

# Moiwana Community v. Suriname

## ABSTRACT<sup>1</sup>

*On November 29, 1986, members of the armed forces of Suriname attacked the N'djuka Maroon village of Moiwana. State agents allegedly massacred over 40 men, women and children, and razed the village to the ground. Those who escaped the attack supposedly fled into the surrounding forest, and then into exile or internal displacement. Furthermore, as of the date of the application, there allegedly had not been an adequate investigation of the massacre, no one had been prosecuted or punished and the survivors remained displaced from their lands; in consequence, they have been supposedly unable to return to their traditional way of life. The Court found that the State violated the American Convention on Human Rights.*

## I. FACTS

### A. Chronology of Events

**1600-1699:** During the European colonization of Suriname, Europeans forcibly take Africans to the region to use them as slaves on the plantations.<sup>2</sup> Many of these African slaves escape to the rainforests of eastern Suriname and establish autonomous communities.<sup>3</sup> The peoples in these communities become known as Maroons, and disperse into six distinct groups: the N'djuka, the Matawi, the Saramaka, the Kwinti, the Paamaka, and the Boni or Aluku.<sup>4</sup>

The N'djuka group consists of 49,000 members organized into different clans.<sup>5</sup> These clans occupy several villages throughout the

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2. *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 86(1) (June 15, 2005).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 86(3).

group's territory, extending along the Tapanahoni and Cottica Rivers.<sup>6</sup> The N'djuka's language, history, and cultural and religious traditions are unique, distinct from those of the other Maroon groups.<sup>7</sup>

Essential to the N'djuka's cultural integrity and identity is the group's relationship to its traditional land.<sup>8</sup> Land rights are inalienable and exist in perpetuity, on both communal and individual levels.<sup>9</sup>

The spiritual tradition of the N'djuka demands that the people perform specific rituals upon the death of a community member.<sup>10</sup> These rituals require between six months and one year to complete, and cannot be performed without possession of the physical remains of the deceased.<sup>11</sup> Only those deemed evil do not receive an honorable burial, and cremation is considered offensive.<sup>12</sup> The people view the failure to complete these death rituals as a moral transgression that will anger and offend the spirit of the deceased individual and possibly other ancestors of the community, too.<sup>13</sup> In effect, the community will experience "spiritually-caused illnesses" that become manifest in physical maladies that can potentially affect the entire natural lineage.<sup>14</sup> These maladies must be treated through cultural and ceremonial means; if they go untreated, the conditions will persist through generations.<sup>15</sup>

The N'djuka particularly value justice and collective responsibility.<sup>16</sup> If a community member is wronged, that member's next of kin must avenge the offense or offenses.<sup>17</sup> The spirits of deceased community members cannot rest until their next of kin avenge offenses committed against them, and will continue to torment the spirits of the living until justice is accomplished.<sup>18</sup>

**1760 - 1837:** The N'djuka sign a treaty with the Dutch colonial government in 1760 that establishes their freedom from slavery, a century before slavery is formally abolished in the region.<sup>19</sup> In 1837, the N'djuka and the Dutch colonial government renew this treaty, establish

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6. *Id.* ¶¶ 86(3)-(4).

7. *Id.* ¶ 86(3).

8. *Id.* ¶ 86(6).

9. *Id.*

10. *Id.* ¶ 86(7).

11. *Id.* ¶ 86(8).

12. *Id.*

13. *Id.* ¶ 86(9).

14. *Id.*

15. *Id.*

16. *Id.* ¶ 86(10).

17. *Id.*

18. *Id.*

19. *Id.* ¶ 86(2).

the boundaries of the N'djuka's settled territory, and permit the N'djuka to occupy this territory.<sup>20</sup>

**Late 1800's-1986:** N'djuka clans settle the Moiwana village.<sup>21</sup> By 1986, ten camps make up the village, and stretch along four kilometers of the Paramaribo-Albina road.<sup>22</sup>

**1975:** Suriname attains independence from the Netherlands.<sup>23</sup> The N'djuka still regard the 1837 treaty to be in full force.<sup>24</sup>

Although Suriname's Constitution considers individual members of indigenous and tribal communities to be natural persons, it does not recognize such communities as legal entities.<sup>25</sup> National legislation does not provide for collective property rights.<sup>26</sup>

**February 25, 1980:** Desire Bouterse leads a violent coup against Suriname's democratic government and organizes a military regime that commits gross and systematic human rights violations.<sup>27</sup>

**1986:** The Jungle Commando, an armed opposition force composed of many Maroons, begins operating in the eastern part of Suriname and attacks military installations in the area.<sup>28</sup>

**1986:** The national army begins responding to the Jungle Commando with extensive military action, resulting in at least 200 civilian casualties.<sup>29</sup> Most of the victims of these attacks are Maroon villagers, and, by 1987, the attacks force approximately 15,000 people to flee to the capital city, Paramaribo, and another 8,500 people to flee to French Guiana.<sup>30</sup> Again, most of these displaced people are Maroon, representing more than one third of the Maroon population.<sup>31</sup>

**November 29, 1986:** Suriname's national military attacks the Moiwana

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20. *Id.*

21. *Id.* ¶ 86(11).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 86(5).

26. *Id.*

27. *Id.* ¶ 86(12).

28. *Id.* ¶ 86(13).

29. *Id.*

30. *Id.*

31. *Id.*

village.<sup>32</sup> State agents and collaborators kill at least thirty-nine defenseless community members, burn and destroy village property, and force the survivors to flee.<sup>33</sup> These survivors either flee to the forest, enduring harsh conditions until arriving at refugee camps in French Guiana, or become internally displaced in larger towns in the interior of Suriname, or in the capital, Paramaribo.<sup>34</sup> The displaced individuals suffer poverty and deprivation, and are unable to practice the traditional means of subsistence and livelihood.<sup>35</sup>

At the time of the Court's judgment in 2005, the Moiwana village and the surrounding lands remain abandoned.<sup>36</sup> Although survivors visit the area, they have no intention of staying permanently.<sup>37</sup> The cultural beliefs of the Moiwana people dictate that the survivors may not return permanently until justice is accomplished through an investigation, thereby appeasing the angry spirits of their deceased family members and purifying the land.<sup>38</sup>

Additionally, the Moiwana community members are unable to locate the remains of those killed during the attack, and consequently, are unable to perform the death rites so required by their N'djuka culture.<sup>39</sup>

**November 12, 1987:** Suriname becomes party to the American Convention on Human Rights and, at the same time, recognizes the Court's jurisdiction.

**1989:** The civilian police begin to investigate the November 29, 1986, attack at the Moiwana village.<sup>40</sup> In March and April, the head of the investigation, Inspector Herman Gooding, questions several suspects and arrests at least two individuals, Frits Moesel and Orlando Swedo.<sup>41</sup> These two suspects declare to police that the Surinamese national army trained and armed them, and that they participated in the attack on the Moiwana village.<sup>42</sup> Shortly after their arrests, however, a fully-armed contingent of the military police arrives at the civilian police station and

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32. *Id.* ¶ 86(15).

33. *Id.*

34. *Id.*

35. *Id.* ¶ 86(18).

36. *Id.* ¶ 86(19).

37. *Id.*

38. *Id.* ¶ 86(43).

39. *Id.* ¶ 86(20).

40. *Id.* ¶ 86(25).

41. *Id.*

42. *Id.*

forcibly obtains the release of Mr. Swedo.<sup>43</sup>

The military police take Mr. Swedo to the military barracks where Army Commander Bouterse is holding a meeting.<sup>44</sup> Commander Bouterse issues a press statement confirming that the attack at the Moiwana village was a military operation that he ordered, that he would not allow the civilian police to investigate military operations, and that he required the release of Mr. Swedo.<sup>45</sup>

**August 4, 1990:** After meeting with the Deputy Commander of the military police, Inspector Gooding is murdered.<sup>46</sup> At the time of the judgment, there has never been an investigation into his murder.<sup>47</sup> Investigators who collaborated with Inspector Gooding subsequently flee Suriname, after facing “life-threatening circumstances.”<sup>48</sup>

**December 1990:** The military again seizes power in Suriname.<sup>49</sup>

**1991:** Suriname holds democratic elections, but the military regime continues to wield influence on the national society throughout the following decade.<sup>50</sup> With the assistance of the United Nations High Commissioner for Refugees (“UNHCR”), arrangements are made to allow the Surinamese refugees, including members of the Moiwana Community, in French Guiana to participate in Suriname’s national election, though few take advantage of this opportunity.<sup>51</sup>

Surinamese refugees in French Guiana present their conditions for repatriation into Suriname before a commission consisting of representatives from the UNHCR and the Surinamese and French Guianese governments.<sup>52</sup> The refugees demand that Suriname ensure their safety and freedom, and that the State investigate and prosecute those responsible for killing civilians during the internal conflict.<sup>53</sup> The commission never acts upon these demands.<sup>54</sup>

**1992:** The official refugee camps in French Guiana close, but the

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43. *Id.* ¶ 86(26).

