.

44 R. Goodland, *Environmental and Social Reconnaissance: The Bakhuys Bauxite Mine Project. A report prepared for The Association of Indigenous Village Leaders of Suriname and The North-South Institute*, 2006. Available at: http://www.nsi-ins.ca/english/pdf/Robert_Goodland_Suriname_ESA_Report.pdf

45 *Id.* at 22-3.

46 See, http://www.biceca.org/en/Project.328.aspx and; http://www.iirsa.org/BancoMedios/Documentos%20PDF/mer_bogota04_presentacion_eje_del_escudo_guayanes.pdf

47 See Annex 2.1, *Formal Petition made pursuant to Article 22 of the 1987 Constitution of the Republic of Suriname*, 18 February 2003 (English translation of Dutch original).

a) Logging Concessions:

39. The first logging company to begin operations in Saramaka territory was Tacoba NV (also known as Topco NV and Tacoba Forestry Consultants NV), a locally registered subsidiary of a Chinese company known as China International Marine Containers Limited.[48] Tacoba commenced work in late 1997.[49] When challenged by Saramaka community members, Tacoba explained that it had permission from the government and any attempt to interfere with or challenge its operations would be punished by imprisonment.[50]

40. Two years later, at the end 1999, Tacoba withdrew and another company, Ji Shen Wood Industries (also known as Jin Lin Wood Industries) began operating in and around the concession previously worked by Tacoba, as well as in additional areas.[51] This company, which reportedly owns Tacoba, acquired the services of the Surinamese National Army to guard its concession.[52] A military post was established in the concession and military forces actively prevented Saramaka from accessing hunting, fishing and farming areas within the concession.[53] The soldiers were directly controlled by the logging company.[54] Ji Shen ceased operations in December 2002.

41. Surinamese government statistics for the years 1999 and 2000 show that Chinese logging companies (excluding Hong Kong) declared exports of 22,516 cubic meters of round wood valued at US$3,128,742;[55] in 2001, 10,179 cubic meters valued at US$1,994,565;[56] in 2002, 26,083 cubic meters valued at US$3,744,053;[57] in 2003, 3,929 cubic meters valued at US$921,348.[58] The majority of this timber was cut in Saramaka territory and is timber traditionally owned by the Saramaka people.

42. The State has refused to release statistics indicating the export volumes of individual companies – citing company confidentiality – and therefore it is not possible to specify exactly how much timber was exported by Tacoba and Ji Shen. The victims' representatives request that the Court requests the State to present this information.

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48 *Annual Report of China International Marine Containers (Group) Ltd.*, 2001, p. 18. Available at: http://www.cimc.com/UpFiles/Report/303.doc

49 See Annex 3.4, 'Inhabitants of the Stuwmeergebied Alarmed about Illegal Logging: LBB Investigates', *De Ware Tijd*, 1 August 1997; Annex 3.5, 'Saramaccaners make fist in battle for recognition land rights', De West, 26 March 1998; Annex 3.6, 'Gold, Coke and Malaria', *De Groene Amsterdammer*, 1 April 1998.

50 The victims' representatives offer the testimony of Captain Cesar Adjako, Sylvie Adjako, and Head Captain Wazen Eduards in support of this and related contentions.

51 See *Overview of logging concessions in the Pokigron Region*. Map produced by the Suriname Forestry Management Foundation, Ministry of Natural Resources, August 2003 in Annex 1.1, Concession No. 324 (the green line approximates the area mapped by the Association of Saramaka Authorities).

52 See Annex 3.1, p. 3 (explaining that Tacoba is owned by Jin Lin).

53 *Statement of Mr. G. Huur*, in Annex 9 to the Application of the Commission.

54 *Id.*

55 Suriname Forestry Management Foundation, *Forest Statistics 1999-2000*.

56 Suriname Forestry Management Foundation, *Forestry Statistics: Production, Export and Import of Wood Products 2001*, Paramaribo, July 2002, p. 10.

57 Suriname Forestry Management Foundation, *Forestry Statistics: Production, Export and Import of Wood Products 2002*, Paramaribo, May 2003, p. 10.

58 Suriname Forestry Management Foundation, *Forestry Statistics: Production, Export and Import of Wood Products 2003*, Paramaribo, August 2004, p. 10.

43. In August 2003, logging operations were discovered in two additional concessions in Saramaka territory. These operations are ongoing at this time. The two concessions are held by Paramaribo resident, Dennis W. Leysner, and are designated as concession nos. 323b and 327 on State-issued maps.[59] According to government statistics 1,773 cubic meters of timber were extracted from these concessions in 2004[60] and 1,431 cubic meters of timber were extracted in 2005.[61] A map presented to the Commission – and now presented to the Court – depicts Saramaka occupation and use of lands and resources in the concessions held by D.W. Leysner.[62]

b) Mining Concessions:

44. According to State-issued maps dated September 1999, six mining concessions have been issued in Saramaka territory.[63] Two of these are for stone mining and incorporate some 25 Saramaka villages and four are for gold mining. It is unknown who holds these concessions. No mining has taken place in the concessions to date. These concessions are in addition to those affecting the displaced Saramaka communities residing outside of traditional Saramaka territory.

3. Environmental Damage and Destruction of Subsistence Resources

45. The Afobaka dam and reservoir have permanently submerged 1,400 square kilometres of traditional Saramaka territory as well as the subsistence resources traditionally relied upon by the Saramaka in that area. This deprivation is ongoing and continuous and has placed a severe stress on the Saramaka's remaining resource base. This is due both to the actual loss of lands and resources and the increase of population on the Upper Suriname River, which has disrupted the delicate balance between human occupation and the regeneration capacity of the forest.[64]

46. The Tacoba, Ji Shen and D.W. Leysner logging companies, all licensed by the State and operating in concessions issued by the State, have caused massive destruction of the Saramaka people's forests and the resources therein.[65] These companies also destroyed Saramaka subsistence farms and other traditional

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[59] See *Overview of logging concessions in the Pokigron Region*. Map produced by the Suriname Forestry Management Foundation, Ministry of Natural Resources, August 2003 in Annex 1.1.

[60] Suriname Forestry Management Foundation, *Forestry Statistics: Production, Export and Import of Wood Products 2004*, Paramaribo, August 2005, p. 10.

[61] Suriname Forestry Management Foundation, *Forestry Statistics: Production, Export and Import of Wood Products 2005*, Paramaribo, June 2006, p. 10.

[62] *Map II, submitted by Peter Poole to the Commission during public hearing (hearing no. 49, 119th Period of Sessions, 5 March 2006* [sic; 2004], in Annex 15 to the Application of the Commission.

[63] See *Map prepared by the Ministry of Natural Resources*, in Annex 16 to the Application of the Commission.

[64] The victims' representatives offer to present the expert testimony of Dr. Robert Goodland in support of this and related contentions.

[65] *Statement of Mr. G. Huur*, in Annex 9 to the Application of the Commission. See, also, Declaration of Dr. Peter Poole before the Commission, Annex 11 to the Application of the Commission; and *Report of Prof. Richard Price in Support of Provisional Measures*, in Annex 2 to the Application of the Commission.

resources,[66] blocked and polluted creeks that are a major source of potable water for nearby Saramaka communities, and caused a substantial reduction in game animals, both due to their own hunting and because of the disruption caused by their operations.[67]

47. This and other severe environmental and social harm is confirmed in expert testimony presented to the Commission[68] and presently offered to the Court.[69] It is further confirmed in a series of press reports on the activities of logging companies in Suriname with special reference to the Saramaka situation published by *The Philadelphia Inquirer* in 2001. One of these reports states that environmental degradation

> was all too clear walking through the Jin Lin concession. The company had plowed large, muddy roads about 45 feet wide into the forest, churned up huge piles of earth, and created fetid pools of green and brown water. Upended and broken trees were everywhere and what were once plots of sweet potatoes, peanuts, ginger, cassava, palm and banana crops - planted in the forest by Maroon villagers - were muddy pits.[70]

C. Disregard for Saramaka Rights in Suriname's Constitution and Laws

48. Article 41 of Suriname's 1987 Constitution states that, "Natural riches and resources are property of the state and shall be used for economic, social and cultural development. The state shall have the inalienable right to take complete possession of natural resources, in order to apply them to the needs of economic, social and cultural development of Suriname." The rights of indigenous and tribal peoples, their communities or other traditional land holding entities to their lands, territories and resources or otherwise are not recognized in nor guaranteed by the 1987 Constitution.

49. Pursuant to Article 186 of the 1987 Constitution, Article 41 came into force on 30 October 1987. The Constitution as a whole was officially published on 18 December 1987 thereby completing the legal process required to adopt the new Constitution.

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66 See Annex 3.2,'Maroon tribe in Suriname produces map to claim land rights, halt logging', *Associated Press*, 16 October 2002. See, also, Annex 3.3, 'Saramaka traditional authorities want recognition and participation. Demarcation living area Saramakas finished', *De Ware Tijd*, 16 October 2002 (original in Dutch).

67 *Draft Report on Assessment of the Impacts of Industrial Logging upon the Saramaka Territory, Suriname*, January 2004, in Annex 13 to the Application of the Commission; and, *Map II, submitted by Peter Poole to the Commission during public hearing (hearing no. 49, 119th Period of Sessions, 5 March 2006* [sic; 2004], in Annex 15 to the Application of the Commission.

68 *Id.*

69 The victims' representatives offer to present the expert testimony of Dr. Robert Goodland and Dr. Peter Poole in support of this and related contentions. See, also, *Declaration of Dr. Peter Poole before the Commission*, in Annex 11 to the Application of the Commission; and *Report of Prof. Richard Price in Support of Provisional Measures*, in Annex 2 to the Application of the Commission.

70 'Raiding the Rain Forest. For a global treasure, a new threat: Asian companies in weakly regulated countries tamper with the ecosystem to fill a growing demand for hardwood'. Mark Jaffe, *Philadelphia Inquirer*, Sunday, May 20, 2001. The full text is contained in Annex 3.1.

50. Article 34 of the 1987 Constitution provides for a right to the enjoyment of property. This article is set forth in Chapter VI on Social, Cultural and Economic Rights and Obligations and provides in pertinent part that

> 1. Property, of the community as well as of the private person, shall fulfill a social function. Everyone has the right to undisturbed enjoyment of his property subject to the limitations which stem from 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.

51. This article however does not apply to indigenous and tribal peoples because their traditional forms of land tenure are not classified as property under Surinamese law.[71] Even if it did apply, this provision is non-justiciable pursuant to the 1992 amendment to Article 137 of Constitution. This amendment limits the jurisdiction of the courts in constitutional matters to the guarantees contained in Articles 8-23 in the chapter on fundamental rights.[72]

52. Almost all land in the interior of Suriname (the area inhabited by indigenous and tribal peoples) is presently classified as state-owned land.[73] As the state is considered in law to be the owner of these lands, all rights to land in Suriname must derive from a valid grant issued by the state.[74] Indigenous and tribal peoples, who cannot show title issued by the state, are therefore regarded as merely permissive occupiers of state land without effective rights or title thereto.[75]

53. The primary legislation in Suriname concerning state land, the military-era L-Decrees of 1981-82, provides that

> 4(1) In allocating *domainland* [state-owned land], the rights of the tribal Bushnegroes [Maroons] and Indians to their villages, settlements and forest plots will be respected, provided that this is not contrary to the general interest;
> (2) General interest includes the execution of any project within the framework of an approved development plan.[76]

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71 *Decree L-1 of 15 June 1982, containing basic principles concerning Land Policy*, SB 1982, no. 10, *Explanatory note,* at 13. See, also, *Explanatory note to art. 1 of the Agrarian Ordinance*, Annex, Colonial States, 1935-1936, 5.2; and E-R. Kambel & F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, IWGIA Doc. 96, Copenhagen, 1999, at 144.

72 Article 137 of the Constitution as amended in 1992 provides that: "Insofar as the judge considers the application of a legal rule in the particular case brought before him to be contrary to one or more constitutional rights mentioned in Chapter V, the application in that case shall be declared unwarranted by him;" whereas the prior 1987 provision provided that: "[i]nsofar as the judge considers the application of a legal rule in the particular case brought before him to be contrary to one or more constitutional rights, he declares that application unwarranted in that case."

73 For instance, see, Quintus Bosz, A.J.A., *Drie Eeuwen Grondpolitiek in Suriname [Three Centuries of Land Policies in Suriname]*, Paramaribo, 1980 (original diss. Groningen 1954); E-R. Kambel & F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, IWGIA Doc. 96, Copenhagen, 1999; and, J. Nelson, 'Recht en Grond' [Law and Land]. In: Kanhai & Nelson (eds), *Strijd om grond in Suriname [The Struggle for land in Suriname]*, 1993.

74 *Decree L-1 of 15 June 1982, containing basic principles concerning Land Policy*, SB 1982, no. 10, Art. 1, -- "All land, to which others have not proven right of ownership, is domain of the State."

75 *Id.*

76 *Id.* at Art. 4.

54. According to this provision's explanatory note, it is "a requirement of justice that in allocating domain land, [the] *de facto* rights to those areas [upon which tribal communities depend for their livelihood] shall be taken into account as much as possible."[77] Use of the term '*de facto* rights' in the explanatory note serves to distinguish these 'rights' from the legal (*de jure*) rights accorded to holders of real title issued by the state.

55. Consistent with this interpretation, in its submissions before the Commission in this case, Suriname has routinely referred to indigenous and tribal peoples' rights as 'privileges' and referenced its constitutional and legal system to expressly deny that the Saramaka people hold any formal property rights, including any property rights pursuant to the American Convention.[78]

56. The exception related to the general interest in Article 4 of Decree L-1 quoted above is so broad that indigenous and tribal peoples' '*de facto* rights' will always be superceded by any action that the state deems in the public interest, including any activity, specific or general, included in a development plan.[79] Also, classification of an activity as being in the general interest is a non-justiciable political question that cannot be challenged in the judicial system.

57. Further, pursuant to Article 4, indigenous and tribal peoples' '*de facto* rights' only apply to their villages, settlements and forest (meaning agricultural) plots and, therefore, do not include areas not presently cultivated – indigenous and tribal peoples practice rotational cultivation, which requires extended fallow periods over large areas – waters, hunting, fishing and gathering areas, and sites of religious or cultural significance if these are located outside of the specified areas. This excludes *a priori* large areas from the purview of this provision and fails to account for indigenous and tribal peoples' traditional land tenure systems, customary laws and values.

58. Article 4 of Decree L-1 does not provide a mechanism for regularizing and securing indigenous and tribal peoples' property rights. It merely limits the areas of state-owned lands that may be granted to third parties for activities not falling within the 'general interest' exception. In practice, this provision provides no protection at all because it is the jurisprudence *constante* of the Suriname judiciary that a grant of a real title will supercede any '*de facto* right' asserted by indigenous and tribal peoples, even if the grant is within the residential area of an indigenous or tribal village.[80]

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77 *Decree L-1, 1982, Explanatory note,* at 13.

78 Application of the Commission, *supra,* para. 142. See, also, *Official Response of the State of Suriname, Case 12.338*, 27 December 2002, at paras. 8 – "there is no question of property, as such is defined in the Declaration and the Convention" -- 9 -- "there is no question of property in the sense of the Convention, Declaration or Surinamese Constitution" -- 10 -- "[i]f petitioners state that there is no relevant legislation, the State must conclude, that by claiming such, they themselves acknowledge that they do not have the right to property, as set forth in the Convention, the Declaration and Surinamese Constitution. Even if we could speak of property ..." – and; 24 -- "[w]ith regard to 'own', we cannot, as was mentioned before speak of property as is meant in the Surinamese Civil Code."

