

1994

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### Recommended Citation

Martin, Claudia, and Françoise Roth. "Suriname Faces Past Human Rights Violations." *Human Rights Brief* 1, no. 1 (1994): 1, 10-11.

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# HUMAN RIGHTS

The Center for Human Rights and Humanitarian Law

# BRIEF

Washington College of Law • The American University

Volume 1, Number 1 • Spring 1994

## Suriname Faces Past Human Rights Violations

by Claudia Martin and Françoise Roth

As in most Latin American countries, the newly elected Surinamese government is confronted with past human rights violations perpetrated under the previous military regime.

While, to date, it has failed to bring human rights abusers to justice, Suriname was recently the subject of a decision by the Inter-American Court of Human Rights ("the Court"). The *Aloeboetoe et al.* case, rendered on September 10, 1993, determined the compensation to be paid to the survivors of seven Saramaca Maroon men killed by the military in 1987.

The troubled political situation experienced by this former Dutch colony following its independence in 1975 ended, in May 1991, with the inauguration of a democratically elected President. The election took place five months after a December 1990 army putsch overthrew what was the first democratically elected government in the South American republic since 1980. Nevertheless, as recently reported by the U.S. State Department, "the Government took no action to investigate past human rights violations."

During the last years of Dersie Bouterse's dictatorship, former army sergeant Ronny Brunswijk launched an uprising in the eastern and southeastern provinces to overthrow the military government. His guerilla group, known as the "Jungle Commando," was comprised mostly of Maroons (descendants of escaped African slaves who fled into the interior between the 16th and 18th centuries to avoid recapture). In the final years of conflict at least 200 people, mostly civilians, were killed, over 10,000 refugees were driven into neighboring French Guiana, and the medical and educational infrastructure of the region were destroyed.

The events that gave rise to the *Aloeboetoe et al.* case took place on December 31, 1987 during this period of turmoil when a group of soldiers attacked unarmed civilian Maroons in a counterinsurgency operation in Atjoni in the north of Suriname. Seven of the Maroons were dragged, blindfolded and driven off in a military vehicle on suspicion of belonging to the "Jungle Commando." A few kilometers

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## Commission Evaluates Administration of Justice in Peru

by Antonio Maldonado and Diego Rodríguez

The United States and Peru recently reached an unprecedented agreement permitting an independent commission of human rights experts to examine the administration of justice in Peru following the April 5, 1992, auto-coup by Peruvian president Alberto Fujimori. In an effort to concentrate power in the executive branch, Fujimori dismissed the Peruvian congress, the majority of judges and public prosecutors, and the Tribunal de Garantías Constitucionales (Tribunal of Constitutional Guarantees). The United States responded to the coup d'état by freezing most U.S. aid to Peru. The agreement worked out by key congressional leaders and the Clinton administration calls for the restoration of aid to Peru if, inter alia, it implements the commission recommendations.

"This has never been done before," says American University professor Robert Goldman, who was selected to chair the commission. "Other people in Congress are looking at the commission

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further, they were forced out of the vehicle and ordered to dig their own graves. Six of the Maroons were summarily executed while the seventh, injured while trying to escape, died several days later. The case, lodged on behalf of the seven Maroons, was initiated in the Inter-American Commission on Human Rights ("the Commission") in January 1988.

The Commission, after determining governmental responsibility in the killings, sent the case to the Court on August 27, 1990. Suriname eventually admitted its liability at a hearing on the preliminary objections on December 2, 1991. It also agreed to discuss the issue of compensation and reparation. This decision reflected the pledge of the newly-elected President "to respect and to promote the observance of the obligations comprised in the area of human rights."

In resolving the case, the Court, for the first time in its short history, decided to consider the family structure of the victims' tribe rather than state civil law in determining the compensation to be bestowed.

The Commission requested the Court to award compensation in the form of material and moral damages for the families of the victims according to the rule of *restitutio in integrum*. It also requested non-pecuniary reparations, such as a public apology by the President of Suriname for the killings, and the exhumation and return of the victims' bodies to the families. Finally, it demanded that Suriname pay full legal expenses incurred by the petitioners in pursuing the case.

The Commission urged that the decision on compensation for actual damages be made with reference to the customs of the Saramaca tribe. The social structure of the Maroons, of which the Saramacas are a part, is based on a strongly matriarchal familial configuration where polygamy is common. The Commission explained that the core family is 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." The govern-

ment, on the other hand, argued that compensation should be granted according to the American Convention and the principles of international law and thus requested that its civil law be applied.

The Court acknowledged that Surinamese family law did not apply to the tribe as tribe members were unaware of the law and adhered to their own customs and traditions. Furthermore, the government did not provide the necessary infrastructure for registering births, marriages and deaths in the region, an

sion on behalf of the petitioners.

In addition, the Court made a distinction between successors and claimants. It identified successors as those who were the most closely related or next of kin to the decedent. Parents, for example, were considered successors to the interests of their deceased unwed children. In the event the decedent was married, the victim's spouse and children were the successor while their parents were regarded as claimants.

