

WorldCourts™

| | |
|-----------------------|--|
| Institution: | Inter-American Court of Human Rights |
| Title/Style of Cause: | Daison Aloeboetoe, Dedemanu Aloeboetoe, Mikuwendje Aloeboetoe, John Amoida, Richenel Voola (alias Aside or Ameikanbuka), Martin Indisie Banai and Beri Tiopo v. Suriname |
| Doc. Type: | Judgment (Reparations and Costs) |
| Decided by: | President: Rafael Nieto-Navia; Vice President: Sonia Picado-Sotela; Judges: Hector Fix-Zamudio; Julio A. Barberis; Asdrubal Aguiar-Aranguren; Antonio A. Cancado Trindade |
| Dated: | 10 September 1993 |
| Citation: | Aloeboetoe v. Suriname, Judgment (IACtHR, 10 Sep. 1993) |
| Terms of Use: | Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm |

In the case of Aloeboetoe et al.,

the Inter-American Court of Human Rights, pursuant to the Court's judgment of December 4, 1991 (Aloeboetoe et al. Case, Judgment of December 4, 1991. Series C No. 11), and in application of Article 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules of Procedure"), enters the following judgment in the case brought by the Inter-American Commission of Human Rights (hereinafter "the Commission") against the Republic of Suriname (hereinafter "the Government" or "Suriname").

I.

1. The instant case was brought to the Inter-American Court of Human Rights (hereinafter "the Court") by the Commission on August 27, 1990, by a note transmitting its Report 03/90. It originated in Petition N° 10.150 of January 15, 1988, against Suriname.

In its communication, the Commission asserted that "the Government of Suriname violated Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1) and 25(2) of the American Convention on Human Rights" (hereinafter "the Convention" or "the American Convention"). On those grounds, the Commission asked the Court "to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victims' next of kin."

2. The Commission submitted its memorial on April 1, 1991.

The events that gave rise to the petition apparently occurred on December 31, 1987, in Atjoni (village of Pokigron, District of Sipaliwini) and in Tjongalangapassi, District of Brokopondo. In

Atjoni, more than 20 male, unarmed Bushnegroes (Maroons) had been attacked, abused and beaten with riflebutts by a group of soldiers. A number of them had been wounded with bayonets and knives and were detained on suspicion of belonging to the Jungle Commando, a subversive group. Some 50 persons witnessed these occurrences.

3. According to the petition, the Maroons all denied that they were members of the Jungle Commando. The Captain of the village of Gujaba made a point of informing the commander in charge of the soldiers that the persons in question were civilians from various different villages. The commander disregarded this information.

4. The petition asserts that the soldiers allowed some of the Maroons to continue on their way, but that seven of them, including a 15-year old boy, were dragged, blindfolded, into a military vehicle and taken through Tjongalangapassi in the direction of Paramaribo. The names of the persons taken by the soldiers, their place and date of birth, insofar as is known, are as follows: Daison Aloeboetoe, of Gujaba, born June 7, 1960; Dedemanu Aloeboetoe, of Gujaba; Mikuwendje Aloeboetoe, of Gujaba, born February 4, 1973; John Amoida, of Asindonhopo (resident of Gujaba); Richenel Voola, alias Aside or Ameikanbuka, of Grantatai (found alive); Martin Indisie Banai, of Gujaba, born June 3, 1955; and, Beri Tiopo, of Gujaba (cf. *infra*, paras. 65 and 66).

5. The petition goes on to state that the vehicle stopped when it came to Kilometer 30. The soldiers ordered the victims to get out or forcibly dragged them out of the vehicle. They were given a spade and ordered to start digging. Aside was injured while trying to escape, but was not followed. The other six Maroons were killed.

6. The petition states that on Saturday, January 2, 1988, a number of men from Gujaba and Grantatai set out for Paramaribo to seek information on the seven victims from the authorities. They called on the Coordinator of the Interior at Volksmobilisatie and on the Military Police at Fort Zeeland, where they tried to see the Head of S-2. Without obtaining any information regarding the whereabouts of the victims, they returned to Tjongalangapassi on Monday, January 4. At Kilometer 30 they came across Aside, who was seriously wounded and in critical condition, and the bodies of the other victims. Aside, who had a bullet in his right thigh, pointed out that he was the sole survivor of the massacre, the victims of which had already been partially devoured by vultures. Aside's wound was infested with maggots and his right shoulder blade bore an X-shaped cut. The group returned to Paramaribo with the information. After 24 hours of negotiations with the authorities, the representative of the International Red Cross obtained permission to evacuate Mr. Aside. He was admitted to the Academic Hospital of Paramaribo on January 6, 1988, but died despite the care provided. The Military Police prevented his relatives from visiting him in the hospital. It was not until January 6, that the next of kin of the other victims were granted permission to bury them.

7. The original petitioner asserted that he spoke twice with Aside about the events and that Aside's version of what took place concurs with that obtained from the eyewitnesses and the members of the search-party.

8. The memorial of the Commission contains all the documentation on the instant case. Proceedings were initiated by the Commission on February 1, 1988, and continued until May 15, 1990. On that date, pursuant to Article 50 of the Convention, the Commission drew up Report N° 03/90 which decided the following:

1. To admit the present case.
2. To declare that the parties have been unable to achieve a friendly settlement.
3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.
4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.
5. To recommend to the Government of Suriname that it take the following measures:
 - a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;
 - b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;
 - c. Take necessary measures to avoid their reoccurrence;
 - d. Pay a just compensation to the victims' next of kin.
6. To transmit this report to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this report is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47(6) of the Commission's Regulations.
7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

9. In its memorial of April 1, 1991, the Commission requested the following of the Court:

[. . .]

That the Honorable Court find the State of Suriname responsible for the deaths of Messrs. Aloeboetoe, Daison; Aloeboetoe, Dedemanu; Aloeboetoe, Mikuwendje; Amoida, John; Voola, Richenel, alias Aside [or] Ameikanbuka (found alive); Banai, Martin Indisie; and, Tiopo, Beri, while in detention, and hold that these deaths violate Articles 1(1) (2), 4(1), 5(1) (2), 7(1) (2) (3) and 25 of the American Convention on Human Rights.

That the Court find that Suriname must pay adequate reparation to the victims' next of kin and, consequently, order the following: payment of indemnization for indirect damages and loss of earnings; reparation for moral damages, including the payment of compensation and adoption of measures to restore the good name of the victims; and, the investigation of the crime committed, with due punishment for those found to be guilty.

[. . .]

That the Court order Suriname to pay the costs incurred by the Commission and the victims in the instant case.

[. . .]

10. Suriname's counter-memorial was received by the Court on June 28, 1991. In it, the Government interposed preliminary objections.

The document presented by the Government requested that the Court declare that:

- 1.- Suriname cannot be held responsible for the disappearance and death of the persons named by the Commission.
- 2.- In view of the fact that it has not been proved that the violation attributed to Suriname was committed, Suriname should not have to pay compensation of any type whatsoever for the death and disappearance of the persons listed in the Commission's report.
- 3.- Suriname be exempted from the payment of costs in the instant case, since its responsibility for the executions attributed to it has not been demonstrated.

11. At the public hearing convened by the Court on December 2, 1991, to deal with the preliminary objections, Suriname accepted its responsibility in the instant case (cf. Aloeboetoe et al. Case, supra, introductory paragraph, para. 22).

12. As a result, in its judgment of December 4, 1991, the Court unanimously

1. Notes the admission of responsibility proffered by the Republic of Suriname and finds that the dispute relating to the facts giving rise to the instant case has now been concluded.
2. Decides to retain the case on its docket in order to fix reparations and costs. (Aloeboetoe et al. Case, supra, introductory paragraph, operative part.)

II.

13. By order of January 18, 1992, the President of the Court (hereinafter "the President") granted the Commission until March 31, 1992, to offer and submit the evidence at its disposal regarding reparations and costs in the instant case; he gave the Government until May 15, 1992, to present its observations on the Commission's submission. In that order, the President also summoned the parties to a public hearing on the subject, to be held at 10:00 a.m. on June 23, 1992. At the request of the Commission and with the Government's agreement, the President on March 24, 1992, agreed to postpone the aforementioned hearing until July 7, 1992, at the same hour.

