

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Saramaka People v. Suriname
Doc. Type:	Judgement (Interpretation of the Judgment on Preliminary objections, Merits, Reparations, and Costs)
Decided by:	President: Sergio Garcia Ramirez; Judges: Diego Garcia Sayan; Leonardo Franco; Margarete May Macaulay; Rhadys Abreu Blondet
	Judge Cecilia Medina Quiroga, Judge Manuel E. Ventura Robles, and Deputy Registrar Emilia Segares Rodriguez informed the Tribunal that, for reasons of force majeure, they could not be present during the deliberation of this Judgment.
Dated:	12 August 2008
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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 Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 59 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”), decides on the request for interpretation of the Judgment on preliminary objections, merits, reparations, and costs issued by the Court on November 28, 2007 in the Case of the Saramaka People v. Suriname (hereinafter “the request for interpretation”), submitted by the State of Suriname (hereinafter “Suriname” or “the State”).

I. PRESENTATION OF THE REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On March 17, 2008, the State submitted a request for an interpretation of the Judgment on preliminary objections, merits, reparations, and costs [FN1] issued in this case on November 28, 2007 (hereinafter “the Judgment”), based on Articles 67 of the Convention and 59 of the Rules of Procedure. The State requested interpretation as to the “meaning and scope” of several issues, which the Court hereby summarizes in the following order:

a) with whom must the State consult to establish the mechanism that will guarantee the “effective participation” of the Saramaka people ordered in the Judgment;

- b) to whom shall a “just compensation” be given when, for example, only part of the Saramaka territory is affected by concessions granted by the State; that is, whether it must be given to the individuals directly affected or to the Saramaka people as a whole;
- c) to whom and for which development and investment activities affecting the Saramaka territory may the State grant concessions;
- d) under what circumstances may the State execute a development and investment plan in Saramaka territory, particularly in relation to environmental and social impact assessments, and
- e) whether the Court, in declaring a violation of the right to juridical personality recognized in Article 3 of the Convention, took into consideration the State’s arguments on that issue.

[FN1] Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172.

2. On March 25, 2008, pursuant to Article 59(2) of the Rules of Procedure and following the instructions of the Tribunal’s President, the Registrar of the Court (hereinafter “the Registrar”) sent a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission), and to the victims’ representatives (hereinafter “the representatives”) and informed them that they had until May 5, 2008 to submit their written arguments. Additionally, the Registrar reminded the State that, pursuant to Article 59(4) of the Rules of Procedure, “[t]he request for interpretation does not suspend the execution of the Judgment.”

3. On April 28 and April 30, 2008, the representatives and the Commission, respectively, requested an extension until May 19, 2008 in order to submit their written arguments. The Court’s President granted both requests. On May 19, 2008, the Commission and the representatives submitted their written arguments on the State’s request for an interpretation of the Judgment.

II. JURISDICTION AND COMPOSITION OF THE COURT

4. Pursuant to Article 67 of the Convention [FN2], the Court has jurisdiction to interpret its judgments. When examining the request for interpretation, pursuant to Article 59(3) of the Rules of Procedure, the Tribunal shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought. On this occasion, the Court is composed of the same judges who delivered the Judgment upon which an interpretation has been requested.

[FN2] Article 67 of the Convention states that “[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.”

III. ADMISSIBILITY

5. The Court must verify if the request for interpretation complies with the requirements established in the applicable norms, specifically the above-cited Article 67 of the Convention, as well as 29(3) [FN3] and 59 [FN4] of the Rules of Procedure.

[FN3] Article 29(3) of the Rules of Procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

[FN4] Article 59 of the Rules of Procedure states that:

1. The request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

[...]

A request for interpretation shall not suspend the effect of the judgment.

The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

6. The Commission considered “that the communication presented by the State does not meet the requirements set forth in Article 67 of the American Convention [...] or Articles 29(3) and 59 of the Rules of Procedure of the Court”. Furthermore, the Commission alleged that the “request presented by Suriname attempts to appeal aspects of the decision which the State finds unfavorable, or to induce the Tribunal to interpret some passages of the judgment according to the State’s interpretation of the facts and the procedure and its disagreement with the sentence.” Additionally, the Commission observed that the “State has not pointed to any ambiguity or lack of clarity in the text of the judgment”. Nonetheless, “[w]hile the Commission consider[ed] that the request presented by the State is framed in the terms of an appeal of questions already decided and explained in the judgment, the Commission also note[d] that the issues raised indicate that the State may require further guidance with respect to certain criteria in order to implement the Court’s orders”.