79 Declaration of Expert Mariska Muskiet before the Commission, in Annex 12 to the Commission's Application. The victims' representatives additionally offer the expert testimony of Mariska Muskiet on this and related Surinamese law issues.

80 See, for example, *Tjang A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, 21 May 1998 (holding that real title to land will void any interest claimed by indigenous peoples

59. Decree E-58 of May 8, 1986 Containing General Rules for Exploration and Exploitation of Minerals regulates large- and small-scale mining.[81] The Mining Decree is based on the principle that ownership of the subsurface is distinct from surface rights (Art. 2(1)). It introduced for the first time in Suriname's history the legal principle that all minerals are property of the State (Art. 2(2)). The Mining Decree does not contain any protections for indigenous and tribal peoples, whether related to land and resources, environment, or consultation and participation. They are mentioned only once in Article 25(1)(b), which provides that applications for exploration permits must include a list of all tribal communities located in or near the area to be explored.

60. The 1992 Forest Management Act governs most forestry activities in Suriname. Pursuant to Article 25(1)(a) of the Forest Management Act, logging concessions constitute a registered grant of a real property right in favour of the holder.[82]

61. Article 41(1)(a) of the Forest Management Act states that "the customary rights of the tribal bushland inhabitants to their villages, settlements and agricultural plots, will continue to be respected as much as possible." If these rights are violated, the traditional authorities may file a complaint with the President (Art. 41(1)(b)), stating the reasons for the complaint. The President may establish a commission to guide him on the matter (Art. 41 (1)(b)). These customary rights are the same *de facto* rights mentioned in the L-Decrees.

62. The Saramaka people filed official complaints with the President of Suriname under the procedure established by Article 41(1)(b) on two occasions, the first in 1999, the second in 2000.[83] While the receipt of one of these complaints was acknowledged by the state, no substantive response was received and no action was taken to investigate the complaints or to address any of the issues raised therein.[84]

D. Suriname's Land Titling Procedures

63. The Saramaka people does not presently hold title to its traditional lands, territory and resources, or any part thereof, and there is no mechanism in Surinamese law by which it may obtain effective and communal title. This is also the case for all indigenous and tribal peoples and communities in Suriname: not one holds any form of collective title to their traditional territories or any part thereof.

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on the basis of traditional occupation and use); and, *Celientje Martina Joeroeja-Koewie et al v. Suriname & Suriname Stone & Industries N.V.*, A.R. no. 025350, Cantonal Court, First Canton, Paramaribo, 24 July 2003 (holding that an indigenous community lacked "competence" to challenge the grant of a sand mining concession (constituting a real property right under the Mining Act) within the confines of the village itself).

81 *Mining Decree (Decreet Mijnbouw)* SB 1986, 28. A translation of this Decree is in Annex 8 to the Application of the Commission.

82 A translation of the Forest Management Act is contained in Annex 6 to the Application of the Commission.

83 See, Application of the Commission, Annex 17, for copies of these complaints and petitions.

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

64. Under the L-Decrees of 1982, every Surinamese citizen and specified legal persons are entitled to request a piece of unencumbered state land.[85] The same also applies to indigenous and tribal individuals. The procedure is simple: a request stating the use or uses to which the land will be put, accompanied by a map of the requested area issued by a registered surveyor, is submitted to the State Lands Office. If no valid reason for rejecting the application is found, a leasehold title is issued and registered in the name of the applicant. Decisions relating to issuance of titles are non-justiciable.

65. The title issued under this procedure – the only form of title to land that can be obtained in Suriname – is leasehold (*grondhuur* in Dutch).[86] *Grondhuur* is a revocable,[87] 15-40 year lease of state-owned land[88] that "is issued unilaterally by the State,"[89] and for which the lessee is required to pay rent to the State.[90]

66. *Grondhuur* titles can be held only by recognized legal persons, which are limited to individuals, corporate bodies or registered foundations.[91] Indigenous and tribal peoples, their communities or other traditional land holding entities are not recognized as legal persons for the purposes of holding title. This was confirmed by

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85 For translated copies of relevant portions of these Decrees, see, Annex 5 to the Application of the Commission.

86 According to the Surinamese legislation, "[t]he right of land lease is a real right to have the free enjoyment of a piece of domain land [State-owned land] under the requirement to utilize the land in accordance with the goal and provisions awarded by the State at the time of allocation." *Decree of 15 June 1982, containing regulations with regard to the allocation of domain land* (Decree Allocation Domain Land), SB 1982, no. 11, as amended by SB 1990, no. 3, at art. 14(1).

87 *Decree of 15 June 1982, containing general principles concerning Land Policy* (Decree Principles Land Policy), SB 1982, no. 10, art. 9(2) – "After lapse of this period, an extension of the same duration will be granted, unless the conditions under which the land was issued are no longer met, or it is against the general interest." See, also, *Decree Allocation Domain Land, id.* art. 32(1) – "The Minister may declare termination of the land lease in whole or in part: (a) if the land lease holder does not or does so insufficiently, in the judgment of the Minister, meet the provisions and conditions, of general or special character, that are connected with this right or its exercise; (b) if the land lease holder, to the satisfaction of the Minister, within one year after the entry into force of the land lease term, has not started utilizing the land in accordance with the goal for which the right was issued, or has not properly met the objective during the further course of the term; and, (c) if the fee has not been paid for a period of three consecutive years."

88 *Decree Principles Land Policy_id.* at art. 9(1) and; *Decree Allocation Domain Land*, art. 14(3) – "The term of the right will be determined at the time of allocation for, at a minimum, fifteen and at most forty years."

89 *Id.* at art. 14(1).

90 *Decree Principles Land Policy*, art. 6(3) – "For the use of domain land, regardless of its objective or issued under whatever title [land lease or personal], the State will receive remunerations to be established by decree" – and, *Decree Allocation Domain Land*, art. 14(2).

91 *Decree Allocation Domain Land*, art. 2 – "Only the following persons have the right to acquire domain land, as mentioned in the 'Decree Principles Land Policy': a. Surinamers, who live in Suriname; b. Corporations, legal persons and foundations if they are established under Surinamese law and are based in Suriname."

the Court in *Moiwana Village*[92] and by the State itself in its submissions before the Commission.[93]

E. Judicial Remedies

67. The rights of the Saramaka people, and all other indigenous and tribal peoples in Suriname, to their lands, territories and resources, or otherwise, are not explicitly recognized or guaranteed by the 1987 Constitution. There is therefore no provision contemplating judicial recourse should these rights be violated or any possibility of challenging the constitutionality of legislative or other measures that violate these rights.

68. Article 1386 of Suriname's Civil Code provides a means for seeking indemnification for any unlawful act that causes harm to persons.

69. Article 22 of the 1987 Suriname Constitution provides for a right to petition public authorities. The Saramaka people invoked this remedy on a number of occasions. No response was received to any of these formal petitions.

V. APPLICABLE LAW

A. Preliminary

70. The jurisprudence of the inter-American human rights system acknowledges that the American Convention should be interpreted and applied in the context of developments in the field of international human rights law and with due regard to relevant rules of international law applicable to respondent states.[94] In relation to this, the Commission and the Court have referred to Article 29(b) of the Convention, which provides that "No provision of this Convention shall be interpreted as: ... 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." The Commission and the Court have also emphasized the need to take into account the evolution of international legal protection for the rights of indigenous and tribal peoples when interpreting the Convention.[95]

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

93 *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No. 12.338 "Twelve Saramaka Lös (Communities),"* (no date) – "On the basis of the Decree Principles of Land Policy ... Article 2, every Surinamer, so also the maroons as individuals, have the right to obtain a piece of state-owned land under the right in rem of "land lease". This right is an individual right that cannot be granted to peoples living in tribal communities."

94 *Case of the Massacres of Ituango*, Judgment of 1 July 2006. Series C No. 148, para. 155-56, 179; *Yakye Axa Indigenous Community Case*, 17 June 2005. Series C No. 125, para. 124-31 and; *Tibi Case*, 7 September of 2004. Series C No. 114, para. 144.

95 *Inter alia, Report 36/00*, Case 11.101, "Caloto" Massacre (Colombia), 31 April 2000, para. 38-41, at 41; and, *Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001. Series C No. 79, para. 148. See, also, see, *Jurisprudencia sobre Derechos de los Pueblos Indígenas en el Sistema Interamericano de Derechos Humanos*, OEA/Ser.L/V/II.120, Doc. 43, 9 September 2004.

71. As discussed below (para. 106-158), Suriname's international commitments under United Nations human rights instruments are highly relevant to the interpretation and application of Articles 3 and 21 of the Convention in the case at hand. This is particularly the case with respect to the right to self-determination as set forth in common Article 1 of the international human rights Covenants.

72. The Court and the Commission have also stated on a number of occasions that the rights guaranteed by the American Convention "must be interpreted and applied in connection with indigenous and tribal peoples with due consideration of the principles relating to protection of traditional forms of property and cultural survival and of the rights to lands, territories, and natural resources."[96] The judgments of the Court in the *Bámaca Velasquez, Aloeboetoe* and *Mayagna* cases additionally call attention to the "importance of taking into account certain aspects of the customs of the indigenous peoples of the Americas for purposes of application of the American Convention on Human Rights."[97]

73. Finally, the Court has held that, "it is indispensable that States grant effective protection that takes into account [indigenous and tribal peoples'] particularities, their economic and social characteristics, as well as their especially vulnerable situation, their customary law, values, customs and mores."[98]

B. Article 21 of the Convention

74. The Saramaka people's traditional patterns of occupation and use of its lands, territory and resources correspond with a system of customary rules and norms that determines rights and entitlements among its constituent clans and the members thereof. This customary land tenure system, which vests paramount ownership of territory in the Saramaka people collectively, and subsidiary rights to lands in the twelve clans and their members, embodies a property regime and a form of property that is protected by Article 21 of the American Convention.

75. Suriname has failed to recognize, secure and protect the Saramaka people's property rights in law and practice and therefore has violated Article 21 in conjunction with Articles 1 and 2 of the Convention. Moreover, Suriname has further disregarded these rights by unilaterally issuing logging and mining concessions in the victims' territory; by inundating a large area of their territory through the construction of a hydroelectric dam; by unilaterally extinguishing the Saramaka people's natural resource rights through Article 41 of its 1987 Constitution and Article 2 of the 1986 Mining Decree; and in connection with the related and ongoing effects and consequences of these acts and omissions.

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[96] Mayagna (Sumo) Awas Tingni Case, *supra*, para. 134-39. See, also, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, para. 129-31.

[97] *Bamaca Velasquez Case*, 25 November 2000. Series C No. 70, para. 81; Mayagna (Sumo) Awas Tingni Case, *supra*, para. 149; and Aloeboetoe et al. Case, Reparations, *supra*, para. 62.

[98] Yakye Axa, *supra*, at para. 63.

1) Suriname is obligated to recognize, secure and protect the property rights of the Saramaka people and has failed to comply with this obligation

76. Article 21 of the American Convention guarantees the right to property and establishes that everyone "has the right to the use and enjoyment of his property." The Court explains that 'property' includes material things that can be possessed "as well as any right which may be part of a persons patrimony; that concept includes all moveables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value."[99] The Commission further explains that the right to property "implies the right to dispose of ... goods in any legal way, to possess them, use them, and prevent any other person from interfering with the[] enjoyment of this right."[100]

77. The Commission and the Court have repeatedly held that Article 21 protects indigenous and tribal peoples' collective property rights; that states parties to the Convention have positive, special and concrete obligations to recognize, restore, secure and protect indigenous and tribal peoples' property rights; and that states parties incur international liability if they fail to meet these obligations.[101] These property rights, which have an autonomous meaning international law, arise from indigenous and tribal peoples' own laws and forms of land tenure, and exist as valid and enforceable rights irrespective of formal recognition by the states' legal systems.[102]

78. In the 2006 *Sawhoyamaxa Case*, the Court observed that its jurisprudence holds that: "(1) Traditional possession by indigenous of their lands has the equivalent effect of full title granted by the State [and;] (2) traditional possession gives the indigenous the right to demand the official recognition of their land and its registration."[103]

79. Similarly, finding that "Indigenous peoples' customary law must be especially taken into account," the Court held in the *Mayagna Case* that, "[a]s a result of customary practices, possession of 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."[104] It ordered, among others, that "the State must adopt the legislative, administrative, and any other measures required to create an effective mechanism for delimitation, demarcation, and titling of the property of

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99 *Ivcher Bronstein Case,* 6 February 2001. Series C No. 74, at para. 122. See also, Mayagna (Sumo) Awas Tingni Case, *supra,* para. 144.

100 *Report No 90/05*, Alejandra Marcela Matus Acuña Et Al, October 24, 2005, at para. 51, *citing*, Ivcher Bronstein, *id.*

101 *Inter alia*, Report N° 75/02, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, para. 131; Twelve Saramaka Clans, *supra*, para. 175 and; *Sawhoyamaxa Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146, para. 127.

102 Sawhoyamaxa, *id.* para. 248; Case 11.577, Awas Tingni Indigenous Community (Nicaragua), *Annual report of the IACHR 1999*. OEA/Ser.L/V/II.102, Doc.6 rev., (Vol. II), April 16, 1999, p. 1067, para. 108. See, also, Art. XVIII, *Proposed American Declaration on the Rights of Indigenous Peoples*, approved by the IACHR in 1997.

103 Sawhoyamaxa Case, *supra*, at para. 128

104 Mayagna (Sumo) Awas Tingni Case, *supra*, at para. 151.

indigenous communities, in accordance with their customary law, values, customs and mores."[105]

80. Article 21 read in conjunction with Articles 1 and 2 of the Convention requires that Suriname adopts special measures to guarantee the individual and collective rights of the Saramaka people to the ownership and control of its traditional lands, territory and resources.[106] This includes the establishment of legal mechanisms for clarifying, securing and protecting the property rights of the Saramaka people with regard to its territory and the resources therein, and amending or modifying any domestic laws that hinder, impede or negate the full enjoyment of these property rights.

81. The facts of the instant case conclusively demonstrate that Suriname has failed to recognize, secure, restore, and protect the property rights of the Saramaka people. Suriname's laws do not recognize the victims' property rights and there is no mechanism, legislative, administrative or otherwise, that serves to secure and protect their communal rights in law or practice. Suriname's laws and institutions also fail to recognize the victims' legal personality, rendering them incapable of holding and seeking protection for their rights. The preceding points were both determined by the Court to be proven facts and facts acknowledged by the State itself in the *Moiwana Village Case*.[107]

82. Suriname's laws not only fail to recognize the victims' rights, they negate these rights by privileging, *ab inito*, the rights of the state and third parties. These laws set aside designated '*de facto*' indigenous and tribal rights in the name of the general interest, which includes any activity set out in an approved development plan, or where they conflict with registered property rights issued by the state. Logging and mining are classified as activities conducted in the public interest and logging and mining concessions are also legally classified as registered real property rights.

83. The Saramaka people's traditional possession and ownership thus counts for nothing in the eyes of the law and the state is legally empowered to do as it will with its territory and resources. This is endorsed by Constitution, which vests ownership of all natural resources in the state and insists that the state has an inalienable right to exploit those resources without providing any concomitant protections for the Saramaka people's rights. Moreover, by virtue of the Article 41 of the Constitution and Article 2 of the 1986 Mining Decree, the State has extinguished the Saramaka people's natural resource rights at domestic law without its consent, and unilaterally transferred rights over these resources to itself (this issue is discussed in greater detail in para. 143-58 *infra*).

84. That the preceding is an accurate depiction of the situation in Suriname[108] is confirmed by the United Nations Committee on the Elimination of Racial

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[105] *Id.* at para. 164.

[106] Mayagna (Sumo) Awas Tingni Case, *supra*; Yakye Axa Case, *supra*; Moiwana Village Case, *supra*, and; Sawhoyamaxa Case, *supra*.