14. The Commission presented its brief on reparations and costs on March 31, 1992, with the Spanish translation following on May 8.

15. In its brief, the Commission maintains that, under Article 63(1) of the American Convention and the applicable principles of international law, the Government must compensate the injured party for damages resulting from its failure to fulfill its obligations on the basis of the rule of *restitutio in integrum*. In the Commission's opinion, the Government should indemnify for material and moral damages, grant other, non-monetary reparations and reimburse the expenses and costs incurred by the victims' next of kin. The Commission's brief refers to the

amount of the damages and costs, proposes a method of payment and lists the non-monetary measures requested by the families of the victims.

16. The Commission makes a distinction between the compensation for material damages payable to the minor children of the persons killed and that payable to their adult dependents. It proposes the establishment of a trust fund for the minor children, the basic value of which would consist of a sum proportional to the estimated projected income of the victim, after deducting what would have been the victim's own living expenses. The foregoing would be determined by applying the current or present value method. According to the Commission, this method entails the application of generally acceptable principles that are compatible with international law. As for the adult dependents, the Commission requests that a lump sum be placed in a trust fund, to become due and payable on the date of the judgment. The amount thereof would be calculated on the basis of the income that the victims had at the time of their death. Alternatively, said sum could be made available through annual payments in securities that maintain their purchasing power, to be continued until the death of the beneficiaries. The sums claimed in Surinamese Florins (hereinafter "Sf") must be adjusted to reflect the current value of that currency, since they were calculated on the basis of "1988 monetary values."

17. With regard to the persons who would be entitled to compensation for actual damages, the Commission explains that it is necessary to take into account the family structure of the Maroons, of which the Saramakas (the tribe to which the victims belonged) are a part. It is essentially a matriarchal(*) structure, where polygamy is common. In Suriname, marriages must be registered in order to be recognized by the State. Due to the dearth of registry offices in the interior of the country, however, that requirement is generally not met. The Commission is of the opinion that this should not affect the right to compensation of the relatives or spouses of unregistered marriages. It is argued that the care of family members is entrusted to a communal group organized along maternal lines; this is something that should be borne in mind in determining which of the relatives should be compensated. The direct, personal damages of a monetary nature that give rise to compensatory rights should be measured principally by the degree of financial dependence that existed between the claimant and the deceased. The list of aggrieved parties entitled to compensation was drawn up by the Commission partly on the basis of sworn statements by the next of kin of the victims.

18. According to the Commission, the Government would also be under the obligation to make reparation for moral damages suffered as a result of the severe psychological repercussions that the killings had on the relatives of the victims, the working men who represented their main or only source of income.

The Government's failure to react, investigate or punish these deeds is presented as an indication of the little value it places on the lives of the Maroons, a fact that has wounded their dignity and self-confidence. In six of the seven cases, the bodies of the victims were not returned for burial, the authorities gave no information as to where they might be found, they could not be identified and no death certificates were issued.

19. The Commission argues that the Saramakas also suffered direct moral damages and should be compensated. According to the Commission,

In the traditional Maroon society, a person is not only a member of his own family group, but also a member of the village community and of the tribal group. In this case, the damages suffered by the villagers due to the loss of certain members of its group must be redressed. Since the villagers, in practice, constitute a family in the broad sense of that term [. . .] they have suffered direct emotional damages as a result of the violations of the Convention.

The deeds for which the Government accepted responsibility appear to have caused damages to the Saramaka tribe, aggravated by the Government's subsequent actions in not recognizing "the rights of the Bushnegroes." In the Commission's opinion, a conflictive relationship appears to have existed between the Government and the Saramaka tribe and the killings occurred as a consequence of that situation.

20. The Commission states that the families of the victims demand that certain non-pecuniary provisions be made. For example, they ask that the President of Suriname apologize publicly for the killings; that the chiefs of the Saramaka tribe be invited to come before the Congress of Suriname to receive an apology; and, that the Government publish the operative part of this judgment. They also request the Government to exhume the bodies of the six victims and return them to their respective families; to name a park, square or street in a prominent section of Paramaribo after the Saramaka tribe; and, to investigate the murders committed and punish the guilty parties.

21. The Commission demands that the Government pay the expenses and costs incurred by the families of the victims in asserting their rights before the courts of Suriname, the Commission, and the Court.

In its brief, the Commission describes some aspects of that endeavor, which included a visit to Suriname by the attorney representing the victims, a visit to the interior of the country by part of Moiwana 86, the appointment of research assistants to prepare the three hearings for the case before the Commission and the initial memorandum to the Court, and the hiring of an associate professor to take over the university course that the victims' attorney was unable to give because of his work on this case.

22. The Commission's brief concludes that:

[. . .]

In view of the foregoing, the Commission on Human Rights and the attorneys representing the victims' families respectfully request that the Court order the payment of the following amounts:

A lump sum of Sf. 5,114,484 broken down as follows:

- Sf. 1,114,484 for material damages, to the children;
- Sf. 660,000 for moral damages, to the children;
- Sf. 1,340,000 for moral damages, to the adult dependents;
- Sf. 2,000,000 for moral damages, to the tribe of the victims;

an annual sum of Sf. 84,040, adjusted incrementally, for actual damages payable to the adult dependents;

lump sums of Sf. 715,618 and US\$ 18,533 to cover legal costs; and, a lump sum of US\$ 32,375 for expenses.

In order to preserve the purchasing power of the amounts listed in Surinamese currency, we respectfully ask the Court to order the Government to provide access to the official rate of exchange. Otherwise, the sums involved will have to be recalculated at the market rate of exchange of 20:1.

The Court has confirmed that discrepancies exist between the English and Spanish versions of the Commission's brief, as well as between the figures and names as they appear in the text and in its attachments.

23. On May 13, 1992, the Agent of Suriname requested the President to grant an extension of the time limit set for the Government to submit its observations on the Commission's brief regarding reparations and costs, in view of the fact that the official Spanish version was transmitted to the Agent on May 12, 1992, "exactly three days before the deadline fixed by the Court" for the Government's submission. The President acceded to the request and determined that the observations should be submitted to the Secretariat by May 22, 1992, at the latest.

The Government presented its observations on Monday, May 25, 1992, that is, on the first working day after expiration of the time limit. In them, the Government argues that the fact that the Commission submitted its brief on the reparations and costs in the English language and that the Spanish translation was delivered to the Agent four days before expiration of the deadline fixed by the Court "resulted in an indirect reduction of the time limit granted [. . .] for presentation of its countermemorial and to some degree impaired once again our defense before that Court" (underlined in the original), since Suriname had barely ten days in which to respond to the Commission's brief on reparations and costs.

24. The communication emphasizes the importance of Suriname's express admission to the Court of its responsibility in the instant case. This action by Suriname has its "fundamental basis" in the fact that the country had, on May 25, 1991, retaken the road to democracy and that its President, Dr. Venetiaan, had committed himself "to respect and promote the observance of the obligations comprised in the area of human rights". It recalls that, in its 1991 Annual Report, the Commission declared that it had received no complaints of alleged violations of human rights since the accession of President Venetiaan.

25. The Government does not seek to disavow the responsibility it accepted before the Court. However, it considers the reparations and costs demanded by the Commission to be excessively burdensome and "a distortion of the meaning of the provisions of Article 63(1) of the Convention." It adds that the potential income of the victims as presented by the Commission has no bearing on reality.

26. Suriname points out that its domestic legislation only permits it to make payments in the national currency. Consequently, it shall use that coin to pay all of the financial obligations that this judgment may impose.

27. As for the compensation for actual damages suffered, the Government declares that such compensation should be based on the American Convention and the applicable principles of international law, as the Court indicated in the *Godínez Cruz Case* [*Godínez Cruz Case, Compensatory Damages, Judgment of July 21, 1989, (Art. 63(1) American Convention on Human Rights). Series C No. 8, para. 29*]. The customary norms of the Saramaka tribe should not be binding in fixing the amount of compensation to be granted to the victims' next of kin, whose family relationship must be determined by reference to the American Convention and the applicable principles of international law.