7. The representatives observed that the State’s request meets the pertinent admissibility requirements. Concurrently, the representatives stated that some of the “issues presented by Suriname are unfocused and imprecise and are, therefore, not amenable to precise responses”. Nonetheless, the representatives observed that, “because all of the issues raised by the State are highly important and/or reveal serious misinterpretations of the judgment, they respectfully urge the Court to explain each [issue, in order] to rectify these serious misinterpretations and to assist the parties to fully understand and implement the judgment”.

8. The Judgment in this case was notified to the State, the Inter-American Commission, and the representatives on December 19, 2007, and the State submitted its request for an interpretation of said Judgment on March 17, 2008. Thus, the State complied with the term established in Article 67 of the Convention.

9. As this Tribunal has previously stated, [FN5] the request for interpretation of a judgment may not be used as an appeal, but, rather, its exclusive objective is to clarify the meaning of a judgment when one of the parties considers that the text of its operative paragraphs or its considerations lacks clarity or precision, as long as these considerations affect said operative paragraphs. Therefore, a party may not seek the modification or annulment of the corresponding judgment through a request for interpretation.

[FN5] Cf. Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on Merits. Order of the Court of March 8, 1998. Series C No. 47, para. 16; Case of Escué-Zapata v. Colombia. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of May 5, 2008. Series C No. 178, para. 10, and Case of Cantoral-Huamaní and García-Sana Cruz v. Peru. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No. 176, para. 10.

10. The Court observes that some of the State's requests lack precision as to which issues require the Court's interpretation relating to the meaning or scope of the judgment. Nonetheless, the Court considers that the issues raised indicate that the State requires further guidance in order to fully comply with the Court's orders. Thus, to provide a comprehensive response to the State's concerns, and in light of the interrelatedness of some of the issues raised by the State, the Court declares the request admissible as a whole and will proceed to analyze those issues in the following order: (1) questions regarding (a) the establishment of a mechanism for the "effective participation" of the Saramaka people, and (b) the determination of the beneficiaries of a "just compensation"; (2) questions regarding the circumstances in which the State may not execute a proposed developmental and investment plan in Saramaka territory, particularly regarding prior environmental and social impact assessments; (3) questions regarding concessions the State may grant in Saramaka territory, and (4) whether the Court took into consideration the State's arguments related to the violation of Article 3 of the Convention.

IV. THE REQUIREMENTS OF "EFFECTIVE PARTICIPATION" AND "BENEFIT SHARING"

11. In its request for an interpretation of the Judgment, the State requested clarification as to the person or persons with whom the State must consult when establishing the mechanism by which the "effective participation" of the Saramaka people will be guaranteed, as ordered in the Judgment. The State questioned whether it is obligated to consult "with the collective of Saramaka Captains, or with individual captains involved in the respective territory, or with the Paramount Chief (Gaa'man of the Saramaka people), or with other subsidiary entities within the culture, custom and traditions of the Saramaka People". Similarly, the State alluded to the Court's determination, in the chapter on "Preliminary Objections", that any individual may file a petition before the Inter-American Commission on Human Rights. The State questioned whether this meant that the State had an obligation to consult with "every individual, organ or entity within the cultural structure of the Saramaka Tribe". Finally, the State raised concerns regarding which Saramakas should benefit from specific development projects. Particularly, the State seemed concerned about the possible hindrance of the State's economic development, as well as

other complications and internal divisions among the Saramaka that might occur, if certain tribe members living in areas close to where concessions were issued become excluded from sharing those benefits. The State observed that those tribe members might consequently confront concession holders to demand a share in the benefits. Therefore, Suriname considered it should be left to the State, rather than the Saramaka people, to devise the required system of “benefit sharing”. The State did not ask a specific question on this matter, but rather requested “the Court’s interpretation as to the understanding of the State with regard to this aspect of the Judgment”.