[107] Moiwana Village Case, *id.*, para. 86(5).

[108] See Annex 4 for the decisions of these bodies.

Discrimination,[109] by the United Nations Human Rights Committee[110] and by the UN Commission on Human Rights' Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.[111]

85. Similarly, a 2005 Inter-American Development Bank study concludes that "a source of resource conflicts is the absence of individual or group property rights for Amerindians and Maroons;"[112] and, "[a]ccording to Suriname law, all land and subsoil resources within the territory of Suriname belong to the state. ... Since the 1980s, subsequent governments have promised to address the land rights question but have not brought any change in the situation."[113]

86. In light of the preceding, the victims' representatives respectfully request that the Court declare that Suriname has violated the right to property guaranteed by Article 21 of the Convention in conjunction with its failure to comply with the general obligations under Articles 1 and 2 of the same.

2) Suriname has actively violated the property rights of the Saramaka people

87. Suriname has additionally failed to respect and actively violated the property rights of the Saramaka people by issuing logging and mining concessions in its territory; by inundating a large area of this territory through the construction of a hydroelectric dam; by unilaterally extinguishing the Saramaka people's natural resource rights pursuant to Article 41 of the 1987 Constitution and Article 2 of the

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109 In 2004, CERD observed that Suriname, "has not adopted an adequate legislative framework to govern the legal recognition of the rights of indigenous and tribal peoples (Amerindians and Maroons) over their lands, territories and communal resources;" and expressed its concern that "indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons." *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname,* UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 11 & 14. These conclusions were reiterated in three subsequent decisions adopted under both CERD's Urgent Action and Follow Up procedures, most recently in August 2006. See, *Follow –Up Procedure, Decision 3(66), Suriname.* UN Doc. CERD/C/66/SUR/Dec.3, 9 March 2005; *Decision 1(67), Suriname.* UN Doc. CERD/C/DEC/SUR/2, 18 August 2005; and *Decision 1(69),* Suriname. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006.

110 In 2004, the Human Rights Committee expressed its concern "at the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources;" and recommended that Suriname "guarantee to members of indigenous communities the full enjoyment of all the rights recognized by article 27 of the Covenant, and adopt specific legislation for this purpose." *Concluding observations of the Human Rights Committee: Suriname, 04/05/2004.* UN Doc. CCPR/CO/80/SUR., at para 21.

111 United Nations Special Rapporteur, Stavenhagen, similarly concluded that "Legally, the land they occupy is owned by the State, which can issue land property grants to private owners. Indigenous and tribal lands, territories and resources are not recognized in law. ... Despite petitions to the national Government and the Inter-American system of protection of human rights (Commission and Court), the indigenous and Maroon communities have not received the protection they require." *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65.* UN Doc. E/CN.4/2003/90, 21 January, at para 21.

112 Inter-American Development Bank, Country Environment Assessment (CEA) Suriname, February 2005, at 4. Available at: http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPublicDoc.aspx?docnum=482598

113 *Id.*

1986 Mining Decree; and in connection with the related and ongoing effects and consequences of these acts and omissions.

88. These activities, separately and cumulatively, are highly prejudicial to the victims' rights and well-being and undermine their cultural integrity and survival.[114] As the Court observed in *Moiwana Village*: "in order for the culture to preserve its very identity and integrity, [indigenous and tribal peoples] ... must maintain a fluid and multidimensional relationship with their ancestral lands."[115] The same also applies in the case of the Saramaka people. The cumulative impact of these activities also rises to the level of violating the rights of peoples under common Article 1 of the international human rights Covenants, which should inform the Court's interpretation of Article 21 of the American Convention in this case (see para. 106-58, *infra*).

a) Logging and Mining Concessions:

89. International human rights law places clear and substantial obligations on states in connection with resource exploitation within indigenous and tribal peoples' territories. In such cases, the UN Human Rights Committee holds that a state's freedom to encourage economic development is strictly limited by the obligations it has assumed under international human rights law rather than by some margin of appreciation.[116] The Inter-American Commission observes that state authorized resource exploitation cannot take place in a vacuum that ignores its human rights obligations.[117] The African Commission on Human and Peoples' Rights[118] and other international human rights bodies have reached the same conclusion.[119]

90. The basic principle, reaffirmed at the 1993 Vienna World Conference on Human Rights, is that "While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights."[120] This principle applies to resource

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114 *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 17 *et seq.*

115 Moiwana Village Case, *supra*, at para. 101, 102-03.

116 *I. Lansman et al. vs. Finland (Communication No. 511/1992)*, CCPR/C/52/D/511/1992, 10.

117 *Report on the Situation of Human Rights in Ecuador*. OEA/Ser.L/V/II.96, Doc. 10 rev. 1 1997, 89. See, also, *Third Report on the Human Rights Situation in Paraguay*, OEA/Ser.L/V/II.110 Doc.52 (2001), Chapter IX, para. 47; *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc 59 rev., (2000), Ch. X, para. 26; and, Twelve Saramaka Clans, *supra*, para. 213-19.

118 *Communication No. 155/96, The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria*, at para. 58 and 69 (hereafter 'Ogoni Case') – "The 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."

119 Among others, see, UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4.; and, UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): forced evictions (1997). In, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*. UN Doc. HRI/GEN/1/Rev.5, 26 April 2001, pps. 49-54, at para. 18.

120 *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights on 25 June 1993. UN Doc. A/CONF.157/23, 12 July 1993, Part I, at para. 10.

extraction as well as all other development-related activities. To suggest otherwise would seriously undermine the international human rights regime.

91. Suriname has breached this basic principle by granting logging and mining concessions within the area subject to the Saramaka people's protected property rights and by authorizing destructive and unsupervised logging operations therein, all without notifying, consulting with and obtaining the free, prior and informed consent of the Saramaka people.

92. As the Commission concludes in the case at hand – and has held on a number of prior occasions – indigenous and tribal peoples' free, prior and informed consent is always required by law in relation to a wide range of decision-making and activities that may affect their territorial rights, including resource extraction.[121] Indigenous peoples' right to free, prior and informed consent is also recognized and emphasized in the jurisprudence of the UN treaty bodies that oversee universal instruments applicable to Suriname.[122] Additionally, in recent years, the United Nations Permanent Forum on Indigenous Issues[123] and the United Nations Working Group on Indigenous Populations have both devoted considerable energy to analyzing and explaining indigenous peoples' right to free, prior and informed consent.[124]

93. The State has acknowledged in its submissions before the Commission in this case that it has in fact issued concessions within Saramaka territory, and maps issued by its Ministry of Natural Resources conclusively demonstrate that these concessions were issued.[125] The State was fully aware that the lands in question were traditionally occupied and used by the Saramaka people at the time these concessions were granted. However, it chose to disregard the victims' internationally guaranteed property rights and also chose to ignore their repeated complaints about the activities

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[121] Twelve Saramaka Clans, *supra*, para. 214. See, also, Mary and Carrie Dann Case, *supra*, para. 131; *Report No. 40/04*, Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize), 12 October 2004, para. 142.

[122] For UN jurisprudence affirming indigenous peoples' right to give or withhold consent, see, *inter alia*, Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador. 21/03/2003*. UN Doc. CERD/C/62/CO/2, at para. 16; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. 30/11/2001*. UN Doc. E/C.12/Add. 1/74, at para. 12; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ecuador. 07/06/2004*. UN Doc. E/C.12/1/Add.100; and, *Concluding Observations of the Human Rights Committee: Canada, 20/04/2006*. UN Doc. CCPR/C/CAN/CO/5.

[123] *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*. United Nations Permanent Forum on Indigenous Issues, (New York, 17-19 January 2005). UN Doc. E/C.19/2005/3.

[124] *Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept submitted by Antoanella-Iulia Motoc and the Tebtebba Foundation*. UN Doc. E/CN.4/Sub.2/AC.4/2004/4; and *Legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*. UN Doc. E/CN.4/Sub.2/AC.4/2005/2

[125] See Annex 16 to the Application of the Commission and Annex 1.1 hereto.

conducted by the companies permitted to log in the concessions. The State also chose to authorize additional logging concessionaires after the Saramaka sought the protection of the Commission in October 2000.

94. No Environmental and Social Impact Assessment was undertaken prior to the commencement of logging operations and no mitigation measures were developed in consultation with the Saramaka people. Moreover, Suriname lacks environmental laws that could provide enforceable benchmarks in relation to the logging that took and is taking place in Saramaka territory. The state has essentially allowed the companies to regulate themselves. These logging operations took place and continue to take place in the victims' traditional territory without regulation or supervision by the State and to the detriment of their traditional food sources, environment, cultural and spiritual values, and internationally guaranteed rights.

95. The State not only failed to effectively supervise the logging concessionaires, it actively assisted in additional violations of the Saramaka people's rights by providing active duty military personnel to guard the concession of Ji Shen. These soldiers operated at the direction of company employees and excluded Saramaka persons from traditional hunting, farming and fishing areas.

96. This military presence in Saramaka territory is deeply offensive to the Saramaka on multiple levels: it recalls Dutch incursions in the 18th century when the Saramaka were fighting for their freedom from slavery and invokes their most profound fear – a return to slavery. It also recalls more recent history when the Suriname army massacred seven Saramaka men in 1987, an incident that gave rise to the *Aloeboetoe et al Case* decided by the Court in 1993.[126] The military presence in their territory therefore was a source of substantial intimidation and fear and denigrates the values that the Saramaka hold most dear.[127]

97. Suriname's acts and omissions in connection with the logging operations violate Article 21 of the American Convention. In this respect, and as a general principle, the Commission and Court have unambiguously 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.[128] Suriname has failed to comply with this imperative and, by virtue of its acts and omissions, has caused substantial and irreparable harm to the Saramaka people.

b) The Afobaka Dam and Reservoir

98. In the 1960s, Suriname constructed the Afobaka dam and reservoir which flooded approximately 1,400 square kilometres of traditional Saramaka territory and cause the forced displacement of around 6,000 mostly Saramaka persons from 28 communities. While this deprivation and forced displacement took place over 20

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126 *Report of Prof. Richard Price*, annex D of the petition of 30 September 2000, in Annex 1 to the Application of the Commission, para. 4.3; and *Report of Dr. Richard Price in support of Provisional Measures*, in Annex 2 to the Application of the Commission, para. 18.

127 *Id.*

128 Mayagna (Sumo) Awas Tingni Case, *supra*; Yakye Axa Case, *supra*; Moiwana Village Case, *supra*, and; Sawhoyamaxa Case, *supra*

years prior to Suriname's accession to the American Convention and acceptance of the Court's jurisdiction, the associated effects and consequences are ongoing and continuous and violate the Convention.[129]

99. These effects and consequences include: a continuing deprivation of access to those traditional lands and resources that have been submerged, as well as irreparable harm to numerous sacred sites; an ongoing disruption of the Saramaka people's traditional land tenure and resource management systems, which, coupled with a substantial population increase caused by the amalgamation of most of those displaced with existing communities, has placed a severe stress on the capacity of Saramaka lands and forests to meet basic subsistence needs; an ongoing failure of the State to secure tenure rights for those that lost lands, both within traditional Saramaka territory and for those communities presently outside this territory; and an ongoing failure to otherwise provide meaningful reparations.

100. Those communities forced to relocate outside of traditional Saramaka territory have seen the lands they presently occupy and use granted in concession to mining companies and invaded by small-scale miners. Small-scale mining has caused severe environmental degradation, including mercury contamination levels almost 3,000 times in excess of World Health Organization limits. The State has not only failed to protect these Saramaka communities from these activities, it has actively facilitated them by issuing the concessions to multinational mining companies, by issuing permits to small-scale miners and failing to supervise their activities, and by failing to address the extreme mercury contamination in any meaningful way.

101. The Court has previously held that "indigenous people who have been forced to leave their traditional lands against their wishes or who have otherwise lost possession of their traditional lands, still hold the right to property over these lands, even in the absence of legal title, except when the lands in question have been legitimately transferred to third parties in good faith."[130]

102. This right to restitution continues as long as the affected indigenous or tribal peoples maintain some form of connection to the expropriated lands,[131] and where they are prevented from maintaining their traditional relationships with their territories, the right to recovery continues "until such impediments disappear."[132] The Court also observed that if, for "concrete and justifiable reasons," the state is unable to return indigenous peoples' traditional lands and communal resources, compensation or the provision of alternative lands is required.[133]

103. This is consistent with the jurisprudence of the UN Committee on the Elimination of Racial Discrimination, which holds that indigenous and tribal peoples' have the right to restitution of traditionally owned lands taken without their consent

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[129] *Blake Case*, Judgment of 2 July 1996. Series C No. 27, at paras. 33 and 40; *Genie Lacayo Case*, Judgment of 27 January 1995. Series C No. 21, para. 22-26; *Plan de Sánchez Massacre Case, Reparations*, 19 November 2004. Series C No. 105; and, Moiwana Village Case, *supra*, at para. 108, 126.

[130] Sawhoyamaxa Indigenous Community Case, *supra* at para. 128.

[131] *Id.* para. 131.

[132] *Id.* at 132.

[133] *Id.* para. 138-9.

and that only where this is not possible for "factual reasons, ... the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."[134]

104. The victims' representatives submit that the Saramaka people continue to maintain a variety of spiritual and cultural relationships with the lands submerged by the Afobaka dam and that this submergence constitutes an ongoing impediment to the maintenance of their other relationships with these lands. For factual reasons, it would be impossible for them to return however. Therefore, the State has an obligation to provide adequate compensation and to secure alternative lands, subject to the victims' consent to be obtained "in accordance with their own consultation processes, values, uses and customary law," pursuant to Article 21 of the American Convention.[135]

105. In light of the preceding, the victims' representatives respectfully request that the Court declare that Suriname has violated its obligations under Article 21 read in conjunction with Articles 1 and 2 of the same. We additionally request that the Court issue the appropriate orders to remedy these violations. This includes an order requiring that Suriname suspend all mining activities that have not been consented to by the Saramaka people in the areas occupied and used by those communities now living outside of traditional Saramaka territory, at least until such time as their communal tenure rights have been secured in law and fact and with their consent and the consent of the neighbouring indigenous peoples' communities.[136]

c) Suriname has extinguished the Saramaka property rights and expropriated its natural resources in violation of Article 21 interpreted in light of the rights of the Saramaka people under Article 1(1) and 1(2) of the international human rights Covenants

106. As detailed above, Suriname has violated Article 21 of the Convention to the detriment of the Saramaka people. Nonetheless, in the case at hand, further consideration of the scope of these rights is required, both in terms of the qualitative nature of the rights protected by Article 21 and in relation to the scope of the permissible restrictions on those rights.

107. Further consideration is required because the cumulative impact of the state's acts and omissions transcends simple violations of property rights and rises to the level of violating the right of peoples to freely dispose of their natural wealth and

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[134] Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, at para. 5.

[135] Yakye Axa Case, *supra*, at para. 151 and; Sawhoyamaxa, *supra*, para. 135.

[136] Moiwana Village Case, *supra*, at para. 211; and Mayagna (Sumo) Case, *supra*, para. 164. See, also, *Mayagna (Sumo) Indigenous Community Case, Provisional Measures of 6 Sept. 2002*, at Decisions, at para. 1 -- "To order the State to adopt, without delay, whatever measures are necessary to protect the use and enjoyment of property of lands belonging to the Mayagna Awas Tingni Community, and of natural resources existing on those lands, specifically those measures geared toward avoiding immediate and irreparable damage resulting from activities of third parties who have established themselves inside the territory of the Community or who exploit the natural resources that exist within it, until the definitive delimitation, demarcation and titling ordered by the Court are carried out."

resources and to be secure in their means of subsistence. In particular, the State has unilaterally extinguished the Saramaka people's property rights in and to their natural resources pursuant to Article 41 of its 1987 Constitution and Article 2 of the 1986 Mining Decree. The effects and consequences of this extinguishment are ongoing and continuous, and the State has subsequently expropriated and permitted third parties to exploit and dispose of the natural resources that belong to the Saramaka people.

