In the Case of the Saramaka People,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 37, 56 and 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the present Judgment.

I. INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. On June 23, 2006, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted an application to the Court against the State of Suriname (hereinafter "the State" or "Suriname"). The application originated from petition No. 12.338 presented to the Secretariat of the Commission on October 27, 2000 by the Association of Saramaka Authorities (hereinafter "ASA") and twelve Saramaka captains on their own behalf as well as on behalf of the Saramaka people of the Upper Suriname River. On March 2, 2006, the Commission adopted admissibility and merits report No. 9/06, pursuant to Article 50 of the Convention, [FN1] in which it made certain recommendations to the State. On June 19, 2006, the Commission concluded that "the matter had not been settled" and, consequently, submitted this case to the jurisdiction of the Court. [FN2]

[FN1] In the report, the Commission concluded that the State was responsible for the violation of: the right to property established in Article 21 of the American Convention to the detriment of the Saramaka people, by not adopting effective measures to recognize its communal property right to the lands it has traditionally occupied and used, without prejudice to other tribal and indigenous communities; the right to judicial protection enshrined in Article 25 of the American Convention, to the detriment of the Saramaka people, by not providing them effective access to justice for the protection of their fundamental rights, and Articles 1 and 2 of the Convention by failing to recognize or give effect to the collective rights of the Saramaka people to their lands and territories. In addition, the Commission made some recommendations to the State of Suriname. Cf. Inter-American Commission on Human Rights, Report Nº 09/06, Admissibility and Merits. Case 12.338. The Twelve Saramaka Clans (LOS). Suriname. March 02, 2006 (case file of appendices to the application and annex 1, appendix 1, folios 239-297).
[FN2] The Commission appointed Paolo Carozza, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Ariel E. Dulitzky, Víctor Madrigal Borloz, Oliver Sobers and Manuela Cuvi Rodríguez, as legal advisers.
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2. The application submits to the Court's jurisdiction alleged violations committed by the State against the members of the Saramaka people, an allegedly tribal community living in the Upper Suriname River region. The Commission alleged that the State has not adopted effective measures to recognize their right to the use and enjoyment of the territory they have traditionally occupied and used, that the State has allegedly violated the right to judicial protection to the detriment of such people by not providing them effective access to justice for the protection of their fundamental rights, particularly the right to own property in accordance with their communal traditions, and that the State has allegedly failed to adopt domestic legal provisions in order to ensure and guarantee such rights to the Saramakas.

3. The Commission asked the Court to determine the international responsibility of the State for the violation of Articles 21 (Right to Property) and 25 (Right to Judicial Protection), in conjunction with Articles 1(1) and 2 of the American Convention. Furthermore, the Commission requested that the Court order the State to adopt several monetary and non-monetary reparation measures.

4. The representatives of the alleged victims, namely, Mr. Fergus MacKay, of the Forest Peoples Programme, Mr. David Padilla, and the Association of Saramaka Authorities (hereinafter “the representatives”), submitted their written brief containing pleadings, motions and evidence (hereinafter “representatives’ brief”), in accordance with Article 23 of the Rules of Procedure. The representatives asked the Court to declare that the State had violated the same rights alleged by the Commission, and additionally alleged that the State had violated Article 3 (Right to Juridical Personality) of the Convention by “failing to recognize the legal personality of the Saramaka people”. Moreover, the representatives submitted additional facts and arguments regarding the alleged ongoing and continuous effects associated with the construction of a hydroelectric dam in the 1960s that allegedly flooded traditional Saramaka territory. Additionally, they requested certain measures of reparation and the reimbursement of the costs and expenses incurred in processing the case at the national level and before the international proceedings.

5. The State submitted its brief containing the answer to the application and observations to the representatives' brief (hereinafter "answer to the application"), in which it alleged it "is not responsible for the violation of the right to property established in [A]rticle 21 of the Convention, because the State does recognize the Saramaka community [a privilege to the land it] has traditionally occupied and used[;] the right to judicial protection has not been violated, because the Surinamese legislation does provide effective legal recourse[, and] the State […] has complied with its obligation under [A]rticle 1 and [A]rticle 2 of the Convention and therefore not violated these rights". Furthermore, the State submitted several preliminary objections, which the Court has divided into the following categories: legal standing of the original petitioners before the Commission, legal standing of the representatives before the Court, non-exhaustion of domestic remedies, duplication of international procedures, and the Commission's lack of "standing to bring this particular [case] before [the] Court". Finally, the State referred to other admissibility arguments regarding the legal representation of the alleged victims and the roles of Mr. David Padilla and Mr. Hugo Jabini in the present case.

II. PROCEEDINGS BEFORE THE COURT

6. The application of the Commission was notified to the State on September 12, 2006, [FN3] and to the representatives on September 11, 2006. During the proceedings before the Court, in addition to the presentation of the principal briefs forwarded by the parties (supra paras. 1, 4 and 5), the Commission and the representatives submitted written briefs on the preliminary objections presented by the State. Furthermore, on March 26, 2007 the State submitted an additional written pleading, pursuant to Article 39 of the Court's Rules of Procedure, to which the Commission and the representatives submitted their respective observations on April 18, 2007.

[FN3] When the application was notified to the State, the Court informed it of its right to designate an ad hoc Judge in this case. On October 6, 2006, the State designated Mr. Alwin Rene Baarh as ad hoc Judge. Mr. Baarh participated in the oral hearing in the present case, and subsequently informed the Court that, for reasons of force majeur, he could not participate in the deliberation of the present Judgment.

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7. On March 30, 2007, the President of the Court (hereinafter "the President") ordered the submission of sworn declarations (affidavits) of seven witnesses and five expert witnesses proposed by the Commission, the representatives and the State, to which the parties were given the opportunity to submit their respective observations. [FN4] Furthermore, due to the particular circumstances in this case, the President convened the Inter-American Commission, the representatives, and the State to a public hearing in order to receive the declarations of three alleged victims, two witnesses and two expert witnesses, as well as the final oral arguments of the parties regarding the preliminary objections and possible merits, reparations, and costs. The State requested that the date of the public hearing be postponed, and the parties were given the opportunity to submit observations on this matter. Having considered said observations, on April 14, 2007 the President reaffirmed his prior decision regarding the date of the hearing, and

partially modified the March 30th Order, granting the parties more time to submit the sworn written testimonies and expert declarations, as well as their final written arguments. [FN5] The public hearing in this case was held on May 9 and 10, 2007, during the seventy-fifth regular session of the Court. [FN6]

[FN4] Order issued by the President of the Inter-American Court on March 30, 2007.
[FN5] Order issued by the President of the Inter-American Court on April 14, 2007.
[FN6] The following were present at this hearing: (a) for the Inter-American Commission: Paolo Carozza, Commissioner and Delegate, and Elizabeth Abi-Mershed and Juan Pablo Albán A., advisers; (b) for the representatives: Fergus MacKay, attorney for the Forest Peoples Programme, and (c) for the State: Soebhaschandre Punwasi, Agent; Eric Rudge, deputy Agent; Hans Lim A Po, Lydia Ravenberg, Margo Waterval, Reshma Alladin and Monique Pool.

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8. On July 3, 2007, the State presented its final written arguments; on July 9, 2007, the Commission and the representatives submitted their respective final written arguments.

9. On July 16, 2007, the representatives were requested to submit the verifying receipts and evidence regarding the costs and expenses incurred by the Forest Peoples Programme in the present case. Said evidence was not submitted.

III. PRIOR CONSIDERATIONS

10. Prior to analyzing the preliminary objection submitted by the State and the possible merits of this case, the Tribunal will address in this chapter whether the Court is competent to address the representatives´ arguments (supra para. 4) regarding the alleged ongoing effects caused by the construction of a dam within alleged traditional Saramaka territory.

A. The alleged “ongoing and continuous effects” associated with the construction of the Afobaka dam

11. In its application before the Court, the Commission defined the factual basis for the present case under the heading “Statement of Facts”. Here, the Commission included the following statement: “[d]uring the 1960s, the flooding derived from the construction of a hydroelectric dam displaced Saramakas and created the so-called ‘transmigration’ villages”. This one line is the only reference in the Commission’s application regarding the alleged displacement of members of the Saramaka people due to the construction of a dam, which the representatives referred to as the Afobaka dam that in the 1960s flooded alleged traditional Saramaka territory. The Court observes that the Commission did not develop in the application any legal arguments regarding the alleged international responsibility of the State for these acts.

12. The representatives submitted an additional and rather detailed, three-and-a-half page account of certain facts not contained in the application, regarding the alleged “ongoing and continuous effects” associated with the construction of the Afobaka dam. Accordingly, under the heading of “Facts” in their brief containing pleadings, motions, and evidence, the representatives

described, inter alia, the following alleged facts: the lack of consent by the Saramaka people for said construction; the names of the companies involved in the construction of the dam; various figures regarding the amount of area flooded and the number of displaced Saramakas from the area; the compensation that was awarded to those displaced persons; the lack of access to electricity of the so-called "transmigration" villages; the painful effect the construction had on the community; the reduction of the Saramaka people's subsistence resources; the destruction of Saramaka sacred sites; the lack of respect for the interred remains of deceased Saramakas; the environmental degradation caused by foreign companies that have received mining concessions in the area, and the State's plan to increase the level of the dam to increase power supplies, which will presumably cause the forcible displacement of more Saramakas and which has been the object of a complaint filed by the Saramakas before domestic authorities in the year 2003.

13. At this juncture, the Court will address whether the factual basis for the representatives´ arguments regarding the alleged "ongoing and continuous effects" associated with the construction of the Afobaka dam bears a direct relationship with the factual framework submitted to this Tribunal by the Commission in its application, which is the document that defines the factual scope of the litigation before this Tribunal. [FN7] In this sense, the Court has constantly held that "[…] it is not admissible [for the representatives] to allege new facts distinct from those set out in the [Commission's] application, without detriment to describing facts that explain, clarify or reject those mentioned in the application, or that respond to the claims of the applicant". [FN8] Accordingly, the Court must look to the Commission's application to determine whether this is an issue that falls within the factual scope of the case that was submitted for the Court's adjudication.

[FN7] Cf. Article 61 of the American Convention; Articles 32, 33, 36 of the Court's Rules of Procedure, and Articles 2 and 28 of the Court's Statute.

[FN8] Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 153; Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 121, and Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 162.

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14. The Court observes that none of the factual assertions submitted by the representatives with regards to the Afobaka dam can be found in the application submitted by the Commission. Furthermore, some of the issues raised by the representatives involve controversies, such as the State's alleged plan to increase the level of the dam, that are still pending before Surinamese domestic authorities.

15. Additionally, during the pubic hearing held in the present case, the Commission was asked how it would "characterize the additional information which was presented by the representatives regarding the alleged effects on the Saramaka people of the dam?". [FN9] The Commission responded that "[t]here is a single sentence in the complaint and in the Article 50 Report relating to the dam and its effects", and further characterized said information "as a

historical fact". [FN10] Unlike in other cases, [FN11] the Commission has not alleged that this contextual and historical background is related to the subject matter of the controversy.

[FN9] Question asked by Judge Macaulay during the public hearing held at the Court on May 9 and 10, 2007 (transcription of public hearing, p. 90).
[FN10] Answer by the Commission to Judge Macaulay's question during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, p. 91).
[FN11] Cf. Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152; Case of Goiburu et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, and Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163.

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16. Consequently, in accordance with the application's structure and object, as well as the Commission's own clarification as to the manner in which these alleged facts should be understood in the present case, the Court considers that this issue was raised by the Commission only as contextual background involving the history of the controversy in the present case, but not as an issue for the Court's adjudication. Thus, in accordance with the limitations regarding the alleged victims' participation in the process before this Court, the Tribunal considers that the factual basis for the representatives' arguments in this regard falls outside the scope of the controversy as framed by the Commission in its application.

17. In light of the above considerations, and in order to preserve the principle of legal certainty and the right of defense of the State, the Court considers that the representatives' arguments concerning the alleged ongoing and continuous effects associated with the construction of the Afobaka dam are not admissible.

IV. PRELIMINARY OBJECTIONS

18. In its answer to the application the State submitted a number of preliminary objections, which will be addressed by the Court in the following order:

A) FIRST PRELIMINARY OBJECTION (Lack of legal standing of the petitioners before the Inter-American Commission)

19. The State asserted in its first preliminary objection that neither of the two original petitioners, namely the Association of Saramaka Authorities and the twelve Saramaka captains, had standing to file a petition before the Inter-American Commission. More specifically, the State argued that the petitioners did not consult the paramount leader of the Saramakas, the Gaa'man, about filing the petition. This alleged disregard for Saramaka customs and traditions is tantamount, according to the State, to a failure to meet the requirements of Article 44 of the Convention, as the petitioners allegedly had no authorization from the chief leader, and thus no authority to petition on behalf of the whole Saramaka community. Based on these facts, the State was of the view that the Commission should have declared the petition inadmissible. The Inter-

American Commission alleged that, under Article 44 of the American Convention and Article 26(1) of the Commission's Rules of Procedure, it is not necessary for the petitioners to be the actual victims or to hold power of attorney or other legal authorization from the victims or next of kin in order to file the petition. The representatives alleged that, although the petitioners consulted with the Gaa'man, both prior and after the submission of the petition, there is no requirement, explicit or implicit, in either Article 44 of the Convention or Article 23 of the Commission's Rules of Procedure that the Gaa'man, whom the State considers to be the representative of the petitioners, had to submit the petition or that the petitioners had to obtain authorization from the Gaa'man to do so.

20. In this regard, the Court must analyze the scope of the provision of Article 44 of the Convention, which is to be construed by the Court in accordance with the object and purpose of such treaty, namely, the protection of human rights, [FN12] and in accordance with the principle of the effectiveness (effet utile) of legal rules. [FN13]

[FN12] Cf. The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29.

[FN13] Cf. Case of Ivcher Bronstein v. Peru. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37, and Case of Constitutional Court v. Peru. Competence. Judgment of September 24, 1999. Series C No. 55, para. 36. Cf. also Case of Baena Ricardo et al. v. Panamá. Competence. Judgment of November 28, 2003. Series C No. 104, para. 66; Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006. Series C No. 144, para. 135, and Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 84.

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21. Article 44 of the Convention provides that:

[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

22. Article 44 of the Convention permits any group of persons to lodge petitions or complaints regarding violations of the rights set forth in the Convention. This broad authority to file a petition is a characteristic feature of the Inter-American system for the protection of human rights. [FN14] Moreover, a person or group of persons other than the alleged victims may file the petition. [FN15]

[FN14] Cf. Case of Castillo Petruzzi et al. v. Peru. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 77.

[FN15] Cf. Case of Castillo Petruzzi et al., supra note 14, para. 77; Case of Acevedo Jaramillo et al., supra note 13, para. 137, and Case of Yatama, supra note 13, para. 82.

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23. In light of these considerations, this Tribunal finds no conventional prerequisite that the paramount leader of a community must give his or her authorization in order for a group of persons to file a petition before the Inter-American Commission to seek protection for their rights, or for the rights of the members of the community to which they belong. As previously noted, the possibility of filing a petition has been broadly drafted in the Convention and understood by the Tribunal. [FN16]

[FN16] Cf. Case of Castillo Petruzzi et al., supra note 14, para. 77; Case of Acevedo Jaramillo et al., supra note 13, para. 137, and Case of Yatama, supra note 13, para. 82.

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24. Thus, for the purposes of this case, this Court is of the opinion that the Association of Saramaka Authorities, as well as the twelve Saramaka captains, can be considered as a "group of persons" in accordance with the wording of Article 44 of the Convention and the Court's interpretation of said provision. Furthermore, the Court is of the opinion that, in light of the American Convention, it was not necessary for the petitioners to obtain authorization from the Gaa´man in order to file a petition before the Inter-American Commission. For these reasons, the Court dismisses the first preliminary objection.

B) SECOND PRELIMINARY OBJECTION (Lack of legal standing of the representatives before the Inter-American Court)

25. As a second preliminary objection, the State challenged the locus standi in judicio of the alleged victims and their representatives in the proceedings before this Court. The State asserts that, in accordance with Articles 51 and 61 of the Convention, only the State and the Commission may bring a case to the Court and appear before this Tribunal. According to the State, any independent or separate participation by the alleged victims and their representatives would be contrary to the Convention and the principle of equality of arms. As only a draft Protocol exists concerning the standing of individuals before the Court, and because the Court's Rules of Procedure cannot supersede the Convention, the State concludes that individuals cannot yet have legal standing before the Court. Thus, participation of the alleged victims and their representatives can only take place through the Commission. Moreover, the State argued that the representatives do not have standing to separately and independently allege before the Court that Suriname violated the right recognized in Article 3 of the Convention. The Commission and the representatives asserted that, once the Commission submits a case to the Court, the alleged victims or their representatives have standing to submit to the Court requests and arguments autonomously, based on the facts set out in the Commission's application.

26. Indeed, as stipulated by Article 61 of the Convention, the Inter-American Commission is the body empowered to initiate the proceedings before the Court by lodging an application. Nevertheless, the Tribunal is of the view that preventing the alleged victims from advancing their own legal arguments would be an undue restriction upon their right of access to justice, which derives from their condition as subjects of international human rights law. [FN17] At the current

stage of the evolution of the Inter-American system for the protection of human rights, the empowerment of the alleged victims, their next of kin or representatives to submit pleadings, motions and evidence autonomously must be interpreted in accordance with their position as titleholders of the rights embodied in the Convention and as beneficiaries of the protection offered by the system. [FN18] Nevertheless, there are certain limits to their participation in these proceedings, pursuant to the Convention and in the exercise of the Court's jurisdiction. [FN19] That is, the purpose of the representatives´ brief containing pleadings, motions and evidence is to give effect to the procedural attribute of locus standi in judicio that this Court has already recognized, in its jurisprudence, to the alleged victims, their next of kin or their representatives. [FN20]

[FN17] Cf. Case of the "Five Pensioners", supra note 8, para. 155; Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 54, and Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 57.
[FN18] Cf. OAS, General Assembly, Resolution AG/RES. 1890 (XXXII-O/02), Evaluation of the Workings of the Inter-American System for the Protection and Promotion of Human Rights with a View to its Improvement and Strengthening, and OAS, General Assembly, AG/RES. 2291 (XXXVII-O/07), Strengthening of Human Rights Systems Pursuant to the Mandates Arising from the Summits of the Americas.
[FN19] Cf. Case of the "Mapiripán Massacre", supra note 17, para. 58, and Case of the Massacre of Pueblo Bello, supra note 17, para. 55.
[FN20] Cf. Case of the Massacre of Pueblo Bello, supra note 17, para. 53.
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27. It is also well established in the Tribunal's jurisprudence that the representatives may inform the Court of so-called supervening facts, which may be submitted to the Court at any moment of the proceedings before a judgment is delivered. [FN21] It is also worth mentioning that, with regard to the incorporation of other rights distinct than those included in the Commission's application, the Court has established that the petitioners may invoke such rights, provided that they refer to the facts already included in the application. [FN22] Ultimately, it is for the Court to decide, in each case, on the admissibility of allegations of this nature in order to safeguard the procedural equality of the parties (supra para. 17). [FN23]

[FN21] Cf. Case of the "Five Pensioners", supra note 8, para. 154; Case of Bueno Alves, supra note 8, para. 121, and Case of the Miguel Castro Castro Prison, supra note 8, para. 162.
[FN22] Cf. Case of the "Five Pensioners", supra note 8, para. 155; Case of Escué Zapata v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 92, and Case of Bueno Alves, supra note 8, para. 121.
[FN23] Cf. Case of the "Mapiripán Massacre", supra note 17, para. 58, and Case of the Massacre of Pueblo Bello, supra note 17, para. 55.
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28. The recognition of the alleged victims´ locus standi in judicio as well as their right to submit legal arguments that are different from those of the Commission, yet based on the same facts, does not infringe upon the State's right to defend itself. The State always has the opportunity, at all stages of the proceedings before this Tribunal, to respond to the allegations of the Commission and the representatives. This opportunity is available to the State at both the written and oral stages of the proceedings. Furthermore, in the present case, pursuant to Article 39 of the Court's Rules of Procedure, the State was given the opportunity to submit an additional written brief in order to fully respond to all legal arguments put forward by the representatives (supra para. 6). Thus, the State's right to defend itself against the allegations submitted by the representatives in the present case has been respected and ensured at all times.

29. The Court is thus of the view that, in accordance with the Convention, the Court's Rules of Procedure, and its jurisprudence, the alleged victims and their representatives were entitled to participate in all stages of the present proceedings and allege violations of rights which were not contemplated by the Commission in its application. For the above reasons, the Court dismisses the second preliminary objection.