44. *Id.* ¶ 86(27).

45. *Id.*

46. *Id.* ¶ 86(28).

47. *Id.*

48. *Id.* ¶ 86(29).

49. *Id.* ¶ 86(14).

50. *Id.*

51. *Id.* ¶ 86(21).

52. *Id.* ¶ 86(22).

53. *Id.*

54. *Id.*

French government allows a certain population to remain, most of which consists of Moiwana community members because they refuse to return to Suriname without guarantees of their safety.<sup>55</sup> The French grant these individuals renewable permits to reside in French Guiana.<sup>56</sup>

**August 19, 1992:** The President of Suriname promulgates the Amnesty Act 1989, which grants amnesty to the perpetrators of certain criminal acts, with the exception of crimes against humanity, during the period from January 1, 1985, until August 20, 1992.<sup>57</sup> Crimes against humanity are statutorily defined as “those crimes which according to international law are classified as such.”<sup>58</sup>

The First District Court in Paramaribo denies an injunction request submitted by Moiwana ‘86, an organization that represents the victims of the attack on the Moiwana community, to prevent the enactment of the Act.<sup>59</sup> In its request, Moiwana ‘86 argues that the Act would violate “the Constitution of the Republic of Suriname and the conventions ratified by the Republic of Suriname in respect of human rights.”<sup>60</sup>

**1993:** A minority of the refugees of the Moiwana community living in French Guiana return to Suriname.<sup>61</sup> The State places them in a “temporary” reception center in Monego, but at the time of the judgment, many still remain there because they have no alternative place to live.<sup>62</sup>

**May 22, 1993:** Moiwana ‘86 discovers a mass grave near the Moiwana village.<sup>63</sup>

**May 24, 1993:** Moiwana ‘86 notifies the Office of the Attorney General about its discovery of the mass gravesite, and urges the Office to investigate the attack on the Moiwana community, and prosecute the responsible parties.<sup>64</sup>

**May 29, 1993 and June 9, 1993:** A team consisting of military and

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55. *Id.* ¶ 86(23).

56. *Id.* ¶ 86.

57. *Id.* ¶ 86(39).

58. *Id.*

59. *Id.* ¶ 86(40).

60. *Id.*

61. *Id.* ¶ 86(24).

62. *Id.*

63. *Id.* ¶ 86(31).

64. *Id.* ¶ 86(34).

civilian police, a pathologist, and Moiwana '86 visit the mass grave on two occasions.<sup>65</sup> They take the human remains that they uncover to Paramaribo for analysis.<sup>66</sup> State authorities report that the remains belonged to five to seven adults, and two to three children.<sup>67</sup> At the time of this judgment, the State has not provided an identification of the corpses or any other information about the gravesite.<sup>68</sup>

**August 23, 1993:** Moiwana '86 sends a letter to the Office of the Attorney General, requesting information concerning the criminal investigation into the attack on the Moiwana community.<sup>69</sup>

**December 10, 1993:** Mr. Moesel, one of the suspects arrested by Inspector Gooding, is killed, allegedly in a hunting accident.<sup>70</sup>

**December 19, 1995:** The National Assembly of Suriname adopts a motion requesting that the Executive Branch begin an immediate investigation into the human rights violations committed during the military regime.<sup>71</sup>

**1996:** Moiwana '86 files two formal requests with the Attorney General for a proper investigation into the attack on the Moiwana village.<sup>72</sup> After receiving no response, the organization submits a request to the President of the Court of Justice.<sup>73</sup>

**August 21, 1996:** The President of the Court of Justice instructs the Attorney General to submit to that Court a report on the attack and any corresponding police files.<sup>74</sup>

**February 26, 1997:** After already advising the Attorney General that he never received a response to his August 21, 1996 request, the President of the Court of Justice again reiterates his request for information on the investigation of the Office of the Attorney General.<sup>75</sup> Both of these

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65. *Id.* ¶ 86(31).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* ¶ 86(34).

70. *Id.* ¶ 86(30).

71. *Id.* ¶ 86(32).

72. *Id.* ¶ 86(35).

73. *Id.*

74. *Id.*

75. *Id.*

follow-up inquiries are made at the behest of Moiwana '86.<sup>76</sup>

**1997:** The French government grants five or ten-year residency permits to Surinamese refugees remaining in French Guiana, which consist largely of members of the Moiwana community.<sup>77</sup>

Over the years, many of those who collaborate with Moiwana '86 to obtain justice for the 1986 attacks receive threats, and many flee Suriname due to safety concerns.<sup>78</sup> Stanley Rensch, the founder of Moiwana '86, survives an assassination attempt and is arbitrarily arrested four times.<sup>79</sup> He, too, eventually flees Suriname.<sup>80</sup>

**November 16, 2004:** The President of Suriname promulgates an amendment to the Penal Code, which provides that the "right to prosecute does not expire" if the matter in question concerns, *inter alia*, a "crime against humanity" or a "war crime."<sup>81</sup>

#### *B. Other Relevant Facts*

[None]

### II. PROCEDURAL HISTORY

#### *A. Before the Commission*

**June 27, 1997:** Moiwana '86 files petition No. 11,821 before the Secretariat of the Inter-American Commission of Human Rights.<sup>82</sup>

**March 7, 2000:** The Commission approves Admissibility Report No. 26/00, which contains allegations that Suriname violated Articles 25 (Right to Judicial Protection), 8 (Right to a Fair Trial), and 1(1) (Obligation to Respect Rights) of the American Convention against the Moiwana community.<sup>83</sup>

**February 28, 2002:** The Commission approves Report No. 35/02 on the merits of the case, recommending that the State open a serious,

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76. *Id.*

77. *Id.* ¶ 86(23).

78. *Id.* ¶ 86(37).

79. *Id.*

80. *Id.*

81. *Id.* ¶ 86(41).

82. *Id.* ¶¶ 1, 5.

83. *Id.* ¶ 6.



impartial and effective investigation into the events surrounding the Moiwana massacre in order to produce an official report; investigate, prosecute, and punish the perpetrators of the violations contained in Report No. 35/02 in lawful judicial and administrative proceedings; make reparations to the victims of the violations, their families, and rightful claimants who have been prejudiced by the violations; and take legislative and judicial measures to repeal and nullify the Amnesty law for this case to allow for impunity for human rights violations, and crimes against humanity.<sup>84</sup>

**March 21, 2002:** The Commission transmits Report No. 35/02 to the State, requesting that the State report on the measures adopted with reference to the Commission's recommendations, within two months of the date of transmission.<sup>85</sup>

**May 20, 2002:** The State submits a communication contesting the case's admissibility and the Commission's decisions in Report No. 35/02.<sup>86</sup>

#### *B. Before the Court*

**December 20, 2002:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>87</sup>

#### 1. Violations Alleged by Commission<sup>88</sup>

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

#### 2. Violations Alleged by Representatives of the Victims<sup>89</sup>

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)

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84. *Id.* ¶ 7.

85. *Id.* ¶ 8.

86. *Id.* ¶ 10.

87. *Id.* ¶ 1.

88. *Id.* ¶ 2.

89. *Id.* ¶¶ 87, 122. Moiwana '86, the Forest Peoples Programme, and Association Moiwana served as representatives of the Moiwana community members.

Article 21 (Right to Property)

*all in relation to:*

Article 1(1) of the American Convention.