108. The Saramaka people have bourn all of the costs and received none of the benefits from these activities, and they have been denied their right to participate in and consent to the associated decision-making processes. The irretrievable and unmitigated loss of 1,400 square kilometres of their territory caused by the Afobaka dam has further compounded and exacerbated these violations by severely compromising the Saramaka people's right to be secure in its means of subsistence.

109. In this light, Article 21 should be interpreted with regard to the Saramaka people's right to self-determination guaranteed by common Article 1 of the international human rights Covenants. Suriname acceded to both Covenants on 28 December 1976 without reservation. This right is further affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, approved by the UN Human Rights Council in June 2006.

110. The Court has previously held that the provisions of the American Convention "must be interpreted in the light of the concepts and provisions of instruments of a universal character"[137] and that "a balanced interpretation is obtained by adopting the position most favorable to the recipient of international protection."[138] It has also observed that "human rights treaties are living instruments whose interpretation must consider changes over time and present-day conditions;"[139] and held that Article 29(b) of the Convention prohibits a restrictive interpretation of the rights guaranteed therein in light of a state's other international commitments.[140]

i) The Saramaka people holds the right to self-determination under international law and Suriname is obligated to respect and protect the exercise and enjoyment of this right in connection with the Saramaka people's property rights protected by Article 21 of the American Convention

111. Common Article 1 of the International Human Rights Covenants provides in pertinent part that

> (1) All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue the economic, social and cultural development.
> (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources.... In no case may a people be deprived of its own means of subsistence.

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137 *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, OC-5/85 of November 13, 1985. Series A No. 5, at para. 51.

138 Sistematizacion de la jurisprudencia contenciosa de la Corte Interamericana de Derechos Humanos, 1981-1991, Viviana Gallardo et al, 13 November 1981, p. 115, at para. 16.

139 Mayagna (Sumo) Awas Tingni Case, *supra*, at para. 125.

140 *Inter alia*, Massacres of Ituango Case, *supra*, at 207.

112. Articles 3 and 3(bis) of the UN Declaration on the Rights of Indigenous Peoples similarly provide, respectively, that "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue the economic, social and cultural development;" and "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."[141] The Proposed American Declaration on the Rights of Indigenous Peoples also recognizes these rights.[142]

113. A leading commentator on the right to self-determination states that "Article 1 common to the Covenants addresses itself directly to peoples" and "[p]eoples are thus the holders of international rights to which correspond obligations incumbent upon Contracting States...."[143] These rights are not restricted to peoples in classic colonial situations, but are vested in 'all' peoples.[144]

114. The UN Human Rights Committee also subscribes to this view, including in the case of indigenous peoples living within states-parties to the Covenant on Civil and Political Rights.[145] It has explained that the right of self-determination "is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."[146]

115. That the right to self determination is vested in indigenous and tribal peoples has been affirmed on numerous occasions by the Human Rights Committee, which often addresses indigenous peoples' rights in relation to Article 1 of the Covenant in its concluding observations.[147] The same is also the case for the Committee on

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141 *United Nations Declaration on the Rights of Indigenous Peoples*, approved by the Human Rights Council. UN Doc. A/HRC/1/L.3, 23 June 2006.

142 *Proposed American Declaration on the Rights of Indigenous Peoples*, approved by the I-A Commission on Human Rights in 1997, Article XV(1). See, also, *Consolidated Text of the Draft Declaration Prepared by the Chair of the Working Group*, OEA/Ser.K/XVI, GT/DADIN/doc.139/03,17 June 2003, Article III.

143 A. Cassese, *Self-Determination of Peoples. A Legal Reappraisal*. Cambridge: Cambridge University Press (1995), at 144.

144 *Inter alia*, J. Crawford, The Right of Self-Determination in International Law: Its Development and Future, In, P. Alston (ed.), *Peoples' Rights*. Oxford: OUP (2001), pps. 7-68, at 27 --

> Just as a matter of ordinary treaty interpretation, one cannot interpret Article 1 as limited to the colonial case. Article 1 does not say that some peoples have the right to self-determination. Nor can the term 'peoples' be limited to colonial peoples. Article [1, paragraph] 3 deals expressly, and non-exclusively, with colonial territories. When a text says that 'all peoples' have a right – the term 'peoples' having a general connotation – and then in another paragraph of the same article, its says that the term 'peoples' includes peoples of colonial territories, it is perfectly clear that the term is being used in its general sense.

145 See, Human Rights Committee, *General comment 12, The right to self-determination of peoples* (Art. 1): 13/04/84, at para. 6 - Article 1(3) "imposes specific obligations on States parties, not only in relation to their **own peoples** but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination" (emphasis added) – and; in accord, Committee on the Elimination of Racial Discrimination, *General Recommendation XXI on the right to self-determination* (1996), at para. 5 – "the rights of all peoples within a State."

146 *Id.* at para. 1.

147 *Inter alia*, *Concluding Observations of the Human Rights Committee: Canada, 20/04/2006*. UN Doc. CCPR/C/CAN/CO/5; *Concluding Observations of the Human Rights Committee: Brazil,*

Economic, Social and Cultural Rights in relation to Article 1 of the Covenant on Economic, Social and Cultural Rights[148]

116. These Committees have made explicit and reinforced the relationship between indigenous and tribal peoples' rights to their traditional territories and resources and the right to self-determination. For indigenous and tribal peoples, the right to self-determination establishes and includes a right to own and control their territories and the resources therein and to be effectively involved in decision making processes that may affect them.

117. The Human Rights Committee has also addressed indigenous and tribal peoples' right to self-determination in its case law. In *Apirana Mahuika et al. vs. New Zealand*, for instance, the Committee held that Article 1 could be read conjunctively with Article 27 of the Covenant,[149] and that "the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27."[150] In that case, the authors contended that the *Treaty of Waitangi (Fisheries Claims) Settlement Act* expropriated their commercial fishing resources in violation of Articles 1 and 27. In resolving this issue, the Committee set forth a test to

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01/12/2005. UN Doc. CCPR/C/BRA/CO/2; and, *Concluding Observations of the Human Rights Committee: Norway, 25/04/2006*. UN Doc. CCPR/C/NOR/CO/5.

148 *Inter alia, General Comment No. 15, The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. UN Doc. E/C.12/2002/11, 26 November 2002, at para. 7; and *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation. 12/12/2003*. UN Doc. E/C.12/1/Add.94, at para. 11 and 39 --

> 11. The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant. The Committee notes that the Law of 2001 On Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, which provides for the demarcation of indigenous territories and protection of indigenous land rights, has still not been implemented.
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> 39. The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence. The Committee also encourages the State party to ensure the effective implementation of the Law on Territories and Traditional Nature Use.

149 *Apirana Mahuika et al. vs. New Zealand, (Communication No. 547/1993, 15/11/2000)*, UN Doc. CCPR/C/70/D/547/1993 (2000), at para. 3 -- "When declaring the authors' remaining claims admissible in so far as they might raise issues under articles 14(1) and 27 in conjunction with article 1, the Committee noted that only the consideration of the merits of the case would enable the Committee to determine the relevance of article 1 to the authors' claims under article 27."

150 *Id.* at para. 9.2 – "The Committee observes that the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. As shown by the Committee's jurisprudence, there is no objection to a group of individuals, who claim to be commonly affected, to submit a communication about alleged breaches of these rights. Furthermore, the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27." See, also, *J G A Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia*, Communication No. 760/1997. UN Doc. CCPR/C/69/D/760/1997 (2000), at para. 10.3 ("the provisions of Article 1 may be relevant to the interpretation of other rights protected by the Covenant, in particular Article 25, 26 and 27.") For an extensive discussion on this issue by a former member of the Human Rights Committee, see, M. Scheinin, The Right to Self-Determination under the Covenant on Civil and Political Rights. In, P. Aikio and M. Scheinin (eds.), *Operationalizing the Right of Indigenous Peoples to Self-Determination*, Turku: Institute for Human Rights, Abo Akademi University, (2000).

assess whether indigenous and tribal peoples' right to freely dispose of their natural wealth and resources is satisfied, stating that

> With the Settlement, Maori were given access to a great percentage of quota, and thus effective possession of fisheries was returned to them. In regard to commercial fisheries, the effect of the Settlement was that Maori authority and traditional methods of control as recognised in the Treaty [of Waitangi] were replaced by a new control structure, in an entity in which Maori share not only the role of safeguarding their interests in fisheries but also the effective control.[151]

118. The test to be employed therefore is whether indigenous and tribal peoples enjoy 'effective possession' of and 'effective control' over their natural resources. In *Apirana Mahuika*, the resource in question was commercial fisheries and thus the Committee also holds the view that indigenous and tribal peoples' resource rights are not limited only to subsistence resources *per se*.

119. This test incorporates and is relevant to both sub-paragraphs 1 and 2 of Article 1 of the Covenant because it not only addresses the material aspects of the right to self-determination ("effective possession" of territory and resources) but also its self-government aspects ("effective control" over territory and resources). This is an acknowledgment that indigenous and tribal peoples' right "to freely determine their economic, social and cultural development" (Art. 1(1)) is fundamentally related to their right to freely dispose of their natural wealth and resources and to be secure in their means of subsistence (Art. 1(2)). Indeed, it would be a grave mistake to disaggregate the various components of the right to self-determination as they are, in sum, a complex of inextricably related and interdependent rights. For indigenous and tribal peoples to freely pursue their economic, social and cultural development, they must be in a position to determine how best to utilize their territories and resources.[152]

120. Finally, indigenous and tribal peoples' right to freely dispose of their natural wealth and resources – referred to as permanent sovereignty over natural resources – has been the subject of a number of United Nations studies and reports in recent years.[153] Concluding that indigenous and tribal peoples are holders of the right to permanent sovereignty over their natural resources, *inter alia*, because "The natural resources originally belonged to the indigenous peoples concerned and were not, in most situations, freely and fairly given up,"[154] the primary UN study on this issue observes that "[i]ndigenous peoples' permanent sovereignty over natural resources might properly be described as a collective right by virtue of which the State is

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[151] *Id* at para. 9.7.

[152] In this context, note also Article 1(2) of the 1986 UN Declaration on the Right to Development, which provides that "The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." G.A. Res. 41/128 of 4 December 1986, Declaration on the Right to Development.

[153] *Inter alia*, see, the reports and papers prepared for the Expert seminar on indigenous peoples' permanent sovereignty over natural resources and on their relationship to land. Palais des Nations, Geneva, 25, 26 and 27 January 2006, available at: http://www.ohchr.org/english/issues/indigenous/sovereignty.htm

[154] *Indigenous peoples' permanent sovereignty over natural resources. Final report of the Special Rapporteur, Erica-Irene A. Daes.* UN Doc. E/CN.4/Sub.2/2004/30, at para. 32.

obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources."[155]

121. With regard to the nature of indigenous and tribal peoples' interests, the same study states that "in general these would be the interests normally associated with ownership: the right to use or conserve the resources, the right to manage and to control access to the resources, the right to freely dispose of or sell the resources, and related interests."[156]

122. Concerning the nature of the natural resources themselves, the UN study adds that "In general these are the natural resources belonging to indigenous peoples in the sense that an indigenous people has historically held or enjoyed the incidents of ownership, that is, use, possession, control, right of disposition, and so forth. These resources can include air, coastal seas, and sea ice as well as timber, minerals, oil and gas, genetic resources, and all other material resources pertaining to indigenous lands and territories."[157]

123. The victims' representatives urge the Court to adopt the United Nations' approach explained above in relation to the rights of the Saramaka people, both in connection with interpreting the substantive and qualitative nature of their property rights guaranteed under Article 21 of the American Convention and the nature of any permissible restrictions on those rights.

ii) The substance and quality of indigenous peoples' property rights guaranteed by Article 21 in light of the right to self-determination

124. Article 41 of Suriname's 1987 Constitution vests ownership of all resources in the State and provides for an inalienable right of the State to exploit those resources. This provision, which came into force one month after Suriname accepted the Court's jurisdiction, unilaterally extinguished the rights of indigenous and tribal peoples, including the Saramaka people, to the resources pertaining to their traditional territories, and transferred ownership of these resources to the State. The Saramaka people have thus been deprived, on an ongoing basis, of their property rights in and to their natural resources without their consent and without compensation.

125. Such a provision is impermissible in light of inter-American jurisprudence pertaining to indigenous and tribal peoples' property rights, all the more so in the case of Suriname as its legislation also fails to provide any countervailing guarantees for indigenous and tribal peoples' land and resource rights. It is also impermissible with respect to the rights of the Saramaka people guaranteed by Article 1 of the Covenants, which, pursuant to Article 29(b) of the American Convention, cannot be restricted when interpreting the right to property in Article 21.

126. Suriname's laws and practice also fail to recognize indigenous and tribal peoples' right to exercise effective control over their lands, territories and resources through their own customary or other governance institutions and norms. Article 41

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[155] *Id.* at para. 40.
[156] *Id.* at para. 41.
[157] *Id.* at para. 42.

of the Constitution effectively denies this right in that it vests complete and exclusive control over resource use and management decisions in the State.

127. The Commission and the Court have both held that indigenous and tribal peoples' property rights arise from and are grounded in their customary land tenure systems and laws.[158] In the *Mayagna Case*, the Court made clear in its judgement that indigenous peoples' rights to their lands include rights to the resources therein[159] and that these rights of ownership are held collectively and according to their own customary law, values, customs and mores.[160] The nature and extent of these rights, including those pertaining to natural resources, therefore, should, in the first instance, be determined by reference to these customary systems and laws.

128. The jurisprudence of the Human Rights Committee in relation to Article 1 of the Covenant on Civil and Political Rights adds that the resources vested in indigenous and tribal peoples can include resources capable of commercial exploitation rather than only those resources used for traditional subsistence purposes. It also holds that indigenous and tribal peoples have the right to freely dispose of their natural wealth and resources, which includes the right to effective possession of and control over the same.[161] The use of the term 'freely' in Article 1(2) denotes that indigenous and tribal peoples have the right to consent to any disposition of their natural wealth and resources.

129. The victims' representatives submit that the customary laws of the Saramaka people acknowledge and vest in the Saramaka people and its constituent land holding entities ownership rights to all natural resources within and subjacent to, or otherwise pertaining to, its traditional territory, and seek from the Court a recognition of this right under Article 21 of the American Convention. We further submit that these rights are additionally guaranteed and protected by Article 1 of the Covenants, which require that the Saramaka people's property and governmental interests in its natural wealth and resources be secured through mechanisms to recognize and protect its effective possession of and control over these resources, and also seek from the Court a recognition of this right under Article 21 of the American Convention.[162]

130. The Saramaka people have traditionally and continuously owned and used the resources within their territory since the 18th century, including products of the subsoil, such as minerals, clays, sand, gravel and stone materials. The Saramaka have also made extensive use of timber and non-timber forest products, both for subsistence and commercial purposes. Hunting and fishing is also conducted for subsistence and commercial purposes and has been done so for many generations. Under their law, the Saramaka are also the owners and stewards of the water courses and other bodies of water, surface and sub-surface, within their territory. These rights and activities have been and remain regulated and controlled through their traditional

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158 *Inter alia*, Mayagna (Sumo) Awas Tingni Case, *supra*, para. 151; and, Maya Indigenous Communities, *supra*, para. 117

159 *Id.* para. 153.

