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Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 7 March 2000
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I. SUMMARY

1. The petition was lodged by the human rights organization Moiwana '86 of Suriname on June 27, 1997, and concerns the extrajudicial execution of more than 40 residents of Moiwana, a village belonging to one of Suriname's maroon communities, and the intentional destruction of their property by members of the Army of that country. The petition also addresses the failure to provide a fair trial with due process, and compensation for those acts. The State did not answer the Commission's requests for information about the petition. The Commission after analyzing the petition and the fulfillment of the requisites provided for the application of the American Declaration on the Rights and Duties of Man (the "Declaration") and the American Convention on Human Rights (the "Convention"), decided to declare the case admissible in respect to alleged violations of Articles I, right to life, liberty and personal security; VII. right to protection for mothers and children; IX. right to inviolability of the home; XXIII, right to property; all of them of the Declaration; and Articles 8(1), right to a fair trial; and 25(2) right to judicial protection, and Article 1(1) Obligation to respect rights of the Convention.

II. PROCESSING BY THE COMMISSION

2. The Commission received the petition on June 27, 1997, and transmitted it to the Government on October 30 of that year, requesting a reply within the next 90 days. Faced with the Government's failure to reply, the Commission repeated the request on two occasions, June 2, 1998, and February 25, 1999, indicating that it would consider application of Article 42 of its Regulations in the event no reply were received within the next 30 days. To date the Commission has not received any response from the State.

III. POSITION OF THE PARTIES

A. The petitioner

3. By way of general background information, the petition says that in 1980 a group of officers of the National Army of Suriname carried out a coup d'état and their leader, Desi Bouterse, declared himself Commander-in-Chief of the Army. Those military officers proceeded to appoint a civilian administration, which announced it would call elections. However, no such elections were ever held and instead there followed a period of serious and systematic human rights violations, which were documented overall by the IACHR in several reports[FN1].

[FN1] Reports on the Situation of Human Rights in Suriname, 1983 and 1985, several resolutions (including those published in the 1988-89 Annual Report, p. 123-54) and two cases before the Inter-American Court (Nº 10.150 and 10.274).

4. As specific background information, the petition mentions that in 1986 an armed opposition group (the "Jungle Commando") was set up with the support of Surinamese exiles living in Holland and under the leadership of Ronnie Brunswick, a former member of Desi Bouterse's guard. That group's initial activities were attacks on military posts in Eastern Suriname in the territory of the Ndjuka maroons, the people to which Brunswick and most of his armed followers belong. The Army responded with extensive operations in the region and with systematic and collective reprisals against the civilian maroon population, alleging they were collaborating with the Jungle Commando. Villages of maroons who belonged to other tribes and lived in different regions were targeted for reprisal by the Surinamese Army, which killed between 150 and 200 civilians. It should be recalled, inter alia, that the IACHR documented[FN2] cases where the maroons had been made victims of forced starvation, illegal cuts in benefits, and "ethnocide."

[FN2] IACHR 1986-97 Annual Report, p. 263-65.

5. The petition states with respect to the massacre and destruction at the village of Moiwana, which is the principal subject of the petition, that at the beginning of November 1986 the military commenced a "cleansing" operation in Eastern Suriname, and ordered the civilian population to evacuate the area. For various reasons many did not leave. The operation against the village of Moiwana and its outlying areas began, according to the petition, on November 29, 1986, and was carried out by a military unit made up of specially-trained men divided into three groups, one of which launched a direct attack on the village. This action started with the burning of the house belonging to the rebel leader, Brunswick, and continued with the shooting of nearly all the inhabitants, after which the village was burned. At the same time the soldiers blew up a bus that was approaching, killing all the occupants. After these events were over 40 people were dead, victims of extrajudicial execution by government troops. Some of the corpses that were

taken to the morgue in Alfonsdorp were incinerated next to the morgue building. Toward the end of November 1986, the Government denied having carried out any operations in the area.

6. According to the petition, in 1989 the Civil Police attempted to carry out an investigation led by Police Inspector Herman E. Gooding, who was murdered on August 4, 1990, after meeting with the Deputy Commander of the Military Police, as documented in the report by the IACHR[FN3]. His corpse was found next to the office of Commander-in-Chief Bouterse. Several soldiers were arrested by the Civil Police shortly after the Moiwana massacre, but were released after the police were besieged by 30 armed Military Policemen acting on the orders of Commander-in-Chief Bouterse.