**March 3, 2003:** The State appoints Soebhascandre Punwasi as Agent and Armand van der Saan as Deputy Agent.<sup>90</sup>

**March 6, 2003:** The State appoints Freddy Kruisland as Judge *ad hoc*.<sup>91</sup>

**February 24, 2004:** Harvard Law Student Advocates for Human Rights and the Global Justice Center jointly submit an *amicus curiae* brief to the Court.<sup>92</sup>

**October 11, 2004:** The State and the Commission submit their final written arguments on preliminary objections, possible merits, reparations, and costs.<sup>93</sup>

In its first preliminary objection, the State argues that the Court lacks jurisdiction *ratione temporis* to hear the case for a number of reasons.<sup>94</sup> First, the alleged human rights violations that took place before Suriname became a party to the American Convention on November 12, 1987, and the alleged violations of a continuous nature that occurred after that date are two different types of violations and should be processed separately.<sup>95</sup> Second, because Suriname did not become a Convention State until November 12, 1987, the events that occurred at Moiwana Village on November 29, 1986, could not be violations of the Convention.<sup>96</sup> Third, since no violations arose out of the events occurring on November 29, 1986, it is impossible to have continuing violations of the Convention.<sup>97</sup> Last, because there is no alleged violation of Article 18, there can be no violations of Articles 8 and 25.<sup>98</sup>

The Court recognizes that under Article 28 of the Vienna Convention on the Law of Treaties of 1969, the American Convention does not bind Suriname for any situation that ceased to exist before the

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90. *Id.*

91. *Id.* ¶ 13.

92. *Id.* ¶ 16.

93. *Id.* ¶ 23.

94. *Id.* ¶ 34.

95. *Id.* ¶ 34(a).

96. *Id.* ¶¶ 34(b)-(c).

97. *Id.* ¶ 34(f).

98. *Id.*

date the Convention entered into force for Suriname.<sup>99</sup> However, when there is a continuing or permanent violation that begins before the acceptance of the Court's jurisdiction and persists after that acceptance, the Court is competent to examine the actions and omissions that occurred subsequent to the acceptance of jurisdiction.<sup>100</sup> The Commission alleged that the State's violations arose out of acts and omissions that occurred after Suriname ratified the Convention, namely the State's failure until 1989 to initiate an *ex officio* investigation into the November 29, 1986, attack; the army's forceful release of suspects in police custody in 1989; the 1990 murder of the police officer in charge of the investigation; and the "chilling effect" upon the investigation after the 1992 enactment of an amnesty law.<sup>101</sup> Accordingly, the Court has jurisdiction to examine the State's failure to initiate an effective investigation after Suriname became a party to the Convention, the continued displacement of those community members exiled after the attack, and any other violations that occurred after November 12, 1987.<sup>102</sup>

The State also contends that the petitioners failed to exhaust domestic remedies as required by the American Convention and the Commission's Rules of Procedure.<sup>103</sup> The State's Civil Code, Code of Civil Procedure, and Code of Criminal Procedure provide adequate and effective local remedies allowing the petitioners to commence criminal proceedings and a civil action for damages against the State for its wrongful acts, but the petitioners only pursued criminal prosecution of the perpetrators.<sup>104</sup> The State argues that a civil suit would have been the most effective remedy for the petitioners and because the petitioners did not attempt to initiate a lawsuit, they cannot argue that they were denied access to the national judicial authorities.<sup>105</sup>

The Court acknowledges the rule under the Convention that requires the exhaustion of domestic remedies, but notes that a State may expressly or tacitly waive the enforcement of this rule.<sup>106</sup> In order to enforce the rule, the State must raise its objection during the first stages of the proceeding; otherwise, the Court presumes that the State tacitly waived its objection.<sup>107</sup> If the State does timely object, it must indicate

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99. *Id.* ¶ 38.

100. *Id.* ¶ 39.

101. *Id.* ¶¶ 40-41.

102. *Id.* ¶ 43.

103. *Id.* ¶ 45.

104. *Id.* ¶¶ 45(c)-(e).

105. *Id.* ¶ 45(g).

106. *Id.* ¶¶ 48-49.

107. *Id.* ¶ 49.

which remedies should have been exhausted and provide evidence of their effectiveness.<sup>108</sup> In the case at hand, Suriname did not object to the petitioner's failure to exhaust domestic remedies until after the Commission issued both its Admissibility Report on March 7, 2000, and its Merits Report of February 28, 2002.<sup>109</sup> Thus, because Suriname did not object in a timely manner, the Court concludes that the State tacitly waived its right to object.<sup>110</sup>

In its third preliminary objection, the State argued that the Court's jurisdiction is barred under Article 51(1) of the Convention because the Commission exceeded the three month time limit to submit its application to the Court following transmission of the Merits Report No. 35/02.<sup>111</sup>

The Court, however, notes that Suriname requested two extensions of its time limit to respond to the Merits Report.<sup>112</sup> After the expiration of these two extensions on December 20, 2002, the Commission submitted the application to the Court because of the absence of substantive developments pertaining to the case.<sup>113</sup> The Court may extend the three-month time period provided for in Article 51(1) if such an extension is procedurally fair.<sup>114</sup> Here, the State expressly recognized that if the Commission granted it an extension to respond to the Merits Report and no substantial developments occurred with respect to the case, the Commission could submit the case to the Court.<sup>115</sup> Moreover, the rule of *non concedit venire contra factum proprium* applies because the State benefitted from the extensions granted by the Commission, and is now trying to invoke these extensions as a procedural violation.<sup>116</sup> Accordingly, the Court rejects this preliminary objection.<sup>117</sup>

Next, the State objects to the Commission's conclusions that the State committed certain violations even though the petitioners did not originally allege those violations.<sup>118</sup> The Court dismisses this preliminary objection, however, because the Commission's conclusions regarding specific violations of the American Convention are not binding upon the Court and do not pertain to the proceedings before the

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108. *Id.*

109. *Id.* ¶ 50.

110. *Id.* ¶¶ 50-51.

111. *Id.* ¶ 52.

112. *Id.* ¶ 56.

113. *Id.*

114. *Id.* ¶ 57.

115. *Id.*

116. *Id.* ¶¶ 53, 58.

117. *Id.* ¶ 59.

118. *Id.* ¶ 60.

Court.<sup>119</sup>

The State's final preliminary objection arises out of the Commission's failure to send all pertinent parts of the petition to the State as intended in Article 42 of its Rules of Procedure.<sup>120</sup> Such parts of the petition include a number of attachments "of the utmost importance" in deciding the case, leaving the State's defense compromised.<sup>121</sup> The Court finds this preliminary objection improper because Suriname failed to exercise its right to defense during the appropriate procedural opportunities before the Commission.<sup>122</sup> Because the State did not raise this objection in a timely fashion, it is now barred from raising such a defense.<sup>123</sup>

**April 14, 2005:** The Court orders Freddy Kruisland to demit the post of *ad hoc* judge because of his previous participation in legal proceedings with a direct connection to significant facts and issues before the Court in the instant case.<sup>124</sup> Mr. Kruisland demits the post on April 15, 2005.<sup>125</sup> The State does not appoint a new judge *ad hoc*.

### III. MERITS

#### A. Composition of the Court

Sergio García Ramírez, President  
Allirio Abreu-Burelli, Vice-President  
Oliver Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Diego Garcia Sayán, Judge

Pablo Saavedra-Alessandri, Secretary  
Emilia Segares- Rodríguez, Deputy Secretary

#### B. Decision on the Merits

**June 15, 2005:** The Court issues its Judgment on Preliminary

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119. *Id.* ¶ 63.

120. *Id.* ¶ 65.

121. *Id.*

122. *Id.* ¶ 68.

123. *Id.* ¶¶ 68-69.

124. *Id.* ¶ 28.

125. *Id.* ¶ 29.

Objections, Merits, Reparations, and Costs.<sup>126</sup>

The Court found unanimously that Suriname had violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of the Moiwana community members,<sup>127</sup> because:

*Article 5(1) provides that “[e]very person has the right to have his physical, mental, and moral integrity respected.”<sup>128</sup> The State must protect this right by not only ensuring the humane treatment of individuals, but by investigating possible violations of this right.<sup>129</sup>*

*Although the Court was not competent to examine the events of November 29, 1986, because Suriname did not become a party to the Convention or recognize the Court’s jurisdiction until November 12, 1987, the Court exercised its jurisdiction to examine the State’s fulfillment of its obligation to investigate possible violations of Article 5 (Right to Humane Treatment) in relation to the effects of the events of November 29, 1986, which continued after the critical date of ratification and acceptance of the Court’s jurisdiction.<sup>130</sup>*

*The Court found that the State’s failure to investigate the events of November 29, 1986, prevented the Moiwana community members from honoring their deceased loved ones and from returning to their native land.<sup>131</sup> Despite clear evidence of the State’s responsibility in the matter and multiple efforts by the community members and their representatives, there was no indication that the State or any agency seriously and thoroughly investigated the matter.<sup>132</sup> Additionally, the community members never received any form of reparation.<sup>133</sup>*

*This failure to take any remedial efforts in response to the events of November 29, 1986, caused anguish and shame for the community members because it created the belief among the members that the State*

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126. Case of the Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 233 (June 15, 2005).