12. Regarding the effective participation of the Saramaka people in the process of issuing concessions in their traditional territory, the Commission observed that “[t]hroughout the judgment the Court has made very clear that the participation of the Saramaka People in such process shall take place in conformity with their customs and traditions”. Regarding the benefit sharing with the Saramaka people from concessions granted within their territory by the State, the Commission observed “that the Court’s sentence does not require the State to act in such a way as to obstruct development, but rather sets forth the principles under which development may take place in conformity with respect for the rights of those affected by it.” Furthermore, the Commission considered that the “point raised does not constitute a valid basis for a request for interpretation under Article 67 of the Convention”.

13. The representatives observed that the Judgment clearly indicates “that the modes of effective participation and the entity or entities that shall participate in decision making are to be determined by the Saramaka in accordance with their custom and tradition” and then communicated to the State. “Conversely, if Suriname is uncertain about these matters, it may communicate with the Saramaka to seek clarity”. Additionally, the representatives observed that “the legislative and administrative basis for the benefit sharing system must be developed and determined with the effective participation of the Saramaka, not by the State alone”, and that “the Saramaka must also effectively participate in decisions about benefit sharing on a case-by-case basis”.

14. The issues raised by the State refer to (a) the establishment of a consultation mechanism with the Saramaka people, and (b) the determination of the beneficiaries of a “just compensation” in relation to development and investment projects in Saramaka territory. The Court considers that both concerns are addressed in the Judgment, particularly, but not exclusively, in paragraphs 81, 100, 101, 129-140, 147, 155, 164, 170, 171, 174, and 194, and in Operative Paragraphs 5 through 9. Nevertheless, the Court deems that a reiteration of how the Judgment addresses these issues is pertinent.

a) Regarding the establishment of a consultation mechanism with the Saramaka people

15. Regarding the first issue, the Court reiterates that the State has a duty to consult with the Saramaka people in order to comply with several of the Court’s orders, and that the Saramaka must determine, in accordance with their customs and traditions, which tribe members are to be involved in such consultations.

16. In this regard, the Judgment orders the State to consult with the Saramaka people regarding at least the following six issues: (1) the process of delimiting, demarcating and granting collective title over the territory of the Saramaka people; [FN6] (2) the process of granting the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong; [FN7] (3) the process of adopting 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 the territory they have traditionally used and occupied; [FN8] (4) the process of adopting 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; [FN9] (5) regarding the results of prior environmental and social impact assessments, [FN10] and (6) regarding any proposed restrictions of the Saramaka people's property rights, particularly regarding proposed development or investment plans in or affecting Saramaka territory. [FN11]

[FN6] In Operative Paragraph 5 of the Judgment, read in conjunction with paragraph 194(a), the Court ordered the State to "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." Cf. Case of the Saramaka People, supra note 1, para. 194(a).

[FN7] In Operative Paragraph 6 of the Judgment, read in conjunction with paragraph 174, the Court ordered the State to "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." Cf. Case of the Saramaka People, supra note 1, para. 174.

[FN8] In Operative Paragraph 7 of the Judgment, read in conjunction with paragraph 194(c), the Court ordered the State to "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." Cf. Case of the Saramaka People, supra note 1, para. 194(c).

[FN9] In Operative Paragraph 8 of the Judgment, read in conjunction with paragraph 194(d), the Court ordered the State to "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." Cf. Case of the Saramaka People, supra note 1, para. 194(d).

[FN10] In Operative Paragraph 9 of the Judgment, read in conjunction with paragraph 133, the Court ordered the State to “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.” Cf. Case of the Saramaka People, supra note 1, para. 133.

[FN11] In paragraph 129 of the Judgment, the Court declared that “[...], 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 [...] ensure the[ir] effective participation [...], in conformity with their customs and traditions [...].” Case of the Saramaka People, supra note 1, para. 129.