C) THIRD PRELIMINARY OBJECTION (Irregularities in the proceedings before the Inter-American Commission)

30. The State contended that various irregularities occurred during the proceedings before the Commission, including, inter alia, that the Commission allegedly: (i) gave the petitioners latitude to submit approximately eleven petitions over the course of the proceedings; (ii) allowed Mr. Padilla –the former Assistant Executive Secretary of the Commission- to act as advisor and counsel to petitioners; (iii) failed to give the State the opportunity to attend the 119th session of March, 2004, by not inviting the State in a timely manner; (iv) required the State to submit a second request for another public hearing on the matter because the Commission failed to respond to the first request; (v) failed to treat the State with respect during the 121st session of the Commission because only one Commissioner presided over the public hearing while a second member left the hearing after the beginning remarks; (vi) failed to send the meeting minutes or other information regarding the 119th session of the Commission to the State despite several requests to this effect, which led to Suriname's lack of information during the 121st session and caused it to be disadvantaged, and (vii) failed to respond to the State's submissions after the adoption of the Article 50 Report and therefore misled the State as to the submission of the application to the Court. The State further submitted that "[s]ince the Commission did not act properly when the petition was in process before it, this Court must remedy the situation and declare the Commission without jurisdiction to submit this particular case to the Court. [I]f the Commission is declared without jurisdiction to submit this petition/case to the Court because of the applicability of the fruits of a poisoned tree principle, the original petitioners lack standing to proceed in this case".

31. In response, the Commission alleged that: (i) both parties had ample opportunity to address the Commission both orally and in writing and the State has not demonstrated how the Commission's treatment was different or harmful to the State; (ii) the participation of the Commission's former Assistant Executive Secretary in this case does not contravene the Commission's Rules of Procedure, and no preferential treatment was afforded to Mr. Padilla;

(iii) it gave due notice to the State concerning the hearing convened for the 119th period of sessions, in accordance with Article 62(4) of its Rules of Procedure, which allows for one month's notice for hearings; (iv) the hearing requested by the State was convened at the first available opportunity after the State's request; (v) in accordance with Article 65 of the Commission's Rules of Procedure, the President may form working groups for purposes of procedural economy, and furthermore, all hearings are recorded so as to inform the entire Commission about the events that transpired during the hearings; (vi) it has requested in its application that the Court call upon two experts heard at the Commission's 119th period of sessions to allow the State an opportunity to hear and question their declarations, and (vii) it took full account of the information provided by the parties during the time period between the issuance of the Article 50 report and its determination that the case should be sent to the Court. In such a decision, the Commission considered its duties under Article 44(1) and 44(2) of its Rules of Procedures that contemplate whether the State has complied with the recommendations issued and to consider the views of the petitioner as well. The representatives supported the Commission's arguments and views.

32. The Court has previously considered that it will review the proceedings before the Commission when an error may exist that infringes upon the State's right of defense. [FN24] In this case, it has not been demonstrated how the aforementioned Commission's behavior has implicated an error that has affected the State's right of defense during the proceedings before the Commission.

[FN24] Cf. Case of Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 66.

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33. In light of these considerations, this Court dismisses the third preliminary objection opposed by the State.

D) FOURTH PRELIMINARY OBJECTION (Non-compliance with Articles 50 and 51 of the American Convention)

34. The State asserted that the application filed by the Commission on June 23, 2006 was time-barred because it was submitted to the Court after the three-month period established in Articles 50 and 51 of the American Convention. The State affirmed that the Commission should have filed its application no later than June 22, 2006. Since the conventional time period had allegedly elapsed, the State averred that the Commission should have adopted the report prescribed in Article 51 of the American Convention.

35. Article 51(1) of the Convention sets forth the maximum period in which the Commission can submit a case to the contentious jurisdiction of the Court; after this period the Commission's capacity to do so expires. [FN25] Said Article reads as follows:

[i]f, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the

Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

[FN25] Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 58.

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36. This Tribunal has already established that the period of three months shall be counted from the date of transmittal of the Article 50 report to the State concerned. [FN26] The Court has also clarified that the time limit, though not fatal, has a preclusive character, except in special circumstances, with regard to the submission of the case to this Court. [FN27]

[FN26] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 162; Case of Almonacid Arellano et al., supra note 25, para. 56, and Case of Baena Ricardo et al. v. Panamá. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 37. Cf. also Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights). Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 51.

[FN27] Cf. Case of Neira-Alegría et al. v. Peru. Preliminary Objections. Judgment of December 11, 1991. Series C No. 13, paras. 32-34, and Case of Cayara v. Peru. Preliminary Objections. Judgment of February 3, 1993. Series C No. 14, paras. 38-39. Cf. also Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), supra note 26, para. 51.

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37. According to the evidence submitted to the Court by the Inter-American Commission, Report No. 09/06 (the Article 50 report) was transmitted to the State on March 23, 2006. The State has not provided any evidence to contradict this fact. Thus, the referral of the case to the Court on June 23, 2006 was done within the three-month timeframe established under Article 51(1) of the Convention. Furthermore, because the case was referred to the Court, the provisions of Article 51 of the Convention are not applicable. [FN28]

[FN28] Cf. Case of Velásquez Rodríguez, supra note 26, para. 63, and Case of Baena Ricardo et al., supra note 26, paras. 38-39. Cf. also Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), supra note 26, para. 52.

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38. For these reasons, the Court finds that the Inter-American Commission submitted the application in the present case to this Court within the conventional time frame established in Article 51(1), and hereby dismisses the State's fourth preliminary objection in this regard.

39. Furthermore, the State maintained that the Commission did not take into consideration the State's submission detailing its implementation of the recommendations found within the Commission's Article 50 report. In this regard, the Court reiterates that Articles 50 and 51 of the Convention establish two separate stages. [FN29] Once the preliminary report established in Article 50 of the Convention is adopted, the Commission need not necessarily adopt a further report assessing the compliance or non-compliance of its recommendations by the State. Rather, the Commission is empowered, within the period of three months, to decide whether to submit the case to the Court by means of the respective application or to proceed in accordance with Article 51 of the Convention. [FN30] However, this decision is not discretionary, but rather must be based upon the alternative that would most favorably protect the rights established in the Convention. [FN31]

[FN29] Cf. Case of Baena Ricardo et al., supra note 26, para. 37, and Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), supra note 26, para. 50.
[FN30] Articles 50 and 51 of the American Convention. Cf. Case of Velásquez Rodríguez, supra note 26, para. 63; Case of Baena Ricardo et al., supra note 26, para. 37, and Case of Cayara, supra note 27, para. 39. Cf. also Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), supra note 26, para. 50.
[FN31] Cf. Case of Baena Ricardo et al., supra note 26, para. 37, and Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), supra note 26, para. 50.
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40. In this respect, the Commission has affirmed that it "took fully into account the information provided by the parties during the time period between the issuance of the Article 50 report and its determination that the case should be sent to the Court". The Court is of the opinion that it is within the competence of the Commission, in accordance with Article 51 of the Convention as well as with the standards set forth in Article 44 of the Commission's Rules of Procedure, to consider whether or not the State has complied with the recommendations of the Article 50 report and to decide the referral of the case to the Court for its adjudication. However, even if the Commission has a certain margin of discretion in this appraisal, due regard should be given to the respect of the procedural rights of the parties. [FN32] Additionally, the Court will review the proceedings before the Commission when an error may exist that infringes the State's right of defense. [FN33] However, in the present case there is no evidence that suggests that the Commission failed to comply with the relevant provisions of the Convention or its Rules of Procedure. Therefore, the Court hereby dismisses the State's fourth preliminary objection in this regard as well.

[FN32] Cf. Case of Cayara, supra note 27, para. 63, and Case of Baena Ricardo et al., supra note 26, para. 43.
[FN33] Cf. Case of Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 24, para. 66.

E) FIFTH PRELIMINARY OBJECTION (Non-exhaustion of domestic remedies)

41. Suriname affirmed that the alleged victims have not pursued and exhausted the remedies available under domestic law, which the State avowed are adequate and effective. The State argued that effective legal recourse is recognized under several articles of Suriname's Civil Code, namely articles 1386, [FN34] 1387, [FN35] 1388, [FN36] 1392, [FN37] and 1393. [FN38] Moreover, the State alleged that an effective legal remedy is available under Article 226 of Suriname's Code of Civil Procedure, which institutes a "summary proceedings procedure" for cases that require immediate urgency. The State asserted that the alleged victims chose not to make use of all these available remedies under national legislation before filing the petition with the Commission. In addition, the State maintained that the fact that the petition lodged with the President of the Republic pursuant to Article 41(2) of the Forest Management Act did not have a favorable outcome does not in and of itself denote either lack of domestic remedies or exhaustion of all available and effective remedies.

[FN34] "Article 1386: Every lawful act which causes damages to another, imposes an obligation on the person through whose fault the damage was caused to compensate such damage". Cf. Civil Code of Suriname (case file of appendices to the application and appendix 1, appendix 4, folio 51).
[FN35] "Article 1387: Everyone shall be responsible not only for the damage he has caused by his act, but also for that which he has caused by his negligence or carelessness". Cf. Civil Code of Suriname (case file of appendices to the application and appendix 1, appendix 4, folio 51).
[FN36] "Article 1388: 1. One is not only responsible for the damage cause by one's own act, but also for that which is caused due to acts of persons for whom one is responsible, or by goods one has in one's possession. […] 3. The principals and those who appoint other persons to represent their affairs, shall be responsible for the damage caused by their servants and employees in the performance of the work for which they have used them". Cf. Civil Code of Suriname (case file of appendices to the application and appendix 1, appendix 4, folio 51).
[FN37] "Article 1392: 1. Deliberate or imprudent injury or maiming of any part of the body, entitles the injured party to claim not only compensation of the costs of recovery, but also those of the damage caused by the injury or maiming. 2. These as well shall be valued in accordance with the mutual position and wealth of the persons and the circumstances. 3. This last provision shall in general be applicable in the valuation of the damage arisen from any offence committed against the person". Cf. Answer of the State (merits, volume II, folio 335).
[FN38] "Article 1393: 1. The civil action relating to defamation shall be used to compensate the damage and to mend the prejudice to the name or reputation. 2. The judge shall, in valuing this, have regard to the lesser or greater degree of the insult, as well as on the quality, position and wealth of both party and the circumstances." Cf. Answer of the State (merits, volume II, folio 336).
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42. In the present case, the alleged victims recognized that they did not exhaust the domestic remedies mentioned by the State supra. Rather, they contend that those remedies are inadequate

and ineffective to address the issues presented to this Court. Instead, the alleged victims filed four petitions with the State regarding the present case: two were lodged with the President of Suriname pursuant to Article 41(1)(b) of the 1992 Forest Management Act, and the other two under Article 22 of the 1987 Suriname Constitution that recognizes the right to petition public authorities. None of these formal complaints were given a substantive reply. Thus, the question is whether the alleged victims should have additionally or concurrently exhausted the domestic remedies mentioned by the State.

43. The Court has already developed clear guidelines for the analysis of an objection regarding an alleged failure of exhaustion of domestic remedies. [FN39] Firstly, the objection has been understood by the Court to be a defense available to States and, as such, it may be expressly or tacitly waived. Secondly, in order for the objection of failure to exhaust domestic remedies to be timely, it must be pled in the State's first submission before the Commission; otherwise, it is presumed that the State has tacitly waived this argument. Thirdly, the Court has asserted that a State lodging this objection must specify the domestic remedies that remain to be exhausted and demonstrate that these remedies are applicable and effective.

[FN39] Cf. Case of Velásquez Rodríguez, supra note 26, para. 88; Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 51, and Case of Almonacid Arellano et al., supra note 25, para. 64.

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44. In its fourth submission before the Commission on August 16, 2002, the State first raised the issue of non-exhaustion of domestic remedies and did not explicitly specify which alleged domestic remedies the alleged victims had not pursued and exhausted. In a subsequent submission of May 23, 2003, the State made reference to the existence of "a number of articles in the Suriname Civil Code […] on the basis of which petitioner could have instituted actions". It referred, in particular, to Articles 1386, 1387, 1388, 1392, and 1393 of its Civil Code. In its answer to the application before the Court, the State additionally mentioned the alleged non-exhaustion of the remedy available under Article 226 of its Civil Code. The Court notes that the State did not raise, in its first submission in the proceedings before the Commission, that the alleged victims failed to exhaust the possible available remedies under Articles 226, 1386, 1387, 1388, 1392, and 1393 of its Civil Code. Therefore, the State has tacitly waived the issue of non-exhaustion of domestic remedies as to these articles of its Civil Code. Accordingly, the Court dismisses the State's preliminary objection as to non-exhaustion of domestic remedies.

F) SIXTH PRELIMINARY OBJECTION (Duplication of international proceedings)

45. The State argued that petitioners have filed duplicate requests to more than one international body, which renders the petition inadmissible in accordance with Articles 46(c) and 47(d) of the American Convention. The State maintained that, in this case, complaints with the same fact predicate and human rights legal standards and provisions were lodged with the United Nations Human Rights Committee (hereinafter "HR Committee") and the United Nations Committee on the Elimination of Racial Discrimination (hereinafter "CERD"). The State also

averred that the Court has already decided the right to property of "maroon and/or indigenous people" in the case of Moiwana Community v. Suriname.

46. Article 46 of the American Convention stipulates as one of the requirements for the admission of a petition by the Commission,

[…]
c. that the subject of the petition or communication is not pending in another international proceeding for settlement; […]
and Article 47 of the American Convention renders inadmissible a petition if
[…]
d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.
[…]

47. The question of litis pendentia requires ascertaining whether "the subject" of the petition or communication is pending before another international proceeding for settlement, while res judicata arises where the petition or communication is "substantially the same" as one already studied by the Commission or by another international organization.

48. This Court has already established that "[t]he phrase 'substantially the same' signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same, and that the legal grounds are identical". [FN40]

[FN40] Cf. Case of Baena Ricardo et al., supra note 13, para. 53.
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49. The petition regarding the present case was filed with the Commission on October 27, 2000. The objection made by the State has to do with submissions made before the United Nations human rights treaty bodies that range from the years 2002 through 2005. Specifically, the State pointed to: a) five "formal applications" submitted by the Association of Indigenous Village Leaders in Suriname, Stichting Sanomaro Esa, the Association of Saramaka Authorities, and the NGO Forest Peoples Programme to the CERD between December 2002 and July 2005, [FN41] particularly, a petition filed on December 15, 2002 "requesting for urgent action on indigenous and tribal peoples' rights in Suriname", and b) a "petition" presented by the NGO Forest Peoples Programme on January 30, 2002 to the HR Committee concerning Suriname and its compliance with the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), specifically in relation to violations of Articles 1, 26 and 27 of said international instrument.

[FN41] The State refered to: Formal Request to Initiate an Urgent Procedure to Avoid Immediate and Irreparable Harm, December 15, 2002; Additional Information, May 21, 2003; Comments on Suriname's State Party Report (CERD/C/446/Add.1), January 26, 2004; Request for the

Initiation of an Urgent Action and a Follow Up Procedure in Relation to the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Suriname, January 6, 2005, and Request for Follow Up and Urgent Action Concerning the Situation of Indigenous and Tribal Peoples in Suriname, July 8, 2005.

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50. The HR Committee rendered concluding observations on Suriname on May 4, 2004, [FN42] while the CERD issued concluding observations regarding Suriname on April 28, 2004. [FN43] Furthermore, on March 9, 2005 the CERD adopted a follow-up decision regarding the aforementioned concluding observations. [FN44] Lastly, the CERD has issued three decisions concerning Suriname according to its early warning and urgent action procedure on March 21, 2003, [FN45] August 18, 2005, [FN46] and August 18, 2006 [FN47].

[FN42] UNHRC, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding Observations on Suriname (Eightieth session, 2004), U.N. Doc. CCPR/CO/80/SUR, May 4, 2004 (case file of appendices to the representatives' brief, appendix 4.3, folios 1492-1496).

[FN43] UNCERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Suriname (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/CO/9, April 28, 2004 (case file of appendices to the representatives' brief, appendix 4.2, folios 1486-1491).

[FN44] UNCERD, Follow-Up Procedure, Decision 3(66) on Suriname (Sixty-sixth session, 2005), U.N. Doc. CERD/C/66/SUR/Dec.3, March 9, 2005 (case file of appendices to the representatives' brief, appendix 4.4, folios 1497-1498).

[FN45] UNCERD, Urgent Action Procedure, Decision 3(62) on Suriname (Sixty-second session, 2003), U.N. Doc. CERD/C/62/CO/Dec.3, March 21, 2003 (case file of appendices to the representatives' brief, appendix 4.1, folios 1484-1485).

[FN46] UNCERD, Urgent Action Procedure, Decision 1(67) on Suriname (Sixty-seventh session, 2005), U.N. Doc. CERD/C/DEC/SUR/2, August 18, 2005 (case file of appendices to the representatives' brief, appendix 4.5, folios 1499-1500).

[FN47] UNCERD, Urgent Action Procedure, Decision 1(69) on Suriname (Sixty-ninth session, 2006), U.N. Doc. CERD/C/DEC/SUR/5, August 18, 2006 (case file of appendices to the representatives' brief, appendix 4.6, folios 1501-1502).

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51. In addressing this issue, the Court will focus on the object, purpose, and nature of the actions brought forth before the United Nations HR Committee and the CERD. With regards to the HR Committee, the only decision indicated by the State concerned the procedure by which this monitoring body issued concluding observations and recommendations on Suriname's compliance with and implementation of the rights and obligations set forth in the ICCPR. Such procedure, governed by Article 40 of the ICCPR, vests on the HR Committee the faculty to examine the State Parties' periodical reports "on the measures they have adopted which give effect to the rights recognized [t]herein and on the progress made in the enjoyment of those rights". The Court observes that the object and purpose of the submission made by the NGO Forest Peoples Programme does not constitute a petition for the adjudication of certain rights of

the Saramaka people, but a "shadow report" intended to assist the HR Committee in formulating questions to Suriname when reviewing the State's reports as well as to provide independent information in this matter. It is clear that the HR Committee's concluding observations relate to the assessment of the general human rights situation in the country under scrutiny. Said procedure contrasts with the system of individual complaints set forth in the First Optional Protocol to the ICCPR, under which the HR Committee may consider individual communications relating to alleged violations of the rights enshrined in the ICCPR by States Party to the Protocol, which has not been the case.

52. The CERD's decisions identified by the State, on the other hand, point to two different supervisory mechanisms. First, the concluding observations were issued within the reporting procedure set forth in Article 9 of the International Convention on the Elimination of Racial Discrimination (hereinafter "ICERD"), whereby the State parties undertake to periodically submit "a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention". Said procedure is similar to the one described above for the HR Committee. Moreover, the follow-up procedure decision issued by the CERD involved a review of the measures adopted by the State in order to comply with the concluding observations and recommendations previously adopted, as well as a request for further information pursuant to Article 9, paragraph 1, of ICERD, and Article 65 of the Committee's Rules of Procedure.

53. Second, the CERD issued three decisions regarding its early warning measures and urgent action procedure, a preventive mechanism adopted in 1993 to seek the prevention of "existing problems from escalating into conflicts" and "to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention". This mechanism differs as well from the procedure of individual complaints, under which the CERD may consider individual communications relating to States parties, only if the States made the necessary declaration under Article 14 of ICERD, which Suriname has not done yet. The CERD acknowledged such differentiation by stating that the early warning and urgent action procedure "is clearly distinct from the communication procedure under Article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure". [FN48]

[FN48] UNCERD, Early Warning and Urgent Action Procedure, Decision 1 (68) on United States of America (Sixty-eighth session, 2006), U.N. Doc. CERD/C/USA/DEC/1, April 11, 2006, para. 4.

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54. From the above considerations, this Tribunal concludes that the reporting procedures of the universal treaty-based bodies as well as that of the early warning and urgent procedure of the CERD cannot be considered to be of the same object, purpose, and nature as the adjudicatory jurisdiction of the Inter-American Court. The former do not involve a petitioning party requesting redress for the violation of the rights of the Saramaka people. Rather than adjudicating controversies and ordering appropriate reparations, such procedures consist of reviews of the general situation pertaining to human rights or to racial discrimination in a certain

country, in this case Suriname, or concern a special situation involving racial discrimination in need of urgent attention. Furthermore, the nature of the concluding observations and recommendations issued by said Committees is different from the judgments delivered by the Inter-American Court.

55. In light of these considerations, it is unnecessary for the Court to address whether the parties involved in such international proceedings are identical to those in the present case, or whether the legal grounds are identical. Suffice it for the Court that the proceedings before the HR Committee and the CERD are intrinsically of a diverse object, purpose, and nature than those of the present case. Thus, the Court hereby dismisses the State's sixth preliminary objection regarding the alleged duplicity of international proceedings in relation to the aforementioned decisions of the HR Committee and the CERD.