127. *Id.*

128. *Id.* ¶ 90.

129. *Id.* ¶ 92.

130. *Id.*

131. *Id.* ¶ 93.

132. *Id.* ¶ 94.

133. *Id.*

*discriminated against them.*<sup>134</sup>

*Furthermore, the inability to achieve justice for the deceased was especially poignant for the Moiwana community members.<sup>135</sup> Their spiritual beliefs provide that the spirits of the deceased torment the living members if their deaths go unavenged.<sup>136</sup> Accordingly, the Moiwana community members lived in fear of these spirits and suffered because there was no justice following the events of November 29, 1986.<sup>137</sup>*

*The members experienced additional suffering because they were unable to perform the burial rights on the physical remains of the deceased as required by their traditions.<sup>138</sup> The members did not know what happened to the bodies after the attack and became distressed upon hearing reports that some corpses were burned at a Monego mortuary.<sup>139</sup> Burning a body is a severe transgression in Moiwana tradition and the members feared that the spirits would cause “spiritually-caused illnesses” on the members and future generations unless they performed proper ceremonies for the deceased.<sup>140</sup>*

*Finally, the lack of an investigation into the matter prevented the community members from understanding the motives behind the attack.<sup>141</sup> This inability to understand the motives caused the members to fear that they would suffer a similar attack if they returned to their land.<sup>142</sup> Consequently, they remained displaced from their home.<sup>143</sup> This displacement threatened their cultural identity and integrity because the N’djuka community’s connection to its land is of vital spiritual, cultural, and material importance.<sup>144</sup>*

*Therefore, the Court concluded that the Moiwana community members endured significant emotional, psychological, spiritual, and economic hardship due to the State’s violation of Article 5(1) (Right to Physical,*

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134. *Id.*

135. *Id.* ¶¶ 95-96.

136. *Id.*

137. *Id.* ¶ 96.

138. *Id.* ¶ 99.

139. *Id.* ¶100.

140. *Id.* ¶¶ 99-100.

141. *Id.* ¶ 97.

142. *Id.*

143. *Id.*

144. *Id.* ¶ 101.

*Mental, and Moral Integrity*).<sup>145</sup>

Article 22 (Right to Freedom of Movement and Residence), in relation to Article 1(1) of the Convention, to the detriment of the Moiwana community members,<sup>146</sup> because:

*Article 22 (Right to Freedom of Movement and Residence) establishes that every person lawfully in a State's territory has the right to reside and move about within it and the right to leave the State's territory at any time.<sup>147</sup> These rights may be restricted only pursuant to law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.<sup>148</sup> No person can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.<sup>149</sup>*

*Furthermore, the Court recognizes that the Guiding Principles issued in 1998 by the UN Secretary General's Special Representative on Internally Displaced Persons supplement Article 22.<sup>150</sup> These Principles establish that internally displaced persons shall enjoy the same rights and freedoms under international and domestic law as do other persons in their country and that such internally displaced persons shall not be discriminated against because of their internally displaced status.<sup>151</sup> The State's obligation to respect human rights law includes the obligation to prevent and avoid conditions that might lead to displacement of persons; in the event that displacement occurs, it shall not be carried out in a manner that violates the right to life, dignity, liberty, and security of those affected.<sup>152</sup> This state obligation is heightened when it concerns indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependence on and attachment to their lands.<sup>153</sup> Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow*

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145. *Id.* ¶ 103.

146. *Id.* Although neither the Commission nor the Representatives alleged the violation of Article 22, the Court has competence based on the American Convention and in light of the *iura novit curia* principle to study the possible violation of Convention provisions that have not been alleged in the case's pleadings. *Id.* ¶ 107.

147. *Id.* ¶ 109.

148. *Id.*

149. *Id.*

150. *Id.* ¶ 111.

151. *Id.*

152. *Id.*

153. *Id.*



*internally displaced persons to return voluntarily, in safety and with dignity, to their homes, or to resettle voluntarily in another part of the country.*<sup>154</sup>

*The Court found that the Moiwana community members were convinced that they could not return to their land because they were unable to obtain justice for the events of 1986.*<sup>155</sup> *When some members returned to the land, they suffered physical and psychological illnesses because they believed they seriously offended the spirits of those who died in the attack by failing to perform the proper death rituals and reconciling with the spirits.*<sup>156</sup> *All of the community members who testified before the Court expressed that their land had to be purified before they could return to it.*<sup>157</sup>

*In addition, the Court found that the members were also reluctant to return to their land because they did not know the identity of the perpetrators of the 1986 attack and feared another attack if they returned to their land.*<sup>158</sup>

*The Court also took into consideration that in 1991 the Surinamese refugees presented their conditions for repatriation to a commission comprised of representatives from the UNHCR and the governments of Suriname and French Guiana, but that these conditions were never fulfilled.*<sup>159</sup> *Furthermore, the Court found it significant that the French government allowed Surinamese refugees to remain in French Guiana after the official refugee camps were closed in 1992 because the refugees refused to return to Suriname without guarantees for their safety.*<sup>160</sup> *The French government subsequently granted renewable residency permits to these refugees because of the dangers posed to these individuals.*<sup>161</sup>

*Therefore, the Court found that the State violated Article 22 because the State failed to establish conditions and provide the means that would allow the Moiwana community members to return voluntarily, in safety*

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154. *Id.*

155. *Id.* ¶ 113.

156. *Id.*

157. *Id.*

158. *Id.* ¶ 114.

159. *Id.* ¶ 115.

160. *Id.*

161. *Id.*

and with dignity, to their lands.<sup>162</sup> The State failed to establish conditions for the return of the members by failing to conduct a thorough criminal investigation into the events of 1986 so that the members could avenge the deaths of the deceased and it failed to provide the means by depriving those members exiled in French Guiana of their rights to enter Suriname and remain there.<sup>163</sup>

Article 21 (Right to Property), in relation to Article 1(1) of the Convention, to the detriment of the Moiwana community members,<sup>164</sup> because:

*Article 21 provides that everybody has the right to use and enjoy his property.<sup>165</sup> No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in accordance with the law.<sup>166</sup>*

*As discussed with respect to Article 22 above, the Court found that the State's failure to conduct an effective investigation into the events of 1986 prevented the community members from voluntarily returning to their traditional land.<sup>167</sup> To determine whether the State violated Article 21, however, the Court needed to determine whether the land belonged to the community members.<sup>168</sup> The parties to the case agreed that the community members did not formally possess legal title to the land, but that the land formally belonged to the State in default because no entity legally owned the land.<sup>169</sup>*

*However, in previous cases the Court held that indigenous communities who occupied their ancestral lands in accordance with customary practices but without legal title, the mere possession of the land should suffice to obtain official recognition of their communal ownership.<sup>170</sup>*

*Although the Moiwana community members were not indigenous to the region, the Village was settled by N'djuka clans late in the 19<sup>th</sup> Century and lived in the area with strict adherence to N'djuka custom until the*

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162. *Id.* ¶ 120.

163. *Id.*

164. *Id.*

165. *Id.* ¶ 127.

166. *Id.*

167. *Id.* ¶ 128.

168. *Id.* ¶ 129.

169. *Id.* ¶ 130.

170. *Id.* ¶ 131.

1986 attack.<sup>171</sup> *The community members did not possess the land as individuals, but as a community as a whole.*<sup>172</sup> *Therefore, the Court held that the community's rights to property under Article 21 applied to the Moiwana community members and should suffice to obtain State recognition of their ownership and that the Moiwana community members may be considered the legitimate owners of their traditional lands.*<sup>173</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of the Moiwana community members,<sup>174</sup> because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.*<sup>175</sup>

*Article 25 (Right to Judicial Protection) provides that everyone has the right to simple and prompt recourse to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.*<sup>176</sup> *State parties must ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state, must develop the possibilities of judicial remedy, and must ensure that the competent authorities shall enforce such remedies when granted.*<sup>177</sup>

*The Court observed that under Suriname's case law, the State had a duty to initiate, without delay, a serious, impartial, and effective investigation into the events of 1986 because State actors were involved*

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171. *Id.* ¶ 132.