[FN3] IACHR 1990-91 Annual Report, p. 497-98.

7. In 1992, the Parliament of Suriname adopted a retroactive Amnesty Law that canceled all proceedings related to human rights violations committed from 1985 to 1991, except for crimes against humanity defined by the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Charter of the Nuremberg Tribunal of 1950 (Nuremberg Principles). According to the petitioners, the foregoing means that the aforesaid Amnesty Law does not apply to the crimes of Moiwana.

8. On the question of the law, the petition alleges violation by the Government of Suriname of Articles I, right to life and personal security; VII, right to protection for mothers and children; IX, right to inviolability of the home; and XXIII, right to property of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"); Articles 8 (1), right to a fair trial; and 25(1) and 25(2), right to judicial protection of the American Convention on Human Rights. The petition further alleges violation of Article 3 of the Geneva Convention of August 12, 1949; and Articles 4 and 13 of the Protocol Additional to the forenamed convention, Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1978, and of international criminal law related to the prohibition and punishment of crimes against humanity.

9. The petitioner pleads exception to the requirement of exhaustion of domestic remedies based on the grounds contained in Article 37(2)(b) and (c) of the Regulations of the IACHR, which refer, respectively, to denial of access to the remedies under domestic law or prevention from exhausting them, and to unwarranted delay in rendering a final judgment.

10. The petitioners claim that the Attorney General and the President of the Court are the only ones who could have ordered an investigation and filed criminal charges against those responsible, but that neither of them had opened a meaningful investigation into the Moiwana massacre, nor adopted any measures either to implement the recommendations that the Commission made in five decisions that it published in its 1989 Annual Report, or against the mass repression inflicted by the Army in 1986 in the village of Moiwana and other locations against Maroons and Amerindians, which led to their exile en masse in French Guyana and Paramaribo. The petitioner alleges that the State has provided no compensation at all to any of

the victims, be they the residents of the village of Moiwana or the refugees, 10,000 of whom were still living in refugee camps near St. Laurent, in French Guyana at the time the petition was lodged.

11. The petitioners further assert that there was unwarranted delay of justice in accordance with Article 37(c) of the Regulations of the IACHR, given that the massacre took place on November 29, 1986, more than 10 years before the petition was filed and yet the court had still not issued a final decision. The petitioners claim that prior to 1992, one could understand why the civil, elected, and judicial authorities should have failed to investigate and administer justice because the Armed Force were in control and democracy was weak. They contend that after that date such reasoning was no longer valid.

12. The petitioners report that in May 1993 a mass grave was found containing a number of corpses of the victims from the village of Moiwana, and that the Ministry of Justice and the police indicated that the legal investigation and prosecution of the matter were not priorities for that administration, and that the country's economic and social problems took precedence. For its part, the Ministry of Social Affairs and Housing, declared in a press conference at the time that the Moiwana massacre must be deemed covered by the Amnesty Law that had been passed, and, therefore, was not justiciable. By the same token, the petitioners report that despite identification of several of the corpses (of five to seven adults and two to three children) in the grave as members of the Moiwana community, no measures whatever were adopted.

13. The petitioners also say that the Parliament of Suriname adopted in December 1995 a motion requiring the Executive Branch immediately to open an investigation into several infamous violations committed during the military regime, including the Moiwana massacre, but that no action was taken either. The petitioners also mention that they have repeatedly requested the authorities to adopt measures on the matter, to no avail. The petitioners state that under Surnames law, at the request of a private claimant the Supreme Court, if the request is justified, is required to ask the Attorney General to undertake an investigation into the matter in question. Accordingly, the petitioners made such a request and the President of the Supreme Court informed them that he had solicited information from the Attorney General but that the latter had not provided it to him. The petition claims that the party that won the elections and establishes judicial priorities is under the leadership of Desire Bouterse, the military officer who headed the military regime that carried out the alleged violations, for which reason it is unlikely that the Government will adopt a different attitude.

14. The petitioners attach official documents, together with reports on the situation supporting the foregoing allegations published internationally by governments and non-governmental organizations. For all these reasons they request that the exception to the requirement to exhaust domestic remedies be accepted.