28. Suriname accepts the compensation for moral damages and relies on the precedents established in the *Velásquez Rodríguez and Godínez Cruz cases*, where such compensation was granted after the psychological damages of the family members of the victims had been substantiated by expert medical testimony [*Velásquez Rodríguez Case, Compensatory Damages, Judgment of July 21, 1989, (Art. 63(1) American Convention on Human Rights). Series C No. 7, para. 51; Godínez Cruz Case, Compensatory Damages, supra 27, para. 49*]. According to the Government, this was not done in the instant case, no evidence having been produced on the subject.

29. Suriname objects to the Commission's request to compensate the Saramaka tribe for moral damages because this claim was not presented during the proceedings on the merits. In its brief, the Government states the following:

To admit new claims for compensation during the current COMPENSATORY DAMAGES phase would be to accept the violation of a new international obligation (which the Commission to this date has neither identified nor attributed) that had not been presented by the Commission in its previous briefs and had neither been analyzed by the Court during the various phases of the proceedings nor contested by Suriname's defense during the prior hearings (apart from the fact that this deprives the government of its defense).

30. The Government argues that the Commission works with outside attorneys, who are listed as lawyers for the victims, in order to perform tasks that should have been done by its own officials. Fees for such services amount to 250 United States of America Dollars (hereinafter "dollars" or "US\$") per hour, a rate that bears no relationship to prevailing conditions in the "inter-American" system. Furthermore, the families of the victims did not file any claims in the Surinamese courts and the Commission was seized of the case a mere fifteen days after the events had taken place.

31. As for the non-pecuniary reparations requested by the Commission, the Government believes that the acceptance of its responsibility, made public in the Court's judgment of December 4, 1991, is a significant and important form of reparation and moral satisfaction for the families of the victims and the Saramaka tribe.

32. In its brief, Suriname challenges the experts proffered by the Commission to testify at the hearing scheduled for July 7, 1992. It states that such experts should have provided a sworn affidavit — for which the procedural stage had already expired — and that only the testimony of witnesses would be admissible at the hearing. The Government provides supporting proof in its brief.

33. In its conclusion, Suriname's brief declares the following:

Suriname wishes to inform the Court that, in its opinion, compensation in this contentious case should basically cover in-kind reparations, such as the opportunity to obtain, free of charge, housing, agricultural property, social security, labor, medical, and educational benefits. Suriname is, in consequence, prepared to grant the families of the victims the aforementioned reparations within a reasonable period. These would be treated as part of the fair compensatory damages that the Court may order to be paid.

34. The Government considers that the standards of compensation put forward by the Commission are not in line with the current social and economic reality in Suriname. It adds that Suriname has come before the Court "in order to correct the erroneous path followed in the past by former governments, as well as to demonstrate to the Court and to the international community the seriousness of President Venetiaan's intentions with regard to the protection of human rights," a position that must not serve as a pretext to impose on the country compensations in the millions that will only impoverish it further.

III.

35. In view of the statements of the parties, the evidence presented and Suriname's objection to the expert witnesses proposed by the Commission, on June 19, 1992, the President decided that the purpose of the hearing convened for July 7, 1992 (see *supra*, para. 13), would be to hear the arguments of Suriname and the observations of the Commission regarding the objection filed and, if appropriate, to receive the testimony offered by the parties and hear the views of the parties concerning reparations and costs.

36. The public hearing on reparations and costs was held at the seat of the Court on July 7, 1992.

There appeared before the Court

- a) for the Government of Suriname:
Carlos Vargas-Pizarro, Agent
Fred M. Reid, Representative of the Ministry of Foreign Affairs
Jorge Ross-Araya, Attorney-Adviser
- b) for the Inter-American Commission on Human Rights:
Oliver H. Jackman, Delegate
David J. Padilla, Delegate
Claudio Grossman, Adviser

- c) called at the request of the Commission:
Richard Price
Stanley Rensch
- d) called at the request of the Government:
Ramón de Freitas.

37. At the hearing, the Court rejected the objections filed by Suriname and heard the testimony, while “reserving the right to consider it at a later date”. The witnesses and experts proffered by the parties responded to the questions put to them by the parties and the judges.

38. During these proceedings, an amicus curiae brief was received from the International Commission of Jurists.

IV.

39. In view of the fact that more detailed information was required in order to be able to fix the amount of the compensation and costs, the President, after consulting with the Permanent Commission, on September 24, 1992, decided to have the Court avail itself of the services of Mr. Christopher Healy and Ms. Merina Eduards as experts. By order of March 16, 1993, the Court decided to “at the appropriate time make available to the parties the information supplied by the experts in this case.” The Court also requested clarifications and additional information of the parties.

On March 18, 1993, the Court asked the Commission to transmit “a final list of the correct names of the persons it contends are the children and spouses of the victims” in this case. On March 20, 1993, the Court asked the Government to send “to the Court whatever information and observations the Government of Suriname deems advisable to submit in this regard.” A final list containing the names of the wives, children, and other dependents of the victims was drawn up by the Commission on April 8, 1993, and delivered to the Secretariat of the Court on the 14th of that month. By note of April 26, 1993, the President granted the Government a period of 20 days to present its observations regarding the documents transmitted by the Commission to the Court. The Government made no observations, nor did it present the information it had been requested to provide.

40. During the Special Session of the Court held from March 15 to 18, 1993, it was decided that the Deputy Secretary, Ana María Reina, would travel to Suriname in order to gather additional information regarding the economic, financial, and banking situation of the country. She would also visit the village of Gujaba to obtain data that would enable the Court to deliver a judgment taking into account the prevailing conditions in Suriname. This decision was communicated to the parties.

The information and data gathered during this visit through interviews and documents, both in Paramaribo and in the village of Gujaba, have also been utilized by the Court to fix the amount of compensation.

V.

41. The Court has jurisdiction to decide on the payment of reparations and costs in the instant case. Suriname has been a State Party to the American Convention since November 12, 1987, date on which it also accepted the contentious jurisdiction of the Court. The Commission submitted the case to the Court pursuant to Articles 51 and 61 of the American Convention and 50 of its Regulations, and the Court decided the case on the merits on December 4, 1991.

VI.

42. In the instant case, Suriname has accepted its responsibility for the events described in the Commission's memorial. Consequently, as the Court stated in its judgment of December 4, 1991, "the dispute relating to the facts giving rise to the instant case has now been concluded" (Aloeboetoe et al. Case, *supra* introductory paragraph, para. 23). This means that the facts presented in the memorial of the Commission dated August 27, 1990, are deemed to be true. Nevertheless, there is disagreement between the parties as to other facts which relate to the reparations and their scope. The dispute over these matters will be decided by the Court in the instant judgment.

43. The provision applicable to reparations is Article 63(1) of the American Convention, which reads as follows:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

This article codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law, as has been recognized by this Court (cf. Velásquez Rodríguez Case, *Compensatory Damages*, *supra* 28, para. 25; Godínez Cruz Case, *Compensatory Damages*, *supra* 27, para. 23) and the case law of other tribunals (cf. *Factory at Chorzów*, *Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; *Factory at Chorzów*, *Merits*, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Second Phase, *Advisory Opinion*, I.C.J., Reports 1950, p. 228).

44. The obligation contained in Article 63(1) of the Convention is governed by international law in all of its aspects, such as, for example, its scope, characteristics, beneficiaries, etc. Consequently, this judgment must be understood to impose international legal obligations, compliance with which shall not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law (cf. Velásquez Rodríguez Case, *Compensatory Damages*, *supra* 28, para. 30; Godínez Cruz Case, *Compensatory Damages*, *supra* 27, para. 28; *Jurisdiction of the Courts of Danzig*, *Advisory Opinion*, 1928, P.C.I.J., Series B, No. 15, pp. 26 and 27; *Greco-Bulgarian "Communities"*, *Advisory Opinion*, 1930, P.C.I.J., Series B, No. 17, pp. 32 and 35; *Free Zones of Upper Savoy and the District of Gex*, *Order of 6*

December 1930, P.C.I.J., Series A, No. 24, p. 12; Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 167; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, p. 24).