172. *Id.* ¶ 133.

173. *Id.* ¶¶ 133-34.

174. *Id.*

175. *Id.* ¶ 139.

176. *Id.* ¶ 140.

177. *Id.*

*in the attack that killed at least thirty-nine Moiwana residents.*<sup>178</sup> Upon its accession to the American Convention in 1987, Suriname was obligated to provide a swift and exhaustive judicial investigation into the events of November 29, 1986, regardless of the efforts of the victims or their family members or upon their submission of evidence.<sup>179</sup> Therefore, the Court found that the Moiwana community members have the right to have the deaths and violations to personal integrity occurring in 1986 effectively investigated by State authorities, the right to have those responsible for the unlawful acts prosecuted and appropriately punished, and the right to receive compensation for damages and injuries suffered.<sup>180</sup>

*The Court next outlined the standards for a diligent investigation.*<sup>181</sup> At a minimum, State authorities must seek to identify the victim; recover and preserve evidentiary material related to the death in order to aid in any potential prosecution of those responsible; identify possible witnesses and obtain statements from them concerning the death; determine the cause, manner, location, and time of death, as well as any pattern or practice that may have brought about the death; and distinguish between natural death, accidental death, suicide and homicide. Furthermore, the crime scene must be exhaustively investigated and autopsies and analyses of skeletal remains must be rigorously performed by competent professionals, employing appropriate procedures.<sup>182</sup>

*Although the police initiated an investigation in 1989, the Court found that authorities did not conduct this investigation with due diligence.*<sup>183</sup> First, the police did not initiate the investigation for more than two years after the attack.<sup>184</sup> Next, even though the lead investigator, Herman Gooding, questioned several suspects and arrested at least two individuals, armed military police arrived at the police station shortly after these arrests and forcibly obtained the release of one of these individuals, Mr. Swedo.<sup>185</sup> The police abandoned the investigation after Army Commander Desire Bouterse issued a statement by which he confirmed that he ordered the military action in Moiwana, that he

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178. *Id.* ¶ 145.

179. *Id.* ¶ 146.

180. *Id.* ¶ 147.

181. *Id.* ¶ 148.

182. *Id.*

183. *Id.* ¶ 164.

184. *Id.* ¶ 150.

185. *Id.*

would not allow the action to be investigated by civilian police, and that he required the release of Mr. Swedo.<sup>186</sup> Authorities briefly resumed the investigation when Moiwana '86 discovered a mass grave near Moiwana Village.<sup>187</sup> After an investigative team uncovered human remains, state authorities reported that the remains corresponded to five to seven adults and two to three children; however, the State did not provide an identification of the corpses or further information regarding the grave site.<sup>188</sup>

The Court noted that these limited investigations were the extent of any State action regarding the attack of the Moiwana community despite a 1995 directive adopted by the National Assembly of Suriname requesting the Executive Branch to investigate human rights violations committed during the military regime and two formal requests filed in 1996 by Moiwana '86 with the Attorney General for a proper investigation.<sup>189</sup>

In addition, the Court recognized that during the course of any investigations, the State must enact all necessary means to protect investigators, witnesses, judges, prosecutors, and the Moiwana community members.<sup>190</sup> Many involved in the previous investigations faced violence designed to deter them from pursuing an investigation: Inspector Herman Gooding was murdered, police who collaborated with Gooding faced life-threatening circumstances and fled Suriname, Stanley Rensch, founder of Moiwana '86, survived an assassination attempt and was arbitrarily arrested four times, and those who collaborated with Moiwana '86 were often threatened and harassed and some fled Suriname for their safety.<sup>191</sup> Furthermore, there was never an investigation into the murder of Inspector Gooding.<sup>192</sup>

Finally, the Court evaluated the reasonableness of the length of the proceedings pertaining to the events of November 29, 1986.<sup>193</sup> Despite the fact that the alleged victims and their representatives frequently urged criminal investigations into the attack, eighteen years had passed without any effective investigation or reparations for the community

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186. *Id.*

187. *Id.* ¶ 151.

188. *Id.*

189. *Id.* ¶ 154.

190. *Id.* ¶ 159.

191. *Id.* ¶ 158.

192. *Id.*

193. *Id.* ¶ 160.

members.<sup>194</sup> *The Court recognized that this was a complex matter, but that the complexity did not justify the extended delay of the proceedings because police had initiated an investigation in 1989, but were preventing from achieving any resolution because of obstructive actions by the military and a disinterest on the behalf of the Attorney General.*<sup>195</sup>

*In sum, the Court held that Suriname violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) because of its seriously deficient investigation, its violent obstruction of justice, and the extended lapse of time without any clarification of the facts or punishment of the perpetrators violated the standards for access to justice and due process established in the American Convention.*<sup>196</sup>

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Cecilia Medina Quiroga

In a separate opinion, Judge Medina Quiroga expressed that although she agreed with the Court's decision, she believed that the State also violated Article 4 (Right to Life) due to its failure to comply with its obligation to investigate the deprivation of life that occurred in relation to the events of November 29, 1986.<sup>197</sup> Furthermore, she believed that the Court failed to note that the State's violation of Article 5 (Right to Humane Treatment) arose not only from its failure to comply with its obligation to investigate the facts, but also in relation to personal integrity.<sup>198</sup>

Although the massacre of November 29, 1986, occurred before Suriname became a party to the American Convention, the Court ruled that it had jurisdiction over the State's failure to comply with its obligation to investigate the attack because such an obligation arose when Suriname became a party to the Convention in 1987.<sup>199</sup> Judge Medina Quiroga, on the other hand, stated that the State's obligation to investigate arose at the time of the massacre.<sup>200</sup> Because Suriname was a

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194. *Id.* ¶ 161.

195. *Id.* ¶ 162.

196. *Id.* ¶¶ 163-64.

197. *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 124, 1 (June 15, 2005).

198. *Id.*

199. *Id.* at 4.

200. *Id.*

member of the Organization of American States, it was obliged to respect and guarantee the human rights established in the American Declaration of the Rights and Duties of Man, which include the rights to life, liberty, and the security of the person.<sup>201</sup> Still, however, the Court did not have jurisdiction to monitor compliance with this obligation because the Court was not a party to the Convention.<sup>202</sup>

In ruling that the State had an obligation to investigate the events of 1986, Judge Medina Quiroga commented that the Court should have established the legal grounds for that obligation.<sup>203</sup> Although the Court mentions Article 1(1) (Obligation to Respect Rights), the obligation to guarantee refers to the duty to comply with the contents of Article 8 (Right to a Fair Trial) and of Article 25 (Right to Judicial Protection), but cannot serve as grounds to hold that the State had the obligation to investigate.<sup>204</sup>

## 2. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade highlighted issues in the case that he believed would facilitate the development of international law.<sup>205</sup>

First, Judge Cançado Trindade discussed the case's relevance to legal subjectivity in international law.<sup>206</sup> The Court acknowledged the legal subjectivity of the individual in the case of the *Moiwana Community* by recognizing that failing to allow the *Moiwana* community members to submit their own pleadings would constitute an "undue restriction" of "their conditions as subjects of the International Law of Human Rights."<sup>207</sup> The rights protected under the American Convention belong to individuals and do not merely exist as State obligations.<sup>208</sup>

Second, Judge Cançado Trindade discussed uprootedness as a human rights problem confronting the universal juridical conscience.<sup>209</sup> When peoples are uprooted from their homes, it ultimately affects their

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201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 5.

205. *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Antonio A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 1 (June 15, 2005).

206. *Id.* ¶ 2.

207. *Id.* ¶¶ 9-10.