B. The State

15. Notwithstanding repeated requests by the Commission made on October 30, 1997, June 2, 1998, and February 25, 1999, the latter indicating that the Commission will consider the application of Article 42 of its Regulations if no answer were received within 30 days, the State

of Suriname did not reply to any of those requests for comments. The Commission considers consequently that the State has not controverted the facts alleged in the petition.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* of the Commission

16. The petitioners claim that the State of Suriname violated rights of the inhabitants of the village of Moiwana recognized in Articles I, VII, IX, and XXIII of the Declaration; and in Articles 8(1), and 25(1) and 25(2) of the Convention, by facts occurred in the Surinames territory affecting natural persons under Suriname's jurisdiction.

17. The Commission considers it is competent *ratione materiae*, *ratione personae* and *ratione loci* in this case to analyze the complaint in reference to presumed violations to the Declaration and the Convention.

18. Suriname, as a member state of the OAS is bound both to the Declaration since the beginning to its membership to the OAS on June 8, 1977; and to the Convention which it has ratified on November 12, 1987. The original events that originated the petition, specifically the alleged attack on the village of Moiwana and the extrajudicial executions and other violations denounced, would have happened on November 29, 1986, while the Declaration was in force in regard to Suriname. In reference to the Convention, the facts referring to its duty in respect to legal guarantees and due process are of a continuous nature.[FN4]. Therefore, the Commission is competence *ratione temporis* with regard to those facts as per the competent given by the Convention.

[FN4] Cf. CIDH Case 11.516 Ovelario Tames. Report N° 60/99, April 13th, 1999. Paras. 26 and 27. Annual Report 1998, Vol I, p.446.

19. In those matters specifically referred to the Declaration, the Commission is competent to know the case because the allegations referred to violations of rights recognized in its Article I (right to life, liberty and personal security); VII (right to protection for mothers and children); IX (right to inviolability of the home); and XXIII (right to property) as indicated by Articles 26 and 51 of its Regulations.[FN5]

[FN5] The fact that Suriname had ratified the American Convention on November 12, 1987, does not exempt it from the responsibility for acts that violate human rights and that had occurred before its ratification, but are guaranteed by the American Declaration, which has binding force, as per Advisory Opinion N° 10, Inter-American Court of Human Rights. Interpretation of the American Declaration on the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights. Serie A. Decisions and Opinions.N° 10.

20. The Commission is also competent with respect to the Convention, to examine the alleged facts that may constitute violation or continuous denegation of justice as per Articles 8 and 25 (right to judicial guarantees, and rights to due legal process) in relation with Article 1(1). By its ratification of the Convention, Suriname assumed the duty to respect all rights and freedoms recognized in the Convention and to guarantee its full and free enjoyment to all persons under its jurisdiction[FN6] (Article 1(1)), including judicial guarantees and protection, as stated in Articles 8 and 25. According to the Inter-American Court on Human Rights this obligation implies the duty of the State party to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridical ensuring the free and full enjoyment of human rights.

[FN6] I.A. Court HR. Godinez Cruz Case, Judgment of January 20, 1989, Serie C. N° 5 par. 175.

21. Consequently, the Commission has competence *ratione tempore* to examine and decide the instant case, in relation to the violations allegedly occurred before Suriname's ratification of the Convention, as well as in relation with the Convention in reference to proceedings and activities or inactions by the State of Suriname as continuing violations of Articles 8 and 25 of the Convention, in relation with its Article 1(1).

22. The Commission considers as well necessary to examine the admissibility in relation with the positive obligation indicated in Article 1(1) of the Convention (obligation to respect the rights and freedoms recognized and to guarantee its full and free exercise). In that sense the Commission reminds what the Court has indicated:

Basically, the measures the Court may impose constitute the protection of the law for the rights provided by the Convention which in light of the positive obligation contained in Article 1(1) obligating states to respect and guarantee them, implies, as the Court has stated... the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.[FN7]

[FN7] I.A. Court HR. Velásquez Rodríguez Case, Judgment of July 29, 1988, Serie C. N° 4. par. 164. Godinez Cruz Case, Judgment of January 20, 1989, Serie C .N° 5 par. 175.