56. With respect to the allegations that this Court has already decided on the right to property of "maroon and/or indigenous people" in the Case of the Moiwana Community v. Suriname (hereinafter "Moiwana case"), this Court recalls that in order to find res judicata there should be identity between the cases, that is to say, the parties must be the same and legal grounds of the object of the action must be identical (supra para. 48).

57. It is clear that no identity between the subjects or the objects of this and the Moiwana case can be found. The victims in the Moiwana case differ from the alleged victims in the present case. Whereas the former referred to violations to the detriment of Moiwana community members, the present case involves alleged violations to the detriment of the members of the Saramaka people. While in the Moiwana case the facts referred to the alleged denial of justice and displacement of the Moiwana community occurring subsequent to the attack by members of the armed forces of Suriname on the village of Moiwana on November 29, 1986, in the present case the facts relate to Suriname's alleged failure to adopt effective measures to recognize the communal property right of the members of the Saramaka people to the territory they have traditionally occupied and used, to provide the members of the Saramaka people effective access to justice, as a community, for the protection of their fundamental rights, and to comply with its obligation to adopt domestic legal provisions and respect Convention rights.

58. For these reasons, the Court also dismisses the State's sixth preliminary objection with regard to the alleged duplicity of international proceedings in relation to the Moiwana case.

G) SEVENTH PRELIMINARY OBJECTION (Lack of jurisdiction ratione temporis)

59. The representatives alleged in their brief containing pleadings, motions and evidence that the construction of the Afobaka dam and reservoir in the 1960s on land traditionally occupied and used by the Saramaka people "exhibits ongoing and continuous effects and consequences attributable to Suriname and that violate the Convention guarantees." In particular, the representatives pointed to "a continuing deprivation of access to those traditional lands and resources that have been submerged, as well as irreparable harm to numerous sacred sites; an ongoing disruption of the Saramaka people's traditional land tenure and resource management systems, which, coupled with a substantial population increase caused by the amalgamation of most of those displaced with existing communities, has placed a severe stress on the capacity of

Saramaka lands and forests to meet basic subsistence needs; an ongoing failure of the State to secure tenure rights for those lost lands, both within traditional Saramaka territory and for those communities presently outside this territory; and an ongoing failure to otherwise provide meaningful reparations."

60. In its additional brief pursuant to Article 39 of the Court's Rules of Procedure, the State contested this Court's jurisdiction ratione temporis over said alleged acts, arguing that they occurred prior to November 12, 1987, which is the date Suriname ratified the American Convention and recognized the contentious jurisdiction of the Court in accordance with Article 62(1) of the American Convention. Moreover, the State observed that the alleged acts took place in the 1960s during the time the Dutch colonial power ruled over Suriname's territory, that is to say, before the State of Suriname was established under the accepted rules and principles of international law. Suriname contended that prior to November 25, 1975, which is the date it gained its independence from the Kingdom of the Netherlands, no responsibility under international law could be conferred upon the State of Suriname, not even under the concept of continuous violations, since the State was not a subject of obligations under international law at that time, and the concept of continuous violation is a concept that emerged very recently.

61. The Tribunal has already decided that it is not competent to hear the alleged violations related to the construction of the Afobaka dam in the present case because the Commission did not include such facts in its application (supra paras. 11-17). Therefore, there is no need for the Court to address this again at this juncture.

V. JURISDICTION

62. The Inter-American Court has jurisdiction over this case in accordance with Article 62(3) of the Convention. Suriname ratified the American Convention on November 12, 1987 and recognized the Court's contentious jurisdiction that same day.

VI. EVIDENCE

63. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as the Court's prior decisions regarding evidence and its assessment, [FN49] the Court will proceed to examine and assess the documentary evidence submitted by the Commission, the representatives, and the State at the different procedural stages. It will also examine and assess the testimonies and expert opinions provided by affidavit or before the Court in the public hearing. To that effect, the Court shall abide by the principles of sound criticism, within the corresponding legal framework. [FN50]

[FN49] Cf. Case of The Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 86; Case of The "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50, and Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 15. Cf. also Case of the Miguel Castro Castro Prison, supra note 8, paras. 183 and 184; Case of Almonacid Arellano et

al., supra note 25, paras. 67, 68 and 69, and Case of Servellón García et al., supra note 11, para. 34.
[FN50] Cf. Case of The "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 76; Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 38, and Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 32.

A) DOCUMENTAL, TESTIMONIAL, AND EXPERT EVIDENCE

64. At the request of the President, the Court received the testimonies and declarations by affidavit provided by the following witnesses and expert witnesses: [FN51]

a) Silvi Adjako, witness proposed by the Commission and the representatives, is a member of the Matjau lö (clan), and testified regarding the alleged destruction of her farms by a foreign logging company and her subsequent efforts to obtain redress;
b) Hugo Jabini, witness proposed by the Commission and the representatives, is a founding member of the Association of Saramaka Authorities and serves as its Paramaribo representative. He testified regarding, inter alia: the Saramaka people's efforts to protect their land and resources, their alleged attempts to settle the case with the State, and their methods for documenting traditional Saramaka use of the territory;
c) Head Captain Eddie Fonkie, witness proposed by the Commission, is a representative of the Abaisa lö (clan) and fiscali of the Saramaka people, and testified regarding Saramaka customary law that governs ownership of land and resources, Saramaka treaty rights, purported contemporary use of Saramaka land and resources, and the alleged impact of mining operations on the displaced villages of Brokopondo District;
d) George Leidsman, witness proposed by the representatives, is a Saramaka member of the flooded village of Ganzee, and testified regarding the alleged forcible displacement of the Saramaka people in the 1960s, as well as its consequences and effects;
e) Jennifer Victorine van Dijk-Silos, witness proposed by the State, is the chairperson of Suriname's Presidential Land Rights Commission, and testified regarding the establishment of the Presidential Land Rights Commission on February 1, 2006, its accomplishments, and its future plans with respect to the land rights of the Saramaka people and other maroons and indigenous peoples living in Suriname;
f) Peter Poole, expert witness proposed by the Commission and the representatives, is a geomatics expert who has worked extensively with various indigenous and tribal peoples on projects concerning resource management and sustainable development. He provided his expert opinion regarding, inter alia: his role in assisting the Saramaka people to create geographically accurate maps, aerial photographs, and satellite images that display how the Saramaka use and occupy their territory and resources; inferences regarding the extent of Saramaka use of their territory and resources based on these instruments; illegal gold mining near so-called Saramaka transmigration villages; the alleged ongoing impact caused by the Afobaka dam's flooding of Saramaka territory, and the environmental impact of logging activities in Saramaka territory;
g) Mariska Muskiet, expert witness proposed by the Commission and the representatives, is a property law lecturer at the University of Suriname as well as the Acting Director of Stichting

Moiwana, a Surinamese human rights organization. She provided her expert opinion regarding Surinamese property law and domestic remedies with respect to indigenous and tribal peoples´ claims to land;

h) Robert Goodland, expert witness proposed by the representatives, is the former Chief Environmental Adviser for the World Bank Group who drafted and implemented the World Bank's official policy on Tribal and Indigenous Peoples adopted in February of 1982. He provided his expert opinion regarding, inter alia: the alleged environmental and social impacts of logging concessions that operated between 1997 and 2003 in Saramaka territory, Suriname's lack of compliance with World Bank standards, the alleged ongoing adverse effects of the Afobaka dam and reservoir on the Saramaka people, the potential ramifications of Suriname's plans to increase the water level of the Afobaka reservoir through the Tapanahony/Jai Kreek Diversion Project, and possible measures to repair the alleged damage in the present case;

i) Martin Scheinin, expert witness proposed by the representatives, is a Professor of Constitutional and International Law at the Åbo Akademi University, Finland, and a former member of the United Nations Human Rights Committee. He provided his expert opinion regarding, inter alia: the HR Committee's recognition of indigenous and tribal peoples' rights under common Article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"), their relevance to the interpretation of Articles 21 (Right to Property) and 3 (Right to Juridical Personality) of the American Convention, the relationship between Article 1(2) of the ICCPR and indigenous and tribal peoples' property rights, and the right to self-determination, and

j) Magda Hoever-Venoaks, expert witness proposed by the State, is an authority on legal remedies in Surinamese administrative and constitutional law. She provided her expert opinion regarding, inter alia: the legal status of the provisions affording remedies to interested parties in Suriname's Mining Act and Suriname's Forest Management Act, as well as other available remedies in Surinamese administrative and/or constitutional law.

[FN51] Although on March 30, 2007 the President decided to require the testimonies by affidavit of Mr. Michel Filisie, Minister of Regional Development of the Republic of Suriname, and of Gaa'man Gazon Mathodja (supra note 4), the State informed the Court on April 25, 2007 of its withdrawal of said witnesses from this case.

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65. During the public hearing held in the present case, the Court heard the testimonies and the expert opinions given by the following persons:

a) Head Captain Wazen Eduards, witness proposed by the Commission and the representatives, is the Chairperson of the Association of Saramaka Authorities, the authorized representative of the Dombi lö (clan), and a recently appointed fiscali of the Saramaka people. He testified regarding, inter alia: the endeavors of the Association of Saramaka Authorities to counter the alleged incursion of logging companies in Saramaka territory, the alleged impact of these companies' operations, and the purported failure of the Surinamese government to consult or obtain consent from the Saramaka people prior to authorizing the concessions; the efforts of Saramaka people to protect their rights domestically, including the process of reaching an

internal consensus; customary Saramaka law governing ownership rights and demarcation of territory, and the importance of land for the cultural integrity of the Saramaka people;

b) Captain Cesar Adjako, witness proposed by the Commission and the representatives, is a member of the Matjau lö (clan). He testified regarding, inter alia: the reasons why Saramaka individuals must obtain concessions from the government, the alleged arrival of foreign logging companies on Matjau territory, their purported destruction of the forest resources and subsistence farms, and the Saramaka people's interest in preserving their environment and the sustainable harvesting of timber;

c) Rudy Strijk, witness proposed by the State, is the former District Commissioner of the Sipaliwini District. He testified regarding, inter alia: his role as District Commissioner in granting mining and logging concessions, the government's relationship with traditional Saramaka authorities, and the District Commissioner's purported consultations with the Saramaka people prior to awarding concessions;

d) Head Captain Albert Aboikoni, witness proposed by the State, was the acting Gaa'man following Gaa'man Songo Aboikoni's passing. He testified regarding his experience as a parliamentarian in the Surinamese government and his efforts to advance land rights of indigenous and tribal peoples in Suriname, the role of the Gaa'man and his relationship with the community and other traditional authorities, and the areas in which Saramaka people reside;

e) Rene Ali Somopawiro, witness proposed by the State, is the acting director of the Foundation for Forest Management and Production Control (SBB). He testified regarding, inter alia: the role of the SBB in processing applications for timber concessions, monitoring such concessions and promoting sustainable forestry; the difference between "timber logging permits" and "communal forests" as well as their eligibility requirements with respect to indigenous and maroon villages, and the status of concessions awarded to Saramaka individuals;

f) Richard Price, expert witness proposed by the Commission and the representatives, is a Professor of American Studies, Anthropology and History at the College of William & Mary as well as an authority on the history and culture of the Saramaka people. He provided his expert opinion regarding the Saramaka people's sustainable use of the land; the history behind the Treaty of 1762 between the Dutch crown and the Saramaka people; the alleged impact of the Afobaka dam on the Saramaka people and their traditional territory; the differences between the Saramaka people and other Maroon groups; the relationship between Saramaka customary law and Suriname's legal system; the civil war in Suriname between the Maroons and the coastal government; the cultural significance of cutting timber as a traditional Saramaka activity; the alleged material, cultural and spiritual effects of logging operations by outside companies on the Saramaka people and territory; the presence of Surinamese troops in Saramaka territory, and the Saramaka people's social structure, traditional land tenure systems, and customary law, and

g) Salomon Emanuels, expert witness proposed by the State, is a cultural anthropologist. He provided his expert opinion regarding, inter alia: the Saramaka hierarchy of authority, including the position and role of both the Gaa'man and the lös (clans); Saramaka procedures with respect to decisions on land rights involving the entire community, and relations between the local authorities of the Saramaka lös (clans).

B) EVIDENCE ASSESSMENT

66. In the instant case, as in others, [FN52] the Court admits and recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage, in

accordance with Article 44 of the Court's Rules of Procedure, which have neither been disputed nor challenged, and the authenticity of which has not been questioned.

[FN52] Cf. Case of Loayza Tamayo v. Peru. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, para. 53; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 41, and Case of Zambrano Vélez et al., supra note 50, para. 37.

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67. Regarding the press documents submitted by the parties, the Court considers that they may be assessed insofar as they refer to public and notorious facts or statements made by State officials that have not been amended, or if they corroborate related aspects to the case that are proven by other means. [FN53]

[FN53] Cf. Case of The "White Van" (Paniagua Morales et al.), supra note 50, para. 75; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 41, and Case of Zambrano Vélez et al., supra note 50, para. 38.

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68. With respect to the testimonies and expert opinions rendered by witnesses and expert witnesses, the Court deems them relevant insofar as they comport with their respective subject of testimony established by the Order of the President (supra para. 7), and taking into account all the observations of the parties. The Court considers that the statements made by the victims cannot be assessed separately, but rather within the context of the remaining body of evidence in this case, since they have a direct interest in the outcome. [FN54]

[FN54] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 44, and Case of Zambrano Vélez et al., supra note 50, para. 40.

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69. Given its relevance to the adjudication of the present case and pursuant to Article 45(1) of the Court's Rules of Procedure, and upon a request made by the Commission, the Tribunal hereby incorporates into the present body of evidence the transcript of the expert opinion rendered by Dr. Richard Price during the public hearing held on July 7, 1992 in the case of Aloeboetoe et al. v. Suriname. [FN55]

[FN55] Case of Aloeboetoe et al. v. Suriname. Merits. Judgment of December 4, 1991. Series C No. 11.

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70. The State objected to the statement provided by Mr. Peter Poole during the proceedings before the Commission because "[t]he research was done without the approval of authorities in

Suriname." Additionally, the State noted that it was not present at the March 2004 hearing before the Commission and that the items of evidence produced at the hearing were not sent to it. Thus, Suriname argued that said evidence should not be admitted in accordance with Article 44(2) of the Court's Rules of Procedure. The State also objected to the statement made by Ms. Mariska Muskiet before the Commission, asserting that "this information was not submitted to the State during the proceedings before the Commission" and that "[Ms. Muskiet] does not qualify […] as an expert in the field of property law in Suriname and/or land rights of indigenous and maroons in Suriname." The Tribunal observes that, although the State was not present when Mr. Poole and Ms. Muskiet testified during the Commission's proceedings, both experts provided declarations during the proceedings before this Tribunal, and the State was afforded the right to defend itself and present observations to both declarations. Furthermore, Suriname failed to demonstrate why Ms. Muskiet, who is a university professor and teaches property law, is not qualified to provide expert testimony regarding Surinamese property law. Thus, the Court admits this evidence, taking into consideration the State's observations, and will assess its probative value according to the rules of sound criticism and the body of evidence in the case.

71. In addition, the State objected to the statements made by Dr. Richard Price before the Commission, claiming that his declaration "is totally outdated". The Court, however, admits this evidence, taking into consideration the State's observations, and will assess its probative value according to the rules of sound criticism and the body of evidence in the case.

72. The Court observes that the State submitted further documentary evidence along with its additional written pleading pursuant to Article 39 of the Court's Rules of Procedure. Specifically, the State presented documents identified as "Bulletin of Acts and Decrees of the Republic of Suriname –SB 2003 #07-", "An Analysis of Land Rights of the Indigenous Peoples and Maroons in Suriname. Adoption of Legislation in Suriname by Amazon Conservation Team", "Current status of timber concessions situated in the claimed area of the Saramaka Lö's", and "Transmigration". Similarly, the representatives presented further documentary evidence with their observations to the State's additional written brief, which included the 2004 Final Report of the United Nations Special Rapporteur on indigenous peoples' permanent sovereignty over natural resources, and excerpts of a March 2007 United Nations Economic Commission for Latin America and United Nations Development Programme report.

73. The Court finds that the aforementioned documents submitted by the State and the representatives, which have not been challenged and the authenticity of which has not been questioned, are useful and relevant; therefore, the Court incorporates them into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

74. Furthermore, the State attached an expert opinion on "Permanent sovereignty over natural resources and indigenous peoples" by Nico. J. Schrijver, as an annex to its final written arguments. The Court notes that the State did not offer said evidence in a timely fashion and that neither the Tribunal nor the President ordered the submission of said evidence. Consequently, pursuant to Article 44(3) of the Court's Rules of Procedure, the Tribunal does not admit said evidence.

75. The representatives also submitted additional evidence with their final written brief, specifically, the receipts enumerating the costs incurred by the Association of Saramaka Authorities. Because the Court finds these documents germane to deciding the costs in the present case, the Court admits this evidence, taking into consideration the State's observations, and will assess its probative value according to the rules of sound criticism and the body of evidence in the case, pursuant to Article 45(1) of the Court's Rules of Procedure.

76. Having examined the evidentiary elements that have been incorporated into the present case, the Court will proceed with its analysis of the alleged violations of the American Convention in light of the facts that the Court deems proven, as well as the parties´ legal arguments.

VII. NON-COMPLIANCE WITH ARTICLE 2 [FN56] (DOMESTIC LEGAL EFFECTS), AND VIOLATION OF ARTICLES 3 [FN57] (RIGHT TO JURIDICAL PERSONALITY), 21 [FN58] (RIGHT TO PROPERTY) AND 25 [FN59] (RIGHT TO JUDICIAL PROTECTION) OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) [FN60] (OBLIGATION TO RESPECT RIGHTS) THEREOF

[FN56] Article 2 establishes that: "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

[FN57] Article 3 establishes that: "[e]very person has the right to recognition as a person before the law."

[FN58] Article 21 establishes, inter alia, that: "1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law."

[FN59] Article 25 establishes that: "1. Everyone has the right to simple and prompt recourse, or any other effective 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. 2. The States Parties undertake:

a. to 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;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted."

[FN60] Article 1(1) establishes that: "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

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77. In light of the interrelatedness of the arguments submitted to the Court in the present case, the Tribunal will address in a single chapter the alleged non-compliance with Article 2, and violations of Articles 3, 21, and 25 of the Convention. Accordingly, the Court will address the following eight issues: first, whether the members of the Saramaka people make up a tribal community subject to special measures that ensure the full exercise of their rights; second, whether Article 21 of the American Convention protects the right of the members of tribal peoples to the use and enjoyment of communal property; third, whether the State has recognized the right to property of the members of the Saramaka people derived from their system of communal property; fourth, whether and to what extent the members of the Saramaka people have a right to use and enjoy the natural resources that lie on and within their alleged traditionally owned territory; fifth, whether and to what extent the State may grant concessions for the exploration and extraction of natural resources found on and within alleged Saramaka territory; sixth, whether the concessions already issued by the State comply with the safeguards established under international law; seventh, whether the lack of recognition of the Saramaka people as a juridical personality makes them ineligible under domestic law to receive communal title to property as a tribal community and to have equal access to judicial protection of their property rights; and finally, whether there are adequate and effective legal remedies available in Suriname to protect the members of the Saramaka people against acts that violate their alleged right to the use and enjoyment of communal property.

A. THE MEMBERS OF THE SARAMAKA PEOPLE AS A TRIBAL COMMUNITY SUBJECT TO SPECIAL MEASURES THAT ENSURE THE FULL EXERCISE OF THEIR RIGHTS

78. The Commission and the representatives alleged that the Saramaka people make up a tribal community and that international human rights law imposes an obligation on the State to adopt special measures to guarantee the recognition of tribal peoples' rights, including the right to collectively own property. The State disputed whether the Saramaka people could be defined as a tribal community subject to the protection of international human rights law regarding their alleged right to collectively own property. The Court must therefore analyze whether the members of the Saramaka people make up a tribal community, and if so, whether it is subject to special measures that guarantee the full exercise of their rights.

79. First of all, the Court observes that the Saramaka people are not indigenous to the region they inhabit; they were instead brought to what is now known as Suriname during the colonization period (infra, para. 80). Therefore, they are asserting their rights as alleged tribal peoples, that is, not indigenous to the region, but that share similar characteristics with indigenous peoples, such as having social, cultural and economic traditions different from other sections of the national community, identifying themselves with their ancestral territories, and regulating themselves, at least partially, by their own norms, customs, and traditions.