VII.

45. Having determined that the obligation to make reparation falls under international law and is governed by it, the Court considers it advisable to carefully analyze the scope of that compensation.

46. Article 63(1) of the Convention makes a distinction between the behavior that must be followed by the State responsible for the violation from the moment that the Court passes judgment and the consequences of that same State's attitude in the past, that is, while the violation was in process. As regards the future, Article 63(1) provides that the injured party shall be ensured the enjoyment of the right or freedom that was violated. As for the past, the provision in question empowers the Court to impose reparations for the consequences of the violation and a fair compensation.

In matters involving violations of the right to life, as in the instant case, reparation must of necessity be in the form of pecuniary compensation, given the nature of the right violated (Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 189; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 199).

47. The Commission interprets Article 63(1) of the Convention as instituting the obligation to reestablish the *statu quo ante*. In another part of its brief, the Commission refers to *in integrum restitutio*, which it seems to equate to the reestablishment of the *statu quo ante*. Regardless of the terms employed, the Commission affirms that the compensation to be paid by Suriname shall be in an amount sufficient to remedy all the consequences of the violations that took place.

48. Before analyzing these rules in their legal context, it is important to reflect on human actions in general and how these occur in practice.

Every human act produces diverse consequences, some proximate and others remote. An old adage puts it as follows: *causa causæ est causa causati*. Imagine the effect of a stone cast into a lake; it will cause concentric circles to ripple over the water, moving further and further away and becoming ever more imperceptible. Thus it is that all human actions cause remote and distant effects.

To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible, since that action caused effects that multiplied to a degree that cannot be measured.

49. For a long time, the law has addressed the subject of how human actions occur in practice, what their effects are and what responsibilities they give rise to. On the international plane, the arbitral award in the case of "Alabama" already dealt with this question (Moore,

History and Digest of International Arbitrations to which the United States has been a Party, Washington, D.C., 1898, vol. I, pp. 653-659).

The solution provided by law in this regard consists of demanding that the responsible party make reparation for the immediate effects of such unlawful acts, but only to the degree that has been legally recognized. As for the various forms and modalities of effecting such reparation, on the other hand, the rule of *in integrum restitutio* refers to one way in which the effect of an international unlawful act may be redressed, but it is not the only way in which it must be redressed, for in certain cases such reparation may not be possible, sufficient or appropriate (cf. *Factory at Chorzów*, merits, *supra* 43, p. 48). The Court holds that this is the interpretation that must be given to Article 63(1) of the American Convention.

VIII.

50. It has already been stated that insofar as the right to life is concerned, it is impossible to reinstate the enjoyment of that right to the victims. In such cases, reparation must take other, alternative forms, such as pecuniary compensation (*supra*, para. 46).

This compensation refers primarily to actual damages suffered. According to arbitral case law, it is a general principle of law that such damages comprise both indirect damages and loss of earnings (cf. *Chemin de fer de la baie de Delagoa*, sentence, 29 mars 1900, Martens, *Nouveau Recueil Général de Traités*, 2ème Série, t. 30, p. 402; *Case of Cape Horn Pigeon*, 29 November 1902, Papers relating to the Foreign Relations of the United States, Washington, D.C.: Government Printing Office, 1902, Appendix I, p. 470). Compensation shall furthermore include the moral damages suffered by the victims. The Permanent Court of International Justice so held [*Treaty of Neuilly*, Article 179, Annex, Paragraph 4 (Interpretation), Judgment No. 3, 1924, P.C.I.J., Series A, No. 3, p. 9], as did the arbitral tribunals (*Maal Case*, 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732 and 733; and, *Campbell Case*, 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158).

51. In the instant case, the victims who died at Tjongalangapassi suffered moral damages when they were abused by an armed band which deprived them of their liberty and later killed them. The beatings received, the pain of knowing they were condemned to die for no reason whatsoever, the torture of having to dig their own graves are all part of the moral damages suffered by the victims. In addition, the person who did not die outright had to bear the pain of his wounds being infested by maggots and of seeing the bodies of his companions being devoured by vultures.

52. In the Court's opinion, it is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion; the acknowledgement of responsibility by Suriname suffices.

53. The actual damages are analyzed starting in paragraph 88 et seq.

IX.

54. The damages suffered by the victims up to the time of their death entitle them to compensation. That right to compensation is transmitted to their heirs by succession.

The damages payable for causing loss of life represent an inherent right that belongs to the injured parties. It is for this reason that national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death. In that jurisprudence a distinction is made between successors and injured third parties. With respect to the former, it is assumed that the death of the victim has caused them actual and moral damages and the burden of proof is on the other party to show that such damages do not exist. Claimants who are not successors, however, must provide specific proof justifying their right to damages, as explained below (cf. *infra*, para. 68).

55. In the instant case, there is some difference of opinion between the parties as to who the successors of the victims are. The Commission urges that this decision be made with reference to the customs of the Saramaka tribe, whereas Suriname requests that its civil law be applied.

The Court earlier stated that the obligation to make reparation provided in Article 63(1) of the American Convention is governed by international law, which also applies to the determination of the manner of compensation and the beneficiaries thereof (*supra*, para. 44). Nevertheless, it is useful to refer to the national family law in force, for certain aspects of it may be relevant.

56. The Saramakas are a tribe that lives in Surinamese territory and was formed by African slaves fleeing from their Dutch owners. The Commission's brief affirms that the Saramakas enjoy internal autonomy by virtue of a treaty dated September 19, 1762, which granted them permission to be governed by their own laws. It also states that these people "acquired their rights on the basis of a treaty entered into with the Netherlands, which recognizes, among other things, the local authority of the Saramaka (*sic*) over their own territory." The text of the treaty is attached to the brief in question, which adds that "the obligations of the treaty are applicable, by succession, to the state (*sic*) of Suriname."

57. The Court does not deem it necessary to investigate whether or not that agreement is an international treaty. Suffice it to say that even if that were the case, the treaty would today be null and void because it contradicts the norms of *jus cogens superveniens*. In point of fact, under that treaty the Saramakas undertake to, among other things, capture any slaves that have deserted, take them prisoner and return them to the Governor of Suriname, who will pay from 10 to 50 florins per slave, depending on the distance of the place where they were apprehended. Another article empowers the Saramakas to sell to the Dutch any other prisoners they might take, as slaves. No treaty of that nature may be invoked before an international human rights tribunal.

58. The Commission has pointed out that it does not seek to portray the Saramakas as a community that currently enjoys international juridical status; rather, the autonomy it claims for the tribe is one governed by domestic public law.

The Court does not deem it necessary to determine whether the Saramakas enjoy legislative and jurisdictional autonomy within the region they occupy. The only question of importance here is

whether the laws of Suriname in the area of family law apply to the Saramaka tribe. On this issue, the evidence offered leads to the conclusion that Surinamese family law is not effective insofar as the Saramakas are concerned. The members of the tribe are unaware of it and adhere to their own rules. The State for its part does not provide the facilities necessary for the registration of births, marriages, and deaths, an essential requirement for the enforcement of Surinamese law. Furthermore, the Saramakas do not bring the conflicts that arise over such matters before the State's tribunals, whose role in these areas is practically non-existent with respect to the Saramakas. It should be pointed out that, in the instant case, Suriname recognized the existence of a Saramaka customary law.

The only evidence produced to the contrary is the statement made by Mr. Ramón de Freitas. However, the manner in which that witness testified, his attitude during the hearing and the personality he revealed led the Court to develop an opinion of the witness that persuaded it to reject his testimony.

59. The Commission has produced information on the social structure of the Saramakas indicating that the tribe displays a strongly matriarchal(*) familial configuration where polygamy occurs frequently. The principal group of relatives appears to be the "bêè", composed of all the descendants of one single woman. This group assumes responsibility for the actions of any of its members who, in theory, are each in turn responsible to the group as a whole. This means that the compensation payable to one person would be given to the "bêè", whose representative would distribute it among its members.