17. In paragraph 133 of the Judgment, the Court further clarified this last issue, stating 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”. In paragraphs 133 through 137 the Court gave specific guidelines as to what issues must be the subject of consultation, when the consultation must take place, why the Saramaka people must be consulted, and how the consultation must be carried out. Accordingly, the State has a duty, from the onset of the proposed activity, to actively consult with the Saramaka people in good faith and with the objective of reaching an agreement, which in turn requires the State to both accept and disseminate information in an understandable and publicly accessible format. Furthermore, depending upon the level of impact of the proposed activity, the State may additionally be required to obtain consent from the Saramaka people. The Tribunal has emphasized that when large-scale development or investment projects could affect the integrity of the Saramaka people’s lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent in accordance with their customs and traditions. [FN12]

[FN12] Cf. Case of the Saramaka People, supra note 1, paras. 133 through 137.

18. The Court deliberately omitted from the Judgment any specific consideration as to who must be consulted. By declaring that the consultation must take place “in conformity with their customs and tradition”, the Court recognized that it is the Saramaka people, not the State, who must decide which person or group of persons will represent the Saramaka people in each consultation process ordered by the Tribunal. [FN13]

[FN13] Cf. Case of the Saramaka People, supra note 1, para. 133.

19. Accordingly, the Saramaka people must inform the State which person or group of persons will represent them in each of the aforementioned consultation processes. The State must

then consult with those Saramaka representatives to comply with the Court's orders. [FN14] Once such consultation has taken place, the Saramaka people will inform the State of the decisions taken, as well as their basis.

[FN14] The Court declared in paragraph 137 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." Case of the Saramaka People, supra note 1, para. 137.

20. In a related issue, the Tribunal observes that the State seems to misunderstand the difference between the State's obligation to consult with the Saramaka people, pursuant to their customs and traditions, and the content and purpose of the petitioning system described in Article 44 [FN15] of the Convention.

[FN15] 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."

21. In paragraphs 22 through 24 of the Judgment, the Court addressed whether, in light of Article 44 of the Convention, the original petitioners had standing to file a petition before the Commission. The Court declared that any person or group of persons other than the alleged victims may file a petition before the Commission without first obtaining authorization from the Gaa'man, or, for example, from each member of the community. That analysis of the petitioning system under the American Convention bears no relation to the State's obligation under the Judgment to consult with the Saramaka in accordance with their customs and traditions.

22. Thus, the decision as to whom should be consulted regarding each of the various issues mentioned above (supra para. 16) must be made by the Saramaka people, pursuant to their customs and traditions. The Saramaka people will then communicate to the State who must be consulted, depending on the issue that requires consultation.

b) Regarding the determination of beneficiaries of a "just compensation" in relation to development and investment projects in Saramaka territory

23. The second issue addressed by the State, pertaining to the determination of the beneficiaries of a "just compensation" [FN16] for development and investment projects in Saramaka territory, is closely related to the previous issue and is also addressed in the Judgment.

[FN16] In paragraph 138 of the Judgment the Court declared that the “concept of benefit-sharing, which can be found in various international instruments regarding indigenous and tribal peoples’ rights,[...] can be said to be inherent to the right of compensation recognized under Article 21(2) of the Convention [...]” Case of the Saramaka People, supra note 1, para. 138.

24. In Operative Paragraph 8 of the Judgment, read in conjunction with paragraph 194(d), the Court ordered the State to

adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to [...] reasonably share the benefits of [development and investment] 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. [...]

25. Thus, the determination of those beneficiaries must be made in consultation with the Saramaka people, and not unilaterally by the State. In any case, as the representatives mentioned in their written submissions, “these matters can be discussed and addressed during the consultations and process of reaching agreement on the legislative and administrative measures required to give effect to, inter alia, the benefit sharing requirement.”

26. Furthermore, regarding the State’s concern that there may be internal divisions among the Saramaka as to who can benefit from development projects, the Court observes that, pursuant to paragraph 164 of the Judgment, in the event that any internal conflict arises between members of the Saramaka community regarding this issue, it “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.”

27. Consequently, the Tribunal reiterates that all issues related to the consultation process with the Saramaka people, as well as those concerning the beneficiaries of the “just compensation” that must be shared, must be determined and resolved by the Saramaka people in accordance with their traditional customs and norms, and as ordered by the Court in its Judgment.

V. PRIOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS

28. The State expressed its understanding that an environmental and social impact assessment is one of the requirements that this Court established in order to grant a concession in the territory belonging to the members of the Saramaka people. The State pointed out that the Court “extensively addressed the first and second requirements as listed in para. 129 [regarding consultation and benefit-sharing, but] did not elaborate separately on the third requirement [regarding prior environmental and social impact assessments (hereinafter “ESIA”)].” The State observed that, according to the Judgment, the impact caused by any concession must not be of such nature that amounts to a denial of the survival of the Saramaka people. The State presented two requests for interpretation related to this issue. First, it asked the Court to elaborate on the

meaning and scope of environmental and social impact assessments. Second, it requested the Court to define the level of impact that is acceptable to protect the survival of the Saramaka. The State emphasized that an unbalanced interpretation of this requirement could lead to an obstruction of the development of Suriname.

29. Regarding the meaning and scope of the State's obligation to guarantee the survival of the Saramaka people, the Commission understood the State to be asking the Court to confirm that there are acceptable levels of "impact" a proposed development plan may have on the Saramaka, as long as that impact does not amount to a denial of their survival. The Commission also considered that "when the Court uses the term 'survival' it does not refer only to the obligation of the State to ensure the right to life of the victims, but rather to take all the appropriate measures to ensure the continuance of the relationship of the Saramaka People with their land or their culture".

30. The representatives understood this point to relate to the threshold between lesser impacts and impacts that deny the capacity of the Saramaka to survive as a tribal entity. However, the representatives considered that Suriname has incorrectly interpreted the phrase "survival as a tribal people" to mean that a proposed operation must "not endanger the life of the victims". A correct interpretation, according to the representatives, would involve an assessment of the extent to which proposed development or investment projects, separately or cumulatively, interfere with, impair, or negate the maintenance and continued enjoyment of the Saramaka people's full spectrum of relationships to their traditional lands, territories and resources. According to the representatives, particular attention should also be given to the cumulative impacts of multiple restrictions or other relevant circumstances caused by past and present projects, in relation to proposed future projects. The representatives also considered that the ESIA is one way, but not the only way, of assessing the significance of a development or investment project's impact on the maintenance and continued enjoyment of indigenous and tribal peoples' relationships with their traditional territories. Therefore, in order to properly assess the effect that a restriction on property rights may have on other rights, the representatives submit that, at a minimum, a Human Rights Impact Assessment is required as part of the ESIA process.

a) General requirements and safeguards

31. The Court deems that the issues raised indicate that the State may require further guidance in order to appropriately implement the Judgment. To ensure clarity on both the meaning and scope of the Judgment, and to ensure its appropriate application, the Court will address the State's concerns related to the issue of the environmental and social impact assessments.

32. As the Court indicated in the Judgment, pursuant to Article 21 of the Convention, the State must respect the special relationship that members of the Saramaka people have with their territory in a way that guarantees their social, cultural, and economic survival. [FN17] The Court stated in paragraph 121 of its Judgment:

[...] 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 their distinct cultural identity, social structure, economic system, customs, beliefs, and traditions are respected, guaranteed, and protected by the states.

[FN17] Cf. Case of the Saramaka People, *supra* note 1, Operative Paragraphs 5, 7, and 9, and paras. 81, 86, 90, 91, 103, 120-123, 126-129, 139-141, 146, 148, 155, 157, 158, 194(a), 194(c), and 194(e).

33. Such protection of property under Article 21 of the Convention, read in conjunction with Articles 1(1) and 2 of said instrument, poses a positive obligation on the State to adopt special measures that guarantee the members of the Saramaka people the full and equal exercise of their right to the territories they have traditionally used and occupied.

34. Any attempt to restrict the property rights of the members of the Saramaka people must adhere to the strict requirements established by the Court in the Judgment and the Tribunal's jurisprudence. In the context of restrictions of property rights in general, 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. [FN18]

[FN18] Cf. Case of the Saramaka People, *supra* note 1, paras. 127 and 137; Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, 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.

35. In paragraph 128 of the Judgment, the Court stated that

[...] 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 [...]. [FN19]

[FN19] Cf. Case of the Saramaka People, supra note 1, para. 128; and mutatis mutandis, 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).

36. 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. Thus, the State must satisfy each of the requirements mentioned above.