A.1) The members of the Saramaka people as a distinct social, cultural and economic group with a special relationship with its ancestral territory

80. According to the evidence submitted by the parties, the Saramaka people are one of the six distinct Maroon groups in Suriname whose ancestors were African slaves forcibly taken to

Suriname during the European colonization in the 17th century. [FN61] Their ancestors escaped to the interior regions of the country where they established autonomous communities. [FN62] The Saramaka people are organized in twelve matrilineal clans (lös), and it is estimated that the contemporary size of the Saramaka population ranges from 25,000 to 34,000, which is spread over 63 communities on the Upper Suriname River and in a number of displaced communities located to the north and west of said area. [FN63]

[FN61] This fact is recognized by the State (Merits, volume II, folio 291). Cf. also Testimony of Head Captain and Fiscali Wazen Eduards during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, pp. 3-4).
[FN62] This fact is recognized by the State (Merits, volume II, folio 288). Cf. also Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 4), Expert opinion of Professor Richard Price during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, p. 57), and Expert opinion of Salomon Emanuels during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, p. 67).
[FN63] This fact is recognized by the State (Merits, volume II, folio 297). Cf. also Professor Richard Price, "Report in support of Provisional Measures", October 15, 2003 (case file of appendices to the application and Appendix 1, appendix 2, folio 15).
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81. Their social structure is different from other sectors of society inasmuch as the Saramaka people are organized in matrilineal clans (lös), and they regulate themselves, at least partially, by their own customs and traditions. [FN64] Each clan (lö) recognizes the political authority of various local leaders, including what they call Captains and Head Captains, as well as a Gaa'man, who is the community's highest official. [FN65]

[FN64] Although the question of land ownership is in dispute, the parties agree that the Saramaka people have their own traditional norms and customs that relate to how the Saramaka people use and enjoy property.
[FN65] Cf. Professor Richard Price, "Report in support of Provisional Measures", supra note 63.
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82. Their culture is also similar to that of tribal peoples insofar as the members of the Saramaka people maintain a strong spiritual relationship with the ancestral territory [FN66] they have traditionally used and occupied. Land is more than merely a source of subsistence for them; it is also a necessary source for the continuation of the life and cultural identity of the Saramaka people. [FN67] The lands and resources of the Saramaka people are part of their social, ancestral, and spiritual essence. In this territory, the Saramaka people hunt, fish, and farm, and they gather water, plants for medicinal purposes, oils, minerals, and wood. [FN68] Their sacred sites are scattered throughout the territory, while at the same time the territory itself has a sacred value to them. [FN69] In particular, the identity of the members of the Saramaka people with the land is inextricably linked to their historical fight for freedom from slavery, called the sacred "first

time". [FN70] During the public hearing in this case, Head Captain Wazen Eduards described their special relationship with the land as follows:

The forest is like our market place; it is where we get our medicines, our medicinal plants. It is where we hunt to have meat to eat. The forest is truly our entire life. When our ancestors fled into the forest they did not carry anything with them. They learned how to live, what plants to eat, how to deal with subsistence needs once they got to the forest. It is our whole life. [FN71]

[FN66] By using the term "territory" the Court is referring to the sum of traditionally used lands and resources. In this sense, the Saramaka territory belongs collectively to the members of the Saramaka people, whereas the lands within that territory are divided among and vested in the twelve Saramaka clans (supra para. 100). Cf. Affidavit of Head Captain and Fiscali Eddie Fonkie, April 5, 2007 (case file of affidavits and observations thereto, appendix 4, folio 1911); Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, pp. 60-61), and Professor Richard Price, "Report in support of Provisional Measures", supra note 63.

[FN67] Cf. Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folios 17-18).

[FN68] Cf. Testimony of Captain Cesar Adjako during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, p. 15); Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 55); Report of Professor Richard Price, September 30, 2000 (case file of appendices to the application and Appendix 1, appendix 1, folio 4), and Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folio 16).

[FN69] Cf. Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folio 14), and Affidavit of Dr. Peter Poole of April 30, 2007 (case file of affidavits and observations, appendix 8, folio 1961).

[FN70] Cf. Professor Richard Price, "Report in support of Provisional Measures", supra note 63.

[FN71] Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 5).

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83. Furthermore, their economy can also be characterized as tribal. According to the expert testimony of Dr. Richard Price, for example, "the very great bulk of food that Saramaka eat comes from […] farms [and] gardens" traditionally cultivated by Saramaka women. [FN72] The men, according to Dr. Price, fish and "hunt wild pig, deer, tapir, all sorts of monkeys, different kinds of birds, everything that Saramakas eat". [FN73] Furthermore, the women gather various fruits, plants and minerals, which they use in a variety of ways, including making baskets, cooking oil, and roofs for their dwellings. [FN74]

[FN72] Cf. Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 55); Report of Professor Richard Price, supra note 68, and Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folio 16).

[FN73] Cf. Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 55); Report of Professor Richard Price, supra note 68, and Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folio 16).
[FN74] Cf. Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 55); Report of Professor Richard Price, supra note 68, and Professor Richard Price, "Report in support of Provisional Measures", supra note 63, (folio 16).
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84. Thus, in accordance with all of the above, the Court considers that the members of the Saramaka people make up a tribal community whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with their ancestral territories, and because they regulate themselves, at least partially, by their own norms, customs, and/or traditions. Accordingly, the Court will now address whether and to what extent the members of the tribal peoples require special measures that guarantee the full exercise of their rights.
A.2) Special measures of protection owed to members of the tribal community that guarantee the full exercise of their rights

85. This Court has previously held, based on Article 1(1) of the Convention, that members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival. [FN75] Other sources of international law have similarly declared that such special measures are necessary. [FN76] Particularly, in the Moiwana case, this Court determined that another Maroon community living in Suriname was also not indigenous to the region, but rather constituted a tribal community that settled in Suriname in the 17th and 18th century, and that this tribal community had "a profound and all-encompassing relationship to their ancestral lands" that was centered, not "on the individual, but rather on the community as a whole". [FN77] This special relationship to land, as well as their communal concept of ownership, prompted the Court to apply to the tribal Moiwana community its jurisprudence regarding indigenous peoples and their right to communal property under Article 21 of the Convention. [FN78]

[FN75] Cf. Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, paras. 148-149, and 151; Case of the Indigenous Community Sawhoyamaxa v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paras. 118-121, and 131, and Case of the Indigenous Community Yakye Axa v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005 Series C No. 125, paras. 124, 131, 135-137 and 154.
[FN76] As early as 1972, in the resolution the Commission adopted on "Special Protection for Indigenous Populations – Action to Combat Racism and Racial Discrimination", the Commission proclaimed that "for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of states". Cf. Resolution on Special Protection for Indigenous Populations. Action to Combat Racism and Racial Discrimination, OEA/Ser.L/V/II/.29 Doc. 41 rev. 2, March 13, 1973, cited in Inter-American Commission on Human Rights, Report 12/85, Case No. 7615, Yanomami. Brazil, March 5, 1985, para. 8. Cf. also Inter-American Commission on Human Rights, Report

on the Situation of Human Rights in Ecuador, OAS/Ser.L/V/II.96 Doc.10 rev 1, April 24, 1997, Chapter IX (stating that "within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions"); UNCERD, General Recommendation No. 23, Rights of indigenous peoples (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V, August 18, 1997, para. 4 (calling upon States to take certain measures in order to recognize and ensure the rights of indigenous peoples), and ECHR, Case of Connors v. The United Kingdom, Judgment of May 27, 2004, Application no. 66746/01, para. 84 (declaring that States have an obligation to take positive steps to provide for and protect the different lifestyles of minorities as a way to provide equality under the law).
[FN77] Cf. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, paras. 132-133.
[FN78] Cf. Case of the Moiwana Community, supra note 77, para. 133.
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86. The Court sees no reason to depart from this jurisprudence in the present case. Hence, this Tribunal declares that the members of the Saramaka people are to be considered a tribal community, and that the Court's jurisprudence regarding indigenous peoples' right to property is also applicable to tribal peoples because both share distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories, that require special measures under international human rights law in order to guarantee their physical and cultural survival.

B. THE RIGHT OF MEMBERS OF TRIBAL PEOPLES TO THE USE AND ENJOYMENT OF COMMUNAL PROPERTY IN ACCORDANCE WITH ARTICLES 21, 1.1, AND 2 OF THE AMERICAN CONVENTION

87. The Court will now address whether Article 21 of the American Convention recognizes the rights of members of tribal peoples to the use and enjoyment of communal property.
B.1) Right to communal property under Article 21 of the American Convention

88. This Court has previously addressed this issue and has consistently held that:

the close ties the members of indigenous communities have with their traditional lands and the natural resources associated with their culture thereof, as well as the incorporeal elements deriving there from, must be secured under Article 21 of the American Convention. [FN79]

[FN79] Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 118. Cf. also Case of the Indigenous Community Yakye Axa, supra note 75, para. 137.
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89. Likewise, in the Mayagna case, the Court considered that "Article 21 of the Convention protects the right to property[,] which includes, among others, the rights of members of […]

indigenous communities within the framework of communal property." [FN80] Similarly, in the Sawhoyamaxa case, the Court considered "that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land 'is not centered on an individual, but rather on the group and its community.'" [FN81] Moreover, the Court held in the Yakye Axa case that "both the private property of individuals and communal property of the members of […] indigenous communities are protected by Article 21 of the American Convention." [FN82]

[FN80] Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, para. 148.
[FN81] Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 120 (quoting Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, para. 149).
[FN82] Case of the Indigenous Community Yakye Axa, supra note 75, para. 143.

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90. The Court's decisions to this effect have all been based upon the special relationship that members of indigenous and tribal peoples have with their territory, and on the need to protect their right to that territory in order to safeguard the physical and cultural survival of such peoples. In this sense, the Court has declared that:

the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, [their relationship with] the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy […] to preserve their cultural legacy and transmit it to future generations. [FN83]

[FN83] Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, para. 149. Cf. also Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and Costs. Judgment of November 19, 2004. Series C No. 116, para. 85; Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 118, and Case of the Indigenous Community Yakye Axa, supra note 75, para. 131.

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91. In essence, pursuant to Article 21 of the Convention, States must respect the special relationship that members of indigenous and tribal peoples have with their territory in a way that guarantees their social, cultural, and economic survival. [FN84] Such protection of property under Article 21 of the Convention, read in conjunction with Articles 1(1) and 2 of said instrument, places upon States a positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories they have traditionally used and occupied.

[FN84] Cf. Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, paras. 148-149, and 151; 148-149, and 151; Case of the Indigenous Community Sawhoyamaxa, supra note 75, paras. 118-121, and Case of the Indigenous Community Yakye Axa, supra note 75, paras.

124, 131, 135 and 154. Cf. also Inter-American Commission on Human Rights, Report 75/02, Case 11.140. Mary and Carrie Dann. United States, December 27, 2002, para. 128 (observing that "continued utilization of traditional collective systems for the control and use of territory are in many instances essential to the individual and collective well being, and indeed the survival of, indigenous peoples"), and Inter-American Commission on Human Rights, Report 40/04, Merits. Case 12.052. Maya Indigenous Communities of the Toledo District. Belize, October 12, 2004, para. 114 (emphasizing that "organs of the inter American human rights system have acknowledged that indigenous peoples enjoy a particular relationship with the lands and resources traditionally occupied and used by them, by which those lands and resources are considered to be owned and enjoyed by the indigenous community as a whole and according to which the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human right more broadly.")

B.2) Interpretation of Article 21 of the American Convention in the present case

92. The Court recognizes that it has arrived at such an interpretation of Article 21 in previous cases in light of Article 29(b) of the Convention, which prohibits an interpretation of any provision of the Convention in a manner that restricts its enjoyment to a lesser degree than what is recognized in the domestic laws of the State in question or in another treaty to which the State is a party. Accordingly, the Court has interpreted Article 21 of the Convention in light of the domestic legislation pertaining to indigenous peoples´ rights in Nicaragua [FN85] and Paraguay, [FN86] for example, as well as taking into account the International Labor Organization's Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (hereinafter "ILO Convention 169"). [FN87]

[FN85] Cf. Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, paras. 148, 150 and 152-153.
[FN86] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, paras. 138-139, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, paras. 122-123.
[FN87] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, paras. 127-130, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 117.

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93. As will be discussed infra (paras. 97-107), Suriname's domestic legislation does not recognize a right to communal property of members of its tribal communities, and it has not ratified ILO Convention 169. Nevertheless, Suriname has ratified both the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights. [FN88] The Committee on Economic, Social, and Cultural Rights, which is the body of independent experts that supervises State parties' implementation of the ICESCR, has interpreted common Article 1 of said instruments as being applicable to indigenous peoples. [FN89] Accordingly, by virtue of the right of indigenous peoples to self-determination recognized under said Article 1, they may "freely pursue their economic, social and cultural development", and may "freely dispose of their natural wealth and resources" so as not to be

"deprived of [their] own means of subsistence". [FN90] Pursuant to Article 29(b) of the American Convention, this Court may not interpret the provisions of Article 21 of the American Convention in a manner that restricts its enjoyment and exercise to a lesser degree than what is recognized in said covenants. [FN91] This Court considers that the same rationale applies to tribal peoples due to the similar social, cultural, and economic characteristics they share with indigenous peoples (supra paras. 80-86) [FN92].

[FN88] Suriname ratified both on March 28, 1977. International Covenant on Civil and Political Rights, 19 December 1966, 99U.N.T.S. 171, Can T.S. 1976 No. 47, 6 I.L.M. 368 (entered in force 23 March 1976), and International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3, 6 I.L.M. 368 (entered into force 3 January 1976).
[FN89] Cf. UNCESCR, Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations on Russian Federation (Thirty-first session), U.N. Doc. E/C.12/1/Add.94, December 12, 2003, para. 11, in which the Committee expressed concern for the "precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant."
[FN90] Common Article 1 of the ICCPR and ICESCR.
[FN91] Cf. Article 29 of the American Convention. Cf. also Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 37, and The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 113 115 (endorsing an interpretation of international human rights instruments that takes into account development in the corpus juris gentium of international human rights law over time and in present day conditions).
[FN92] Cf. Case of the Moiwana Community, supra note 77, para. 133.
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94. Similarly, the Human Rights Committee has analyzed the obligations of State Parties to the ICCPR under Article 27 of such instrument, including Suriname, and observed that "minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture[, which] may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority". [FN93]

[FN93] UNHRC, General Comment No. 23: The rights of minorities (Art. 27) (Fiftieth session, 1994), U.N. Doc. CCPR/C/21Rev.1/Add.5, August 4, 1994, paras. 1 and 3.2.
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95. The above analysis supports an interpretation of Article 21 of the American Convention to the effect of calling for the right of members of indigenous and tribal communities to freely determine and enjoy their own social, cultural and economic development, which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied. Thus, in the present case, the right to property protected under Article 21 of the

American Convention, interpreted in light of the rights recognized under common Article 1 and Article 27 of the ICCPR, which may not be restricted when interpreting the American Convention, grants to the members of the Saramaka community the right to enjoy property in accordance with their communal tradition.

96. Applying the aforementioned criteria to the present case, the Court thus concludes that the members of the Saramaka people make up a tribal community protected by international human rights law that secures the right to the communal territory they have traditionally used and occupied, derived from their longstanding use and occupation of the land and resources necessary for their physical and cultural survival, and that the State has an obligation to adopt special measures to recognize, respect, protect and guarantee the communal property right of the members of the Saramaka community to said territory.

C. THE PROPERTY RIGHTS OF THE MEMBERS OF THE SARAMAKA PEOPLE DERIVED FROM THEIR SYSTEM OF COMMUNAL PROPERTY (ARTICLE 21 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 1(1) AND 2 THEREOF)

97. Having declared that the American Convention recognizes the right of the members of the Saramaka people to the use and enjoyment of property in accordance with their system of communal property, the Court will now proceed to analyze whether the State has adopted an appropriate framework to give domestic legal effect to this right.

98. This Court, in the Moiwana case, already addressed the general issue regarding communal property rights of indigenous and tribal peoples in Suriname. There, the Court held that the State did not recognize such peoples a collective right to property. [FN94] The Court observes that such conclusion is further supported by a variety of international bodies and organizations that have also addressed this issue. The United Nations Committee on the Elimination of Racial Discrimination, [FN95] the United Nations Human Rights Committee, [FN96] and the United Nations Commission on Human Rights' Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people [FN97] have all observed that Suriname does not legally recognize the rights of members of indigenous and tribal peoples to their communal land, territories, and resources.

[FN94] Cf. Case of the Moiwana Community, supra note 77, paras. 86.5 and 130.

[FN95] Cf. UNCERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Suriname, supra note 43, para. 11 (case file of appendices to the representatives' brief, appendix 4.2, folios 1487).

[FN96] Cf. UNHRC, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations on Suriname, supra note 42, para. 21 (expressing concern "at the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources", and recommending that Suriname "guarantee to members of indigenous communities the full enjoyment of all the rights recognized by article 27 of the Covenant, and adopt specific legislation for this purpose") (case file of appendices to the representatives' brief, appendix 4.3, folios 1495-1496).

[FN97] Cf. U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (Fifty ninth session), U.N. Doc. E/CN.4/2003/90, January 21, 2003, para. 21 (explaining that, "[l]egally, the land they occupy is owned by the State, which can issue land property grants lo private owners. Indigenous and tribal lands, territories and resources are not recognized in law. […] Despite petitions to the national Government and the Inter-American system of protection of human rights (Commission and Court), the indigenous and Maroon communities have not received the protection they require"). The Inter-American Development Bank further supported this analysis in its August 2006 study on indigenous peoples and maroons in Suriname. Said study states that "Surinamese law does not recognize and protect the traditional land tenure systems of indigenous and tribal peoples, or their special relationship with the forest. All land and all natural resources are considered to be owned by the State". Cf. Inter-American Development Bank, Indigenous Peoples and Maroons in Suriname, August 2006 (merits, volume II, folio 567).

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99. The State also acknowledged that its domestic legal framework does not recognize the right of the members of the Saramaka people to the use and enjoyment of property in accordance with their system of communal property, but rather a privilege to use land. Nevertheless, the State provided four alleged reasons as to why it should not be held accountable for this in the present case. First, the State asserted that the lack of clarity regarding the land tenure system of the Saramaka people, particularly regarding who owns the land, presents a practical problem for State recognition of their right to communal property. Second, certain "complexities and sensitivities" regarding the issue of collective rights has not permitted the State to legally recognize such rights. The State suggested that legislation providing for "special treatment" for indigenous and tribal groups raises questions of State sovereignty and discrimination with regard to the rest of the population. Thirdly, the State argued that judge-made law could recognize rights to communal property, but the members of the Saramaka people have refused to apply to domestic courts for said recognition. Finally, the State argued that its domestic legislation recognizes an "interest", rather than a right, to property of members of the Saramaka people. The Court will address each issue in said order.

C.1) Land tenure system of the members of the Saramaka people

100. First, the issue regarding the alleged lack of clarity of the members of the Saramaka people's traditional land ownership regime was thoroughly addressed by the parties, witnesses, and expert witnesses in the present case. From the evidence and testimonies submitted before the Court, it is clear that the lös, or clans, are the primary land-owning entities within Saramaka society. [FN98] Each lö is highly autonomous and allocates land and resource rights among their constituent bëë (extended family groups) and their individual members in accordance with Saramaka customary law. [FN99] Pursuant to this customary law, the Captains or members of a lö may not alienate or otherwise encumber the communal property of their lö, and a lö may not encumber or alienate their lands from the collectively held corpus of Saramaka territory. [FN100] On this last point, Head Captain and Fiscali Eddie Fonkie explained that "[i]f a lö tried to sell its land, the other lö would have the right to object and to stop [such transaction] because it would affect the rights and life of all Saramaka people. The lö are very autonomous and […]

do not interfere in each other's affairs unless it affects the interests of all Saramaka people." [FN101] This is because the territory "belongs to the Saramakas, ultimately. [That is,] it belongs to the Saramakas as a people." [FN102]

[FN98] Cf. Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 8); Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 16), Affidavit of Silvi Adjako, April 7 and 8, 2007 (case file of affidavits and observations, appendix 5, folios 1919 1925); Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 59); Expert opinion of Salomon Emanuels, supra note 62 (transcription of public hearing, pp. 67 and 69), and Affidavit of Head Captain and Fiscali Eddie Fonkie, supra note 66, (folios 1911-1912).

[FN99] Cf. Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 8); Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 16); Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 59); Expert opinion of Salomon Emanuels, supra note 62 (transcription of public hearing, pp. 67 and 69), and Affidavit of Head Captain and Fiscali Eddie Fonkie, supra note 66.