60. The Commission also requests compensation for the injured parties and the distribution of such compensation among them. On examining the Commission's brief, it is evident that the identification of the beneficiaries of such compensation has not been carried out in accordance with Saramaka custom, at least not as the Commission has described it before the Court. It is impossible to determine what legal norm the Commission applied for this purpose. It would appear that the Commission simply took a pragmatic approach.

Likewise, on the matter of the amount of compensation and its distribution, the Commission's brief asserts that it resorted to an "equilibrium system" which took the following factors into account: the age of the victim, his actual and potential income, the number of his dependents and the customs and petitions of the Bushnegroes.

61. The I.L.O. Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) has not been accepted by Suriname. Furthermore, under international law there is no conventional or customary rule that would indicate who the successors of a person are. Consequently, the Court has no alternative but to apply general principles of law (Art. 38(1)(c) of the Statute of the International Court of Justice).

62. It is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children. If there is no spouse or children, private common law recognizes the ascendants as heirs. It is the Court's opinion that these rules, generally accepted by the community of nations, should be

applied in the instant case, in order to determine the victims' successors for purposes of compensation.

These general legal principles refer to "children," "spouse," and "ascendants." Such terms shall be interpreted according to local law. As already stated (supra, para. 58), here local law is not Surinamese law, for the latter is not effective in the region insofar as family law is concerned. It is necessary, then, to take Saramaka custom into account. That custom will be the basis for the interpretation of those terms, to the degree that it does not contradict the American Convention. Hence, in referring to "ascendants," the Court shall make no distinction as to sex, even if that might be contrary to Saramaka custom.

63. It has proved extremely difficult to identify the children, spouses, and, in some cases, the ascendants of the victims in this case. These are all members of a tribe that lives in the jungle, in the interior of Suriname, and speaks only its own native tongue. Marriages and births have in many cases not been registered. In those cases where they have, sufficient data have not been provided to fully document the relationship between persons. The matter of identification becomes even more complex in a community which practices polygamy.

64. In its observations, Suriname has presented a general critique of the Commission's brief as regards the evidence it presents. The Government asserts the following: "[. . .] we need to know, based on rational and certainly verifiable data, specifics on all the victims, insofar as the family members left unprotected are concerned [. . .]"

It is true that a person's identity must, as a general rule, be proved by means of relevant documentation. However, the situation in which the Saramakas find themselves is due in great measure to the fact that the State does not provide sufficient registry offices in the region; consequently, it is unable to issue documentation to all its inhabitants on the basis of the data contained therein. Suriname cannot, therefore, demand proof of the relationship and identity of persons through means that are not available to all of its inhabitants in that region. In addition, Suriname has not here offered to make up for its inaction by providing additional proof as to the identity and relationship of the victims and their successors.

In order to clarify the information available on the successors, the Court requested the Commission to provide complementary data about them. Considering the circumstances surrounding the instant case, the Court believes that the evidence supplied is credible and can be admitted.

65. The information provided by the Commission nevertheless contains some discrepancies between the names of the victims and the way these appeared in the petition (see supra, para. 4). Thus, Deede-Manoe Aloeboetoe appears in the petition as Dedemanu Aloeboetoe; this can be explained by the fact that both names are pronounced in the same way. The name of Bernard Tiopo appears in the petition as Beri Tiopo, which was one of his nicknames or surnames, for he was known as Beri or Finsié. There has also been some confusion as to the name of Indie Hendrik Banai, who originally appeared as Martin Indisie Banai, though his identification has never been questioned. As for a victim who was listed in the petition as John Amoida, he was a

son of Pagai Amoida and was known as Asipee Adame. His identification also presented no questions.

66. In accordance with the foregoing, it has been possible to establish a list of the successors of the victims. That list reflects the situation at the time of the killings. Consequently, it includes persons who have since died and excludes those spouses who at the time were divorced from the victims.

Daison Aloeboetoe

his wives:

Wenke Asodanoë

Aingifésie Aloeboetoe

Deede-Manoe Aloeboetoe

his wives:

Asoidamoeje Tiopo

Norma Aloeboetoe

Mikuwendje Aloeboetoe

his mother:

his father:

Richenel Voola

his wives:

Mangoemaw Adjako
(deceased)

Senda Palestina Esje Lugard Baba Tiopo

Indie Hendrik Banai

his wife:

his children:

Podini Asodanoë
Maradona Asodanoë

Leona Aloeboetoe

his children:

Klucion Tiopo

Moitia Foto

Andeja Aloeboetoe

Masatin Koedemoesoe

his children:

Stefan Adjako
Bertholina Adjako
John Adjako
Godfried Franklin Adjako
Pamela Jaja Adjako

his children:

| | |
|--------------------|---|
| Adelia Koedemoesoe | Elbes Koedemoesoe Chris Enoi Vorswijk Aike Karo Vorswijk Robert Vorswijk Etty Vorswijk Etmelia Adipi Jenny Alfonsoewa |
|--------------------|---|

Bernard Tiopo

| | |
|------------|---------------|
| his wives: | his children: |
|------------|---------------|

| | |
|-------------|-----------------|
| Dina Abauna | Bakapina Abauna |
|-------------|-----------------|

| | |
|--------------|--|
| Ajemoe Sampi | Seneja Sampi Arisin Sampi Maritia Vivian Sampi |
|--------------|--|

| | |
|--|---|
| | Anthea Vorswijk Apintimonie Vorswijk |
|--|---|

Glenda Lita Toy

Asipee Adame

| | |
|-------------|--|
| his father: | Pagai Amoida |
| his mother: | Aoedoe Adame (deceased on May 29, 1989). |

X.

67. The obligation to make reparation for damages caused is sometimes, and within the limits imposed by the legal system, extended to cover persons who, though not successors of the victims, have suffered some consequence of the unlawful act. This issue has been the subject of numerous judgments by domestic courts. Case law nevertheless establishes certain conditions that must be met for a claim of compensatory damages filed by a third party to be admitted.

68. First, the payment sought must be based on payments actually made by the victim to the claimant, regardless of whether or not they constituted a legal obligation to pay support. Such payments cannot be simply a series of sporadic contributions; they must be regular, periodic payments either in cash, in kind, or in services. What is important here is the effectiveness and regularity of the contributions.

Second, the nature of the relationship between the victim and the claimant should be such that it provides some basis for the assumption that the payments would have continued had the victim not been killed.

Lastly, the claimant must have experienced a financial need that was periodically met by the contributions made by the victim. This does not necessarily mean that the person should be indigent, but only that it be somebody for whom the payment represented a benefit that, had it not been for the victim's attitude, it would not have been able to obtain on his or her own.

69. The Commission has submitted a list of 25 persons who, while not successors of the victims, claim compensatory damages as their dependents. According to the Commission, they are persons who received financial support from the victims, whether in cash, in kind, or through contributions of personal work.

According to the Commission's brief, the persons listed are relatives of some of the victims, the only exception being a former teacher of one of them.

The Commission presents this information in its brief on reparations and includes a fact sheet on each of the victims. It also adds an affidavit from the father or the mother of each victim. No further proof is offered with regard to the dependency status of the 25 persons, nor the amounts, regularity, effectiveness, or other characteristics of the contributions which the victims purportedly made to those persons.

70. The Commission has repeatedly invoked in its submissions the precedent of the "Lusitania", a case that was resolved by a mixed Commission composed of the United States and Germany. As regards the claims of the dependents, however, that Commission held that compensation was only in order if the effectiveness and regularity of the contributions made by the victim had been proved (cf. the cases of Henry W. Williamson and others and Ellen Williamson Hodges, administratrix of the estate of Charles Francis Williamson, February 21, 1924, Reports of International Arbitral Awards, vol. VII, pp. 256 and 257; and, Henry Groves and Joseph Groves, February 21, 1924, Reports of International Arbitral Awards, vol. VII, pp. 257-259).

71. The Court has earlier made a distinction between the reparations due to the successors and that owed to claimants or dependents. The Court will grant the former the reparations requested, because of the presumption that the death of the victims caused them damages. The burden of proof is therefore on the other party to demonstrate the contrary (cf. supra, para. 54). As far as the other claimants or dependents are concerned, however, the onus probandi is on the Commission. And the Commission has not, in the opinion of the Court, provided the necessary proof to demonstrate that the conditions have been met.