37. The Court emphasized in the Judgment that the phrase “survival as a tribal people” must be understood as the ability of the Saramaka to “preserve, protect and guarantee the special relationship that [they] have with their territory” [FN20], so 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 [...]”. [FN21] That is, the term “survival” in this context signifies much more than physical survival.

[FN20] Case of the Saramaka People, supra note 1, paras. 91 and 129.

[FN21] Case of the Saramaka People, supra note 1, para. 121.

38. In order to guarantee their survival as a tribal people, the Court established a series of complementary requirements applicable to the Saramaka in particular, and indigenous and tribal peoples in general. To this end, the Court stated in paragraph 129 that

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 [...] within Saramaka territory. Second, the State must guarantee that the Saramaka 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.

39. Additionally, in Operative Paragraph 9 of the Judgment the Court ordered the State to “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”.

b) Prior environmental and social impact assessments (ESIAs)

40. To respond with greater precision to the State's concerns related to the prior environmental and social impact assessments ordered in the Judgment, the Court will further elaborate upon this safeguard. [FN22] ESIAs serve to assess the possible damage or impact a proposed development or investment project may have on the property in question and on the community. The purpose of ESIAs is not only to have some objective measure of such possible impact on the land and the people, but also, as stated in paragraph 133 of the Judgment, to "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".

[FN22] The ninth Operative Paragraph of the Judgment indicates that 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 [the] Judgment." Case of the Saramaka People, *supra* note 1, Operative Paragraph 9.

41. In order to comply with the Court's orders, the ESIAs must conform to the relevant international standards and best practices, [FN23] and must respect the Saramaka people's traditions and culture. In conjunction with said standards and best practices, the Judgment established that the ESIAs must be completed prior to the granting of the concession, as one of the objectives for requiring such studies is to guarantee the Saramaka's right to be informed about all the proposed projects in their territory. Hence, the State's obligation to supervise the ESIAs coincides with its duty to guarantee the effective participation of the Saramaka people in the process of granting concessions. Furthermore, the ESIAs must be undertaken by independent and technically capable entities, with the State's supervision. Finally, one of the factors the environmental and social impact assessment should address is the cumulative impact of existing and proposed projects. This allows for a more accurate assessment on whether the individual and cumulative effects of existing and future activities could jeopardize the survival of the indigenous or tribal people.

[FN23] One of the most comprehensive and used standards for ESIAs in the context of indigenous and tribal peoples is known as the Akwé:Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, which can be found at www.cbd.int/doc/publications/akwe-brochure-pdf.

c) Acceptable level of impact

42. In response to the State's question as to what is an acceptable level of impact, as demonstrated through ESIA's, that would permit the State to grant a concession, the Court observes that what constitutes an acceptable level of impact may differ in each case. Nonetheless, the guiding principle with which to analyze the results of ESIA's should be that the level of impact does not deny the ability of the members of the Saramaka people to survive as a tribal people (*supra* para. 37).

43. The Court also highlights that, in addition to the ESIA's, the State must comply with the other requirements stated in the Judgment when evaluating whether it should grant concessions for development and investment activities within or that affect the Saramaka territory.

VI. CONCESSIONS IN THE TERRITORY OF THE SARAMAKA PEOPLE

44. The State asked the Court to clarify to whom the State may grant concessions, and as to which development and investment activities. Specifically, the State suggested that once the "three requirements" set forth in the Judgment are fulfilled, it may grant concessions within Saramaka territory to non-Saramaka persons, and that the Saramaka must request concessions to engage in non-traditional activities on Saramaka territory, such as "mining activities, big scale or commercial forestry, tourism, etc."

45. The Commission could not discern an issue requiring clarification in the State's request. The Commission pointed out, however, that "it was not the intention of [the] Tribunal to impose an additional burden on the members of the Saramaka people" by making them seek concessions from the State to continue to access the natural resources they have traditionally used, such as timber and non-timber forest products.

46. The representatives interpreted the State's request for clarification in this matter as an argument that the State "has the decisive authority with respect to the conduct of any nontraditional activity" on Saramaka territory by anyone, whether or not they are a member of the Saramaka people. The representatives quoted paragraph 194 of the Judgment which states that the members of the Saramaka people have the "right to manage, distribute, and effectively control such territories, in accordance with their customary laws and traditional collective land tenure system", and interpreted that phrase to imply that the Saramaka people have a right to self-determined economic development of all resources within their territory without the interference of the State. They also expressed concern that misinterpretation and misapplication of the standards and requirements of the Judgment could result in serious and irreparable damage to the Saramaka people and their territory.