[FN100] Cf. Affidavit of Head Captain and Fiscali Eddie Fonkie, supra note 66, and Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 60).

[FN101] Affidavit of Head Captain and Fiscali Eddie Fonkie, supra note 66.

[FN102] Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 60).

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101. In any case, the alleged lack of clarity as to the land tenure system of the Saramakas does not present an insurmountable obstacle for the State, which has the duty to consult with the members of the Saramaka people and seek clarification of this issue (infra para. 129), in order to comply with its obligations under Article 21 of the Convention, in conjunction with Article 2 of such instrument.

C.2) Complexity of issues involved and the State's concern regarding discrimination against non-indigenous or non-tribal members

102. Two additional related arguments submitted by the State as to why it has failed to legally recognize and protect the land-tenure systems of indigenous and tribal communities' are the alleged "complexities and sensitivities" of the issues involved, and the concern that legislation in favor of indigenous and tribal peoples may be perceived as being discriminatory towards the rest of the population. Regarding the first issue, the Court observes that the State may not abstain from complying with its international obligations under the American Convention merely because of the alleged difficulty to do so. The Court shares the State's concern over the complexity of the issues involved; nevertheless, the State still has a duty to recognize the right to property of members of the Saramaka people, within the framework of a communal property system, and establish the mechanisms necessary to give domestic legal effect to such right recognized in the Convention, as interpreted by this Tribunal in its jurisprudence (supra paras. 88-98).

103. Furthermore, the State's argument that it would be discriminatory to pass legislation that recognizes communal forms of land ownership is also without merit. It is a well-established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. [FN103] Legislation that recognizes said differences is therefore not necessarily discriminatory. In the context of members of indigenous and tribal peoples, this Court has already stated that special measures are necessary in order to ensure their survival in accordance with their traditions and customs (supra paras. 78-86, 91, and 96). Thus, the State's arguments regarding its inability to create legislation in this area due to the alleged complexity of the issue or the possible discriminatory nature of such legislation are without merit.

[FN103] Cf., for example, ECHR, Connors v. The United Kingdom, supra note 76, para. 84 (declaring that States have an obligation to take positive steps to provide for and protect the different lifestyles of minorities as a way to provide equality under the law). Cf. also Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Ecuador, supra note 76, (stating that "within international law generally, and Inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions"). Cf. also U.N. International Convention on the Elimination of All Forms of Racial Discrimination, Art. 1.4 (stating that "[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination"), and UNCERD, General Recommendation No. 23, Rights of indigenous peoples, supra note 76, para. 4 (calling upon States to take certain measures in order to recognize and ensure the rights of indigenous peoples).

C.3) Judge-made law

104. Additionally, the State argued that judge-made law could recognize collective property rights, but that the members of the Saramaka people have refused to apply to domestic courts for said recognition. First and foremost, a distinction should be made between the State's duty under Article 2 of the Convention to give domestic legal effect to the rights recognized therein, and the duty under Article 25 to provide adequate and effective recourses to remedy alleged violations of those rights. The Court will address infra (paras. 76-85), in its analysis of the alleged violation of Article 25 of the Convention, the effectiveness of the recourses mentioned by the State, including those available under article 1386 of Suriname's Civil Code, to remedy alleged violations of the right to property of members of the Saramaka people in conformity with their system of communal property.

105. The Court observes that although so-called judge-made law may certainly be a means for the recognition of the rights of individuals, particularly under common-law legal systems, the

availability of such a procedure does not, in and of itself, comply with the State's obligation to give legal effect to the rights recognized in the American Convention. That is, the mere possibility of recognition of rights through a certain judicial process is no substitute for the actual recognition of such rights. The judicial process mentioned by the State is thus to be understood as a means by which said rights might be given domestic legal effect at some point in the future, but that has not yet effectively recognized the rights in question. In any case, the right of the members of the Saramaka people in particular, or members of indigenous and tribal communities in general, to collectively own their territory has not, as of yet, been recognized by any domestic court in Suriname.

C.4) Domestic legislation

106. Finally, the State argued that, although it "may be correct that land related interests of the [Saramaka] are not recognized as a subjective right in the Suriname legal system[,] it is a tendentious misrepresentation to suggest that legitimate interests of the Tribe are not recognized by the system and respected in practice." According to the State, the existing domestic legislation recognizes certain "interests" of members of indigenous and tribal peoples to land. These legal instruments include the 1987 Constitution, the L-1 Decrees of 1982, the Mining Decree of 1986, and the Forest Management Act of 1992. As a preliminary matter, the Court observes that an alleged recognition and respect in practice of "legitimate interests" of the members of the Saramaka people cannot be understood to satisfy the State's obligations under Article 2 of the Convention with regards to Article 21 of such instrument. The Court will proceed to analyze the extent to which these legal instruments recognize an "interest", rather than a right, to property of members of the Saramaka people.

C.4.a) The Constitution of 1987

107. With regard to this argument, the State first recognized that "(l)and rights of the Saramaka Tribe are indeed not explicitly recognized or guaranteed by the 1987 Constitution", but also submitted that said constitutional recognition is not a requirement under Article 2 of the Convention. As the State correctly pointed out, Suriname is not an exception in this regard, as many other State Parties to the Convention have constitutions that do not explicitly recognize the communal property rights systems exercised and enjoyed by members of indigenous and tribal peoples. Yet the obligation to give domestic legal effect to the right to collective property does not necessarily imply a constitutional recognition of such right. Article 2 of the Convention requires States to give domestic legal effect to those rights and freedoms by "such legislative or other measures as may be necessary." In the case of Suriname, no such legislative or other measures have been adopted.

C.4.b) The L-1 Decrees

108. Second, the State referred to the L-1 Decrees of 1982. Article 4 of Decree L-1 reads as follows:

(1) When domain land [which is defined as land owned by the State by virtue of its Constitution] is allocated, the rights of tribal Bushnegroes [Maroons] and Indians to their

villages, settlements and agricultural plots are respected, provided that this is not contrary to the general interest.
(2) General interest includes the execution of any project within the framework of an approved development plan. [FN104]

[FN104] Decree L-1 of June 15, 1982, containing basic principles concerning Land Policy, SB 1982, no. 10, Article 4 (case file of appendices to the application and Appendix 1, appendix 5, folio 53).
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109. The official explanatory note to Article 4(1) of Decree L-1 explains that account should be given to the "factual rights" of members of indigenous and tribal peoples when domain land is being issued. [FN105]

[FN105] Decree L-1 of June 15, 1982, supra note 104.
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110. The use of the term "factual rights" (or de facto rights) in the explanatory note to Article 4(1) of Decree L-1 serves to distinguish these "rights" from the legal (de jure) rights accorded to holders of individual real title or other registered property rights recognized and issued by the State. This limitation on the recognition of the legal right of the members of the Saramaka people to fully enjoy the territory they have traditionally owned and occupied is incompatible with the State's obligations under Article 2 of the Convention to give legal effect to the rights recognized under Article 21 of such instrument.

C.4.c) The Mining Decree of 1986

111. Similarly, the Mining Decree referred to by the State also fails to give domestic legal effect to the rights to property that the members of the Saramaka people have as a result of their communal property system. The Mining Decree only recognizes a right to compensation to rightful claimants and third parties with an interest on land on which a mining right is granted. [FN106] Said decree defines rightful "claimants" as persons "who own the land in ownership or have a real property or personal property right on private land." [FN107] Third parties are defined as "those whose interest [arises] from a personal property right on private land[…]." [FN108] Private land, in turn, is defined in Article 46 of the Mining Decree as land issued under personal or real property titles. [FN109] Therefore, to qualify as a rightful "claimant" or a "third party" pursuant to Articles 47-48 of the Mining Decree, the persons in question must hold some form of registered right or title issued by the State. Thus, the Mining Decree, rather than give effect to the property rights of the members of the Saramaka people in conformity with their communal property system, emphasizes the need for them to obtain title to their traditionally owned territory in order to be able to pursue a claim for compensation (infra para. 183).

[FN106] Decree E 58 of May 8, 1986, containing general rules for exploration and exploitation of minerals (Mining Decree), Articles 47 and 48 (case file of appendices to the application and Appendix 1, appendix 8, folio 144).
[FN107] Decree E 58 of May 8, 1986, supra note 106, Article 46(b).
[FN108] Decree E 58 of May 8, 1986, supra note 106, Article 46(c).
[FN109] Decree E 58 of May 8, 1986, supra note 106, Article 46(a).

C.4.d) The Forest Management Act of 1992

112. The State also made reference to the 1992 Forest Management Act as an example of domestic legislation that gives legal effect to the right of the members of the Saramaka people to the use and enjoyment of property in conformity with their communal system. Suriname has asserted that the grant of permits called "community forests", which may be established under its 1992 Forest Management Act, could provide effective recognition of the property rights of the members of the Saramaka tribe. However, the evidence before the Court contradicts this assertion.

113. Although questions arise as to whether the State has made any effort to inform the members of indigenous and tribal peoples about the possibility of obtaining these so-called "community forests," [FN110] the real problem is that such community forests are not issued as a matter of right, but at the sole discretion of the Minister in charge of forest management and subject to any conditions the Minister may impose. [FN111] The Court observes that it does not have evidence that demonstrates the grant of "community forests" permits to any member of the Saramaka community. [FN112] Notwithstanding this absence, the Court considers that the "community forests" permits are essentially revocable forestry concessions that convey limited and restricted use rights, and are therefore an inadequate recognition of the Saramakas' property rights. [FN113] Likewise, as the implementing laws required to issue community forests have yet to be adopted, the legal certainty of said title may be called into question. [FN114]

[FN110] Cf. Article 41(2) of the Forest Management Act, September 18, 1992 (case file of appendices to the application and Appendix 1, appendix 6, folio 75). Cf. also Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 19), and Testimony of Rene Somopawiro during the public hearing at the Court held on May 9 and 10, 2007 (transcription of public hearing, pp. 40 and 53).
[FN111] Cf. Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, pp. 39 and 42).
[FN112] Cf. Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, pp. 18 20), and Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, p. 49).
[FN113] Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, p. 52).
[FN114] Cf. Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, p. 52).
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114. Furthermore, Article 41 of the Forest Management Act of 1992 also states that customary rights of tribal inhabitants, with respect to their villages and settlements, as well as their agricultural plots, will be respected "as much as possible". [FN115] This provision inadequately limits the scope of "respect" afforded to the members of the Saramaka tribe's territory solely to "villages, settlements and agricultural plots". Such limitation fails to take into account the all-encompassing relationship that members of indigenous and tribal peoples have with their territory as a whole, not just with their villages, settlements, and agricultural plots. In accordance with this Court's analysis, the State's duty is much higher in order to ensure, guarantee and protect the property rights of the members of the Saramaka people, within the framework of their communal system of property (supra paras. 85-96). Thus, the Forest Management Act also fails to give legal effect to the communal property rights of the Saramakas.

[FN115] Cf. Article 41 of the Forest Management Act, supra note 110, (folios 74-75).

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115. In sum, the State's legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference. The Court has previously held that, rather than a privilege to use the land, which can be taken away by the State or trumped by real property rights of third parties, members of indigenous and tribal peoples must obtain title to their territory in order to guarantee its permanent use and enjoyment. [FN116] This title must be recognized and respected, not only in practice, but also in law, in order to ensure its legal certainty. In order to obtain such title, the territory traditionally used and occupied by the members of the Saramaka people must first be delimited and demarcated, in consultation with such people and other neighboring peoples. [FN117] In this regard, the Court has previously declared that "a strictly juridical or abstract recognition of indigenous lands, territories or resources lacks true meaning where the property has not been physically established and delimited." [FN118]

[FN116] Cf. Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, para. 153; Case of the Indigenous Community Yakye Axa, supra note 75, para. 215, and Case of the Moiwana Community, supra note 77, para. 209.

[FN117] The Court observes that in the Moiwana Community case the State was ordered to create an effective mechanism for the delimitation, demarcation and titling of the traditional territories of the Moiwana community. Cf. Case of the Moiwana Community, supra note 77, para. 209.

[FN118] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, para. 143.

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116. Ultimately, the State has expressed its commitment "to improve the current codification of the land rights regime of its tribal and indigenous people." For this purpose, the President of Suriname appointed a committee of experts in the year 2006 to address the issue. Nevertheless, to date, the State's legal system does not recognize the property rights of the members of the

Saramaka people in connection to their territory, but rather, grants a privilege or permission to use and occupy the land at the discretion of the State. For this reason, the Court is of the opinion that the State has not complied with its duty to give domestic legal effect to the members of the Saramaka people's property rights in accordance with Article 21 of the Convention in relation to Articles 2 and 1(1) of such instrument.

117. The Court must now determine the scope of the Saramakas' right to their traditionally owned territory and the State's corresponding obligations, within the context of the present case.

D. THE RIGHT OF THE MEMBERS OF THE SARAMAKA PEOPLE TO USE AND ENJOY THE NATURAL RESOURCES THAT LIE ON AND WITHIN THEIR TRADITIONALLY OWNED TERRITORY

118. An issue that necessarily flows from the assertion that the members of the Saramaka people have a right to use and enjoy their territory in accordance with their traditions and customs is the issue of the right to the use and enjoyment of the natural resources that lie on and within the land, including subsoil natural resources. In the present case, both the State and the members of the Saramaka people claim a right to these natural resources. The Saramakas claim that their right to use and enjoy all such natural resources is a necessary condition for the enjoyment of their right to property under Article 21 of the Convention. The State argued that all rights to land, particularly its subsoil natural resources, are vested in the State, which can freely dispose of these resources through concessions to third parties. The Court will address this complex issue in the following order: first, the right of the members of the Saramaka people to use and enjoy the natural resources that lie on and within their traditionally owned territory; second, the State's grant of concessions for the exploration and extraction of natural resources, including subsoil resources found within Saramaka territory; and finally, the fulfillment of international law guarantees regarding the exploration and extraction concessions already issued by the State.

119. First, the Court must analyze whether and to what extent the members of the Saramaka people have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory. The State does not contest that the Saramakas have traditionally used and occupied certain lands for centuries, or that the Saramakas have an "interest" in the territory they have traditionally used in accordance with their customs. The controversy lies regarding the nature and scope of said interest. In accordance with Suriname's legal and constitutional framework, the Saramakas do not have property rights per se, but rather merely a privilege or permission to use and occupy the lands in question (supra paras. 97-115). According to Article 41 of the Constitution of Suriname and Article 2 of its 1986 Mining Decree, ownership rights of all natural resources vest in the State [FN119]. For this reason, the State claims to have an inalienable right to the exploration and exploitation of those resources. On the other hand, the customary laws of the Saramaka people allegedly vest in its community a right over all natural resources within and subjacent to or otherwise pertaining to its traditional territory. In support of this assertion, the Court heard testimony from a Saramaka Captain to the effect that the Saramaka people have a general right to "own everything, from the very top of the trees to the very deepest place that you could go under the ground." [FN120]

[FN119] Constitution of Suriname, Article 41 (case file of appendices to the application and Appendix 1, appendix 3, folio 28), and Decree E 58 of May 8, 1986 supra note 106, Article 2 (folio 120).
[FN120] Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 8).

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120. In this regard, this Court has previously held [FN121] that the cultural and economic survival of indigenous and tribal peoples, and their members, depend on their access and use of the natural resources in their territory "that are related to their culture and are found therein", and that Article 21 protects their right to such natural resources (supra paras. 85-96). [FN122] Nevertheless, the scope of this right needs further elaboration, particularly regarding the inextricable relationship between both land and the natural resources that lie therein, as well as between the territory (understood as encompassing both land and natural resources) and the economic, social, and cultural survival of indigenous and tribal peoples, and thus, of their members.

[FN121] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, para. 137, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 118.
[FN122] The Court also takes notice that the African Commission, as well as the Canadian Supreme Court and the South African Constitutional Court, have ruled that indigenous communities' land rights are to be understood as including the natural resources therein. Nevertheless, according to the African Commission and the Canadian Supreme Court, these rights are not absolute, and may be restricted under certain conditions. Cf. African Commission on Human and Peoples' Rights, The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Communication 155/96 (2001), paras. 42, 54 and 55, and Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010 (December 11, 1997), paras. 194, 199 and 201. The South African Constitutional Court, citing a domestic law that required the return of land to owners who had been dispossessed by racially discriminatory policies, affirmed the right of an indigenous peoples to the mineral resources in its lands. Cf. Alexkor Ltd. and the Government of South Africa v. Richtersveld Community and Others, CCT/1903 (October 14, 2003), para. 102.

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121. In accordance with this Court's jurisprudence as stated in the Yakye Axa and Sawhoyamaxa cases, members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake. [FN123] Hence the need to protect the lands and resources they have traditionally used to prevent their extinction as a people. That is, the aim and purpose of the special measures required on behalf of the members of indigenous and tribal communities is to guarantee that they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected by States.

[FN123] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, para. 137, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 118.

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122. As mentioned above (supra paras. 85-96), due to the inextricable connection members of indigenous and tribal peoples have with their territory, the protection of their right to property over such territory, in accordance with Article 21 of the Convention, is necessary to guarantee their very survival. Accordingly, the right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land. That is, the demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life. This connectedness between the territory and the natural resources necessary for their physical and cultural survival is precisely what needs to be protected under Article 21 of the Convention in order to guarantee the members of indigenous and tribal communities' right to the use and enjoyment of their property. From this analysis, it follows that the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life. [FN124]

[FN124] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, paras. 124 and 137, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, paras. 118 and 121.

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123. Thus, in the present case, the Court must determine which natural resources found on and within the Saramaka people's territory are essential for the survival of their way of life, and are thus protected under Article 21 of the Convention. Consequently, the Court must also address whether and to what extent the State may grant concessions for the exploration and extraction of those and other natural resources found within Saramaka territory.

E. THE STATE'S GRANT OF CONCESSIONS FOR THE EXPLORATION AND EXTRACTION OF NATURAL RESOURCES FOUND ON AND WITHIN SARAMAKA TERRITORY

124. The Commission and the representatives alleged that land concessions for forestry and mining awarded by the State to third parties on territory possessed by the Saramaka people, without their full and effective consultation, violates their right to the natural resources that lie on and within the land. The State asserted that all land ownership, including all natural resources, vests in the State, and that, as such, the State may grant logging and mining concessions within alleged Saramaka territory, while respecting as much as possible Saramaka customs and traditions.

E.1) Restrictions on the right to property

125. This brings the Court to the issue of whether and to what extent the State may grant concessions for the exploration and extraction of natural resources found within Saramaka territory. In this regard, the State argued that, should the Court recognize a right of the members of the Saramaka people to the natural resources found within traditionally owned lands, this right must be limited to those resources traditionally used for their subsistence, cultural and religious activities. According to the State, the alleged land rights of the Saramakas "would not include any interests on forests or minerals beyond what the Tribe traditionally possesses and uses for subsistence (agriculture, hunting, fishing etc.), and the religious and cultural needs of its people".

126. The State seems to recognize that resources related to the subsistence of the Saramaka people include those related to agricultural, hunting and fishing activities. This is consistent with the Court's previous analysis on how Article 21 of the Convention protects the members of the Saramaka people's right over those natural resources necessary for their physical survival (supra paras. 120-122).Nevertheless, while it is true that all exploration and extraction activity in the Saramaka territory could affect, to a greater or lesser degree, the use and enjoyment of some natural resource traditionally used for the subsistence of the Saramakas, it is also true that Article 21 of the Convention should not be interpreted in a way that prevents the State from granting any type of concession for the exploration and extraction of natural resources within Saramaka territory. Clean natural water, for example, is a natural resource essential for the Saramakas to be able to carry out some of their subsistence economic activities, like fishing. The Court observes that this natural resource is likely to be affected by extraction activities related to other natural resources that are not traditionally used by or essential for the survival of the Saramaka people and, consequently, its members (infra para. 152). Similarly, the forests within Saramaka territory provide a home for the various animals they hunt for subsistence, and it is where they gather fruits and other resources essential for their survival (supra paras. 82-83 and infra paras. 144-146). In this sense, wood-logging activities in the forest would also likely affect such subsistence resources. That is, the extraction of one natural resource is most likely to affect the use and enjoyment of other natural resources that are necessary for the survival of the Saramakas.

127. Nevertheless, the protection of the right to property under Article 21 of the Convention is not absolute and therefore does not allow for such a strict interpretation. Although the Court recognizes the interconnectedness between the right of members of indigenous and tribal peoples to the use and enjoyment of their lands and their right to those resources necessary for their survival, said property rights, like many other rights recognized in the Convention, are subject to certain limitations and restrictions. In this sense, Article 21 of the Convention states that the "law may subordinate [the] use and enjoyment [of property] to the interest of society". Thus, the Court has previously held that, in accordance with Article 21 of the Convention, a State may restrict the use and enjoyment of the right to property where the restrictions are: a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society. [FN125]In accordance with this Article, and the Court's jurisprudence, the State will be able to restrict, under certain circumstances, the Saramakas' property rights, including their rights to natural resources found on and within the territory.