208. *Id.*

209. *Id.* ¶ 13.

right to cultural identity, which is integral to the right to life itself.<sup>210</sup> Because an individual's homeland is integral to his or her identity, uprootedness creates deep-rooted suffering and multiple sources of loss: the loss of the home and the familiarity of day-to-day life, the loss of profession and the feeling of usefulness to others, the loss of the native language as a spontaneous expression of feelings, and the illusion of trying to forget the past.<sup>211</sup> The case of the *Moiwana Community v. Suriname* was a significant case in the development of the rights of internally displaced peoples because the Court devoted an entire section to forced displacement and established a violation by the State of Article 22 (Freedom of Movement and Residence) in combination with the general duty of Article 1(1) (Obligation to Respect Rights).<sup>212</sup>

Third, Judge Cançado Trindade explored the ways in the case reflected the projection of human suffering in time.<sup>213</sup> The survivors of the massacre suffered a spiritual harm because they could not uphold their culture by properly honoring the deceased.<sup>214</sup> The Court's judgment allowed the survivors to find redress because it recognized the suffering of the N'djuka people and ordered a State investigation into the massacre and reparations.<sup>215</sup> Although the N'djuka's suffering could not be erased, judicial recognition allowed them to attain the justice they so desperately sought.<sup>216</sup>

Fourth, Judge Cançado Trindade believed the case illustrated the incorporation of death into life because it allowed the Court to move from its recognition of the "right to the project of life" into recognition of the "right to a project of after-life."<sup>217</sup> In order to acknowledge this right, Judge Cançado Trindade called for the configuration of spiritual damage as an aggravated form of moral damage.<sup>218</sup> This new category of damage could be distinguished from moral damage because moral damages require a "quantifications" of the damages as a form of reparations to the benefit of the living.<sup>219</sup> Because spiritual damages affect both the living and the dead, pecuniary reparations would be unable to satisfy such damages.<sup>220</sup> Instead, they could only be satisfied

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210. *Id.*

211. *Id.* ¶ 14.

212. *Id.* ¶ 23.

213. *Id.* ¶ 24.

214. *Id.* ¶ 29.

215. *Id.* ¶ 33.

216. *Id.*

217. *Id.* ¶ 68.

218. *Id.* ¶ 71.

219. *Id.* ¶¶ 73-74.

220. *Id.*



by acts of the living, thereby honoring the spirits of the deceased.<sup>221</sup>

Lastly, Judge Cançado Trindade made a “plea against oblivion” so that the memories of those lost in tragedies, such as the victims of the Moiwana massacre, are not forgotten.<sup>222</sup> Amnesty acts such as Suriname’s Amnesty Act 1989 institutionalize the imposition of this oblivion and undermine the preservation of the memories of these victims.<sup>223</sup> Remembrance is a manifestation of gratitude, and gratitude is perhaps the noblest manifestation of rendering true justice.<sup>224</sup>

#### IV. REPARATIONS

The Court ruled that the State had the following obligations:

##### *A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

###### 1. Investigate, Prosecute, and Punish Those Responsible

The State shall immediately carry out an effective, swift investigation and judicial process, leading to the clarification of the facts, punishment of the responsible parties, and appropriate compensation of the victims.<sup>225</sup> The State shall publicly disseminate the results of these processes so that the Surinamese society may know the truth.<sup>226</sup> No domestic law, including amnesty laws and statutes of limitation may impede compliance with this Court order.<sup>227</sup>

In fulfillment of its obligation to investigate and punish the responsible parties, the State must remove all obstacles, *de facto* and *de jure*, that perpetuate impunity; expedite the investigative and judicial processes; sanction any individuals found responsible for obstructing the criminal investigation of the matter; and provide adequate safety guarantees to the victims, other witnesses, judicial officers, prosecutors, and other relevant law enforcement.<sup>228</sup>

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221. *Id.* ¶ 77.

222. *Id.* ¶ 82.

223. *Id.* ¶ 86.

224. *Id.* ¶ 93.

225. Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 205 (June 15, 2005).

226. *Id.*

227. *Id.* ¶ 206.

228. *Id.* ¶ 207.

## 2. Locate and Return Remains

The State must employ all scientific and technical means possible to promptly recover the remains of the Moiwana community members killed during the attack.<sup>229</sup> If such remains are found by the State, it shall deliver them to the surviving community members, and the State shall analyze those remains found at the gravesite in 1993 and convey those results to the representatives of the victims.<sup>230</sup>

## 3. Give Moiwana Community Members Collective Title to Traditional Territories

The State shall adopt such legislative, administrative, and other necessary measures to ensure the property rights of the Moiwana community members in relation to the traditional territories from which they were expelled, and provide for their use and enjoyment of those territories.<sup>231</sup> Such measures shall include the creation of an effective mechanism for the delimitation, demarcation, and titling of said traditional territories.<sup>232</sup> The State should perform such measures with the participated and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages and the neighboring indigenous communities, including the community of Alfonsdorp.<sup>233</sup>

Until the State secures the Moiwana community members' rights to their land, Suriname shall refrain from actions that would affect the existence, value, use or enjoyment of the property located in the territory where the Moiwana community lived until the events of 1986.<sup>234</sup>

## 4. Guarantee the Safety of Community Members who return to the Moiwana Village

When community members decide that they may safely return to the Moiwana Village, the State shall send representatives every month to the Moiwana Village during the first year to consult with the residents.<sup>235</sup> If the residents express concern regarding their safety

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229. *Id.* ¶ 208.

230. *Id.*

231. *Id.* ¶ 209.

232. *Id.*

233. *Id.* ¶ 210.

234. *Id.* ¶ 211.

235. *Id.* ¶ 212.

during these meetings, the State must take appropriate measures to guarantee their security.<sup>236</sup> The residents shall participate in designing these security measures.<sup>237</sup>

#### 5. Create a Development Fund

The State shall establish a development fund of \$1,200,000 for health, housing, and educational programs for the Moiwana community members.<sup>238</sup> An implementation committee shall determine the specific aspects of said programs and shall be completed within a period of five years from the date of notification of the Judgment.<sup>239</sup> This implementation committee is to consist of three members: the victims shall designate one member, the State shall choose one member, and the representatives of the victims and the State shall agree on the final member.<sup>240</sup> If the representatives of the victims and the State fail to reach an agreement within six months from the date of notification of the present judgment, the Court will convene them to a meeting to decide the matter.<sup>241</sup>

#### 6. Publically Acknowledge International Responsibility

The State shall publicly recognize its international responsibility for the facts of the case and issue an apology to the Moiwana community members.<sup>242</sup> This shall be delivered in a public ceremony with the participation of the *Gaanman*, the N'djuka leader, and high-ranking State authorities.<sup>243</sup> The ceremony shall be publicized through the national media and it must also honor the memory of Herman Gooding, the civilian police investigator murdered during his investigation of the events of 1986.<sup>244</sup> This ceremony must be organized and funded by the State and completed within one year from the date of notification of the present judgment.<sup>245</sup>

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236. *Id.*

237. *Id.*

238. *Id.* ¶ 214.

239. *Id.*

240. *Id.* ¶ 215.

241. *Id.*

242. *Id.* ¶ 216.

243. *Id.*

244. *Id.*

245. *Id.* ¶ 217.

## 7. Construct a Monument

The State shall build a monument in a suitable public location as a reminder to the whole nation of the events that occurred and so that such events do not occur again.<sup>246</sup> The design and location shall be decided through a consultation with the victims' representatives and shall be completed within one year from the date of notification of this judgment.<sup>247</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court ordered the State to pay \$3,000 to each of the 130 identified Moiwana community members for the material damages they suffered owing to their violent expulsion from their homes and ongoing displacement.<sup>248</sup>

#### 2. Non-Pecuniary Damages

The Court ordered the State to pay \$10,000 to each of the 130 identified Moiwana community members for moral damages arising from their inability to obtain justice for the attack on their village, especially in light of their spiritual beliefs and their fear that they will face another attack because the State failed to conduct a criminal investigation.<sup>249</sup> This award also reflects the fact that Moiwana community members were denied information regarding the remains of their loved ones, leaving them unable to honor their loved ones and perform the appropriate death rituals.<sup>250</sup> As a result, the community members fear "spiritually-caused illnesses" that will persist throughout generations.<sup>251</sup> Furthermore, the community members' forced displacement from their lands devastated them emotionally, spiritually, culturally, and economically because their relationship with their land is such an important tenet of their culture.<sup>252</sup>

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246. *Id.* ¶ 218.

247. *Id.*

248. *Id.* ¶¶ 186-87.

249. *Id.* ¶ 195.