47. The Court observes that some of the issues raised by the State fall outside the factual scope of the Judgment, and therefore of this interpretation, particularly in relation to alleged tourism activities within Saramaka territory. Nonetheless, in order to avoid potential misinterpretations of the Judgment, the Court will address the issues raised by the State, insofar as they pertain to the Operative Paragraphs or the considerations that support the Court's orders.

48. In paragraph 194(c) and Operative Paragraph 7 of the Judgment, the Court observed that the members of the Saramaka people have the “right to manage, distribute, and effectively control such territories, in accordance with their customary laws and traditional collective land tenure system”. [FN24] To that end, the Court ordered the State, inter alia, to delimit, demarcate, and give collective title over the territory of the Saramaka people, and to adopt 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 the territory they have traditionally used and occupied. [FN25] The process of adopting such measures, as well as the content of said legislative and administrative measures, must be determined by the State and the Saramaka people jointly in accordance with the Court’s Judgment (supra para. 16).

[FN24] The Court has also previously held that “traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title.” Cf. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 128.

[FN25] Cf. Case of the Saramaka People, supra note 1, Operative Paragraphs 5 and 7.

49. The Judgment also stated that the right to property is not absolute, and thus may be restricted by the State under very specific, exceptional circumstances, particularly when indigenous or tribal land rights are involved. [FN26] In this sense, the Judgment states in paragraph 127 that in “accordance with [Article 21 of the Convention], 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”, by granting concessions for development or investment projects within or that affect Saramaka territory. The Court discussed in the previous chapter those specific and exceptional circumstances in which the State may restrict the rights to property of the members of the Saramaka people (supra paras. 34 and 38).

[FN26] Cf. Case of the Saramaka People, supra note 1, paras. 127 and 129 of the Judgment.

50. In accordance with the aforementioned, the grant of concessions for development or investment projects within or that affect Saramaka territory constitutes a type of restriction on the use and enjoyment of such property. To the extent that this property corresponds to the members of the Saramaka people, they have the “right to manage, distribute, and effectively control such territories, in accordance with their customary laws and traditional collective land tenure system” [FN27], as well as in conformity with domestic legislation, insofar as it is compatible with the American Convention and the jurisprudence of this Tribunal.

[FN27] Case of the Saramaka People, supra note 1, para. 194(c).

51. The Judgment addressed the issue of concessions in the context of proposed development, investment, exploration or extraction plans within Saramaka territory. In the footnote accompanying the three safeguards stated in paragraph 129 of the Judgment, the Tribunal specified that 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.

52. The Court specifically addressed in the Judgment two types of concessions, that is, those involving logging or mining. As to these types of concessions, the Court held that the timber and gold mining concessions previously granted by the State generated a violation of the right to property of the members of the Saramaka people. Regarding timber, the Court explicitly stated in paragraph 146 of its Judgment:

[...] in accordance with the above analysis regarding the extraction of natural resources that are necessary for the survival of the Saramaka people[[FN28]] 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.

[FN28] In paragraph 122 of the Judgment, the Court stated 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.” Case of the Saramaka People, supra note 1, para. 122.

53. Regarding gold mining, the Court stated in paragraph 156 that:

[...] the State failed to comply with the three safeguards when it issued small-scale gold-mining concessions within traditional Saramaka territory. That is, such concessions were issued without performing prior environmental and social impact assessments, and without consulting 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 people’s right to property under Article 21 of the Convention, in conjunction with Article 1(1) of that judgment.

54. The Tribunal did not specifically address other types of development or investment activities within or that affect Saramaka territory. Nonetheless, the Tribunal reiterates that, in the process of issuing concessions within or that affect Saramaka territory, or any other indigenous or tribal territory, the State has a duty to comply with its obligations under the American Convention as interpreted by the Court in its jurisprudence, particularly in light of the Case of the Saramaka People and other cases involving indigenous and tribal peoples’ land rights.