72. The Court is aware of the difficulties presented by the instant case: the facts involve a community that lives in the jungle, whose members are practically illiterate and do not utilize written documents. Nevertheless, other evidence could have been produced.

73. In view of the foregoing, the Court hereby rejects the claim of compensation for actual damages presented by the dependents.

XI.

74. The Commission also seeks compensation for moral damages suffered by persons who, while not successors of the victims, were their dependents.

75. The Court is of the opinion that, as in the case of the reparations for actual damages sought by the dependents, moral damages must in general be proved. The Court considers that in the instant case sufficient proof has not been produced to demonstrate the damages to the dependents.

76. Listed among the so-called dependents of the victims are their parents. The parents of Mikuwendje Aloeboetoe and Asipee Adame have already been declared their successors (supra, para. 66) and will obtain compensation for moral damages. However, the parents of the other five victims are not in the same situation. Nevertheless, in this particular case, it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child.

77. For these reasons, the Court deems it only appropriate that those victims' parents who have not been declared successors also participate in the distribution of the compensation for moral damages.

78. The beneficiaries of the compensation for moral damages are as follows:

Daison Aloeboetoe

his father: Abinotoe Banai (deceased)

his mother: Ajong Aloeboetoe

Deede-Manoe Aloeboetoe

his father: Abinotoe Banai (deceased)

his mother: Ajong Aloeboetoe

Richenel Voola

his mother: Dadda Aside

Indie Hendrik Banai

his father: Eketo Tiopo

his mother: Goensikonde Banai

Bernard Tiopo

his mother: Angaloemoeje Tiopo.

XII.

79. The Court considers it appropriate for the next of kin of the victims to be reimbursed for expenses incurred in obtaining information about them after they were killed and in searching for their bodies and taking up matters with the Surinamese authorities. In the specific case of victims Daison and Deede-Manoe Aloeboetoe, the Commission claims equal sums to cover expenses relating to each of them. These victims were brothers. It would seem reasonable to conclude,

therefore, that the next of kin took the same steps for both at one and the same time and incurred in a single outlay. The Court consequently finds it appropriate to approve a single reimbursement for the two victims.

In its brief, the Commission indicates that in all cases the expenditures were made by the mother of each victim. For lack of proof to the contrary, the reimbursement shall be paid to these persons.

80. The Commission's brief states that the victims were stripped of some of their assets and belongings at the time of their detention. However, it does not present a claim in this regard and the Court will therefore refrain from analyzing this issue.

XIII.

81. The Commission asks the Court to order Suriname to pay the Saramaka tribe compensation for moral damages and to make certain, non-pecuniary reparations.

Suriname objects to this demand on procedural grounds and maintains that the Commission presented this claim during the stage fixed for the determination of compensation. It had not mentioned this issue in its memorial of April 1, 1991.

The Court does not consider the Government's argument to be well-founded, for in proceedings before an international court a party may modify its application, provided that the other party has the procedural opportunity to state its views on the subject (cf. *Factory at Chorzów*, merits, supra 43, p. 7; *Neuvième rapport annuel de la Cour permanente de Justice internationale*, P.C.I.J., Series E, No. 9, p. 163).

82. In its brief, and in some of the evidence presented by the Commission, it is implied that the killings were racially motivated and committed in the context of ongoing conflicts that apparently existed between the Government and the Saramaka tribe.

In the petition dated January 15, 1988, presented to the Commission, it is alleged that: "More than 20 unarmed Bushnegroes were severely beaten and tortured in Atjoni. All were male and they were unarmed, but the soldiers suspected that they were members of the Jungle Commando."

The Commission's memorial of April 1, 1991, took up this petition and included it as an integral part of the document. Throughout the proceedings, the statement that the soldiers acted on suspicion that the Saramakas were members of the Jungle Commando was neither amended nor challenged. Consequently, the origin of the events as described in the memorial of April 1, 1991, lies not in some racial issue but, rather, in a subversive situation that prevailed at the time. Although a certain passage of the brief dated March 31, 1992, and the testimony of an expert both refer to the conflicting relationship that appears to have existed between the Government and the Saramakas, in the instant case it has not been proved that the racial factor was a motive for the killings of December 31, 1987. It is true that the victims of the killings all belonged to

the Saramaka tribe, but this circumstance of itself does not lead to the conclusion that there was a racial element to the crime.

83. In its brief, the Commission explains that, in traditional Maroon society, a person is a member not only of his or her own family group, but also of his or her own village community and tribal group. According to the Commission, the villagers make up a family in the broad sense. This is why damages caused to one of its members also represent damages to the community, which would have to be indemnified.

As for the argument linking the claim for moral damages to the unique social structure of the Saramakas who were generally harmed by the killings, the Court believes that all persons, in addition to being members of their own families and citizens of a State, also generally belong to intermediate communities. In practice, the obligation to pay moral compensation does not extend to such communities, nor to the State in which the victim participated; these are redressed by the enforcement of the system of laws. If in some exceptional case such compensation has ever been granted, it would have been to a community that suffered direct damages.

84. According to the Commission, the third ground for payment of moral damages to the Saramakas involves the rights that the tribe apparently have over the territory they occupy and the violation of such rights by the Army of Suriname when it entered that territory. The Commission has stated that the autonomy acquired by the Saramakas, while originating in a treaty, at the present time is only governed by domestic public law, since no form of international status is sought for the tribe (cf. *supra*, para. 58). The Commission, then, is basing the right to moral compensation on the alleged violation of a domestic legal norm regarding territorial autonomy.

At these proceedings, the Commission has only presented the 1762 treaty. The Court has already expressed its opinion of this so-called international treaty (cf. *supra*, para. 57). No other provision of domestic law, either written or customary, has been relied upon to establish the autonomy of the Saramakas.

The Court believes that the racial motive put forward by the Commission has not been duly proved and finds the argument of the unique social structure of the Saramaka tribe to be without merit. The assumption that a domestic rule on territorial jurisdiction was transgressed in order to violate the right to life does not of itself establish the right to moral damages claimed on behalf of the tribe. The Saramakas could raise this alleged breach of public domestic law before the competent jurisdiction; however, they may not present it as a factor that justifies the payment of moral damages to the whole tribe.

XIV.

85. In its judgments of July 21, 1989, in the Velásquez Rodríguez and Godínez Cruz cases, the Court presented its criteria regarding the calculation of the amounts payable in compensation (Velásquez Rodríguez Case, *Compensatory Damages*, *supra* 28, para. 40 et seq.; and, Godínez Cruz Case, *Compensatory Damages*, *supra* 27, para. 38 et seq.).

In those decisions, the Court held that when the victim has died and the beneficiaries of the compensation are his heirs, the family members have a current or future possibility of working or receiving income on their own. The children, who should be guaranteed an education until they reach a certain age, will be able to work thereafter. In the Court's opinion, "[i]t is not correct, then, in these cases, to adhere to rigid criteria [. . .] but rather to arrive at a prudent estimate of the damages, given the circumstances of each case" (ibid., para. 48; ibid., para. 46).

86. As for the assessment of compensation for moral damages, the Court, in its judgments of July 21, 1989, stated that "indemnification must be based upon the principles of equity" (ibid., para. 27; ibid., para. 25).

87. In the instant case, the Court has followed the aforementioned precedents. In the matter of compensation for loss of earnings, it has arrived at "a prudent estimate of the damages." As for the moral damages, the Court based these on "principles of equity."

The phrases "prudent estimate of the damages" and "principles of equity" do not mean that the Court has discretion in setting the amounts of compensation. On this issue, the Court has strictly adhered to the methods ordinarily used in the case law and has acted in prudent and reasonable fashion by ordering in situ verification by its Deputy Secretary of the figures that served as the basis for its calculations.

88. In order to arrive at the amount of reparations for actual damages to be received by the victims' successors, the method employed was to relate it to the income that the victims would have earned throughout their working life had they not been killed. To that end, the Court decided to make inquiries in order to estimate the income that the victims would have earned during the month of June, 1993, based on the economic activities pursued by each of them. That particular month was selected because it was then that a free exchange market was established in Suriname. In determining the amount of reparations, this made it possible to avoid the distortions produced by a system of fixed rates of exchange in the face of the inflationary process affecting the country's economy. That situation was in fact undermining confidence in long-term projections. In addition, the data provided by the Commission on the victims' income were not sufficiently documented; it was therefore impossible to use them as the basis for calculation without an in situ verification.