160 *Id.* para. 148, 151 and 153.

161 Apirana Mahuika Case, *supra*.

162 The victims' representatives offer the expert testimony of Dr. Martin Scheinin in support of this and related contentions.

authorities and other customary institutions and laws in accordance with their spiritual and other traditions.

131. Until 1986, when the Mining Decree for the first time in Suriname's history vested ownership of the subsoil in the State, and until 1987, when the Constitution vested all natural resources in the State, Surinamese law neither recognized nor strictly precluded the Saramaka people's ownership of their natural resources. Prior to 1986-87, and with the major exception of the Afobaka dam, the Saramaka people has exercised and enjoyed its natural resource ownership rights in its traditional territory without hindrance in accordance with its customary laws and values.

132. These rights were also recognized in the 1762 Treaty between the Saramaka and the Dutch (the ongoing validity of this treaty is discussed *infra*, para. 196-208). Article 10 of the Treaty, for instance, recognizes the rights of the Saramaka to harvest and trade in timber, providing that "Every year fifty of you will be permitted to come to the Saramaka River, as far as Wanica Creek, or to Arwaticabo Creek, or to the Suriname River, as far as Victoria, to bring everything they will have to sell, such as hammocks, cotton, wood, fowl, dug-out canoes, or anything else."

133. The Mining Decree and Article 41 of the Constitution however formally extinguished these rights at domestic law in violation of the Saramaka people's property rights and the exercise and enjoyment of its rights to freely dispose of its natural wealth and resources and to be secure in its means of subsistence. As discussed below, such unilateral extinguishments of indigenous and tribal peoples' territorial and natural resource rights have been held to violate international human rights guarantees, including the right to self-determination (see *infra* para. 143-58). Other principles of international and comparative law support the Saramaka people's maintenance of their natural resource rights including subsoil rights and rights to non-traditional uses and commercial exploitation of those resources.

134. The UN Committee on the Elimination of Racial Discrimination has recognized indigenous and tribal peoples' ownership rights over water, subsoil and other natural resources pursuant to the right to property in Article 5(d)(v) of the Convention on the Elimination of All Forms of Racial Discrimination. In March 2006, for instance, it recommended that a reporting OAS member state "recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources...."[163]

135. That subsoil mineral rights may vest in indigenous peoples pursuant to their customary laws also has been recognized by the South African Constitutional Court and the Canadian Supreme Court.[164] In 2003, the Constitutional Court of South Africa observed that

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[163] See, for instance, Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: Guyana*, UN Doc. CERD/C/GUY/CO/14, 4 April 2006, at para. 16.

[164] *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010, at 1086. See, also, *Guerin v R.* (1985) 13 DLR 4th 321. For US and Australian cases in accord, see, *inter alia*, *United States v. Shoshone Tribe of Indians* 304 US 111 (1938); *United States v. Klamath and Modoc Tribes* 304 US 119 (1938); and, *Otoe and Missouri Tribe v. United States* 131 F Supp 265 (1955); *Mabo v. Queensland No.2* (1992) 175 CLR 166 and; *Ward on behalf of the Miriuwung and Gajerrong People v. Western Australia* (1998) 159 ALR 483.

> We are satisfied that under the indigenous law of the Richtersveld Community communal ownership of the land included communal ownership of the minerals and precious stones. Indeed both Alexkor and the government were unable to suggest in whom ownership in the minerals vested if it did not vest in the Community. Accordingly, we conclude that the history and usages of the Richtersveld Community establish that ownership of the minerals and precious stones vested in the Community under indigenous law.[165]

In the same vein, the Canadian Supreme Court has held that "aboriginal title also encompass[es] mineral rights, and lands held pursuant to aboriginal title should be capable of exploitation in the same way…."[166]

136. The Convention on Biological Diversity (CBD), a binding international environmental treaty in force for Suriname is also relevant in this context. Article 10(c) of the CBD provides in relation to indigenous peoples that states shall "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." The CBD's Secretariat has issued the following guidance with regard to the language "protect and encourage" found in Article 10(c):

> In order to protect and encourage, the necessary conditions may be in place, namely, security of tenure over traditional terrestrial and marine estates; control over and use of traditional natural resources; and respect for the heritage, languages and cultures of indigenous and local communities, best evidenced by appropriate legislative protection (which includes protection of intellectual property, sacred places, and so on). Discussions on these issues in other United Nations forums have also dealt with the issue of respect for the right to self-determination, which is often interpreted to mean the exercise of self-government.[167]

137. Some may argue that the preceding conflicts with the rights of states, such as Suriname, that have asserted full public ownership over all natural resources, or at least all subsoil resources. However, the rights of states in this respect are a function of their territorial title or sovereignty in general international law vis-à-vis other states and are normally expressed and operationalized in relation to and in the name of their citizens via domestic laws.[168] Whereas indigenous and tribal peoples' rights are protected by international human rights law, including the right to property guaranteed in Article 21 of the Convention and the right to self-determination guaranteed in the international Covenants, both of which demand recognition of and protection for traditional land tenure systems, including land and resource ownership, and customary and other laws and institutions.

138. Settled principles of international law provide that sovereignty is no bar to respect for human rights[169] and that states may not invoke their domestic laws to

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[165] *Alexkor Ltd and the Republic of South Africa v. The Richtersveld Community and Others*, CCT 19/03, 2003, para. 64.

[166] Delgamuukw v. British Columbia, *supra*.

[167] *Traditional Knowledge and Biological Diversity*, UNEP/CBD/TKBD/1/2, 18 October 1997.

[168] I. Brownlie, *Principles of Public International Law* (4th ed.). Oxford: OUP (1990), at 119.

[169] *Inter alia, Separate Opinion of Judge Weeramantry, Bosnia and Herzogovenia v. Yugoslavia*, 11 July 1996. http://www.uparis2.fr/cij/icjwww/idocket/ibhy/ibhyjudgment/ibhy_ijudgment_960711_separateopinionweeramantry.htm – "In its ongoing development, the concept of human rights has long passed the stage when it was a narrow parochial concern between sovereign and subject. We

escape their international obligations.[170] State sovereignty in general, and state sovereignty with regard to natural resources in particular, is not absolute but is subject to other principles and rules of international law.[171] As a consequence, and as concluded by a leading commentator on these issues, an increasing number of duties are associated with the sovereign rights of states; *inter alia*, the duty to have due care for the environment and the "duty to respect the rights and interests of indigenous peoples...."[172]

139. Importantly, CERD reached the same conclusion in its 2004 observations on Suriname. Specifically, it observed that "While noting the principle set forth in article 41 of the Constitution that natural resources are the property of the nation and must be used to promote economic, social and cultural development, the Committee points out that this principle must be exercised consistently with the rights of indigenous and tribal peoples."[173] These rights and the State's corresponding duties are defined by general international law and Suriname's contractual commitments under international human rights law, including under the American Convention and common Article 1 of the Covenants.

140. The obligation to secure and respect indigenous and tribal peoples' effective control over their territories also should be read together with the Court's finding in the *Yatama v. Nicaragua Case*. In that case, the Court held that states-parties to the Convention have the obligation to adopt special measures to ensure that indigenous peoples "can participate, in conditions of equality, in decision-making on matters that affect or could affect their rights and the development of their communities, ... and that they are able to do so through their own institutions and in accordance with their values, uses, customs and forms of organization."[174]

141. The Court has also highlighted the importance of the preservation of indigenous and tribal peoples' culture, communal structures, and modes of self-governance in the *Plan de Sanchez Massacre Case*.[175]

142. For the foregoing reasons, Article 21 should be interpreted in the instant case in light of and without restriction to the exercise and enjoyment of the right to self-

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have reached the stage, today, at which the human rights of anyone, anywhere, are the concern of everyone, everywhere. The world's most powerful States are bound to recognize them, equally with the weakest, and there is not even the semblance of a suggestion in contemporary international law that such obligations amount to a derogation of sovereignty."

170 Moiwana Village Case, *supra*, para. 167.

171 I. Brownlie, *Principles of Public International Law (4th ed.)*. Oxford: OUP (1990), 597 (referring to the right of self-determination as informing and complementing other principles of international law, such as state sovereignty.)

172 N. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge Studies in International Law. Cambridge: Cambridge University Press (1997), at 391 and, at 9 – "Various injunctions have been formulated according to which States have to exercise their right to permanent sovereignty in the interest of their populations and to respect the rights of indigenous peoples to the natural wealth and resources in their regions, where 'peoples' are objects rather than subjects of international law." However, see, Preambular paragraph 7, *Proposed American Declaration on the Rights of Indigenous Peoples* - "Recognizing that indigenous peoples are a subject of international law...."

173 Concluding observations: Suriname 2004, *supra*, at para. 11.

174 *Yatama v. Nicaragua*, 23 June 2005. Series C No. 127, at para. 225.

175 Plan de Sánchez Massacre Case, Reparations, *supra*, para. 85.

determination so as to protect the ownership rights of the Saramaka people in and to their traditional territory, including the natural resources subjacent to and pertaining to that territory. These protected property rights also include the victims' right to exercise effective control over their traditional territory and its resources through their traditional or other freely chosen institution(s) of governance and through their customary or other laws and norms. This also requires respect for the Saramaka people's right to freely pursue its economic, social and cultural development including through determining how best to utilize its territory and resources, and prohibits unilateral extinguishment of land and resource rights.

iii) Scope of the permissible restrictions on the Saramaka people's property rights in Article 21 in light of the right to self-determination

143. Article 21 of the American Convention permits subordination of property rights to the interest of society and provides that "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."

144. As discussed above, Suriname's law presently provides that indigenous and tribal peoples' '*de facto* rights' shall be respected with regard to the allocation of state lands unless there is a conflict with the general interest, which includes any activity specified in an approved development plan. Also, once state lands have been allocated, any registered real property right will supercede these *de facto* rights. Moreover, indigenous and tribal peoples' traditional ownership rights and possession do not constitute 'property' under Surinamese law and therefore can be taken without due process or compensation and without their consent whether for the public interest or otherwise.

145. This issue is relevant in the instant case because of the ongoing effects and consequences of the enactment of the Mining Decree in 1986 and Article 41 of the Constitution in 1987. As discussed in the preceding section, the ongoing effects and consequences of these acts on the part of Suriname need to be assessed in relation to Article 21 of the American Convention, which also should be interpreted in light of and so as not to restrict the Saramaka people's property and other rights held pursuant to Article 1 of the international Covenants.

146. Article 2 of the Mining Decree and Article 41 of the Constitution constitute impermissible subordinations of and extinguishments of pre-existing and protected property rights vested in the Saramaka people inconsistent with the narrow limitations permitted under Article 21. The effects and consequences of these acts and omissions are ongoing and continuous and violate the American Convention and Suriname's other international commitments.

147. The victims' rights under Article 1 of the international Covenants limit the permissible deprivations of their property rights pursuant to Article 21 of the Convention. In particular, the United Nations Human Rights Committee and the United Nations Committee on Economic, Social and Cultural Rights have held that unilateral extinguishment of indigenous peoples' territorial and resource rights contravenes the right to self-determination and the prohibition of racial discrimination.

148. The Human Rights Committee has stressed "that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant."[176] Similarly, the Committee on Economic, Social and Cultural Rights has held that "extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party."[177] As a remedy, it recommended that the state party "take concrete and urgent steps to restore and respect an Aboriginal land and resource base adequate to achieve a sustainable Aboriginal economy and culture."[178]

149. Thus, the Committee's have admonished against governmental acts that would unilaterally infringe on indigenous peoples' ownership, control and enjoyment of their rights to lands and natural resources, and determined such infringements to be incompatible with the right to self-determination.

150. The UN study on indigenous peoples' right to permanent sovereignty over natural resources also addresses the legality of laws that purport to unilaterally extinguish indigenous peoples' resource rights and the extent to which the state may limit these rights. With regard to laws that vest full ownership of all resources in the state, as is the case in Suriname, the study explains that

> Such legal regimes have a distinct and extremely adverse impact on indigenous peoples, because they purport to unilaterally deprive the indigenous peoples of the subsurface resources that they owned prior to colonial occupation and the creation of the present State. ... The result of these legal regimes is to transfer ownership of indigenous peoples' resources to the State itself. Of course, in some situations, the ownership of the resources in question was transferred freely and lawfully by the indigenous people who held it. These situations do not concern us here. However, as a general matter it is clear that indigenous peoples were not participants in the process of adopting State constitutions and cannot be said to have consented to the transfer of their subsurface resources to the State.[179]

151. This point is reiterated in the study's conclusions and recommendations, which provide that "Laws and legal systems that arbitrarily declare that resources which once belonged to indigenous peoples are now the property of the State are discriminatory against the indigenous peoples, whose ownership of the resources predates the State, and are thus contrary to international law;"[180] and "States' powers to take resources for public purposes (with compensation) must be exercised, if at all, in a manner that fully respects and protects all the human rights of indigenous peoples. In the generality of situations, this would appear to mean that States may not take indigenous resources, even with fair compensation, because to do so could

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[176] *Concluding observations of the Human Rights Committee: Canada. 07/04/99.* UN Doc. CCPR/C/79/Add.105, at para. 8. In accord, *Concluding observations of the Human Rights Committee: Australia. 28/07/2000.* UN Doc. CCPR/CO/69/AUS, para. 8.

[177] *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. 10/12/98.* UN Doc. E/C.12/1/Add.31, at para. 18.

[178] *Id.* at para. 43.

[179] *Indigenous peoples' permanent sovereignty over natural resources. Final report of the Special Rapporteur, Erica-Irene A. Daes.* UN Doc. E/CN.4/Sub.2/2004/30, at para. 43.

[180] *Id.* at para. 59.

destroy the future existence of the indigenous culture and society and possibly deprive it of its means of subsistence."[181]

152. The Committee on the Elimination of Racial Discrimination has also observed that extinguishment of indigenous and tribal peoples' traditional and other rights to lands and natural resources violates the right to property and the prohibition of racial discrimination. In a decision on Australia under its Urgent Action procedure, the Committee expressed concern about the compatibility of amendments to Australia's Native Title Act with that state's international obligations. In particular, it observed that

> While the original Native Title Act recognizes and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.
>
> The Committee notes, in particular, four specific provisions that discriminate against indigenous title holders under the newly amended Act. These include the Act's "validation" provisions; the "confirmation of extinguishment" provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses.[182]

153. As discussed above, the Mining Decree and Article 41 of Suriname's Constitution extinguish and deny the exercise of the property rights of the Saramaka people. These acts and their ongoing and continuous effects and consequences violate the victims' rights guaranteed by the American Convention and other applicable international instruments, and provide legal certainty for the state and third persons at the expense of the Saramaka people's rights. Consistent judicial rulings upholding the primacy of registered real property rights and the rights of the State over indigenous and tribal peoples' property rights further reinforce and compound the gravity of these ongoing violations.[183]

154. Additionally, the victims' representatives submit that a public interest test is wholly unsuitable in the context of indigenous and tribal peoples' rights given that it is essentially a 'majority rule' standard that in most American states, as with Suriname, is not subject to judicial review. The compelling interests indigenous and tribal peoples have in relation to their traditional territories, recognized and affirmed repeatedly by both the Commission and the Court and by other international bodies, demand strict and rigorous scrutiny of any proposed or prior deprivation of their property rights, and any doubts must be resolved in indigenous and tribal peoples' favour.

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[181] *Id.* at para. 61.

[182] *Decision 2 (54) on Australia, 18/03/99.* UN Doc. A/54/18, para.21(2), at para. 6-7.