23. While petitioners do not explicitly invoke violation of Article 1(1), either as positive obligation, and in relation to other Articles recognized in the Convention that allegedly have been violated, the Commission in consideration of the facts denounced considers it shall examine the eventual violation of Article 1 to establish if the State of Suriname has violated in the instant case its obligation to respect and guarantee the rights to judicial guarantees and protection.

B. Other requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

24. Article 46 of the Convention stipulates that for a case to be admitted will be required, “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” However, the Convention provides for exceptions to this requirement when the domestic law does not provide de facto or de jure remedies. Indeed, Article 46(2) specifies that the above is the case when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. In the instant case, it emerges from what is documented by the petitioner, and not challenged by the State, that, in practice, the petitioner was denied access to those remedies; that the authorities in charge of pressing forward proceedings failed even to institute them, much less complete them; that the initial investigations, the basis for possible remedies, were obstructed by agents of the State; and that an Amnesty Law was interpreted by the authorities as relieving them of the obligation to prosecute those responsible.

25. As indicated by the Court, the exception to the rule of exhaustion of domestic remedies results, following the principles of international law:

... in the first place that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it as this Court has already recognized (see Viviana Gallardo et al. Judgment of November 13,1981, N° G 101/81, Series A, para. 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.[FN8]

[FN8] I.A. Court HR. Caso Godinez Cruz, Preliminary Objections (Judgment of June 26,1987) Series C.N° 3 para. 90.

26. Petitioners invoked in their original complaint the exception to the requirement of exhaustion of domestic remedies, based on the inexistence of an effective remedy and in unjustified delay in the proceedings. Consequently, the burden of the proof to deny this statement by the petitioners becomes a responsibility of the State. By not answering the repeated requests for comments to the complaint, the State has not controverted these allegations and renounced its right to oppose this exception. The Commission concludes that the requirement in relation with the exhaustion of domestic remedies has been satisfied in the instant case.

b. Period for presentation of the petition

27. In the original complaint petitioner explained the reasons to consider the presentation done within a reasonable period. Petitioner alleged that the case was presented ten years after the

originating facts, and that during the first four years of that period the Government was ruled or de facto controlled by a military regime, reason that impeded the initiation of the domestic remedies. Moreover, the amnesty established by Parliament in 1987 had voided the possibility for the victims to obtain due judicial reparation. After 1991, already under a constitutionally elected government, government representatives declared in several opportunities their lack of interest in pursuing their obligation to investigate and to prosecute those responsible, and to make reparations to the victims. Petitioner alleged that during all that period, representatives of the victims made repeated attempts to spur the authorities into action to no avail.

28. It is incumbent upon the State the burden of proof to deny those allegations. The Commission considers that in the instant case the conditions have been fulfilled in relation to the presentation within a reasonable period as stated by Article 46(2) of the Convention, and Articles 38(2) and 52 of its Regulations.

c. Duplication of proceedings

29. According to the record, the petition is not pending in another international proceeding for settlement as prescribed by Article 46(1)(c) of the American Convention, nor is it substantially the same as one previously studied by the Commission or by another international organization in accordance with Article 47(d) of the Convention. The State has not challenged the petition on grounds of duplication of proceedings. Accordingly, the Commission finds that there is no duplication of proceedings in the instant case.

d. Characterization of the facts to establish a violation

30. The alleged facts if proven, may characterize violations of Articles I, VII, IX, and XXIII of the Declaration and Articles 8, 25, and 1 of the Convention.

V. CONCLUSIONS

31. The Commission concludes that it is competent to examine the instant case, that the petition is admissible, in conformity with Articles 52 and 38(2) of its Regulations in what refers to the Declaration and with same Article 38(2) in what refers to the Convention.

32. On the basis of the arguments of fact and law analyzed, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible in relation to alleged violations to Articles I, right to life, liberty and personal security; VII, right to protection for mothers and children; IX, right to inviolability of the home, of the American Declaration; and to Articles 8(1) right to a fair trial; 25(2) right to judicial protection, and 1(1) obligation to respect the rights, of the Convention.
2. To transmit this report to the State of Suriname and to the petitioners.

3. To continue with its analysis of the merits of the case.
4. To make itself available to the parties with a view to reaching a friendly settlement of the matter based on the respect to the rights recognized by the Convention and to invite the parties of the case to answer about this possibility; and,
5. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 7th day of the month of March, 2000. (Signed:) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; and Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.