89. The Court calculated the annual income of each victim in Surinamese Florins and then converted it into dollars at the rate of exchange in effect on the free market.

The annual figure was used to determine the wages that would have accrued during the period from 1988 to 1993, including both of those years. Interest was added as compensation to the sum obtained for each victim, in keeping with the rates in effect on the international market. The resulting amount was increased by the current net value of the expected income during the rest of the working life of each of the victims. In the case of Mikuwendje Aloeboetoe, an adolescent, it was assumed that he would begin to earn a living at the age of 18 and would receive an income similar to that of those listed as construction workers.

90. The calculations made on the basis of the preceding paragraphs produced the following results:

| | |
|------------------------|---------------|
| Daison Aloeboetoe | US\$ 29,173.- |
| Deede-Manoe Aloeboetoe | 26,504.- |
| Mikuwendje Aloeboetoe | 35,988.- |
| Richenel Voola | 19,986.- |
| Indie Hendrik Banai | 55,991.- |
| Bernard Tiopo | 22,716.- |
| Asipee Adame | 42,060.- |

91. As regards the reparations for moral damages, the Court believes that, bearing in mind the economic and social position of the beneficiaries, such reparations should take the form of a lump sum payment in the same amount for all the victims, with the exception of Richenel Voola, who was assigned reparation that exceeded that of the others by one third. As has already been stated, Richenel Voola was subjected to greater suffering as a result of his agony. There is nothing to indicate that there were any differences in the injuries and ill-treatment suffered by the other victims.

92. For lack of other data and because it considers it fair, the Court has accepted the total amount claimed by the Commission for moral damages.

The amounts in Sf that the Commission claims for each victim have been adjusted by a coefficient representing the fluctuation of domestic prices in Suriname over the period in question. The value in florins was converted into dollars at the free market rate of exchange and then increased to include compensatory interest, calculated at the rate in effect on the international market. The total amount was then distributed among the victims as stipulated in the previous paragraph.

93. The calculations made resulted in the following:

| | |
|------------------------|---------------|
| Daison Aloeboetoe | US\$ 29,070.- |
| Deede-Manoe Aloeboetoe | 29,070.- |
| Mikuwendje Aloeboetoe | 29,070.- |
| Richenel Voola | 38,755.- |
| Indie Hendrik Banai | 29,070.- |
| Bernard Tiopo | 29,070.- |
| Asipee Adame | 29,070.- |

94. The expenses incurred by the families as a result of the disappearance of the victims were calculated on the basis of the sums claimed by the Commission, except in the case of the brothers Daison and Deede-Manoe Aloeboetoe, for the reasons explained above. In order to determine the current value of these expenses, the same procedure used to calculate the reparations for moral damages was applied.

95. The results of these calculations are as follows:

| | |
|------------------------|--------------|
| Daison Aloeboetoe | US\$ 1,030.- |
| Deede-Manoe Aloeboetoe | 1,030.- |
| Mikuwendje Aloeboetoe | 242.- |
| Richenel Voola | 1,575.- |
| Indie Hendrik Banai | 1,453.- |
| Bernard Tiopo | 1,453.- |
| Asipee Adame | 726.- |

96. The compensation fixed for the victims' heirs includes an amount that will enable the minor children to continue their education until they reach a certain age. Nevertheless, these goals will not be met merely by granting compensatory damages; it is also essential that the children be offered a school where they can receive adequate education and basic medical attention. At the present time, this is not available in several of the Saramaka villages.

Most of the children of the victims live in Gujaba, where the school and the medical dispensary have both been shut down. The Court believes that, as part of the compensation due, Suriname is under the obligation to reopen the school at Gujaba and staff it with teaching and administrative personnel to enable it to function on a permanent basis as of 1994. In addition, the necessary steps shall be taken for the medical dispensary already in place there to be made operational and reopen that same year.

XV.

97. As regards the distribution of the amounts fixed for the various types of compensation, the Court considers that it would be fair to apply the following criteria:

- a. Of the reparations for material damages caused to each victim, one third is assigned to their wives. If there is more than one wife, this amount shall be divided among them in equal parts. Two thirds shall go to the children, who shall also divide their portion equally among themselves if there is more than one child.
- b. The reparations for moral damages caused to each victim shall be divided as follows: one half is allocated to the children, one quarter to the wives and the remaining quarter to the parents. If there is more than one beneficiary in any of these categories, the amount shall be divided among them in equal parts.
- c. The expenses shall be reimbursed to the person who incurred them, as indicated in the brief of the Commission.

98. In keeping with the above rules, the distribution of reparations and reimbursement of expenses shall be as follows:

Daison Aloeboetoe

to his wives

| | |
|----------------------------|--------------|
| Wenke Asodanoe | US\$ 8,496.- |
| Aingifesia Aloeboetoe..... | 8,496.- |

to his children

| | | |
|-------------------------|------|----------|
| Podini Asodanoë | US\$ | 11,328.- |
| Maradona Asodanoë | | 11,328.- |
| Leona Aloeboetoe..... | | 11,328.- |

to his parents

| | | |
|--------------------------------|------|---------|
| Abinotoë Banai (deceased)..... | US\$ | 3,634.- |
| Ajong Aloeboetoe..... | | 4,664.- |

Deede-Manoë Aloeboetoe

to his wives

| | | |
|------------------------|------|---------|
| Asoidamoëje Tiopo..... | US\$ | 8,050.- |
| Norma Aloeboetoe..... | | 8,050.- |

to his children

| | | |
|--------------------|------|----------|
| Klucion Tiopo..... | US\$ | 16,104.- |
| Moitia Foto..... | | 16,104.- |

to his parents

| | | |
|--------------------------------|------|---------|
| Abinotoë Banai (deceased)..... | US\$ | 3,633.- |
| Ajong Aloeboetoe..... | | 4,663.- |

Mikuwendje Aloeboetoe

to his parents

| | | |
|--------------------------|------|----------|
| Andeja Aloeboetoe..... | US\$ | 32,771.- |
| Masatin Koedemoesoe..... | | 32,529.- |

Richenel Voola

to his wives

| | | |
|----------------------------------|------|---------|
| Mangoemaw Adjako (deceased)..... | US\$ | 8,173.- |
| Senda Palestina Esje Lugard..... | | 8,173.- |

to his children

| | | |
|-------------------------------|------|---------|
| Stefan Adjako..... | US\$ | 5,451.- |
| Bertholina Adjako..... | | 5,451.- |
| John Adjako..... | | 5,451.- |
| Godfried Franklin Adjako..... | | 5,451.- |
| Pamela Jaja Adjako..... | | 5,451.- |
| Baba Tiopo..... | | 5,451.- |

to his mother

| | | |
|------------------|------|----------|
| Dadda Aside..... | US\$ | 11,263.- |
|------------------|------|----------|

Indie Hendrik Banai

to his wife

Adelia Koedemoesoe.....US\$ 25,935.-

to his children

Elbes Koedemoesoe.....US\$ 7,408.-

Chris Enoi Vorswijk..... 7,408.-

Aike Karo Vorswijk..... 7,408.-

Robert Vorswijk..... 7,408.-

Etty Vorswijk..... 7,408.-

Etmelia Adipi..... 7,408.-

Jenny Alfonsoewa..... 7,408.-

to his parents

Eketo Tiopo.....US\$ 3,635.-

Goensikonde Banai..... 5,088.-

Bernard Tiopo

to his wives

Dina Abauna.....US\$ 4,946.-

Ajemoe Sampi..... 4,946.-

Glenda Lita Toy..... 4,946.-

to his children

Bakapina Abauna.....US\$ 4,947.-

Seneja Sampi..... 4,947.-

Arisin Sampi..... 4,947.-

Maritia Vivian Sampi..... 4,947.-

Anthea Vorswijk..... 4,947.-

Apintimonie Vorswijk..... 4,947.-

to his mother

Angaloemoeje Tiopo.....US\$ 8,719.-

Asipee Adame

to his parents

Pagai Amoida..... US\$ 35,565.-

 Aoedoe Adame (deceased)..... 36,291.-

XVI.