[FN125] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, paras. 144-145 citing (mutatis mutandi) Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 96; Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 127, and Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74. para. 155. Cf., also, Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 137.

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128. Furthermore, in analyzing whether restrictions on the property right of members of indigenous and tribal peoples are permissible, especially regarding the use and enjoyment of their traditionally owned lands and natural resources, another crucial factor to be considered is whether the restriction amounts to a denial of their traditions and customs in a way that endangers the very survival of the group and of its members. That is, under Article 21 of the Convention, the State may restrict the Saramakas' right to use and enjoy their traditionally owned lands and natural resources only when such restriction complies with the aforementioned requirements and, additionally, when it does not deny their survival as a tribal people (supra paras. 120-122). [FN126]

[FN126] Cf., e.g. UNHRC, Länsman et al. v. Finland (Fifty-second session, 1994), Communication No. 511/1992, U.N. Doc. CCPR/C/52/D/511/1994, November 8, 1994, para. 9.4 (allowing States to pursue development activities that limit the rights of a minority culture as long as the activity does not fully extinguish the indigenous people's way of life).

E.2) Safeguards against restrictions on the right to property that deny the survival of the Saramaka people

129. In this particular case, the restrictions in question pertain to the issuance of logging and mining concessions for the exploration and extraction of certain natural resources found within Saramaka territory. Thus, in accordance with Article 1(1) of the Convention, in order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must abide by the following three safeguards: First, the State must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan (hereinafter "development or investment plan") [FN127] within Saramaka territory. Second, the State must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.

[FN127] By “development or investment plan” the Court means any proposed activity that may affect the integrity of the lands and natural resources within the territory of the Saramaka people, particularly any proposal to grant logging or mining concessions.

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130. These safeguards, particularly those of effective participation and sharing of benefits regarding development or investment projects within traditional indigenous and tribal territories, are consistent with the observations of the Human Rights Committee, the text of several international instruments, and the practice in several States Parties to the Convention. [FN128] In Apirana Mahuika et al. v. New Zealand, for example, the Human Rights Committee decided that the right to culture of an indigenous population under Article 27 of the ICCPR could be restricted where the community itself participated in the decision to restrict such right. The Committee found that “the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy”. [FN129]

[FN128] Cf., e.g. I.L.O. Convention No. 169, Article 15(2) (stating that “[i]n cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.”) Similar requirements have been put in place by the World Bank, Revised Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10). Other documents more broadly speak of a minority’s right to participate in decisions that directly or indirectly affect them. Cf., e.g. UNHRC, General Comment No. 23: The rights of minorities (Art. 27), supra note 93, para. 7 (stating that the enjoyment of cultural rights under Article 27 of the ICCPR “may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”); UNCERD, General Recommendation No. 23, Rights of indigenous peoples, supra note 76, para. 4(d) (calling upon States parties to “[e]nsure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent”).
[FN129] UNHRC, Apirana Mahuika et al. v. New Zealand (Seventieth session, 2000), U.N. Doc. CCPR/C/70/D/547/1993, November 15, 2000, para. 9.5.

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131. Similarly, Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples, which was recently approved by the UN General Assembly with the support of the State of Suriname, [FN130] states the following [FN131]:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

[FN130] By a vote of 143 in favor to 4 against, with 11 abstentions, the UN General Assembly adopted on September 13, 2007 the United Nations Declaration on the Rights of Indigenous Peoples (Cf. http://www.un.org/News/Press/docs/2007/ga10612.doc.htm).
[FN131] The Court observes that, in explaining the position of the State in favor of this text, the representative of Suriname is reported to have specifically alluded to the aforementioned text of Article 32 of such instrument. The UN Press Release states the following: "[The representative of Suriname] said his Government accepted the fact that the States should seek prior consultation to prevent a disregard for human rights. The level of such consultations depended on the specific circumstances. Consultation should not be viewed as an end in itself, but should serve the purpose of respecting the interest of those who used the land", supra note 130.
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132. More importantly, the District Commissioner of Sipaliwini in Suriname, who testified before the Court on behalf of the State, recognized the importance of consulting with the traditional authorities of the Saramaka people prior to authorizing concessions that may affect "communities in the direct vicinities". [FN132] Nonetheless, the Court considers that the actual scope of the guarantees concerning consultation and sharing of the benefits of development or investment projects requires further clarification.

[FN132] Testimony of District Commissioner Rudy Strijk during the public hearing at the Court held on May 9 and 10, 2007.

E.2.a) Right to consultation, and where applicable, a duty to obtain consent

133. First, the Court has stated that in ensuring the effective participation of members of the Saramaka people in development or investment plans within their territory, the State has a duty to actively consult with said community according to their customs and traditions (supra para. 129). This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, the Saramakas must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community, if such is the case. Early notice provides time for internal discussion within communities and for proper feedback to the State. The State must also ensure that members of

the Saramaka people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily. Finally, consultation should take account of the Saramaka people's traditional methods of decision-making. [FN133]

[FN133] Similarly, in Maya Indigenous Communities of the Toledo District v. Belize, the Inter-American Commission observed that States must undertake effective and fully informed consultations with indigenous communities with regard to acts or decisions that may affect their traditional territories. In said case, the Commission determined that a process of "fully informed consent" requires "at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives". Cf. Inter-American Commission on Human Rights, Report 40/04, Merits. Case 12.052. Maya Indigenous Communities of the Toledo District, supra note 84, para. 142. Cf. also, Equator Principles, Principle 5.

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134. Additionally, the Court considers that, regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions. The Court considers that the difference between "consultation" and "consent" in this context requires further analysis.

135. In this sense, the U.N. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has similarly observed that:

[w]herever [large-scale projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. […] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence. [FN134]

Consequently, the U.N. Special Rapporteur determined that "[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects". [FN135]

[FN134] U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, supra note 97, p. 2.
[FN135] U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, supra note 97, para. 66.

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136. Other international bodies and organizations have similarly considered that, in certain circumstances, and in addition to other consultation mechanisms, States must obtain the consent of indigenous and tribal peoples to carry out large-scale development or investment projects that have a significant impact on the right of use and enjoyment of their ancestral territories. [FN136]

[FN136] The UNCERD has observed that "[a]s to the exploitation of the subsoil resources of the traditional lands of indigenous communities, the Committee observes that merely consulting these communities prior to exploiting the resources falls short of meeting the requirements set out in the Committee's general recommendation XXIII on the rights of indigenous peoples. The Committee therefore recommends that the prior informed consent of these communities be sought". Cf. UNCERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Ecuador (Sixty second session, 2003), U.N. Doc. CERD/C/62/CO/2, June 2, 2003, para. 16.

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137. Most importantly, the State has also recognized that the "level of consultation that is required is obviously a function of the nature and content of the rights of the Tribe in question." The Court agrees with the State and, furthermore, considers that, in addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramakas, in accordance with their traditions and customs.

E.2.b) Benefit-sharing

138. The second safeguard the State must ensure when considering development or investment plans within Saramaka territory is that of reasonably sharing the benefits of the project with the Saramaka people. The concept of benefit-sharing, which can be found in various international instruments regarding indigenous and tribal peoples' rights, [FN137] can be said to be inherent to the right of compensation recognized under Article 21(2) of the Convention, which states that

[n]o one shall be deprived of his property except upon payment of just compensation, for reasons of pubic utility or social interest, and in the cases and according to the forms established by law.

[FN137] United Nations Declaration on the Rights of Indigenous Peoples, supra note 130, Article 32 (stating that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"), and I.L.O. Convention No. 169, supra note 128, Article 15(2) (stating that "[t]he peoples concerned shall wherever possible participate in the benefits of such

activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities").

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139. The Court considers that the right to obtain compensation under Article 21(2) of the Convention extends not only to the total deprivation of property title by way of expropriation by the State, for example, but also to the deprivation of the regular use and enjoyment of such property. In the present context, the right to obtain "just compensation" pursuant to Article 21(2) of the Convention translates into a right of the members of the Saramaka people to reasonably share in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and of those natural resources necessary for their survival.

140. In this sense, the Committee on the Elimination of Racial Discrimination has recommended not only that the prior informed consent of communities must be sought when major exploitation activities are planned in indigenous territories, but also "that the equitable sharing of benefits to be derived from such exploitation be ensured." [FN138] Similarly, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples has suggested that, in order to guarantee "the human rights of indigenous peoples in relation to major development projects, [States should ensure] mutually acceptable benefit sharing […]." [FN139] In this context, pursuant to Article 21(2) of the Convention, benefit sharing may be understood as a form of reasonable equitable compensation resulting from the exploitation of traditionally owned lands and of those natural resources necessary for the survival of the Saramaka people.

[FN138] UNCERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Ecuador, supra note 136, para. 16.

[FN139] U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, supra note 97, para. 66.

F. THE FULFILLMENT OF THE GUARANTEES ESTABLISHED UNDER INTERNATIONAL LAW IN RELATION TO THE CONCESSIONS ALREADY GRANTED BY THE STATE

141. Having declared that the Saramakas' right to use and enjoy their traditionally owned lands necessarily implies a similar right with regards to the natural resources that are necessary for their survival, and having set safeguards and limitations regarding the State's right to issue concessions that restrict the use and enjoyment of such natural resources, the Court will now proceed to analyze whether the concessions already issued by the State within Saramaka territory complied with the safeguards mentioned above.

142. In the present case, the evidence before the Court demonstrates that between 1997 and 2004, the State issued at least four logging concessions and a number of mining concessions to both Saramaka and non-Saramaka members and foreign companies within territory traditionally owned by members of the Saramaka community. [FN140] Witness Rene Somopawiro, the acting

director of the State's Foundation for Forest Management and Production Control, recognized in his testimony before the Court that the State had issued concessions within Saramaka territory. [FN141] District Commissioner Strijk also declared that, during his tenure, at least one logging concession was issued by the State within Saramaka territory and that this concession was held by a non-Saramaka person or corporation. [FN142]

[FN140] Map prepared by the Ministry of Natural Resources (case file of appendices to the application and appendix 1, appendix 16, folios 180-181).
[FN141] Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, pp. 45-46).
[FN142] Testimony of District Commissioner Rudy Strijk, supra note 132 (transcription of public hearing, p. 26).

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143. As mentioned above, Article 21 of the Convention does not per se preclude the issuance of concessions for the exploration and exploitation of natural resources in indigenous or tribal territories. Nonetheless, if the State wants to restrict, legitimately, the Saramakas' right to communal property, it must consult with the communities affected by the development or investment project planned within territories which they have traditionally occupied, reasonably share the benefits with them, and complete prior assessments of the environmental and social impact of the project (supra paras. 126-129).

F.1) Logging concessions

144. Thus, with regard to timber logging, a question arises as to whether this natural resource is one that has been traditionally used by the members of the Saramaka people in a manner inextricably related to their survival. In this regard, Dr. Richard Price, an anthropologist who gave his expert opinion during the public hearing in the present case, submitted a map in which the Saramaka people made hundreds of marks illustrating the location and variety of trees they use for different purposes. [FN143] For example, the Saramakas use a special type of tree from which they build boats and canoes to move and transport people and goods from one village to another. [FN144] The members of the Saramaka community also use many different species of palm trees to make different things, including roofing for their houses, and from which they obtain fruits that they process into cooking oil. [FN145] When referring to the forest, one of the witnesses stated during the public hearing that it "is where we cut trees in order to make our houses, to get our subsistence, to make our boats […]; everything that we live with". [FN146] Another witness addressed the importance of wood-cutting for the Saramaka people and how they care about their environment:

When we cut trees, we think about our children, and our grandchildren, and future generations. […] When we go into the forest for any purpose, we think about what we're doing, we think about saving the environment. We are very careful not to destroy anything that is in the forest. We take the wood that we need for our purposes, and we are very careful not to destroy the environment. [FN147]

[FN143] Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, pp. 55-56).
[FN144] Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, pp. 55-56).
[FN145] Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, pp. 55-56).
[FN146] Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 6).
[FN147] Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, pp. 15-16).

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145. Additionally, the evidence before the Tribunal suggests that the members of the Saramaka people also rely on timber logging as part of their economic structure. In this regard, the State emphasized that some individual Saramaka members have requested logging concessions from the State on their own individual behalf. When asked during the public hearing why he, for example, had requested an individual logging concession from the State, Captain Cesar Adjako, of the Matjau clan (lö), responded that he did so "because the government made a new law saying that if you wanted to sell the wood you cut, you had to have your name on a concession. Otherwise you were not allowed to sell the wood. […] Once I have a concession, all my children are able to cut the wood". [FN148] That is, the request for a personal concession was intended to allow the members of the Saramaka people to legally continue selling wood, as they have traditionally done for subsistence purposes.

[FN148] Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 14).

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146. This evidence shows that the members of the Saramaka people have traditionally harvested, used, traded and sold timber and non-timber forest products, and continue to do so until the present day. [FN149] Thus, in accordance with the above analysis regarding the extraction of natural resources that are necessary for the survival of the Saramaka people, and consequently, its members, the State should not have granted logging concessions within Saramaka territory unless and until the three safeguards of effective participation, benefit-sharing, and prior environmental and social impact assessments were complied with.

[FN149] Cf. Expert opinion of Professor Richard Price, supra note 62 (transcription of public hearing, p. 58), and Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 13).

F.1.a) Effective participation

147. In this case, regarding the logging concessions granted within Saramaka territory, the State did not guarantee the effective participation of the Saramakas in advance, through their traditional decision-making processes, nor did it share the benefits with the members of said people. According to District Commissioner Strijk, who testified before this Tribunal, it was "not necessary" to consult with or obtain the consent of the Saramakas in relation to the logging concessions in question because there were no reported traditional Saramaka sites in the area. [FN150] In the words of District Commissioner Strijk, "if there are sacred sites, cemeteries, and agricultural plots, then we have consultation, if there are no sacred sites, [cemeteries,] and agricultural plots, then consultation doesn't take place". [FN151] This procedure evidently fails to guarantee the effective participation of the Saramaka people, through their own customs and traditions, in the process of evaluating the issuance of logging concessions within their territory. As mentioned above, the question for the State is not whether to consult with the Saramaka people, but whether the State must also obtain their consent (supra paras. 133-137).

[FN150] Testimony of District Commissioner Rudy Strijk, supra note 132 (transcription of public hearing, pp. 26 and 30).

[FN151] Testimony of District Commissioner Rudy Strijk, supra note 132 (transcription of public hearing, p. 30).

F.1.b) Prior environmental and social impact assessments

148. The State further argued that the "concessions which were provided to third parties did not affect [Saramaka] traditional interests". The evidence before the Tribunal suggests not only that the level of consultation referred to by the State was not enough to guarantee the Saramakas' effective participation in the decision-making process, but also that the State did not complete environmental and social impact assessments prior to issuing said concessions, [FN152] and that at least some of the concessions granted did affect natural resources necessary for the economic and cultural survival of the Saramaka people. The Court once again observes that when a logging concession is granted, a variety of non-timber forest products, which are used by the members of the Saramaka people for subsistence and commercial purposes, are also affected.

[FN152] Cf. Testimony of Rene Somopawiro, supra note 110 (transcription of public hearing, p. 47).

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149. In this regard, a map produced by expert witness Dr. Peter Poole and submitted to the Court depicts Saramaka occupation and use of lands and resources in the concessions granted within Saramaka territory to non-Saramaka members. [FN153] This evidence shows that members of the Saramaka people were extensively using the areas granted to the logging companies as hunting and fishing grounds, as well as a source of a variety of forest products. [FN154]

[FN153] Cf. Map II, submitted by Peter Poole to the Inter- American Commission during the public hearing held on March 5, 2006 (case file of appendices to the application and Appendix 1, appendix 15, folio 172).
[FN154] Cf. Affidavit of Dr. Peter Poole, supra note 69 (folio 1965).

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150. Head Captain Wazen Eduards, [FN155] Captain Cesar Adjako, [FN156] Ms. Silvi Adjako, [FN157] and Mr. Hugo Jabini, [FN158] for example, all testified that the activities of the logging companies within traditional Saramaka territory were highly destructive and caused massive damage to a substantial area of the Saramaka people's forest and the ecological and cultural functions and services it provided. Ms. Silvi Adjako, for instance, declared that the logging companies "caused much destruction in our forest and made parts of our land useless because they blocked the creeks and made the water sit on the earth. Before then we were able to use the forest freely and quietly, and it was a great comfort to us and supported us." [FN159] This statement is also supported by the declaration of Mr. Hugo Jabini, who added that these companies "left a totally ruined forest where they worked. Big parts of the forest cannot be used anymore for farming, and animals will stay away from these areas as well. The creeks are all blocked and the area is flooded and turning into a swamp. It is useless and the spirits are greatly offended". [FN160]

[FN155] Cf. Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, pp. 4-5).
[FN156] Cf. Testimony of Captain Cesar Adjako, supra note 68 (transcription of public hearing, p. 16).
[FN157] Cf. Affidavit of Silvi Adjako, supra note 98 (folio 1924).
[FN158] Cf. Affidavit of S. Hugo Jabini of April 3, 2007 (case file of affidavits and observations, appendix 6, folios 1937-38).
[FN159] Affidavit of Silvi Adjako, supra note 98, (folio 1924).
[FN160] Affidavit of S. Hugo Jabini, supra note 158 (folio 1938).

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151. The observations of the Saramaka witnesses are corroborated by the research of expert witnesses Dr. Robert Goodland and Dr. Peter Poole, both of whom visited the concessions and surrounding areas between 2002 and 2007. [FN161] In general, Dr. Goodland stated that "the social, environmental and other impacts of the logging concessions are severe and traumatic", [FN162] and that the "[l]ogging was carried out below minimum acceptable standards for logging operations." [FN163] Dr. Goodland characterized it as "among the worst planned, most damaging and wasteful logging possible." [FN164] Dr. Poole added that it was "immediately apparent to [him] that the logging operations in these concessions were not done to any acceptable or even minimum specifications, and sustainable management was not a factor in decision-making." [FN165]

[FN161] Cf. Affidavit of Dr. Robert Goodland of April 27, 2007 (case file of affidavits and observations, appendix 3, folios 1887-1894), and Affidavit of Dr. Peter Poole, supra note 69 (folios 1964-65).
[FN162] Affidavit of Dr. Robert Goodland, supra note 161 (folio 1888).
[FN163] Affidavit of Dr. Robert Goodland, supra note 161 (folio 1892).
[FN164] Affidavit of Dr. Robert Goodland, supra note 161 (folio 1892).
[FN165] Affidavit of Dr. Peter Poole, supra note 69 (folio 1964).
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152. Dr. Goodland and Dr. Poole both testified that the logging companies built substandard bridges in their concessions and that these bridges unnecessarily blocked numerous creeks. [FN166] Because these creeks are the primary source of potable water used by members of the Saramaka people, "water necessary for drinking, cooking, washing, irrigation, watering gardens, and catching fish is not available. [Furthermore,] subsistence farms become less productive or so unproductive that they have to be abandoned." [FN167] According to Dr. Goodland, these large areas of standing water render the forest incapable of producing traditional Saramaka agricultural crops. [FN168] Dr. Poole reached the same conclusions. [FN169]

[FN166] Cf. Affidavit of Dr. Robert Goodland, supra note 161 (folios 1890-1891), and Affidavit of Dr. Peter Poole, supra note 69 (folios 1964-1965).
[FN167] Affidavit of Dr. Robert Goodland, supra note 161 (folios 1891).
[FN168] Cf. Affidavit of Dr. Robert Goodland, supra note 161 (folios 1890-1891).
[FN169] Cf. Affidavit of Dr. Peter Poole, supra note 69 (folio 1964).

F.1.c) Benefit-sharing

153. Not only have the members of the Saramaka people been left with a legacy of environmental destruction, despoiled subsistence resources, and spiritual and social problems, but they received no benefit from the logging in their territory. Government statistics submitted into evidence before the Court prove that a considerable quantity of valuable timber was extracted from the territory of the Saramaka people without any compensation. [FN170]

[FN170] Cf. Affidavit of Dr. Robert Goodland, supra note 161 (folio 1894) (citing Suriname Forest Management Foundation, Forest Statistics from 1999 to 2005), and Overview of logging concessions in the Pokigron Region. Map produced by the Suriname Forestry Management Foundation, Ministry of Natural Resources, August 2003 (case file of appendices to the representatives' brief, appendix 1.1, folio 1460).