[183] See, for example, *Tjang A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, 21 May 1998 (holding that real title to land will void any interest claimed by indigenous peoples on the basis of traditional occupation and use); and, *Celientje Martina Joeroeja-Koewie et al v. Suriname & Suriname Stone & Industries N.V.*, A.R. no. 025350, Cantonal Court, First Canton, Paramaribo, 24 July 2003 (holding that an indigenous community lacked "competence" to challenge the grant of a sand mining concession (constituting a real property right under the Mining Act) within the confines of the village itself). These cases are in the *Case File before the Commission*, Vol. III & IV submitted with the Commission's Application.

155. The Court emphasized the significance of these compelling interests in *Yakye Axa*, where it observed that "the possession of traditional territory is indelibly marked in the historic memory [of the members of the Community] and that the relations that they maintain with the land is of a quality that severing their connections with the land implies a certain risk of an irreparable ethnic and cultural loss with a consequent loss of diversity as a result."[184]

156. In conclusion, a non-consensual subordination of indigenous and tribal peoples' property pursuant to Article 21 of the Convention is not permissible if it constitutes an extinguishment of their property rights, including natural resource rights, and, therefore, a violation of their right to freely dispose of their natural wealth and resources. Article 41 of the Constitution and the Mining Decree both constitute a wholesale extinguishment of Saramaka people's internationally guaranteed property rights that have ongoing and continuous effects which violate Article 21 of the Convention as interpreted with regard to other applicable norms of international law.

157. Extinguishment or other non-consensual takings cannot be defended under Article 21(1) and (2) of the Convention because of the resulting prejudice to the Saramaka people's rights under Article 1 of the international Covenants and Articles 2 and 5(d)(v) of the Convention on the Elimination of Racial Discrimination, which are saved by Article 29(b) of the American Convention.

158. The victims' representatives respectfully request that the Court declare that Article 41 of the Constitution and Article 2 of the Mining Decree violate the rights of the Saramaka people under Article 21 of the Convention, and order the appropriate remedial measures.

C. Article 3 of the Convention

159. Article 3 of the American Convention provides that "Every person has the right to recognition as a person before the law." This right is highly significant given that enjoyment and enforcement of domestic legal protections depend on legal personality. Denial of the right to legal personality precludes the vesting, exercise and enjoyment of fundamental human rights and renders persons and collectivities invisible to domestic law and the protections that it may provide for the defence and effectuation of their rights.

160. In violation of Article 3 of the Convention, the Saramaka people and its constituent land holding entities and communities are presently not recognized as legal persons under Surinamese law. Consequently, they cannot hold, exercise, enjoy and defend their communal property rights under domestic laws and in domestic venues. That this is the situation in Suriname was acknowledged by the Court in *Moiwana Village,*[185] by the Commission in *Twelve Saramaka Clans,*[186] and by the UN Committee on the Elimination of Racial Discrimination.[187]

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[184] Yakye Axa Case, *supra*, at para. 216.
[185] Moiwana Village Case, *supra*, para. 86(5).
[186] Twelve Saramaka Clans Case, *supra*, para. 230.
[187] Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname, 12/03/04, *supra*, at para. 14.

161. In Surinamese law, legal personality is treated restrictively and, with the exception of natural persons and a law providing for the establishment of non-profit foundations (*stichting*), is confined only to those entities specified in the Civil Code. In the Civil Code, legal persons are listed as associations, corporate bodies and professional partnerships.[188] The only possible relevant category for indigenous and tribal peoples is corporate bodies. However, according to the Civil Code, legal personality may not be attributed to a corporate body unless it has been established by the State or recognized by a Presidential resolution; this has not occurred in relation to indigenous and tribal peoples in Suriname, their communities or other traditional landholding entities.

162. The pertinent Civil Code articles provide that:

> 1665: In addition to the partnership, the law also recognizes associations of persons as corporate bodies, either if these are established by public authority, or if they are recognized themselves as corporate bodies.
> 1666: An association, that is not established by public authority, in order to act as a legal person, must be recognized as a corporate body by resolution of the President.
> 1667: The recognition, as referred to in the previous article, shall take place by approval of the statutes or regulations of the association.

163. Consistent with the preceding, indigenous and tribal peoples and their communities are not recognized as legal persons for the purposes of applying for and holding title to land. The L-Decrees limit the entities that may obtain title to "a. Surinamers, who live in Suriname; [and] b. Corporations, legal persons and foundations."[189] The term 'legal person' is defined in the Civil Code, as quoted above.

164. Additionally, in its submissions before the Commission in the case at hand, Suriname admitted that indigenous and tribal peoples and communities are ineligible to receive title under the procedure established by the L-Decrees. Specifically, Suriname stated that "On the basis of the Decree Principles of Land Policy ... Article 2, every Surinamer, so also the maroons as individuals, have the right to obtain a piece of state-owned land under the *right in rem* of 'land lease'. This right is an individual right that cannot be granted to peoples living in tribal communities."[190]

165. In *Yakye Axa*, the Court observed that "juridical personality, for its part, is the legal mechanism that confers on [indigenous and tribal peoples] the necessary status to enjoy certain fundamental rights, as for example the rights to communal property and to demand protection each time they are vulnerable."[191] In that case, the indigenous people in question had applied for registration of their personality in accordance with domestic law in order to seek restitution and protection of their traditional lands.

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188 *Surinamese Civil Code*, arts. 1630-84

189 *Decree Allocation Domain Land*, Art. 2.

190 *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No. 12.338 "Twelve Saramaka Lös (Communities)"*, no date, Annex D, at p. 2, in *Case File before the Commission*, Volume III & IV submitted with the Commission's Application.

191 Yakye Axa Case, *supra*, at para. 82-3.

166. In the same case, the Court clarified that recognition of juridical personality only makes operative the pre-existing rights that indigenous peoples have exercised historically, and that indigenous peoples' political, social, economic, cultural and religious rights and forms of organisation, as well as the right to reclaim their traditional lands belongs to the peoples themselves irrespective of whether the state formally recognizes their personality before the law.[192] This was reaffirmed by the Court in *Sawhoyamaxa*.[193]

167. According to the Court in *Yakye Axa*, recognition of indigenous peoples' juridical personality is merely a legal formality; a formality that nonetheless is indispensable to the recognition and protection of indigenous peoples' rights domestically. Consequently, in the *Sawhoyamaxa Case*, the Court explained that states have to use all means at their disposal, including legal and administrative measures, to ensure that the right to juridical personality is respected and that states have special obligations to ensure respect for this right in connection with persons in situations of vulnerability, marginalization and discrimination, and with due regard for the principle of equality before the law.[194]

168. While indigenous and tribal peoples in Suriname – referred to in various ways, normally as amorphous populations such 'Indians' or 'tribal inhabitants' rather than collective entities – are mentioned in some legislation, this legislation does not as such confer legal personality. Indeed, it is accurate to say that indigenous and tribal peoples and their communities are not even objects of the law at present.

169. A UN Food and Agriculture Organization study on Suriname's forestry and land laws reached the same conclusion: "Since the [Suriname] legal system currently has no way of recognizing traditional tribal groups and institutions as legal entities, they are effectively invisible to the legal system and incapable of holding rights."[195]

170. Last, as discussed above in connection with the property rights protected by Article 21, Article 3 of the Convention must also be interpreted in light of the Saramaka people's right to self-determination, as guaranteed by common Article 1 of the Covenants and as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. This necessitates that Suriname recognize the juridical personality of the Saramaka people as a distinct *people* rather than simply as communities or some other sub-entity of the people as a whole.

171. In conclusion, the Saramaka people is presently denied its right to be recognized before the law and, as a result, it is also denied the capacity to hold, exercise and seek protection for its property and other rights in domestic law and tribunals. Suriname has failed to comply with its obligation to respect and give full effect to Saramaka people's right to juridical personality. This right also requires special protection for the Saramaka people given its vulnerable situation, its

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[192] *Id.* para. 78-82.
[193] Sawhoyamaxa Case, *supra*, para. 94.
[194] *Id.* at para. 189.
[195] UN Food and Agriculture Organization, *Strengthening National Capacity for Sustainable Development of Forests on Public Lands; Report of the Legal Consultant, Cormac Cullinan,* FAO Project TCP/SUR/4551 (1996), at sec. 4.6.2.

marginalization, and the discrimination that it has historically suffered and continues to suffer at present. The victims' right to juridical personality, interpreted with respect to Suriname's other international commitments, includes the right to be recognized before the law as a distinct people. For the forgoing reasons, Suriname has violated Article 3 of the Convention in conjunction with Articles 1 and 2 of the same.

D. Article 25 of the Convention

172. Pursuant to Article 25 of the American Convention, the Saramaka people has the right to timely and effective judicial remedies for violations of its and its members' human rights. Suriname has the obligation not only to pass laws that provide a remedy for the violation of these human rights but also to ensure due application of those remedies by State authorities. As stated by the Court in, *inter alia*, *Sawhoyamaxa*, this includes the obligation to establish domestic legal procedures for the recognition, restoration and protection of the property rights of indigenous and tribal peoples.[196] Suriname has failed to comply with these obligations in violation of Article 25 of the Convention in conjunction with Articles 1 and 2 of the same.

173. The Commission confirmed that judicial protection and domestic remedies are unavailable in Suriname for the protection of indigenous and tribal peoples' rights in its 2006 report in this case.[197] Since that report was adopted, Suriname has not adopted any new laws or amended existing laws to provide adequate and effective remedies in relation to indigenous and tribal peoples' land and resource rights. The UN Committee on the Elimination of Racial Discrimination similarly found in 2004 that "indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons."[198]

174. Article 25 is closely related to the guarantees recognized in Articles 1 and 2 of the American Convention, and all impose specific obligations on Suriname to give effect to the rights set out in the American Convention, including redress for violations thereof, through its domestic legislation and the organization of the institutions responsible for administering justice.

175. In this respect, the Court has repeatedly held that, "States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of the law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdictions (Art. 1)."[199] Elaborating further, the Court stated that

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196 Sawhoyamaxa Case, *supra*, para. 109.

197 Twelve Saramaka Clans, *supra*, para. 126-33 and 238-55.

198 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname, *supra*, at para. 14.

199 *Velasquez Rodriguez*, Judgment of July 29, 1988. Series C No. 4; *Fabien Garbi and Solis Corrales and Godinez Cruz Case, Preliminary Objections*, Judgment of 26 June 1987, paras. 90, 90 and 92, respectively. Also, see, *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, OC-9/87 of Oct. 6, 1987. Series A No. 9, at para. 24.

> According to this principle, the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[200]

176. In cases involving indigenous and tribal peoples' property rights, the Court has examined both the existence of effective judicial remedies for the recognition, restoration and protection of indigenous and tribal rights in and to their territories as well as whether the state has adopted a specific and effective legal or administrative procedure whereby they can seek restitution of their ancestral lands and/or have their communal lands identified, demarcated and titled.[201] Such a procedure must take into account indigenous and tribal peoples' specific characteristics including their special relationship to their traditional territories.[202]

177. In the *Mayagna* and *Sawhoyamxa* cases, for instance, the Court held that the absence of effective domestic legal measures and remedies to allow for the delimitation, demarcation and titling of indigenous peoples' communal lands violates the right to judicial protection in Article 25 of the Convention in connection with Articles 1 and 2 of the same.[203]

178. As discussed above, Suriname has not established any legal or administrative mechanisms for the delimitation, demarcation and titling of indigenous and tribal peoples' territories and their communal resources therein. Moreover, as acknowledged by the state itself, Suriname's land titling procedure may only be used by individuals for the purposes of acquiring individual leasehold rights, which "cannot be granted to peoples living in tribal communities."[204]

179. Suriname has not adopted any legal measures designed to provide effective judicial remedies in relation to the restitution or recognition of indigenous and tribal peoples' property rights. Moreover, indigenous and tribal peoples lack juridical personality under domestic law to seek protection for their rights.

180. Under Surinamese law, indigenous and tribal peoples or their communities cannot seek judicial protection because the law neither recognizes nor provides for collective rights and the courts do not recognize their standing as collective entities. The clearest and most explicit statement of this principle of Surinamese law is in the Mining Bill presently pending enactment by Suriname's National Assembly. Drafted by the Ministry of Justice in 2003, the Bill was approved by Suriname's Council of

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200 *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), id*

201 Mayagna (Sumo) Awas Tingni Case, *supra*, para. 123-24; Yakye Axa Case, *supra*, para. 65.

202 Sawhoyamaxa Case, *supra*, para. 104; Mayagna Case, *id.*

203 *Id.* para. 111-12 and 123-39, respectively.

204 *Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No. 12.338 "Twelve Saramaka Lös (Communities)"*, no date, Annex D, at p. 2, in *Case File before the Commission,* Volume III & IV submitted with the Application of the Commission.

Ministers in August 2004 and formally endorsed by the Council of State in December 2004.

181. In the Mining Bill, non-indigenous/tribal persons may seek a judicial determination of the amount of compensation due for damages caused by mining if an agreement cannot be reached with the miner.[205] Indigenous and tribal peoples' remedies, however, are limited to an appeal to the executive, which will issue a "binding decision."[206] According to the explanatory note, this overt discrimination against indigenous and tribal peoples is warranted "because traditional rights do not lend themselves to the normal court procedure as individual rights are not involved."[207]

182. Similar logic underlies the 1992 Forest Management Act, although denial of access to judicial remedies is not stated explicitly therein as it is in the Mining Bill. Article 41(1)(b) reads: "In case of violations of the customary rights as mentioned under a, an appeal in writing may be made to the President, which appeal is to be drawn up by the relevant traditional authority of the tribal inhabitants of the interior stating the reasons for the appeal. The President will appoint a committee to advise him on the matter."

183. Given the absence of judicial remedies, the Saramaka people sought relief from the violations of their property rights by submitting formal complaints under Article 41(1)(b) of the Forest Management Act and by invoking the right of petition recognized in Article 22 of Suriname's Constitution. Both proved ineffective as no concrete action was taken by the state to address and resolve violations of their property rights in relation to their complaints and petitions. Indeed, with the one exception of an acknowledgment letter, no response whatsoever was received. Moreover, while the Saramaka people awaited an effective response agents of the State continued to violate its rights with impunity.

184. For these reasons, judicial remedies by which the Saramaka people may seek protection for their property rights are unavailable as a matter of fact and law. This not only excuses the victims from the requirement of prior exhaustion of domestic remedies, it also amounts to a violation of Article 25 of the Convention in conjunction with Articles 1 and 2 of the same.

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[205] *Mining Bill*, Article 68: "(2) The holder of a mining right is obligated to compensate all damage inflicted to the claimants and third parties, whether or not caused by his negligence as a result of his activities. (3) If the parties involved cannot reach agreement concerning the nature and the extent of the damage mentioned in subsection 2 of this article, the Cantonal Judge within whose jurisdiction the terrain is located which is the basis of this conflict, will determine, upon the request of any interested party, the amount of compensation.

[206] *Id.* at Article 76(2) and Explanatory Note to Article 76. Article 76(2) provides that "If there has been no agreement on the compensation as provided in subsection 1 under b, after negotiations between the parties involved, the State will make a proposal that is binding to the parties. The State will ensure that the interests of all parties involved will reasonably be taken into account." The Explanatory note explains that "If parties cannot agree [on the amount of compensation], the executive will provide a binding decision. This model has been chosen because traditional rights do not lend themselves to the normal court procedure, because it does not concern individual rights."

[207] *Id.* at Explanatory Note to article 76.