250. *Id.*

251. *Id.*

252. *Id.*

### 3. Costs and Expenses

The Court ordered the State to pay \$45,000 to the legal representative of Association Moiwana for the costs of litigation.<sup>253</sup> \$27,000 of that amount shall correspond to the costs of the organization Moiwana '86 and \$10,000 shall correspond to the costs of the Forest Peoples Programme.<sup>254</sup> \$8,000 of the \$45,000 shall correspond to the past and likely future costs of Association Moiwana in carrying out the investigative and judicial proceedings of the case.<sup>255</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$1,735,000

### C. Deadlines

The State must hold the ceremony to deliver a public apology and establish a memorial within one year from the date of notification of the Judgment.<sup>256</sup>

The State must establish the development fund directed towards health, housing, and education programs within a period of five years of the date of notification.<sup>257</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

On October 4, 2005, Suriname submitted a request for an interpretation of the judgment on preliminary exceptions, merits, and reparations because the State disagreed with specific parts of the Judgment.<sup>258</sup>

First, the State questioned the Court's ability to hear the case based on procedural and jurisdictional considerations.<sup>259</sup> Next, the State disputed the standing of individuals to appear as individual parties before the Court because Article 57 of the Convention states, "the

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253. *Id.* ¶ 223.

254. *Id.*

255. *Id.* ¶ 224.

256. *Id.* ¶¶ 216, 218.

257. *Id.* ¶ 214.

258. *Moiwana Community v. Suriname*, Interpretation of the Judgment of Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C), No. 124, ¶¶ 4-5 (Feb. 8, 2006).

259. *Id.* ¶ 5.

Commission shall appear in all cases before the Court.”<sup>260</sup> The State believed that treating individuals as separate parties further weakened its position in the case.<sup>261</sup> In addition, Suriname objected to the punishment it received for failing to submit information about the events of 1986 because the events of 1986 fell outside of the Court’s jurisdiction.<sup>262</sup> Finally, the State did not believe that the Court’s assessment and conclusion with regard to collective title to traditional territories had a basis upon the law and facts provided to the Court.<sup>263</sup> Based on the facts submitted, the only conclusion could be that the Moiwana Community members were entitled to return to their traditional lands at any moment they desired. The Court should not have issued a decision as to measures regarding demarcation and delimitation because land rights were not an issue presented to the Court in this case.<sup>264</sup>

In responding to Suriname’s request for an interpretation, the Court held that most of the arguments submitted by the State were attempts to resubmit issues of fact and law that the Court previously decided in the judgment, which is impermissible in requests for interpretations.<sup>265</sup> Therefore, the Court dismissed the State’s request for interpretation pertaining to the Court’s procedure and jurisdiction in the case.<sup>266</sup> However, the Court clarified the scope of the reparations concerning the delimitation and demarcation of land in Suriname.<sup>267</sup> By recognizing the right of the Moiwana community members to the use and enjoyment of their traditional lands, the Court did not make a determination as to the appropriate boundaries of the territory.<sup>268</sup> Rather, the Court directed the State, as a measure of reparation, to “adopt legislative, administrative and other measures as are necessary to ensure” those rights, after consultation with the neighboring communities.<sup>269</sup> If said rights are to be properly ensured, the measures to be taken must include “the delimitation, demarcation, and titling of said traditional territories,” with the participation and informed consent of the victims as expressed through their representatives, the measures of the other N’djuka villages and the neighboring indigenous

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260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.* ¶ 16.

266. *Id.* ¶ 17.

267. *Id.* ¶ 19.

268. *Id.*

269. *Id.*

communities.<sup>270</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**July 14, 2006:** The State forwarded its first report on the measures taken in compliance with the Judgment.<sup>271</sup> In the report, the State informed the Court that it created several entities charged with complying with the Court's judgment, including the Ministerial Coordination Team, the Commission of Legal Experts on Human Rights, the Multidisciplinary Working Group Implementation of Moiwana Judgment, the *Stitching Fonds Ontwikkeling Moiwana Gemeenschap* (the Foundation Fund Development for Moiwana Community), the National Commission on Land Rights, and a Coordination Team, in charge of preparing the investigation and judicial process of the acts committed against the Moiwana Community.<sup>272</sup>

The report also stated that the State prepared the reparations for the material and moral damages and expected to make payment by July 14, 2006.<sup>273</sup> The State had not yet completed the data of fifteen surviving relatives and nine survivors had died in the meantime.<sup>274</sup> With regard to compensation for costs, the State planned to submit payment of \$27,000 to Stitching Moiwana and \$10,000 to the Forest Peoples Programme by July 14, 2006, and affirmed that the \$8,000 payments to Association Moiwana would be made only to reimburse expenses.<sup>275</sup> At the time of the report, Association Moiwana had not submitted any statement of expenses.<sup>276</sup>

Furthermore, the report disclosed that the monument in memory of the victims would be built in a sixty day working period starting in August 2006.<sup>277</sup>

With regard to the recovery of the remains of the victims for delivery to the surviving community, the State reported that the data mentioned in the Judgment could not be completely confirmed by the persons involved.<sup>278</sup> However, Working Group was in the process of

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270. *Id.*

271. *Moiwana Village v. Suriname, Monitoring Compliance with Judgment*, Inter-Am. Ct. H.R. (ser. C), No. 124, 2, ¶ 4(a) (Nov. 21, 2007).

272. *Id.*

273. *Id.* at 3, ¶ 4(c).

274. *Id.*

275. *Id.* at 3, ¶ 4(d).

276. *Id.*

277. *Id.* at 3, ¶ 4(e).

278. *Id.* at 3, ¶ 4(g).

collecting additional data.<sup>279</sup>

**July 15, 2006:** The State held a ceremony to deliver a public apology to the Moiwana community.<sup>280</sup> The State committee coordinated with the representatives of surviving relatives and planned it in accordance with the Auka culture.<sup>281</sup>

**December 15, 2006:** The State transferred the payment for costs to the Forest Peoples Programme.<sup>282</sup>

**January 15, 2007:** The State transferred the payment for costs to Association Moiwana.<sup>283</sup>

**May 2, 2007:** The Secretariat of the Court sent a letter to the State requesting the submission of any audio and/or video records of the public ceremony and required that the State provide, in its second report, specific information concerning the reparation payments, the reach and scope of the mandate of the National Commission on Land Rights, whether community members decided to return to the village, and whether further steps had been taken in constructing the memorial to the victims.<sup>284</sup>

**May 21, 2007:** The State submitted its second report to the Court.<sup>285</sup> With it, the State submitted two DVD's showing the public apology ceremony and a letter from the Ministry of Finance to the Governor of the Central Bank of Suriname dated August 24, 2006, that confirmed the State's payment of SRD 2,149,030.00 (approximately \$76,8091.26 USD) to the victims.<sup>286</sup> The State also confirmed that it completed the payment for costs to Association Moiwana and the Forest Peoples Programme.<sup>287</sup>

In addition, the State updated the Court on the progress of the Moiwana monument.<sup>288</sup> Although work was underway, the completion

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279. *Id.*

280. *Id.* at 9, ¶10(a).

281. *Id.* ¶ 4(f).

282. *Id.* at 9, ¶ 10(b).

283. *Id.* at 9, ¶ 10.

284. *Id.* at 8, ¶ 9.

285. *Id.* at 9, ¶ 10.

286. *Id.* at 9, ¶¶ 10(a), 10(c).

287. *Id.* at 10, ¶ 10(b).

288. *Id.* at 10, ¶ 10(d).



date had been delayed due to heavy rains.<sup>289</sup> The State included evidence of the contract with the artist commissioned to complete the monument and a computer disc with pictures representing the beginning of construction of the monument.<sup>290</sup>

With regard to the National Commission on Land Rights, the State attached Presidential Order No. PB 02/2006, dated February 1, 2006, which established the National Commission on Land Rights.<sup>291</sup>

Finally, for the safety of those community members who would decide to return to the Moiwana village, the State advised the Court that there were existing Police Departments in the neighboring villages of Moengo and Albina.<sup>292</sup> New accommodations were being built for police officers in those villages, and the old one were undergoing renovation.<sup>293</sup> Once the Moiwana village was built, a Neighborhood Police Officer from the Institute of Neighborhood Police Officers would be installed to help guarantee the safety of the community members.<sup>294</sup>

**November 21, 2007:** In its first Monitoring and Compliance Report, the Court recognized that the State fully complied with the Judgment's order to hold a public ceremony of recognition and apology.<sup>295</sup> The Court also recognized that the State was developing the project to build a memorial in accordance with the guidelines set forth in the Judgment.<sup>296</sup> Although the one-year period for completion had past, the Court acknowledged that difficulties could arise and requested updates on the progress of the monument.<sup>297</sup>

The Court observed that the State did not supply sufficient information pertaining to its obligation to investigate the facts of the case and to identify, prosecute, and punish the responsible parties and concluded that the State failed to comply with this obligation.<sup>298</sup> Because the State's investigation of the case was essential to its obligation to guarantee the safety of the Moiwana community members, the State also failed to comply with said obligation.<sup>299</sup> It was not clear whether the police stations in the nearby villages constituted effective

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289. *Id.*

290. *Id.*

291. *Id.* at 10, ¶ 10(e).