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154. In conclusion, the Court considers that the logging concessions issued by the State in the Upper Suriname River lands have damaged the environment and the deterioration has had a

negative impact on lands and natural resources traditionally used by members of the Saramaka people that are, in whole or in part, within the limits of the territory to which they have a communal property right. The State failed to carry out or supervise environmental and social impact assessments and failed to put in place adequate safeguards and mechanisms in order to ensure that these logging concessions would not cause major damage to Saramaka territory and communities. Furthermore, the State did not allow for the effective participation of the Saramakas in the decision-making process regarding these logging concessions, in conformity with their traditions and customs, nor did the members of the Saramaka people receive any benefit from the logging in their territory.All of the above constitutes a violation of the property rights of the members of the Saramaka people recognized under Article 21 of the Convention, in connection with Article 1.1 of said instrument.

F.2) Gold-mining concessions

155. The Court must also analyze whether gold-mining concessions within traditional Saramaka territory have affected natural resources that have been traditionally used and are necessary for the survival of the members of the Saramaka people. According to the evidence submitted before the Court, the members of the Saramaka people have not traditionally used gold as part of their cultural identity or economic system. Despite possible individual exceptions, members of the Saramaka people do not identify themselves with gold nor have demonstrated a particular relationship with this natural resource, other than claiming a general right to "own everything, from the very top of the trees to the very deepest place that you could go under the ground." [FN171] Nevertheless, as stated above (supra paras. 126-129), because any gold mining activity within Saramaka territory will necessarily affect other natural resources necessary for the survival of the Saramakas, such as waterways, the State has a duty to consult with them, in conformity with their traditions and customs, regarding any proposed mining concession within Saramaka territory, as well as allow the members of the community to reasonably participate in the benefits derived from any such possible concession, and perform or supervise an assessment on the environmental and social impact prior to the commencement of the project. The same analysis applies regarding other concessions within Saramaka territory involving natural resources which have not been traditionally used by members of the Saramaka community, but that their extraction will necessarily affect other resources that are vital to their way of life.

[FN171] Testimony of Head Captain and Fiscali Wazen Eduards, supra note 61 (transcription of public hearing, p. 8).

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156. The Court recognizes that, to date, no large-scale mining operations have taken place within traditional Saramaka territory. Nevertheless, the State failed to comply with the three safeguards when it issued small-scale gold mining concessions within traditional Saramaka territory. [FN172] That is, such concessions were issued without performing prior environmental and social impact assessments, and without consulting with the Saramaka people in accordance with their traditions, or guaranteeing their members a reasonable share in the benefits of the project. As such, the State violated the members of the Saramaka peoples' right to property under Article 21 of the Convention, in conjunction with Article 1(1) of such instrument.

[FN172] Cf. Map prepared by the Ministry of Natural Resources, supra note 140.

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157. With regard to the concessions within Saramaka territory that have already been granted to private parties, including Saramaka members, the Court has already declared (supra paras. 127-128) that "when indigenous communal property and individual private property are in real or apparent contradiction, the American Convention itself and the jurisprudence of the Court provide guidelines to establish admissible restrictions to the enjoyment and exercise of those rights". [FN173] Thus, the State has a duty to evaluate, in light of the present Judgment and the Court's jurisprudence, [FN174] whether a restriction of these private property rights is necessary to preserve the survival of the Saramaka people.

[FN173] Case of the Indigenous Community Yakye Axa, supra note 75, para. 144. Cf. also, UNHRC, Ivan Kitok v. Sweden, Communication No. 197/1985, U.N. Doc. CCPR/C/33/D/197/1985, August 10, 1988, para. 9.8.

[FN174] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, paras. 144-145, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 137.

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158. From all of the above considerations, the Court concludes the following: first, that the members of the Saramaka people have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory that are necessary for their survival; second, that the State may restrict said right by granting concessions for the exploration and extraction of natural resources found on and within Saramaka territory only if the State ensures the effective participation and benefit of the Saramaka people, performs or supervises prior environmental and social impact assessments, and implements adequate safeguards and mechanisms in order to ensure that these activities do not significantly affect the traditional Saramaka lands and natural resources; and finally, that the concessions already issued by the State did not comply with these safeguards. Thus, the Court considers that the State has violated Article 21 of the Convention, in conjunction with Article 1 of such instrument, to the detriment of the members of the Saramaka people.

G. THE LACK OF RECOGNITION OF THE SARAMAKA PEOPLE AS A JURIDICAL PERSONALITY MAKES THEM INELIGIBLE UNDER DOMESTIC LAW TO RECEIVE COMMUNAL TITLE TO PROPERTY AS A TRIBAL COMMUNITY AND TO HAVE EQUAL ACCESS TO JUDICIAL PROTECTION OF THEIR PROPERTY RIGHTS

159. The representatives alleged that the State has violated its obligations under Article 3 of the Convention by denying the Saramaka people of their right to recognition of their legal personality. According to the representatives, the lack of recognition of the Saramaka people as a juridical personality makes them ineligible under domestic law to receive communal title to land

as a tribal community. Only individual members of the Saramaka community, acting as individuals, may receive a leasehold on State land. The representatives request, therefore, that the State recognize the juridical personality of the Saramaka people as a distinct people, in accordance also with their right to self-determination.

160. As a preliminary matter, the State argued that the Commission did not allege a violation of Article 3 of the Convention in its application before the Court, and that such alleged violation was not included in its Article 50 Report. The State maintains that the representatives do not have standing to separately and independently allege before the Court that Suriname violated Article 3 of the Convention.

161. The Court has already addressed this issue (supra Preliminary Objections, paras. 25-29), and has previously held that the alleged victims or their representatives may invoke other rights distinct from those included in the Commission's application, provided that they refer to the facts already included in the application. [FN175] The Court observes that, although the Commission did not allege a violation of Article 3 of the Convention, the representatives' legal arguments regarding the alleged lack of recognition of the Saramaka people's juridical personality are based on facts already contained in the application. Thus, the Court will proceed to analyze the parties' arguments regarding this issue.

[FN175] Cf. Case of the "Five Pensioners", supra note 8, para. 155; Case of Escué Zapata, supra note 22, and Case of Bueno Alves, supra note 8, para. 121.

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162. Substantially, the State first questioned the cohesion of the Saramaka people as "an independent bearer of rights and obligations governed by its own laws, regulations and customs, as the concept of judicial [sic] personality provided for in [A]rticle 3 of the Convention presumes." Secondly, the State argued that the American Convention guarantees that every "person" has the right to be recognized as such before the law and not as a "distinct people", as argued by the representatives. Finally, the State argued that it is possible for the Saramaka people to "approach the civil courts requesting a declaratory decision recognizing the tribe as a legal entity."

163. The Court will address the State's first two arguments in the present section, and the last argument, concerning the possible available domestic remedies, in the section concerning the right to judicial protection (infra paras. 176-185).

164. The State's first argument is that the voluntary inclusion of some of the members of the Saramaka people in "modern society" has affected their cultural distinctiveness, such that it would be difficult to define them as a distinct legal personality. That is, the State questions whether the Saramaka can be legally defined in a way that takes into account the different degrees to which various self-identified members of the Saramaka people adhere to traditional laws, customs, and economy, particularly those living in Paramaribo or outside of the territory claimed by the Saramaka. In this regard, the Court has already declared that the Saramaka people can be defined as a distinct tribal group (supra paras. 80-84), whose members enjoy and exercise

certain rights, such as the right to property, in a distinctly collective manner (supra paras. 87-96). The fact that some individual members of the Saramaka people may live outside of the traditional Saramaka territory and in a way that may differ from other Saramakas who live within the traditional territory and in accordance with Saramaka customs does not affect the distinctiveness of this tribal group nor its communal use and enjoyment of their property. Moreover, the question of whether certain self-identified members of the Saramaka people may assert certain communal rights on behalf of the juridical personality of such people is a question that must be resolved by the Saramaka people in accordance with their own traditional customs and norms, not by the State or this Court in this particular case. Accordingly, the lack of individual identification with the traditions and laws of the Saramaka by some alleged members of the community may not be used as a pretext to deny the Saramaka people their right to juridical personality.

165. Having emphasized that the Saramaka people are a distinct tribal group, whose members enjoy and exercise certain rights collectively, the Court will address the State's second argument regarding the possibility of recognizing the legal personality of a distinct group rather than that of its individual members.

166. The Court has previously analyzed the right of individual persons to have their juridical personality recognized pursuant to Article 3 of the American Convention. [FN176] Accordingly, the Court has defined it as the right to be legally recognized as a subject of rights and obligations. [FN177] That is, the "right to recognition of personality before the law represents a parameter to determine whether a person is entitled to any given rights and whether such person can enforce such rights". [FN178] The Court has also declared that a violation of the right to juridical personality entails an absolute failure to recognize or acknowledge the capability of a person to exercise and enjoy said rights and obligations, [FN179] which in turn places the person in a vulnerable position in relation to the State or third parties. [FN180] In particular, the Court has observed that "the State is bound to guarantee to those persons in situations of vulnerability, exclusion and discrimination, the legal and administrative conditions that may secure for them the exercise of such right, pursuant to the principle of equality under the law". [FN181] The issue at hand in the present case is whether these criteria can be applied to the members of the Saramaka people as a group and not merely as individuals.

[FN176] This right is also recognized in other international instruments. Cf., inter alia, Universal Declaration of Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 16; American Declaration of the Rights and Duties of Man, Article XVII, and African Charter on Human and Peoples' Rights, Article 5.

[FN177] Cf. Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 179; Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 188, and Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 177. Cf. also UNHRC, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding Observations on Gabon, U.N. Doc. CCPR/C/31/ADD.4, November 18, 1996, para. 54.

[FN178] Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 188.

[FN179] Cf. Case of Bámaca Velásquez, supra note 177, para. 179; Case of La Cantuta v. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 120, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 188.
[FN180] Cf. Case of the Girls Yean and Bosico, supra note 177, para. 179, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 188.
[FN181] Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 189.
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167. The Court has previously addressed the right to juridical personality in the context of indigenous communities, and has held that States have a duty to provide the means and general juridical conditions necessary to guarantee that each person enjoys the right to the recognition of his or her juridical personality. [FN182] The question presented in this case is of a different nature. Here the question is whether the lack of recognition of the Saramaka people as a juridical personality makes them ineligible under domestic law to receive communal title to land as a tribal community and to have equal access to judicial protection of their property rights. The individual right to have each member's juridical personality recognized by the State is not in question. In Suriname, all persons, whether they are individual Saramaka members or not, are recognized the right to own property and to seek judicial protection against any alleged violation of that individual right. [FN183] Yet, the State does not recognize the Saramaka people as a juridical entity capable of using and enjoying communal property as a tribal group. Furthermore, the State does not recognize the Saramaka people as a juridical entity capable of seeking equal access to judicial protection against any alleged violation of their communal property rights.

[FN182] Cf. Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 189.
[FN183] Cf. Constitution of Suriname, Article 41, supra note 119, and Article 1386 of Civil Code of Suriname (case file of appendices to the application and Appendix 1, appendix 4, folios 51).
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168. The Court observes that the recognition of the juridical personality of individual members of a community is evidently necessary for their enjoyment of other rights, such as the right to life and personal integrity. [FN184] Yet, such individual recognition fails to take into account the manner in which members of indigenous and tribal peoples in general, and the Saramaka in particular, enjoy and exercise a particular right; that is, the right to use and enjoy property collectively in accordance with their ancestral traditions.

[FN184] Cf. Case of the Indigenous Community Sawhoyamaxa, supra note 75, paras. 188-190.
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169. The Court observes that any individual member of the Saramaka people may seek judicial protection against violations of his or her individual property rights, and that a judgment in his or her favor may also have a favorable effect on the community as a whole. In a juridical sense, such individual members do not represent the community as a whole. The decisions pertaining to the use of such individual property are up to the individual and not to the Saramaka

people in accordance with their traditions. Consequently, a recognition of the right to juridical personality of the Saramaka people as a whole would help prevent such situations, as the true representatives of the juridical personality would be chosen in accordance with their own traditions, and the decisions affecting the Saramaka territory will be the responsibility of those representatives, not of the individual members.

170. A similar situation has occurred in the present case, whereby the State has constantly objected to whether the twelve captains of the twelve Saramaka clans (lös) truly represent the will of the community as a whole (supra paras. 19-24). The State additionally asserted that the true representative of the community should be the Gaa'man, and not others. This controversy over who actually represents the Saramaka people is precisely a natural consequence of the lack of recognition of their juridical personality. [FN185]

[FN185] During the proceedings of this case before the Court, and previously during the proceedings of the petition before the Commission, different names have been used to identify it. The Commission's Article 50 report uses the name "12 Saramaka Clans"; the President's Orders of March 30 and April 14, 2007, used the name "Saramaka Community", and in several communications between the Court's Secretariat and the parties, the name "Wazen Eduards et al." has also been used. Nevertheless, in recognition of the right of the members of the Saramaka people to use and enjoy property in accordance with their communal system and ancestral traditions as a tribal community, the Court hereby declares that the name "Saramaka People" is more appropriate.

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171. The recognition of their juridical personality is a way, albeit not the only one, to ensure that the community, as a whole, will be able to fully enjoy and exercise their right to property, in accordance with their communal property system, and the right to equal access to judicial protection against violations of such right.

172. The Court considers that the right to have their juridical personality recognized by the State is one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions. This is a natural consequence of the recognition of the right of members of indigenous and tribal groups to enjoy certain rights in a communal manner.

173. In this case, the State does not recognize that the Saramaka people can enjoy and exercise property rights as a community. [FN186] Furthermore, the Court observes that other communities in Suriname have been denied the right to seek judicial protection against alleged violations of their collective property rights precisely because a judge considered they did not have the legal capacity necessary to request such protection. [FN187] This places the Saramaka people in a vulnerable situation where individual property rights may trump their rights over communal property, and where the Saramaka people may not seek, as a juridical personality, judicial protection against violations of their property rights recognized under Article 21 of the Convention. [FN188]

[FN186] Cf. Case of the Moiwana Community, supra note 77, para. 86.5.
[FN187] Affidavit of Mariska Muskiet of April 3, 2007 (case file of affidavits and observations, appendix 7, folio 1946).
[FN188] Cf., for example, Marijkedorp case (holding that private property titles trump traditional forms of ownership), cf. Affidavit of Mariska Muskiet, supra note 187, and Inter-American Development Bank, Indigenous Peoples and Maroons in Suriname, supra note 97, (folio 568) (stating that "[u]nder Surinamese law, indigenous and tribal peoples and communities lack legal personality and are therefore incapable of holding and enforcing rights[…] Attempts by indigenous peoples to use the court system have therefore failed").

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174. In conclusion, the members of the Saramaka people form a distinct tribal community in a situation of vulnerability, both as regards the State as well as private third parties, insofar as they lack the juridical capacity to collectively enjoy the right to property and to challenge before domestic courts alleged violations of such right. The Court considers that the State must recognize the juridical capacity of the members of the Saramaka people to fully exercise these rights in a collective manner. This may be achieved by implementing legislative or other measures that recognize and take into account the particular way in which the Saramaka people view themselves as a collectivity capable of exercising and enjoying the right to property. Thus, the State must establish, in consultation with the Saramaka people and fully respecting their traditions and customs, the judicial and administrative conditions necessary to ensure the recognition of their juridical personality, with the aim of guaranteeing them the use and enjoyment of their territory in accordance with their communal property system, as well as the rights to access to justice and equality before the law. [FN189]

[FN189] Cf. Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 189.

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175. The State's failure to do so has resulted in a violation, to the detriment of the members of the Saramaka people, of the right to the recognition of their juridical personality pursuant to Article 3 of the Convention in relation to their right to property under Article 21 of such instrument and their right to judicial protection under Article 25 thereof, as well as in relation to the general obligation of States to adopt such legislative or other measures as may be necessary to give effect to those rights and to respect and ensure their free and full exercise without discrimination, pursuant to Articles 2 and 1(1) of the Convention.

H. THE AVAILABILITY OF ADEQUATE AND EFFECTIVE LEGAL REMEDIES IN SURINAME TO PROTECT THE SARAMAKA PEOPLE AGAINST ACTS THAT VIOLATE THEIR RIGHT TO PROPERTY

176. The Commission and the representatives alleged that the State has violated the Saramaka peoples' right to judicial protection insofar as the State's judicial system is not adequately designed to remedy violations of collective property rights of indigenous and tribal peoples. The State maintains that legal remedies are domestically available to address alleged violations of the

property interests of the Saramaka people, and that these have been available to the alleged victims, who have opted not to resort to them. In support of its position, the State referred to several domestic provisions, some of which the Court has already addressed in its analysis of the State's violation of Article 21 of the Convention in conjunction with Article 2 thereof (supra paras. 106-116). Specifically, the State argued that effective legal recourse is recognized under several articles of Suriname's Civil Code, [FN190] which allows any individual to apply to the judiciary in case of an alleged infringement of his or her property rights, including alleged violations by the State itself. The Commission and the representatives argued that said provisions are both irrelevant to the issue of indigenous and tribal peoples' land rights and that such remedies are only available to individuals, not peoples.

[FN190] Cf. Articles 1386, 1387, 1388, 1392 and 1393 of Civil Code of Suriname (case file of appendices to the application and Appendix 1, appendix 4, folios 51) and State's answer to the application (merits, volume II, folios 335-336).

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177. Article 25(1) of the Convention establishes, in broad terms, the obligation of States to afford effective judicial recourse against acts that violate fundamental rights. In interpreting the text of Article 25 of the Convention, the Court has previously held that the State's obligation to provide judicial recourse is not simply met by the mere existence of courts or formal procedures, or even by the possibility of resorting to the courts. Rather, the State has the duty to adopt positive measures to guarantee that the remedies it provides through the justice system are "truly effective in establishing whether there has been a violation of human rights and in providing redress." [FN191] Accordingly, the Court has declared that "[t]he inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs." [FN192]

[FN191] Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

[FN192] Cf. Case of Castillo Petruzzi et al. v. Perú. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 185; Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 130, and Case of Yatama, supra note 13, para. 168. Cf. also Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 American Convention on Human Rights), supra note 191, para. 24.

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178. With regard to members of indigenous peoples, the Court has stated that "it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs." [FN193] Specifically, the Court has held that, in order to guarantee members of indigenous peoples their right to communal property, States must establish "an effective means with due process guarantees […] for them to claim traditional lands." [FN194]

[FN193] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, para. 63.
[FN194] Cf. Case of the Indigenous Community Yakye Axa, supra note 75, para. 96.

H.1) Suriname's Civil Code

179. The Court considers that the judicial recourse available under Article 1386 of the State's Civil Code is inadequate and ineffective to remedy alleged violations of the Saramakas' right to communal property for the following two reasons. First, such recourse is presumably available only for individuals claiming a violation of their individual rights to private property. The Saramaka people, as a collective entity whose legal personality is not recognized by the State, may not resort to such recourse as a community asserting its members' rights to communal property (supra paras. 159-175). Second, the Saramakas' legal right to communal property is not recognized by the State (supra paras. 97-116) and, therefore, judicial recourse that requires the demonstration of a violation of a legal right recognized by the State would not be an adequate recourse for their claims.

180. Evidence submitted before this Tribunal regarding cases filed by members of other indigenous or tribal peoples in Suriname pursuant to its Civil Code support the Saramakas' contention that the recourse is ineffective to address their claims. In one such case, a domestic court denied a community's request to revoke a mining concession, holding that the community lacked the legal capacity as a collective entity to request such measures, and referred the community back to the Minister who had issued the mining concession. [FN195] In another case, a State-issued, privately held land title within a residential area of an indigenous village was upheld over the objections of the Captain of that village. The judge held that since the holder of the land had a valid title under Surinamese law, and the indigenous community did not have title or any other written permit issued by the State, the village had to respect the ownership right of the private title holder. [FN196]

[FN195] Affidavit of Mariska Muskiet, supra note 187, (folio 1943).
[FN196] Affidavit of Mariska Muskiet, supra note 187.

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181. The above points are also consistent with the expert testimony of Professor Mariska Muskiet, who also observed that "Article 1386 [of the Civil Code] involves a civil tort action and does not provide effective means to address the underlying problem that the Saramaka face: the lack of recognition of their communal property rights." [FN197] Professor Muskiet's affidavit explains the nature of a series of "insurmountable problems for the Saramaka people to file and win a case under article 1386", [FN198] and which support her conclusion that "invoking Article 1386 of Suriname's Civil Code would be futile in the circumstances of the Saramaka people's claims and the rights that they are seeking to protect. They would have no hope of success." [FN199]

[FN197] Affidavit of Mariska Muskiet, supra note 187, (folio 1950).
[FN198] Affidavit of Mariska Muskiet, supra note 187, (folio 1950).
[FN199] Affidavit of Mariska Muskiet, supra note 187 (folio 1950). Cf. also U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, U.N. Doc. A/59/258, August 12, 2004, para. 29 (whereby the Special Rapporteur emphasized that "indigenous peoples do not have equal access to the justice system and encounter discrimination of all kinds in the operation of the justice system.")