The Court then explained that where a claim was made by a successor,

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essential requirement for enforcing the state's civil law. The Court decided, however, that under the general principles of international law, the persons entitled to compensation were the "children" and the "spouse" of the victim, or if there is no spouse or children the "ascendant." But in the instant case, those terms had to be construed according to the family structure of the Saramacas to the extent that it did not contradict the American Convention. The Court, however, denied the Commission's request urging compensation for the tribe as a whole.

The Court's ruling also addressed the tendering of evidence and the burden of proof. Following the standard that "He who asserts must prove," the Court ruled that the petitioners had the onus of proving, by "relevant documentation," that they were successors. In the instant case, this construction effectively shifted the burden of proof as Suriname, which was responsible for registering its citizens, did not establish the infrastructure necessary to meet this requirement. Consequently, the state was unable to disprove claims made by would-be successors, leaving the Court with little choice but to accept as true the evidence submitted by the Commis-

it was for the government to prove that the petitioner had not suffered specific and general damages. In the case of claimants, however, the Court determined that the burden was on the Commission to prove that these individuals were entitled to compensation by demonstrating that: 1) the victims had contributed to the welfare of the claimants/dependents; 2) the contribution was made effectively and regularly; 3) the contribution would have continued had the victims not been killed; and 4) the contribution met a financial need of the claimants/dependents.

Furthermore, the Court ruled that parents as claimants would presumably suffer psychological distress following the death of their off-spring. Consequently, the state had the burden of proving otherwise.

In its conclusion, the Court found that Suriname was under an obligation to inform the families of the victims of the location of their remains. The Court, however, omitted any reference to the duty of states to investigate such murders and to punish those responsible. This omission appears inconsistent with the determination, as established in the Velasquez Rodriguez decision,

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that a state has an affirmative "legal duty . . . to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, and to impose the appropriate punishment . . ." The Commission had specifically called for a state inquiry into the murders as a form of nonpecuniary reparation for the victims.

The Court eventually awarded the victims' families U.S.\$450,000 in damages and required Suriname to compensate the families for the expenses incurred in locating the victims' bodies. The Court further determined that financial reparations were not sufficient and ordered the state to re-open the Saramaca medical dispensary and the school in the victims' village, and to staff both with personnel.

Nevertheless, the Court denied the Commission's request to require the Surinamese government to pay for the legal expenses incurred by the litigants in the course of the procedure before the Surinamese courts, the Inter-American Commission and the Court. Rather, it sided with Suriname that the litigants had filed no claim before the national courts and that the Commission accepted the case only fifteen days after the facts took place. Further, the Court agreed with Suriname that the Commission undertook unnecessary expense in employing external lawyers when it could have called upon the services of its own staff.

As the *Human Rights Brief* went to press, the Court handed down a decision in the *Gangaram Panday* case, also involving Suriname. The next issue of the newsletter will feature a review of this case as well as an interview with dean Claudio Grossman who represented the petitioners before the Court in both the *Aloboetoe et al.* and the *Gangaram Panday* cases. 🌐

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## WCL's Acting Dean Grossman Elected to Human Rights Commission

The role of the Inter-American Commission on Human Rights is evolving, according to Claudio Grossman, acting dean of the Washington College of Law. Grossman was recently elected to the Commission, an organ of the Organization of American States (OAS).

Grossman says that the Commission played the role of a "fire fighter" in the 1970s. "There were many gross violations of human rights; arbitrary detentions, killings, and disappearances." The vast majority of member states of the OAS now have elected governments. While elected governments are not necessarily wholly democratic, their problems are generally different than those often associated with dictatorships, explains Grossman. For example, one issue is whether legislation adopted by the member states satisfies their obligations under the American Convention of Human Rights.

opening more accurate records of jurisprudence. Suggestions under consideration include the compilation of case reports similar to the Human Rights Year Books used in the European



WCL's Acting Dean Claudio Grossman

Human Rights System, and the possibility of bringing the decisions on line in a network. This past session Grossman proposed that the Commission devote more time to women's issues. Grossman and the current Commission's chairman, Yale professor Michael Reisman, were named co-rapporteurs on the issue of whether current legislation in OAS member states satisfies the requirements on

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The Commission has jurisdiction over all OAS member states to receive individual complaints under either the American Convention, or, in the case of states, like the United States that have not ratified the Convention, the earlier American Declaration on Human Rights. The Commission also reports on the conditions of human rights in specific countries and can submit cases to the Inter-American Court of Human Rights if the state has accepted the Court's jurisdiction. Additionally, the Commission is responsible for reviewing annual reports from member states.

Grossman says the Commission is trying to expand its role by strengthening the body of precedent relied on in cases brought before it and by devel-

the treatment of women under the American Convention and the American Declaration. They will also jointly investigate whether the prison systems of member states meet the minimum human rights standards embodied in these documents.

Grossman joins the Commission with nearly 20 years' experience as a human rights advocate. He has participated in various on-site fact finding missions throughout the world. Grossman has also acted as a legal advisor to the Commission in compulsory proceedings before the Inter-American Court of Human Rights on the issues of disappearances in Honduras and human rights abuses against indigenous people in Suriname. 🌐