55. In this sense, the Court observes that in Operative Paragraph 5 of the Judgment, in which the Tribunal ordered the State to delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, the Court further stated that

[u]ntil 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.

56. Furthermore, the Tribunal hereby reiterates the text of paragraph 213, which states that

[in] accordance with its constant practice, the Court retains its authority, inherent to its attributions and derived from the provisions of Article 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. [...]

57. Hence, considering that some of the issues raised by the State pertain to matters that are better suited to be treated by the Tribunal under its authority to monitor the full execution of the Judgment, the Court considers it sufficient, for purposes of the present request for interpretation, to reiterate the aforementioned content of the Judgment, and will supervise the implementation of the Court's orders pursuant to the relevant monitoring procedure.

VII. VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The State questioned whether the Court considered its argument in the sense that Article 3 of the American Convention "guarantees that every 'person' has the right to be recognized as such before the law and not as a 'distinct people'."

59. The Commission expressed that it "is unable to identify an issue in this section of the State's communication that would constitute a valid request for interpretation." On the contrary, "[t]he State appears to be presenting a challenge to the Court's reasoning to declare a violation of Article 3 of the Convention, which would clearly fall outside the framework of such a request [...]"

60. The representatives argued that the Court's Judgment is sufficiently clear in addressing the scope of Article 3 of the Convention in the context of the Saramaka people. However, the representatives considered that clarification "is therefore only needed to ensure that the State is certain about its obligations, particularly in relation to the legislative enactments required to give effect to the rights held by the Saramaka people". This would "ensure that there are no further misunderstandings".

61. The State's request does not state with precision an issue relating to the meaning or scope of the Judgment, but rather seeks a modification of the Court's reasoning regarding the right of the members of the Saramaka people to be recognized their juridical capacity to enjoy and exercise rights in a collective manner. In this sense, the Court may not address this issue as framed by the State, as this would constitute an impermissible appeal of the Judgment. Nonetheless, the Court deems pertinent to reiterate the following considerations found in the Judgment insofar as they provide guidance regarding the State's obligations under Operative Paragraph 6, in which the Court orders the State to

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.

62. The right of the members of the Saramaka people to the recognition of their juridical personality was addressed in the Judgment in paragraphs 159 through 175, and again in paragraphs 176 through 185 with regards to their right to judicial protection. In essence, the Court observed in paragraph 164 that "[...] the Saramaka people can be defined as a distinct tribal group [...] whose members enjoy and exercise certain rights, such as the right to property, in a distinctly collective manner [...]."

63. Furthermore, in paragraph 174, the Court declared that

[...] 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. [FN29]

[FN29] Cf. Case of the Sawhoyamaya Indigenous Community, supra note 24, para. 189.

64. Likewise, the Court observed in paragraphs 171 and 172, that

[t]he 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.

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.

65. Thus, to fulfill its obligation under Operative Paragraph 6 of the Judgment, the Tribunal declared in paragraph 168 that the State must “take into account the manner in which members of indigenous and tribal peoples in general, and the Saramaka in particular, enjoy and exercise [...] the right to use and enjoy property collectively in accordance with their ancestral traditions.” The same considerations must be taken into account to guarantee their right to equal access to judicial protection against violations of their right to property.

VIII. OPERATIVE PARAGRAPHS

66. Therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Rules of Procedure,

DECIDES:

unanimously,

1. To declare admissible the State’s request for interpretation of the Judgment on preliminary objections, merits, reparations, and costs issued on November 28, 2007 in the Case of the Saramaka People, pursuant to paragraph 10 of the present Judgment.
2. To determine the scope of the content of Operative Paragraphs 5 through 9 of the Judgment on preliminary objections, merits, reparations, and costs issued on November 28, 2007 in the Case of the Saramaka People, pursuant to chapters IV, V, VI and VII of the present Judgment.
3. To request the Registrar to notify the present Judgment to the State of Suriname, the Inter-American Commission on Human Rights, and the representatives of the victims.

Written in English and Spanish, both texts being official versions, in Montevideo, Uruguay, on August 12, 2008.

Sergio García Ramírez
President

Diego García-Sayán

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Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Registrar

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Registrar