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182. Thus, the Court concludes that the provisions under Suriname's Civil Code do not provide adequate and effective recourse against acts that violate the Saramakas' rights to communal property.

H.2) The Mining Decree of 1986

183. The State also argued that its Mining Decree provides effective remedies that the victims failed to invoke. The Court hereby reiterates (supra para. 111) that this decree only allows for an appeal to the judiciary should the miner and a rightful "claimant" or "third party" be unable to reach an agreement on the amount of compensation required. [FN200] Nevertheless, to qualify as a rightful "claimant" or "third party", the persons in question must hold some form of registered right or title issued by the State. [FN201] Thus, the purported remedy established under the Mining Decree is inadequate and ineffective in the case at hand because the members of the Saramaka people do not hold title to their traditional territory or any part thereof. They cannot therefore qualify as "a rightful claimant" or "third party" under the Mining Decree. This position is consistent with the expert opinion of Dr. Hoever-Venoaks, who declared that the "Mining Decree […] does not offer legal protection to 'inhabitants of the interior living in tribal communities'." [FN202]

[FN200] Decree E 58 of May 8, 1986 supra note 106, Article 46 (a) (folio 144).
[FN201] Decree E 58 of May 8, 1986 supra note 106, Article 46 (a) (folio 144).
[FN202] Affidavit of Dr. M.R. Hoever-Venoaks of April 29, 2007 (case file of affidavits and observations, appendix 10, folio 1982).

H.3) The Forest Management Act of 1992

184. Furthermore, the State alleged that Article 41(1)(b) of the Forest Management Act allows members of the tribal peoples to lodge appeals with the President of Suriname in cases where their alleged customary rights to their villages and settlements, as well as their agricultural plots, are not respected. The members of the Saramaka people have lodged at least two complaints with the President of Suriname, and have to date received no official reply from the Office of the President. [FN203] This calls into question the efficiency of said procedure. In any case, an appeal to the President does not satisfy the requirement under Article 25 of the Convention to

provide adequate and effective judicial remedies for alleged violations of communal property rights of members of indigenous and tribal peoples.

[FN203] Petitions presented by petitioners before the President of the Republic of Suriname on January 15, 2003 and April 16, 2000 pursuant to Article 22 of the Constitution of Suriname, supra note 119, (folios 182-185, and folios 204-205), and Petitions filed in accordance with Article 41 of the 1992 Forest Management Act on October 24, 2005 and July 1, 2000 (case file of appendices to the application and Appendix 1, appendix 17, folios 182-185, and appendix 18, folios 205-208).

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185. The Court thus concludes that the State has violated the right to judicial protection recognized in Article 25 of the Convention, in conjunction with Articles 21 and 1(1) thereof, to the detriment of the members of the Saramaka people, as the aforementioned domestic provisions do not provide adequate and effective legal recourses to protect them against acts that violate their right to property.

VIII. REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION) [FN204]

[FN204] Article 63(1) establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".

A) OBLIGATION TO REDRESS

186. It is a principle of International Law that any violation of an international obligation that has caused damage gives rise to a duty to adequately redress said violation. [FN205] The obligation to redress is regulated by International Law in every aspect. [FN206] The Court has based its decisions in this matter on Article 63(1) of the American Convention.

[FN205] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 156, and Case of Zambrano Vélez et al., supra note 50, para. 131.

[FN206] Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs. Judgment of September 10, 1993. Series C No. 15, para. 44; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 165, and Case of Zambrano Vélez et al., supra note 50, para. 131.

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187. In accordance with criteria established and reiterated in the Court's jurisprudence regarding the nature and scope of the obligation to redress, [FN207] as well as the aforementioned considerations on the merits and violations of the Convention determined in the previous chapter, the Court will proceed to analyze the parties' arguments concerning reparations, so as to order the relevant measures to redress the damages.

[FN207] Cf. Case of Velásquez Rodríguez, supra note 205, paras. 25-26; Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 43, and Case of The "White Van" (Paniagua Morales et al.), supra note 49, paras. 76-79. Cf. also Case of La Cantuta, supra note 179, paras. 200-203, and Case of the Miguel Castro Castro Prison, supra note 8, paras. 414-416.

B) INJURED PARTY

188. The Tribunal has previously held that in a contentious case before the Court, the Commission must individually name the beneficiaries of possible reparations. [FN208] However, given the size and geographic diversity of the Saramaka people, [FN209] and particularly the collective nature of reparations to be ordered in the present case, the Court does not find it necessary in the instant case to individually name the members of the Saramaka people in order to recognize them as the injured party. Nevertheless, the Court observes that the members of the Saramaka people are identifiable in accordance with Saramaka customary law, given that each Saramaka individual belongs to only one of the twelve matrilineal lös in which the community is organized.

[FN208] Cf. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 98, and Case of Goiburu et al., supra note 11, para. 29. Cf. also Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, paras. 162-167.

[FN209] The Saramaka population is comprised of approximately 30,000 people. Given the dearth of accurate census information on the Saramaka community, estimates broadly range from 25,000 to 34,482 members. The Saramaka people are also dispersed throughout the Upper Suriname River, Brokopondo District, and other areas of Suriname, including Paramaribo (supra para. 80).

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189. Thus, in accordance with the Court's jurisprudence regarding indigenous and tribal peoples, [FN210] the Court considers the members of the Saramaka people as the "injured party" in the present case who, due to their status as victims of the violations established in the present Judgment (supra paras. 116, 154, 156, 158, 175, and 185), are the beneficiaries of the collective forms of reparations ordered by the Court.

[FN210] Cf. Case of The Mayagna (Sumo) Awas Tingni Community, supra note 49, para. 164; Case of the Indigenous Community Yakye Axa, supra note 75, para. 189, and Case of the Indigenous Community Sawhoyamaxa, supra note 75, para. 204.

C) MEASURES OF REDRESS

190. The Court will proceed to summarize the parties' arguments with regards to reparations, and will then determine which measures must be ordered to redress the damage to the Saramakas caused by the violations established in the present Judgment.

191. In order to redress the damage caused to the Saramakas, the Commission requested that the Court order the State to, inter alia, remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which they exercise their right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities; refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people; repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used. Furthermore, the Commission requested monetary compensation for property damage sustained as a result of the State's violations, adding that any "compensation cannot be seen from an individual perspective, since the victims are members of a community and the Community itself has been affected."

192. The representatives similarly requested that the Court order the State to, inter alia, adopt any measures necessary to delimit, demarcate and title the Saramaka people's traditional lands and resources in accordance with its customary laws and values; adopt or amend legislative, administrative or other measures as may be required to recognize and secure the right of the Saramaka people to give or withhold its free, prior and informed consent to activities that may affect its lands, territory and resources; offer an official public apology to the Saramaka people, and establish a development fund with sufficient capital to invest in health, education, resource management and other projects in Saramaka territory, all determined and implemented with the informed participation and consent of the Saramaka people. The representatives also requested pecuniary compensation for the environmental degradation and destruction of their territory by logging concessionaires, and for the market value of the timber harvested by the logging companies, adding that any material or immaterial damage award should be added to this fund and used for the same purposes.

193. The State denied any international responsibility for the facts alleged in the application and alleged that the Saramaka people have not proven they have suffered any material or

immaterial damages or that said damages may be attributed to the State. Consequently, the State asked this Court to dismiss the petitioner's request for reparations and costs.

C.1) Measures of Satisfaction and Guarantees of Non-Repetition

194. In order to guarantee the non-repetition of the violation of the rights of the members of the Saramaka people to the recognition of their juridical personality, property, and judicial protection, the State must carry out the following measures:

a) delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people. With regards to the concessions already granted within traditional Saramaka territory, the State must review them, in light of the present Judgment and the Court's jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people. The State must begin the process of delimitation, demarcation and titling of traditional Saramaka territory within three months from the notification of the present Judgment, and must complete this process within three years from such date;

b) grant the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions. The State must comply with this reparation measure within a reasonable time;

c) remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities. The State must comply with this reparation measure within a reasonable time;

d) adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out. The Saramaka people must be consulted during the process

established to comply with this form of reparation. The State must comply with this reparation measure within a reasonable time;

e) ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory, and implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people, and

f) adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal land tenure system. The State must comply with this reparation measure within a reasonable time.

195. Additionally, the Court considers that the present Judgment per se is a form of reparation [FN211] that should be understood as a form of satisfaction that recognizes that the rights of the members of the Saramaka people addressed in the present Judgment have been violated by the State.

[FN211] Cf. Case of Suárez Rosero v. Ecuador. Reparations and Costs. Judgment of January 20, 1999. Series C No. 44, para. 72; Case of Cantoral Huamaní and García Santa Cruz, supra note 50, para. 180, and Case of Zambrano Vélez et al., supra note 50, para. 142.

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196. Furthermore, as a measure of satisfaction, the State must do the following:

a) translate into Dutch and publish Chapter VII of the present Judgment, without the corresponding footnotes, as well as operative paragraphs one through fifteen, in the State's Official Gazette and in another national daily newspaper, and

b) finance two radio broadcasts, in the Saramaka language, of the content of paragraphs 2, 4, 5, 17, 77, 80-86, 88, 90, 91, 115, 116, 121, 122, 127-129, 146, 150, 154, 156, 172, and 178 of the present Judgment, without the corresponding footnotes, as well as Operative Paragraphs 1 through 15 hereof, in a radio station accessible to the Saramaka people. The time and date of said broadcasts must be informed to the victims or their representatives with sufficient anticipation.

197. The State must publish the relevant parts of the Judgment, in accordance with paragraph 196(a) of the present Judgment, at least once in each publication within a year of notification of the present Judgment. The State must also broadcast the relevant parts of the Judgment, in accordance with paragraph 196(b), within a year of notification of the present Judgment.

C.2) Measures of Compensation

198. The Court has developed in its jurisprudence the concept of material and immaterial damages and the situations in which said damages must be compensated. [FN212] Thus, in light of said criteria, the Court will proceed to determine whether measures of pecuniary compensation are warranted in this case, and if so, the appropriate amounts to be awarded.

[FN212] Cf. Case of Velásquez Rodríguez, supra note 205, para. 50; Case of Cantoral Benavides v. Perú. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, paras. 53 and 57, and Case of Bámaca Velásquez, supra note 49, para. 43. Cf. also Case of La Cantuta, supra note 179, paras 213 and 216, and Case of the Miguel Castro Castro Prison, supra note 8, paras. 423 and 430.

C.2.a) Material Damages

199. According to the evidence submitted before the Tribunal, a considerable quantity of valuable timber was extracted from Saramaka territory without any consultation or compensation (supra para. 153). Additionally, the evidence shows that the logging concessions awarded by the State caused significant property damage to the territory traditionally occupied and used by the Saramakas (supra paras. 150-151). For these reasons, and based on equitable grounds, the Court considers that the members of the Saramaka people must be compensated for the material damage directly caused by these activities in the amount of US$ 75.000,00 (seventy-five thousand United States dollars). This amount shall be added to the development fund described infra (paras. 201-202).

C.2.b) Immaterial Damages

200. In the previous chapter the Court described the environmental damage and destruction of lands and resources traditionally used by the Saramaka people, as well as the impact it had on their property, not just as it pertains to its subsistence resources, but also with regards to the spiritual connection the Saramaka people have with their territory (supra paras. 80-85, and 150-151). Furthermore, there is evidence that demonstrates the suffering and distress that the members of the Saramaka people have endured as a result of the long and ongoing struggle for the legal recognition of their right to the territory they have traditionally used and occupied for centuries (supra paras. 64(a), 64(b), 64(c), 64(f), 64(h), 65(a), 65(b), and 65(f)), as well as their frustration with a domestic legal system that does not protect them against violations of said right (supra paras. 178-185), all of which constitutes a denigration of their basic cultural and spiritual values. The Court considers that the immaterial damage caused to the Saramaka people by these alterations to the very fabric of their society entitles them to a just compensation.

201. For these reasons, and on equitable grounds, the Court hereby orders the State to allocate US$ 600,000.00 (six hundred thousand United States Dollars) for a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory. Such fund will serve to finance educational, housing, agricultural, and health projects, as well as provide electricity and drinking water, if necessary, for the benefit of the Saramaka people. The State must allocate said amount for this development fund in accordance with paragraph 208 of the present Judgment.

202. An implementation committee composed of three members will be responsible for designating how the projects will be implemented. The implementation committee shall be composed of a representative appointed by the victims, a representative appointed by the State, and another representative jointly appointed by the victims and the State. The Committee shall

consult with the Saramaka people before decisions are taken and implemented. Furthermore, the members of the fund's implementation committee must be selected within six months from the notification of the present Judgment. Should the State and the representatives fail to reach an agreement as to the members of the implementation committee within six months after notice of the present Judgment, the Court may convene a meeting to resolve the matter.

D) COSTS AND EXPENSES

203. As previously noted by the Court, costs and expenses constitute part of the concept of reparation under Article 63(1) of the American Convention. [FN213]

[FN213] Cf. Case of Garrido and Baigorria, supra note 207, para. 79, and Case of The "White Van" (Paniagua Morales et al.), supra note 49, para. 212. Cf. also Case of La Cantuta, supra note 179, para. 243, and Case of the Miguel Castro Castro Prison, supra note 8, para. 455.

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204. As such, the Court takes into account that the representatives incurred expenses during the course of the domestic and international proceedings in this case. Consequently, the representatives seek an award of all costs incurred in preparing and pursuing this case domestically as well as before the Commission and the Court. They are not, however, seeking reimbursement of attorney's fees in this case, which they have waived. The Association of Saramaka Authorities seeks reimbursement of costs and expenses incurred during the period of 2000 through 2007 in the amount to US$ 108,770.27. In addition, the representatives requested that the Forest Peoples Programme be awarded an equitable sum of US$ 30,000.00 for their respective costs and expenses.

205. The State argued that there is no justification for an award of costs and expenses in the present case. It further contested the receipts provided by the Association of Saramaka Authorities and asserted that the inconsistencies found in said documentation preclude the Court from reaching an equitable decision in this respect.

206. With regard to the request for an equitable award of US$ 30.000,00 (thirty thousand United States dollars) on behalf of the Forest Peoples Programme for the costs they have incurred in the present case, this Court considers that an equitable and reasonable award of US$ 15.000,00 (fifteen thousand United States dollars) is consistent with amounts ordered by this Tribunal in other cases with similar circumstances, and therefore orders the State to pay said amount directly to the Forest Peoples Programme.

207. The Association of Saramaka Authorities, on the other hand, seeks reimbursement of costs and expenses in the amount to US$ 108,770.27 and submitted receipts that purportedly support said request. This Court has analyzed said receipts and has found several problems with them. For example, the amounts stated in many of the receipts do not correspond with that claimed by the Association. Additionally, many of the receipts were illegible, or missing. The relationship between some of the receipts and the present case is also questionable. Nevertheless, the Court is of the opinion that the Association has shown sufficient evidence to support a claim

of substantial costs and expenses related to the domestic and international proceedings. In accordance with the Court's own analysis of said receipts, and based on reasonable and equitable grounds, the Tribunal hereby orders the State to reimburse directly to the Association of Saramaka Authorities the amount of US$ 70.000,00 (seventy thousand United States dollars).

E) TERMS OF COMPLIANCE OF MONETARY REPARATIONS

208. The State must allocate at least US$ 225.000,00 (two hundred and twenty five thousand United States dollars) for the purposes of the development fund mentioned in paragraphs 199 and 201 within one year from the notification of the present Judgment, and the total amount must be allocated within three years from the notification of this Judgment.

209. The payments ordered in paragraphs 206 and 207 as reimbursement for costs and expenses incurred by the representatives shall be made directly to each organization within six months from the date of notification of this Judgment.

210. The State may fulfill its pecuniary obligations by tendering United States Dollars or an equivalent amount in the currency of the State, which will be calculated according to the current exchange rate at the New York stock exchange, United States of America, on the day before payment is made.

211. The amounts set forth in the present Judgment as compensations for material and immaterial damage and reimbursement of costs and expenses may not be affected, reduced or conditioned by tax laws currently in force or to take effect in the future.

212. Should the State fall behind in its establishment of the development fund, Surinamese banking default interest rates shall be paid on the amount owed.

213. In accordance with its constant practice, the Court retains its authority, inherent to its attributions and derived from the provisions of 65 of the American Convention, to monitor full execution of this Judgment. The instant case shall be closed once the State has fully complied with the provisions ordered herein. Within one year from the notification of the instant Judgment, Suriname shall submit a report to the Court on the measures adopted in compliance therewith.

IX. OPERATIVE PARAGRAPHS

214. Therefore,

THE COURT

DECLARES,

Unanimously that:

1. The State violated, to the detriment of the members of the Saramaka people, the right to property, as recognized in Article 21 of the American Convention on Human Rights, in relation to the obligations to respect, ensure, and to give domestic legal effect to said right, in accordance with Articles 1(1) and 2 thereof, in the terms of paragraphs 78 to 158 of this Judgment.
2. The State violated, to the detriment of the members of the Saramaka people, the right to juridical personality established in Article 3 of the American Convention on Human Rights, in relation to the right to property recognized in Article 21 of such instrument and the right to judicial protection under Article 25 thereof, as well as in connection to the obligations to respect, ensure, and to give domestic legal effect to those rights, in accordance with Articles 1(1) and 2 thereof, in the terms of paragraphs 159 to 175 of this Judgment.
3. The State violated, to the detriment of the members of the Saramaka people, the right to judicial protection, as recognized in Article 25 of the American Convention on Human Rights, in conjunction with the obligations to respect and guarantee the rights established under Articles 21 and 1(1) thereof, in the terms of paragraphs 176 to 185 of this Judgment.

AND DECIDES:

Unanimously that:

4. This Judgment constitutes, per se, a form of reparation in the terms of paragraph 195 of this Judgment.
5. The State shall delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people. With regards to the concessions already granted within traditional Saramaka territory, the State must review them, in light of the present Judgment and the Court's jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people, in the terms of paragraphs 101, 115, 129-137, 143, 147, 155, 157, 158, and 194(a) of this Judgment.
6. The State shall grant the members of the Saramaka people legal recognition of the collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions, in the terms of paragraphs 174 and 194(b) of this Judgment.
7. The State shall remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage,

distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities, in the terms of paragraphs 97-116 and 194(c) of this Judgment.

8. The State shall adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out. The Saramaka people must be consulted during the process established to comply with this form of reparation, in the terms of paragraphs 129-140, 143, 155, 158, and 194(d) of this Judgment.

9. The State shall ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory, and implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people, in the terms of paragraphs 129, 133, 143, 146, 148, 155, 158, and 194(e) of this Judgment.

10. The State shall adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal property system, in the terms of paragraphs 177-185, and 194(f) of this Judgment.

11. The State shall translate into Dutch and publish Chapter VII of the present Judgment, without the corresponding footnotes, as well as operative paragraphs one through fifteen, in the State's Official Gazette and in another national daily newspaper, in the terms of paragraphs 196(a) and 197 of this Judgment.

12. The State shall finance two radio broadcasts, in the Saramaka language, of the content of paragraphs 2, 4, 5, 17, 77, 80-86, 88, 90, 91, 115, 116, 121, 122, 127-129, 146, 150, 154, 156, 172, and 178 of the present Judgment, without the corresponding footnotes, as well as Operative Paragraphs 1 through 15 hereof, in a radio station accessible to the Saramaka people, in the terms of paragraphs 196(b) and 197 of this Judgment.

13. The State shall allocate the amounts set in this Judgment as compensation for material and non-material damages in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory, in the terms of paragraphs 199, 201, 202, 208, and 210-212 thereof.

14. The State shall reimburse of costs and expenses, in the terms of paragraphs 206, 207, and 209-211 of this Judgment.

15. The Court shall monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention, and shall close this case once the State has complied fully with its terms. The State shall, within one year as from the date of notification of the present Judgment, provide the Court with a report on the measures adopted to comply with it.

Drafted in English and Spanish, the English text being authentic, in San Jose, Costa Rica, on November 28, 2007.

Sergio García Ramírez

President

Cecilia Medina Quiroga
Manuel E. Ventura Robles
Diego García-Sayán
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Registrar

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Registrar