E. Articles 1 and 2 of the Convention

185. The principle of *pact sunt servanda* is a cornerstone of international law and requires that states fulfil all international obligations in good faith and that domestic law cannot be invoked as grounds for non-compliance.[208] This principle is reiterated and amplified in Articles 1 and 2 of the American Convention, which obligate states-parties "to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction, and to adopt, if necessary, such legislative or other measures as may be necessary to give effect to those rights and freedoms."[209]

186. The jurisprudence *constante* of Court and Commission holds that Article 1 not only requires that states-parties immediately respect and ensure the free and full exercise of the rights set out in the American Convention, it also "imposes an affirmative duty on the states ... to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees."[210]

187. Article 1 also prohibits discrimination with regard to the exercise and enjoyment of the rights set out in the American Convention. This prohibition "extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations."[211]

188. In its report in *Twelve Saramaka Clans*, it is worth recalling that the Commission found that Suriname had violated this prohibition of discrimination in Article 1(1) in relation to the Saramaka people's property rights:

> The Commission considers that the lack of constitutional and legislative recognition or protection of the collective rights of the Saramaka communities reflects unequal treatment in the law ... Indeed, the State has expressly denied that the Saramaka people has an internationally recognized right to the lands and resources it has occupied and used for three centuries.[212]

189. The Court has previously held that, "it is indispensable that States grant effective protection that takes into account [indigenous peoples'] particularities, their economic and social characteristics, as well as their especially vulnerable situation, their customary law, values, customs and mores."[213]

190. Suriname has failed to comply with these obligations with regard to the rights of the Saramaka people. Surinamese legislation pertaining to land and natural

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[208] *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, OC-14/94, December 9, 1994. Series A No. 14, at para. 35.

[209] *Id.* at para. 32.

[210] *Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights)*, OC-11/90, August 10, 1990, Series A No.11, at para. 34.

[211] *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, OC-4/84, January 19, 1984. Series A No.4, at para. 54.

[212] Twelve Saramaka Clans, *supra*, at para. 236.

[213] Yakye Axa Case, *supra*, at para. 63.

resource rights not only fails to recognize and give effect to the victims' rights, it places discriminatory conditions and limitations on these rights that negate their exercise and privilege the interests of the State at their expense. The same is also true of Suriname's 1987 Constitution, which unconditionally vests ownership of all natural resources in the state without any measures to ensure that the victims' natural resource rights are secured and protected.

191. Logging and mining permits have been issued without any reference to or attempt to obtain the Saramaka people's consent and without regard for their property, subsistence and other rights. Natural resource exploitation authorized by the State took and takes place still without a prior impact assessment and effective monitoring, environmental or otherwise, without any compensation to affected communities, and without any effective mitigation or ameliorative measures. The State has also unilaterally extinguished the rights of the Saramaka people to the ownership of its territory and natural resources, and has failed to address the ongoing effects and consequences of the Afobaka dam that violate the Saramaka people's rights.

192. In addition to the obligations imposed by Article 1 and the requirement to adopt "special protections" for indigenous and tribal peoples articulated by the Commission and the Court, Article 2 of the American Convention imposes a specific and affirmative duty on states-parties to adopt and/or amend domestic legislation and other measures to give full effect to the rights recognized in the Convention and to fill "any lacunas or gaps in domestic legislation...."[214] Conversely, Article 2 also requires that states-parties not adopt legislative or other measures that contravene the rights recognized in the American Convention.

193. At a minimum, Suriname is obligated to adopt and modify legislative and other measures to identify the Saramaka people's traditionally owned lands, territory and resources and to legally recognize and secure their tenure and resource ownership in accordance with its customary laws and traditions. Without these measures, the Saramakas will be unable to enjoy and exercise their property, cultural and other rights that are based on and flow from their traditional land tenure and resource use and management practices. It must also address the land tenure situation of those Saramaka communities forcibly displaced from their traditional territory by the Afobaka dam and otherwise provide meaningful compensation to all the displaced Saramaka communities.

194. Suriname however has failed to adopt any legislative measures securing indigenous and tribal peoples' property and other rights since it acceded to the American Convention in November 1987. It has similarly failed to amend extant legislation that conflicts with and negates their rights. Moreover, Suriname has steadfastly maintained this course despite substantial and sustained attention by

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[214] Separate Opinion of Judge A.A. Cançado Trindade, *Cabellero Delgado and Santana Case, Reparations (Art. 63(1) of the American Convention on Human Rights)*, Judgment of January 29, 1997. Series C No. 31, at para. 9. See, also, Separate Opinion of Judge Hector Gross Espiell, *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights)*, OC-7/86, August 29, 1986. Series A No. 7, at para. 6; Separate Opinion of Judge Rodolfo E. Piza Escalante, *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights)*, OC-7/86, August 29, 1986. Series A No. 7, at para. 23-33.

international human rights bodies, all of which have recommended or ordered that Suriname adopt legislative and other measures to recognize and secure indigenous and tribal peoples' rights.[215] This includes the orders of the Court as these relate to the property rights of the Moiwana community.

195. For the foregoing reasons, Suriname has violated Articles 1 and 2 of the American Convention in relation to the Saramaka people's rights to own, control and be secure in the use and enjoyment of their traditional lands, territory and resources, to juridical personality, and to access to adequate and effective judicial remedies to enforce their rights.

VI. CONTINUING VALIDITY OF THE 1762 TREATY

196. In the *Aloeboetoe et al Case*, the Court had occasion to review the 1762 Treaty between the Saramaka and Dutch. In its judgment, the Court determined that the Treaty could not be applied by a human rights tribunal "because it contradicts the norms of *jus cogens superveniens*" by providing for the capture, detention, return, purchase and sale of slaves.[216]

197. The victims' representatives submit however that, while this position is correct with regard to treaties that conflict with *jus cogens* norms extant at the time the instrument in question was concluded, the provisions of a treaty that conflict with a subsequently developed *jus cogens* norms are separable and the remainder of the treaty and any legal relations established on the basis of that instrument that do not conflict with the subsequently developed norms may survive and continue to bind the parties.

198. This issue is relevant to the current case because the 1762 Treaty, reaffirmed in 1835, is a foundational instrument for the Saramaka people, an instrument that confirmed their freedom from slavery and their rights to political, cultural and territorial autonomy. In law and principle, the Treaty also established a relationship based on consent and mutual respect between the Saramaka and the Dutch and with Suriname as successor to the Dutch.[217] It is a sacred instrument consecrated by the blood oath of their most renowned and powerful ancestors whose spirits are revered and invoked to this day. To disregard the Treaty would, from the Saramaka perspective, constitute a gross and spiritually reckless offence against these most powerful ancestral spirits.

199. It would be a grave injustice if the treaty *in toto* were voided due to a provision that the Saramaka neither wanted nor complied with, that has had no effect in law and relations between the parties since slavery was abolished in Suriname over 150 years ago, and was not central to the consent of the parties when they concluded

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[215] See Annex 4.

[216] Aloeboetoe Case *supra*, at para. 57.

[217] *Report of Prof. Richard Price*, annex D of the petition of 30 September 2000, in Annex 1 to the Application of the Commission, para. 4.1.

the Treaty. As noted above and as discussed further below, such a result also contradicts established international law.[218]

200. It is also relevant because the treaty and the subsequent practice of the parties in the execution thereof confirm and protect the rights of the Saramaka people, rights that are important to the interpretation of Article 21 in conjunction with Article 29(b) of the American Convention. For example and as mentioned above, the Treaty both recognizes an agreed northern border of Saramaka territory and secures the rights of the Saramaka people to own, harvest and trade in timber. These are the same timber resources that the State expropriated by law in 1987 and subsequently granted to foreign and domestic logging companies to the extreme detriment of the Saramaka people between 1997 and 2003.

201. The Vienna Convention on the Law of Treaties specifically addresses how existing and newly established peremptory norms should impact on the interpretation, validity, termination and suspension of treaties that may conflict with the norm(s) in question. These matters are addressed by Articles 53 and 64, which provide respectively that

> A treaty is void if, *at the time of its conclusion*, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. (Emphasis added).
>
> If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

202. The victims' representatives agree that the prohibition of slavery is presently a peremptory norm of international law. This was not the case however in 1762 and 1835 and, therefore, the Saramaka treaty should be assessed in relation to Article 64 of the Vienna Convention rather than Article 53. This is important because the Vienna Convention distinguishes between the two provisions when addressing the possibility of separating out the illegal provisions and when addressing the subsequent consequences of voiding a treaty.

203. On this point, Ian Brownlie states that: "The rules governing separability of treaty provisions [Art. 44 of the Vienna Convention], that is, the severance of particular clauses affected by grounds for invalidity or terminating a treaty, do not apply [to the] cases of ... conflict with an existing peremptory norm (jus cogens) [Art. 44(5)]. Provisions in conflict with a new peremptory norm may be severable, however."[219] Other scholars and the International Law Commission hold the same view.[220]

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[218] *Vienna Convention on the Law of Treaties*, concluded at Vienna, 23 May 1969; entered into force, 27 January 1988; 1155 U.N.T.S. 331; 1969 U.N.Y.B. 140; 180 U.K.T.S. 58, Cmnd. 7964; reprinted in 8 I.L.M. 679 (1969). See Arts. 44, 53, 64, & 71.

[219] I. Brownlie, *Principles of International Law* (4th ed.), Oxford: OUP 1990, at 621-2 (footnotes omitted).

[220] See S. Davidson (ed.), *The Law of Treaties*, University of Canterbury, New Zealand, Cromwell Press (2004, pp. 506-11, at pp. 506-07 -- "unlike invalidity under Article 53, the case of

204. Article 44(5) prohibits separation of treaty provisions that conflict with Article 53 of the Vienna Convention, whereas Article 44(3) provides the permissible grounds for the separability of provisions that may be invalid or terminate on other grounds, including in cases of conflict with Article 64. Article 44(3) provides that:

> 3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
>
> (a) the said clauses are separable from the remainder of the treaty with regard to their application;
>
> (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
>
> (c) continued performance of the remainder of the treaty would not be unjust.

205. Severance of the slavery-related clauses from the Saramaka Treaty would not defeat the purpose of the Treaty, these provisions were not central to the consent of the parties – both parties' consent was based primarily on ending hostilities – and continued performance of the remainder of the Treaty, as modified by subsequent practice, would not be unjust.

206. Irrespective, Article 71(2)(b) of the Vienna Convention provides an alternative, although related, means of viewing this issue. This article provides that

> In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:
>
> (a) releases the parties from any obligation further to perform the treaty;
>
> (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

207. Termination of the Treaty thus would not affect the rights or the legal situation of the Saramaka people created through its execution prior to termination. Therefore, the rights of the Saramaka people to its forestry resources and to the autonomous control of its territory through its traditional or other institutions would not be affected for the purposes of interpreting Article 21 of the Convention.

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termination under Article 64 admits of separability of treaty provisions, and those which are not tainted with illegality continue to be valid;" *International Law Commission's Commentary on Article 61 (now Article 64 of Vienna Convention), found in United Nations Conference on the Law of Treaties, First and second sessions,* Vienna, 26 March – 24 May 1968 and 9 April – 22 May 1969, Official Records, Documents of the Conference, United Nations, New York 1971, at p. 80-81, para. 3 -- finding that "different considerations apply in the case of a treaty [falling under Article 64]... If those [conflicting] provisions can properly be regarded as severable from the treaty, the Commission thought that the rest of the treaty out to be regarded as still valid;" C. Rozakis, *The Concept of Jus Cogens in the Law of Treaties,* North-Publishing Co. (1976), p. 122-26 -- arguing that the rational for allowing separability for Article 64 cases seemed equally applicable to Article 53; and Lauri Hannikainen, *Peremptory Norms (Jus Cogens)in International Law: Historical Development, Criteria, Present Status,* Finnish Lawyers' Publishing Company, Helsinki (1988), at p. 299-301 -- "in cases of invalidity under Art. 53 the whole treaty is void, whereas in the cases of invalidity under Art. 64 it is not excluded that only a part of the treaty is declared void and terminated."

208. The victims' representatives urge the Court to adopt the preceding approach to the Saramaka Treaty in its consideration of the issues raise in the case *sub judice*.

VII. REPARATIONS AND COSTS

209. Article 63(1) of the American Convention codifies a canon of customary international law and the fundamental principle that "every violation of an international obligation which results in harm creates a duty to make adequate reparation."[221]

210. On the basis of the proven facts and as a matter of law, Suriname is responsible for violations of the victims' rights guaranteed by Articles 3, 21, 25, 1 and 2 of the American Convention in the instant case. These violations inflicted material and non-material harm on the victims. Pursuant to article 63(1) of the Convention, Suriname has the duty to repair these violations. This obligation to repair requires *restitution in integrum* and, where this is not possible, measures that will safeguard the violated rights, redress the consequences of the violations, and compensate for damages sustained.[222] The nature and amount of reparations depend on the damage caused at both the pecuniary and non-pecuniary level.[223]

211. In this case, the victims' representatives seek reparations for all material and immaterial damages directly, indirectly and proximately caused by Suriname's acts and omissions that violate the Saramaka people's rights under the American Convention. They also seek an award of all costs incurred in prosecuting this case domestically and before the inter-American human rights protection organs.

212. The material and immaterial damages in the instant case have a collective dimension. The violations and harm have been suffered by a community, namely the Saramaka people, which must be deemed to be the injured party and beneficiary in the instant case, as well as by the members thereof. As members of an identifiable community, each Saramaka person need not be individually identified.[224] These violations and the resulting harm have affected the victims' right to preserve their cultural heritage and to pass this along to future generations, as well as their ability to comply with their religious and spiritual obligations and their obligations to their ancestors.[225]

213. Consistent with the Court's jurisprudence in the *Awas Tingni*, *Plan de Sánchez*, *Yakye Axa* and *Moiwana Village* cases, the requested reparations should therefore also account for and address this collective dimension. In particular, we request that any award be administered by a community development fund similar to that ordered in *Yakye Axa* and *Moiwana Village*.

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

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

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

224 *Order of the Inter-American Court of Human Rights of March 6, 2003, Provisional Measures, Jiguamiandó and the Curbaradó Communities Case*, at para. 9

225 *Inter alia*, *Report of Richard Price in support of Provisional Measures*, in Annex 2 of the Application of the Commission, para. 7 *et seq*.

214. The victims' representatives will present appropriate assessments of the nature and extent of the above mentioned damages to the Court, including in expert and other testimony.

A. Material Damages

215. The victims' representatives seek an award to compensate for the material damages suffered by the Saramaka people in this case. These material damages are caused by the ongoing and unmitigated effects of the irretrievable loss of 1,400 square kilometres of Saramaka territory, which commenced with the construction of the Afobaka dam in 1963-4; by environmental degradation; and by the prolonged denial of access to and destruction of subsistence and cultural resources perpetrated by the Chinese and local logging concessionaires with the active involvement of the National Army of Suriname.[226]

216. We also seek an award to compensate the Saramaka people for the market value of their timber resources, which were harvested and expropriated without their consent by the logging companies authorized by the State.

B. Moral Damages

217. On the basis of the facts in this case, it may be presumed that the victims have suffered moral damages, which may include "suffering and affliction, detriment to very significant personal values, as well as non-pecuniary alterations to a victim's living conditions."[227] These moral damages must also be repaired, on an equitable basis, through the payment of compensation.

218. The Saramaka people has been seeking protection for its property and other rights for tens of years. Not only has the State failed to act on the numerous requests and demands submitted by the victims – individually and in collaboration with other indigenous and tribal peoples – it has derided those requests and belittled and maligned the victims for presenting them. It has also failed to provide any meaningful redress for the flooding of Saramaka territory, including the loss of ancestral burial grounds and sacred sites, caused by the Afobaka dam, which continues to be a major source of pain and suffering for the Saramaka people today.

219. Those communities displaced by the dam and now living outside of traditional Saramaka territory have suffered invasions of small-scale miners that have caused severe environmental contamination. Their presently occupied lands have been issued to multinational mining companies without informing them let alone seeking their consent. Mercury contamination, which may be present for generations, may have long-term and debilitating health impacts especially for the development of children. Despite living under the power lines from the dam, only a few of these communities have access to electricity and other basic services.