292. *Id.* at 10, ¶ 10(f).

293. *Id.*

294. *Id.*

295. *Id.* at 14, ¶ 9.

296. *Id.* at 14, ¶ 10.

297. *Id.* at 14, ¶ 11.

298. *Id.* at 15, ¶ 12.

299. *Id.* at 15, ¶ 14.

measures towards compliance with this obligation.<sup>300</sup>

Regarding the State's obligation to recover the remains of the victims of the attack, the Court considered that there was not enough information from the State evidencing its compliance with this portion of the Judgment.<sup>301</sup> There was also no information from the State regarding the Court's order to analyze the human remains found at the grave site in 1993 and to communicate the results to the representatives of the victims.<sup>302</sup>

As to the State's duty to adopt legislative, administrative, and other measures necessary to ensure the property rights to the members of the Moiwana community, the Court observed that the State created Commissions to address the property rights of the ethnic and tribal groups.<sup>303</sup> However, the Court emphasized the lack of specific measures taken by the State towards full compliance with this aspect of the Court's order.<sup>304</sup>

Although the State emphasized the importance of the creation of a Foundation for the Development of the Moiwana Community ("SFOMG") to be directed to health, housing, and education programs for the Moiwana community members, the Fund had not complied with the requirements set forth in the Judgment.<sup>305</sup> The State did not provide the Court with information indicating that the SFOMG funded projects addressing health, housing, and educational needs.<sup>306</sup> Further, the State stressed that the State should ensure the release of funds so that the Moiwana community benefit from the accrued interests on the funds awarded.<sup>307</sup>

The Court considered that the State had fully complied with the order to provide reparations for moral and material damages.<sup>308</sup> The Court also determined that the State fully complied with its obligation to submit payment for the costs of the Forest Peoples Programme and the Association Moiwana.<sup>309</sup>

**November 27, 2007:** The State reported that a Monument had been

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300. *Id.* at 15-16, ¶ 14.

301. *Id.* at 15, ¶ 15.

302. *Id.*

303. *Id.* at 16, ¶ 16.

304. *Id.*

305. *Id.* at 17, ¶ 17.

306. *Id.*

307. *Id.* at 18, ¶ 18.

308. *Id.* at 18, ¶ 19.

309. *Id.* at 18, ¶ 20.

“delivered” to the Moiwana community.<sup>310</sup>

**October 22, 2008:** The Secretariat of the Court sent a note to the State advising it of its failure to submit a detailed report on the actions taken to comply with the reparations ordered by the Tribunal by the March 25, 2008, deadline.<sup>311</sup>

**December 2008:** The State located some of the remains of the Moiwana Community members.<sup>312</sup>

**February 2009:** The victims and their representatives traveled to the cemetery where the remains were found in order to perform burial ceremonies according to their traditional customs.<sup>313</sup>

**May 13, 2009:** The Secretariat of the Court sent a second note advising the State of its failure to submit a report by the March 25, 2008, deadline.<sup>314</sup>

**September 2, 2009:** The Secretariat sent another note to the State, establishing a new deadline of October 2, 2009, to submit a report.<sup>315</sup>

**October 22, 2009:** The Secretariat again requested a report from the State after the State failed to submit a report by the October 2, 2009, deadline.<sup>316</sup>

**December 18, 2009:** In its monitoring compliance report, the Court decided to convene the Inter-American Commission, the representatives of the victims, and the State to a private hearing to take place on February 1, 2010, in order to receive complete and updated information from the State on the actions taken in compliance with the Judgment issued in this case, as well as the observations from the Commission and the representatives.<sup>317</sup>

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310. *Moiwana Village v. Suriname*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. (ser. C), No. 124, 20, ¶ 41 (Nov. 22, 2010).

311. *Case of the Moiwana Village v. Suriname*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. (ser. C), No. 124, 4, ¶ 4 (Dec. 18, 2009).

312. *Case of the Moiwana Village v. Suriname*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. (ser. C), No. 124, 9, ¶ 15 (Nov. 22, 2010).

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.*

317. *Id.* at 7, ¶ 1.

**February 1, 2010:** The State reported that from 2007 until 2009 it carried out workshops with the participation of civil society and indigenous and Maroon communities to raise national awareness on land rights.<sup>318</sup> It also held a national conference that resulted in a tentative timeline for compliance with its obligation to establish land rights and a prioritization of related issues.<sup>319</sup> The National Commission created to address the land rights obligation mapped the Moiwana territory with the Community's cooperation and as a result of its work the State asked the Amazon Conservation Team ("ACT") to conduct a study on that territory.<sup>320</sup> The National Commission intended to discuss this study with the victims and the government in February and March 2010.<sup>321</sup>

**March 2, 2010:** The State submitted a written report requested by the Court on February 1, 2010.<sup>322</sup> However, this report lacked the schedule that the Court requested for the transfer of amounts still owed to the development fund and for the implementation of the development process.<sup>323</sup>

**November 22, 2010:** The Court issued a third Monitoring Compliance Report.<sup>324</sup> It declared that the State had fully complied with its obligation to build a memorial and had partially complied with establishing a community development fund.<sup>325</sup> The Court also declared that it would continue proceedings to monitor the State's compliance with its obligations to 1) implement the measures necessary to investigate the facts of the case, as well as to identify, prosecute, and if applicable, punish the responsible parties; 2) recover the remains of the Moiwana Community members killed during the attack and deliver them to the surviving Community members; 3) adopt legislative, administrative, and other measures necessary to ensure the property rights of the members of the Moiwana Community; 4) guarantee the safety of those Community members who decide to return to Moiwana Village; and 5) establish a community development fund.<sup>326</sup>

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318. *Id.* at 11, ¶ 19.

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.* at 4, ¶ 11.

323. *Id.* at 4, ¶ 12.

324. *Id.* at 1.

325. *Id.* at 21, ¶¶ 1-2.

326. *Id.* at 21-22, ¶ 3.

The Court required that the State immediately comply with the Judgment and decided to continue monitoring compliance with the unfulfilled orders of the Judgment.<sup>327</sup> It required that Suriname submit a report to the Court by March 30, 2011, detailing the actions taken to fulfill with those obligations contained in the Judgment.<sup>328</sup> Thereafter, the State was to submit a report on its compliance with the Judgment every three months.<sup>329</sup>

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[Moiwana Community v. Suriname, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 124 \(June 15, 2005\).](#)

#### 2. Decisions on Merits, Reparations and Costs

[Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 124 \(June 15, 2005\).](#)

[Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 124 \(June 15, 2005\).](#)

[Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 124 \(June 15, 2005\).](#)

#### 3. Provisional Measures

[None]

#### 4. Compliance Monitoring

[Moiwana Village v. Suriname, Monitoring Compliance with Judgment,](#)

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327. *Id.* at 22, ¶ 4.

328. *Id.* at 22, ¶ 6.

329. *Id.* At the time of publication, this was the last Monitoring Compliance published on the Court's website.

[Inter-Am. Ct. H.R. \(ser. C\), No. 124 \(Nov. 22, 2010\).](#)

[Moiwana Village v. Suriname, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(ser. C\), No. 124 \(Dec. 18, 2009\).](#)

[Moiwana Village v. Suriname, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(ser. C\), No. 124 \(Nov. 21, 2007\).](#)

## 5. Review and Interpretation of Judgment

[Moiwana Community v. Suriname, Interpretation of the Judgment of Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\), No. 124 \(Feb. 8, 2006\).](#)

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[Not available]

#### 2. Report on Admissibility

[Not available]

#### 3. Provisional Measures

[None]

#### 4. Report on Merits

[Not available]

#### 5. Application to the Court

[Not available]

## VIII. BIBLIOGRAPHY

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SONJA C. GROVERK, THE EUROPEAN COURT OF HUMAN RIGHTS AS A PATHWAY TO IMPUNITY FOR INTERNATIONAL CRIMES 277-90 (2010).