99. In order to comply with the monetary compensation fixed by this judgment, the Government shall deposit the sum of US\$453,102.- (four hundred fifty-three thousand, one hundred two dollars) before April 1, 1994, in the Surinaamse Trustmaatschappij N.V. (Suritrust), Gravenstraat 32, in the city of Paramaribo.

The Government may also fulfill this obligation by depositing the equivalent amount in Dutch Florins. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States Dollar and the Dutch Florin quoted on the New York market on the day before the date of payment.

100. With the funds received, Suritrust shall set up trust funds in dollars for the beneficiaries listed, under the most favorable conditions consistent with banking practice. Any deceased beneficiaries shall be replaced by their heirs.

Two trust funds shall be established, one on behalf of the minor children and the other on behalf of the adult beneficiaries.

A Foundation (hereinafter "the Foundation"), described in paragraphs 103 et seq. of this judgment, shall serve as trustee.

101. The trust fund for the minor children shall be set up with the compensation payable to all those unmarried beneficiaries who have still not reached the age of 21.

This trust fund shall continue to operate until such time as the last of the beneficiaries becomes of age or marries. As each of the minor beneficiaries meets those conditions, their contributions shall become subject to the provisions governing the trust fund for the adult beneficiaries (infra, para. 102).

102. The adult beneficiaries may withdraw up to 25% (twenty-five percent) of the sum due to them at the time that the Government of Suriname makes the deposit. The trust fund for the adults shall be set up with the remaining funds. The duration of the trust fund shall be a minimum of three and a maximum of 17 years; semi-annual withdrawals shall be permitted. The Foundation may set up a different system in special circumstances.

XVII.

103. The Court hereby orders the creation of a Foundation, with a view to providing the beneficiaries with the opportunity of obtaining the best returns for the sums received in reparation. The Foundation, a non-profit organization, shall be established in the city of Paramaribo, the capital of Suriname, and shall be composed of the following persons, who have already accepted their appointments and shall carry out their functions ad honorem :

Albert Jozef Brahim
Ilse Labadie
John C. de Miranda
Antonius H. te Dorsthorst

John Kent
Rodney R. Vrede
Armand Ronald Tjong A Hung.

104. The Court expresses its appreciation to the persons who have agreed to participate in the Foundation, as a means of contributing to a true and effective protection of human rights in the Americas.

105. At a plenary meeting, the members of the Foundation shall, with the collaboration of the Executive Secretariat of the Court, define their organization, statutes and by-laws, as well as the operational structure of the trust funds. The Foundation shall transmit these documents to the Court after final approval.

The role of the Foundation shall be to act as trustee of the funds deposited in Suritrust and to advise the beneficiaries as to the allocation of the reparations received or of the income they obtain from the trust funds.

106. The Foundation shall provide advice to the beneficiaries. Although the children of the victims are among the principal beneficiaries, this fact does not release their mothers or the guardians in whose charge they may be from the obligation of providing them with assistance, food, clothing and education free of charge. The Foundation shall try to ensure that the compensation received by the minor children of the victims be used to cover subsequent study expenses, or else to create a small capital when they begin to work or get married, and that it only be used for ordinary expenses when grave problems of health or family finances require it.

107. For the operating expenses of the Foundation, the Government of Suriname shall, within 30 days of its establishment, make a one-time contribution in the amount of US\$4,000 (four thousand dollars) or its equivalent in local currency at the selling rate of exchange in force on the free market at the time of such payment.

108. Suriname shall not be permitted to restrict or tax the activities of the Foundation or the operation of the trust funds beyond current levels, nor shall it modify any conditions currently in force nor interfere in the Foundation's decisions, except in ways that would be favorable to it.

XVIII.

109. As the Court stated in the Velásquez Rodríguez and Godínez Cruz cases, "the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and [. . .] the location of their remains" (Velásquez Rodríguez Case, supra 46, para. 181; and, Godínez Cruz Case, supra 46, para. 191); this obligation is of particular importance in the instant case, given the family relationships that exist among the Saramakas.

XIX.

110. The Commission requests that Suriname be ordered to pay the expenses relating to negotiations undertaken with the Government and those incurred in the proceedings before the Commission and the Court.

111. The Court has already decided that the Government, as requested by the Commission, shall reimburse the expenses incurred by the families of the victims in their dealings with the Surinamese authorities (*supra*, paras. 94 and 95).

112. In the instant case, the events took place on December 31, 1987, and the petition was received by the Secretariat of the Commission on January 15, 1988, that is, fifteen days later. From that date on, the case was before, first, the Commission and then the Court. The families of the victims did not have to pursue lengthy proceedings in order to submit the case to the Commission, for the latter took up the petition immediately. For this reason, they were not obliged to seek the advice of a professional and, as a result, did not appoint anyone. Dr. Claudio Grossman, who is identified by the Commission as the attorney for the victims, acted as the legal advisor of the Commission when the case was brought to the Court (*cfr.* *Aloeboetoe et al. Case*, *supra*, introductory paragraph, para. 7 and *cf. supra*, para. 36).

113. The American Convention has established a system for the protection of human rights in the Continent, assigning responsibilities primarily to two organs, the Commission and the Court, whose costs are financed out of the budget of the Organization of American States.

114. In the instant case, the Commission has preferred to fulfill the functions assigned to it under the American Convention by contracting outside professionals instead of using its own staff. The Commission's operational arrangements are a matter of its own internal organization and not subject to the intervention of the Court. However, the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American system is funded by the Member States by means of their annual contributions.

The Court also cannot assess as costs the expenses incurred by its Deputy Secretary in travelling to Suriname, nor the advisory services required on financial or actuarial issues. These are all expenses that the Court must incur as an organ of the system in order to fulfill the functions ascribed to it by the American Convention.

115. In view of the above and of the fact that Suriname has expressly accepted its international responsibility and has not in any way hindered the proceedings for the fixing of reparations, the Court dismisses the Commission's request for reimbursement of costs.

XX.

116. Now, therefore,

THE COURT,

unanimously,

1. Sets reparations at US\$453,102 (four hundred fifty-three thousand, one hundred two dollars), or the equivalent amount in Dutch Florins, to be paid by the State of Suriname before April 1, 1994, to the persons listed in paragraph 98 or their heirs, under the terms of paragraph 99.
2. Orders the creation of two trust funds and the establishment of a Foundation, as contemplated in paragraphs 100 to 108.
3. Determines that Suriname shall not restrict or tax the activities of the Foundation or the administration of the trust funds beyond current levels, nor shall it modify any conditions currently in force, except in ways that would be favorable to these entities, nor interfere in the decisions of the Foundation.
4. Orders the State of Suriname to make a one-time contribution to the Foundation for its operations, payable within 30 days of its establishment, in the amount US\$4,000 (four thousand dollars), or its equivalent in local currency at the free market rate of exchange in force at the time of payment.
5. Also orders the State of Suriname, as an act of reparation, to reopen the school located in Gujaba and staff it with teaching and administrative personnel so that it will function on a permanent basis as of 1994, and to make the medical dispensary already in place in that locality operational during that same year.
6. Decides that the Court shall supervise compliance with the reparations ordered before taking any steps to close the file on this case.
7. Decides that payment of costs shall not be ordered.

Done in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica, this tenth day of September, 1993.

Rafael Nieto-Navia
President

Sonia Picado-Sotela
Héctor Fix-Zamudio
Julio A. Barberis
Asdrúbal Aguiar-Aranguren
Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Rafael Nieto-Navia
President

Manuel E. Ventura-Robles
Secretary

By note of June 4, 1993 to the President of the Court, Judge Thomas Buergenthal withdrew from this case for health reasons.

Judge Asdrúbal Aguiar-Aranguren, elected by the States Parties during the OAS General Assembly held in Nassau, Bahamas, in May, 1992, has participated in the instant case beginning with the hearings on compensation and costs.