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[226] See, G. Handl, Indigenous Peoples' Subsistence Lifestyle as an Environmental Valuation Problem. In, M. Bowman and A. Boyle (eds.), *Environmental Damage in International and Comparative Law. Problems of Definition and Valuation*. Oxford: OUP, 2002 – explaining the bases in international and comparative law for cultural and subsistence lifestyle damages claims by indigenous peoples.

[227] Moiwana Village case, *supra*, at para. 191.

220. The displaced communities that relocated within traditional Saramaka territory continue to feel that they are intruding on and causing hardship to their kin who have allowed them to (re-)establish their villages in traditional clan territory. This is directly related to the stresses placed on Saramaka lands and resources by the forced displacement. The displaced often remark that they are a burden on their kin and that they feel like second class citizens.

221. None of the displaced communities have security of tenure over their lands and resources and only a few persons received any compensation for the loss of their lands, resources and sacred sites. Such a prolonged delay in effectively securing the victims' rights may be presumed to cause suffering and anguish that requires repair.

222. Suriname's acts and omissions that resulted in violations of the American Convention are highly detrimental to the most important of the Saramaka people's values, further compounding their pain and suffering. The Court observed in its considerations on moral damages in the *Yakye Axa* case, that the failure to recognize and respect indigenous and tribal peoples' fundamental and all encompassing relationships to their traditional territories constitutes a denigration of their basic cultural and spiritual values and threatens irreparable harm to their physical and cultural integrity.[228]

223. In *Moiwana Village*, the Court concluded that the community members "have endured significant emotional, psychological, spiritual and economic hardship – suffering to a such a degree as to result in the State's violation of Article 5(1) of the American Convention –" in part on the grounds that they had been forcibly separated from their traditional lands and subsistence resources.[229]

224. In this respect, Richard Price observes that, for the Saramaka people, the forest "is a thoroughly sacrelized space;" and "is the basis for Saramaka religion and its destruction would bring the end of a strong, fundamental, and absolutely essential determining element of traditional Saramaka culture."[230] He further explains that

> The specter of Chinese laborers working at these sites with earthmoving equipment, or the Brazilian miners who are sure to follow if these roads are permitted to be constructed, is as frightening and damaging to Saramakas as would be the wholesale destruction of Mecca to a Muslim. It is no exageration to say that it constitutes, from a Saramaka perspective, an attack as devastating as that experienced by New Yorkers after the crumbling of the World Trade Center. Indeed, it would constitute an even more irreparable attack on life as they know it, an even more traumatic destruction of any sense of security that they earlier came to expect.[231]

225. The Saramaka people are acutely aware of the threats posed by Suriname's failure to recognize and effectively secure their rights and this is a source of enormous anxiety and pain at both a collective and individual level. This anxiety has been

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[228] Yakye Axa Case, *supra*, para. 203.
[229] Moiwana Village, *supra*, at para. 101-02.
[230] *Report of Richard Price in support of Provisional Measures*, in Annex 2 of the Application of the Commission, para. 14.
[231] *Id.* at para. 16.

greatly increased and intensified by the State's authorization of logging and mining concessions within Saramaka territory.

226. The State's failure to respond to and address the numerous complaints submitted by the Saramaka people, its explicit denial that the Saramaka people holds any rights to its territory, and its active support for the Chinese logging concessionaires – in particular, the provision of military personnel to guard the concessions – have left the Saramaka with a deep feeling of helplessness and the belief that those who violate their rights can do so with impunity.

227. This impunity is not imagined; Suriname's laws fail to provide any effective remedies by which the Saramaka people may assert and seek protection for their rights. Prolonged impunity and denial of effective remedies is a recognized cause of suffering and anguish in the inter-American system.[232]

228. The above mentioned military presence in Saramaka territory is also deeply offensive to the Saramaka on multiple levels: it recalls Dutch incursions in the 18th century when the Saramaka were fighting for their freedom from slavery and invokes their most profound fear – a return to slavery. It also recalls more recent history, when the Suriname army massacred seven Saramaka men in 1987, an incident that gave rise to the *Aloeboetoe et al Case* decided by the Court in 1993.

229. The military presence in their territory therefore was a source of substantial intimidation and fear and further denigrated the values that the Saramaka hold most dear. As stated by Richard Price "The use of Suriname army troops to 'protect' the Chinese laborers who are destroying the forests that Saramakas depend on for their subsistence, construction, and religious needs is an extraordinary insult to Saramaka ideas about their territorial sovereignty. ... Their presence in the sacred forest of the Saramakas, with explicit orders to protect it *against* Saramakas, on behalf of the Chinese, is an ultimate affront to cultural and spiritual integrity."[233]

C. Other Forms of Reparation

230. The victims' representatives seek the following additional forms of reparation:

a. Delimitation, Demarcation and Titling:

i) an order requiring that the State adopt legislative, administrative, and any other measures, necessary to create an effective mechanism for the delimitation, demarcation and titling of Saramaka people's traditionally-owned territory and the resources therein, in accordance with the its customary law, values, customs and mores and consistent with its right to effectively control said territory and resources. This order should also make allowance for the provision of additional lands to compensate for the lands lost due to the Afobaka dam and the consequent over-crowding on the Upper Suriname River;

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[232] *Inter alia, id.* para. 94; and *Case of the Serrano-Cruz Sisters*, Judgment of March 1, 2005. Series C, No. 120, paras. 113-115.

[233] *Report of Richard Price in support of Provisional Measures*, in Annex 2 of the Application of the Commission, para. 18.

ii) an order requiring that Suriname delimit, demarcate and title adequate communal lands for the Saramaka communities forced to relocate outside of their traditional territory by the Afobaka dam, with their consent and the consent of the neighbouring indigenous peoples' communities, and further requiring that Suriname adequately compensate the Saramaka people for the loss of 1,400 square kilometres of its territory caused by the same dam;

iii) an order requiring that Suriname suspend all mining activities that have not been consented to by the Saramaka people in the areas occupied and used by those communities now living outside of traditional Saramaka territory, at least until such time as their communal tenure rights have been secured in law and fact;

iv) an order requiring the State to complete the delimitation, demarcation and titling of Saramaka lands, territory and resources within an eighteen month-long period;

v) an order requiring that the State adopt or amend legislative, administrative, and any other measures, as may be required to recognize and secure the right of the Saramaka people to give or withhold its free, prior and informed consent to activities that may affect its lands, territory and resources; and,

vi) an order requiring that the measures identified above shall be taken with the informed participation and free, prior and informed consent of the Saramaka people, as expressed through its freely chosen traditional authorities and representatives;

b) Official Apology:

i) an order requiring that the State officially and publicly apologize for violations of the Saramaka people's property and other rights and give a public commitment to ensure that such rights shall be upheld in the future. This apology should be made in a formal ceremony to which all Saramaka traditional authorities shall be invited as well as in the media; and,

c) Developmental Fund:

i) consistent with the Court's judgments in *Yakye Axa* and *Moiwana Village* and as part of the collective reparations that should be awarded to the Saramaka people, an order requiring the establishment of a developmental fund. This fund should have sufficient capital to invest in health, education, resource management and other projects in Saramaka territory, all determined and implemented with the informed participation and consent of the Saramaka people. Any award of material or moral damages should be added to this fund and used for the same purposes.

D. Costs

231. The victims' representatives additionally seek an award of all costs incurred in prosecuting this case domestically and before the inter-American human rights protection organs. Receipts documenting these costs will be compiled and presented to the Court at the appropriate time.

VIII. CONCLUSIONS AND PRAYER

232. Based on the analysis above, the victims' representatives respectfully request that the Court declare that Suriname is internationally responsible for violations of

a) the right to property in Article 21 by not adopting effective measures to recognize and secure the Saramaka people's communal property rights to the lands, territory and resources it has traditionally owned, without prejudice to other indigenous and tribal peoples;

b) the right to property in Article 21 by granting logging and mining concessions within Saramaka territory and by authorizing destructive logging operations therein without obtaining the free, prior and informed consent of the Saramaka people;

c) the right to property in Article 21 in relation to the ongoing and continuous effects of the Afobaka dam and reservoir and its failure to recognize and respect the associated right of the Saramaka people to restitution or, where not possible, compensation and the provision of alternative lands;

d) the right to property in Article 21 for failing to recognize and protect the Saramaka people's property and governmental interests in its natural wealth and resources and for failing to secure and protect their effective possession of and control over these resources, rights that are guaranteed and protected by Article 1 of the Covenants, all in connection with Suriname's unilateral extinguishment of these rights in its Constitution and subsequent expropriation of the Saramaka people's resources;

e) the right to juridical personality enshrined in Article 3 of the Convention by failing to recognize the legal personality of the Saramaka people;

f) the right to judicial protection guaranteed by Article 25 of the Convention due to its failure to provide the Saramaka people effective access to justice for the protection of its fundamental rights; and

g) Suriname's non-compliance with Articles 1 and 2 of the Convention in connection with its failure to recognize and give effect to the Saramaka people's property and other rights.

233. To remedy these violations, the victims' representatives request that the Court order the measures specified in paragraph 230 *supra* as well as any additional measures that the Court considers appropriate.

IX. EVIDENCE

A. Documentary Evidence

234. The victims' representatives offer the following supporting evidence in addition to that previously submitted by the Commission in its Application to the Court:

a) updated maps depicting contemporary Saramaka occupation and use of lands and resources;
b) aerial photographs of Saramaka communities and traditional farming areas on the Upper Suriname River;
c) updated concession maps produced by the State depicting existing resource exploitation concessions in Saramaka territory;
d) decisions of United Nations treaty bodies concerning Suriname as they relate to the rights of indigenous and tribal peoples;
e) newspaper articles referring to the situation of the Saramaka people.

235. The victims' representatives request that the Court request the State to present the following:

a) official statistics document the amount of timber both harvested and exported by Tacoba (also known as Topco NV or Tacoba Foresry Consultants) and Ji Shen Wood Industries (also known as Jin Lin Wood Industries); and,
b) an official translation of the 2004 Mining Bill;

B. Testimonial Evidence

1) Witnesses

235. The victims' representatives respectfully request that the Court summon the following witnesses:

(a) Head Captain Wazen Eduards: Head Captain Eduards is the Chairperson of the Association of Saramaka Authorities (ASA), the authorized representative of the Dombi *lö* and was recently appointed to the position of *Fiskalie* by the *Gaama* of the Saramaka people. There are three *Fiskalie*, who together with the *Gaama* form the *Gaama's* Council, the highest political body in Saramaka society. He will testify about the creation of the ASA to counter the incursion of Chinese logging companies; the impact of these 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 twelve clans and the importance of the land and security of tenure for the maintenance of Saramaka cultural integrity, identity, and spirituality;

(b) Hugo Jabini: Mr. Jabini is a founding member of the ASA and its authorized representative in Paramaribo. He has been involved with this case since its inception and will testify about the Saramaka people's efforts to seek

protection for their rights to lands and resources domestically and attempts to settle the case with the State. He will also address the impact of logging activities in Saramaka territory and the measures employed by the Saramaka people to document their traditional occupation and use of their territory and the activities of logging companies;

(c) **Captain Ceasar Adjako:** Captain Adjako (Matjau *lö*) will testify about the arrival of the Chinese companies on the lands of his clan, destruction of the forest and Saramaka subsistence farms and resources, and violation of Saramaka sacred sites. He will also address 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 as a whole; and,

(d) **Head Captain Eddie Fonkel:** Head Captain Fonkel is one of the three Saramaka *Fiskalie* and the authorized representative of the Abaisa *lö*. He will address the impact of the flooding of Saramaka lands by the Afobaka dam and its ongoing effects and consequences for the Saramaka people. He will also 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.

236. **Translation:** The majority of the Saramaka witnesses does not speak English, Spanish or Dutch, and therefore will have to testify in their own language. The Petitioners have identified a translator and will fund translation services for these witnesses. The translator will be Mr. Adiante Franzoon, a Saramaka person from the Upper Suriname River, who has lived in the United States for over twenty years. He is fluent in English and Saramaka and able to translate simultaneously.

2) Expert Witnesses

237. The victims' representatives respectfully request that the Court summon the following expert witnesses:

(a) **Professor Richard Price:** Dr. Price is the pre-eminent academic authority on the history and culture of the Saramaka people. He is the Duane A. and Virginia S. Dittman Professor of American Studies, Anthropology, and History, at the College of William & Mary in the United States and has held a variety of positions at other leading academic institutions. Dr. Price has written extensively on Saramaka history, social structure and culture. He will testify about Saramaka social structure; traditional land tenure systems and customary law; Saramaka economy, hunting, gathering, fishing and farming; cultural and spiritual relationships to lands, territory and resources; the impact of the Afobaka dam; Saramaka treaty rights and relations with the State; and reparations;[234]

[234] CV in Annex 19 to the Application of the Commission

(b) **Mariska Muskiet:** Ms. Muskiet holds a Master of Laws degree from the University of Suriname, where she is currently a lecturer on property law. She has also taught at the University of Amsterdam. She is presently the Acting Director of Stichting Moiwana, Suriname's main human rights organization. Ms. Muskiet will testify about the nature of Surinamese law, property law in particular, as it relates to the substantive violations alleged in this case as well as domestic remedies issues;[235]

(c) **Dr. Peter Poole:** Dr. Poole is a geomatics expert with extensive experience of working with indigenous peoples in all regions of the world. He has published numerous articles on mapping indigenous lands and acted as a consultant to the World Bank and other international institutions. Dr. Poole assisted the Saramaka people in making a map of their territory and using remote imaging technology, including aerial and satellite photography, to identify and analyze the impacts of logging and other activities on their territory. He will testify about the process of making the Saramaka map, and the conclusions that can be drawn from the map and from aerial photos of logging activity on Saramaka lands. He will attest to the evidentiary probity of the aerial photographs showing logging operations and settlement patterns in Saramaka territory;[236] and,

(d) **Professor Martin Scheinin**: Dr. Scheinin is Armfelt Professor of Constitutional and International Law and Director of the Institute for Human Rights at the Åbo Akademi University, Finland. He is a former member of the United Nations Human Rights Committee (1997-2004) and is presently United Nations Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism. Dr. Scheinin has written widely on indigenous peoples' rights in international law and will testify about the relationship between Article 1, especially sub-paragraph (2), of the international Covenants and Articles 21 and 3 of the American Convention.[237]

3. Testimony by Affidavit

238. The victims' representatives additionally request that the Court summon the following persons to give evidence by affidavit:

a) Expert witnesses:

(i) **Dr. Robert Goodland:** Dr. Goodland is the former head of the World Bank's Environment Department and was responsible for drafting World Bank policies on Environmental Impact Assessment and Indigenous Peoples. He will testify about the impact of logging operations on the Saramaka people and the ongoing impacts of the Afobaka dam. He will also testify about the State's plans to increase the storage capacity of the dam as it is relevant to the current situation of the Saramaka people.[238]

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[235] CV in Annex 20 to the Application of the Commission.
[236] CV in Annex 21 to the Application of the Commission.
[237] CV in Annex 5.1.
[238] CV in Annex 5.2.

b) Witnesses:

(i) Ms. Silvi Adjako: Ms. Adjako is a member of Kajapati village and was directly affected by the operations of the Ji Shen logging company. In particular, Ji Shen bulldozed Ms. Adjako's subsistence farm. She will testify about the personal and communal impact of this company's operations and her and her community's efforts to obtain redress for the destruction of their subsistence resources; and,

(ii) Mr. George Leidsman: Mr. Leidsman is a Saramaka person with substantial knowledge of the forcible displacement of the Saramaka in the 1960s and its ongoing consequences and effects.