ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 22, 2010

CASE OF THE MOIWANA COMMUNITY *V.* SURINAME

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs delivered in the *Case of the Moiwana Community v. Suriname* by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal") on June 15, 2005 (hereinafter "the Judgment" or "the Moiwana Judgment").

2. The Judgment on Interpretation of the Moiwana Judgment (hereinafter "the Judgment on Interpretation") delivered by the Court on February 8, 2006, in which it clarified aspects of the Judgment on preliminary objections, merits, reparations and costs and decided that it would continue to monitor the Republic of Suriname's compliance therewith (hereinafter "the State" or "Suriname").

3. The Order on the monitoring of compliance with the Judgment issued by the Court on November 21, 2007, whereby it declared as follows:

> 1. That, in accordance with [Having Seen clause] 9, the State ha[d] fully complied with […] Operative Paragraph [six] of the Judgment […], regarding its obligation to hold a public ceremony of recognition and apology;
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> 2. That, in accordance with [Having Seen clauses] 17-19, the State ha[d] fully complied with Operative Paragraphs [eight] and [nine] of the Judgment, regarding the order to effect the payment of compensation to the Moiwana [C]ommunity members for material and moral damages;
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> 3. That, in accordance with [Having Seen clause 20], the State ha[d] fully complied with Operative Paragraph [ten] of the Judgment[,] regarding the order to effect the payment of […] costs to [the] Forest Peoples Programme and [the Moiwana] Association[;]
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> 4. That the Tribunal w[ould continue] the proceedings for [the] monitoring [of] compliance with the orders pending fulfillment.

In that Order, the Court decided:

> 1. To require the State to take the [measures necessary] to fully and immediately comply with the Operative Paragraphs […] of the Judgment [pending fulfillment;]
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> 2. To require the State to submit to the Court, [by] March 25, 2008, a detailed report on the actions taken in order to [carry out] the reparations ordered by the Court which are still pending, as set forth in [Considering clauses] 10 to 16 and [Declarative] [P]aragraph [four] of th[e] Order. [Additionally, the Court decided that the report should contain, among other things,] detailed information [on] the following:
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> > a. with respect to the obligation to investigate the facts of the case and to identify, prosecute, and[, if applicable,] punish the responsible parties, the State shall inform the Court of its efforts to ensure a mechanism by which the victims can give their testimony with due guarantees for their safety and the effective [safeguards of due] process;
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> > b. with respect to the recovery of the remains of the victims and their delivery to the surviving [C]ommunity members, the State shall inform the Court of the specific efforts taken to employ all technical and scientific means available to recover the remains with due diligence. The State shall also report on the status of its analysis of the human remains found […] in 1993;
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> > c. with respect to the adoption of such legislative, administrative, and other measures as are necessary to ensure [the] property rights of the members of the Moiwana [C]ommunity in relation to their [ancestral lands], the State shall inform the Court of the composition and specific mandate of the National Commission on Land Rights[,] as well as the status of its deliberations [on the] develop[ment of] a national policy. The State shall also inform the Court [on] the measures it has taken to achieve the 'informed consent of the victims' in th[at] deliberative process;
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> > d. with respect to the community development fund, the State shall inform the Court about the progress of the implementation committee in developing concrete plans and proposals […] with the goal of providing for the health, housing[,] and education of the Moiwana [C]ommunity and provide information about any […] projects that have been funded. The State shall also inform the Court on the funds transferred and the measures taken in order to establish an operative budget [that] guarantee[s] that the Committee can [carry out necessary operative and logistical functions in accordance with] its mandate; and
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> > e. with regard to the memorial, the State shall inform the Court about the status of the project's completion [and include] photographs or other descriptions[, as available].
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> […]

4. The Secretariat's notes of October 23, 2008, and May 13, 2009, in which the State was advised that in accordance with Operative Paragraph two of the aforementioned Order, the deadline for the submission of a detailed report on its implementation of the reparations ordered by the Tribunal had expired on March 25, 2008, yet no report had been received. Accordingly, the Secretariat requested that

the State submit such a report as soon as possible. Subsequently, through the Secretariat's note of September 2, 2009, the State was given a new deadline for the submission of a report on its compliance with the Judgment. This deadline expired on October 2, 2009, yet no report was received. Thus, through the Secretariat's note of October 22, 2009, the State was again asked to submit a report on compliance as soon as possible. The State did not submit the report requested.

5. The Order on the monitoring of compliance with the Judgment issued by the President of the Court on December 18, 2009, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), the representatives of the victims (hereinafter "the representatives"), and the State were summoned to a private hearing at the seat of the Court on February 1, 2010, so that the latter could obtain complete and updated information from the State on its compliance with the Judgment, as well as observations from the Commission and the representatives.

6. The communication of January 20, 2010, whereby the representatives indicated that they would be unable to attend the hearing scheduled by the Court and requested that they be allowed to submit their views on the State's compliance with the Judgment in writing. Through the Secretariat's note of January 25, 2010, the representatives were informed that they had until January 28, 2010, to file their submissions.

7. The brief dated January 28, 2010, whereby the representatives submitted information on the State's compliance with the Judgment (*supra* Having Seen clause 6).

8. The private hearing held at the seat of the Court on February 1, 2010.[1]

9. The Secretariat's note of February 8, 2010, which specified the information that the parties were required to include in the written report requested by the Court at the end of the private hearing (*supra* Having Seen clause 8).

10. The brief dated February 28, 2010, whereby the representatives submitted their comments on the private hearing and on the documents submitted by the State during the hearing (*supra* Having Seen clause 8).

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[1] The following persons appeared at the hearing: a) on behalf of the Inter-American Commission, Karla Quintana and Silvia Serrano, Attorneys of the Executive Secretariat; and b) on behalf of the State, Margo Waterval, Head of the Delegation; Loes Monsels, M.Sc, Chair of the Commission on the Implementation of the Moiwana Judgment; Jornell Vinkwolk, LL.M., Head of the Human Rights Bureau; Patricia Meulenhof, LL.M, Permanent Secretary of the Ministry of Regional Development; and Monique Pool, Translator. As indicated in their communication of January 20, 2010, the representatives were not present at the private hearing (*supra* Having Seen clause 6).

11. The communication of March 2, 2010, whereby the State submitted the written report requested by the Court at the end of the private hearing (*supra* Having Seen clause 8).

12. The Secretariat's notes of March 8, May 7, and September 30, 2010, which indicated that in its report (*supra* Having Seen clause 11), the State did not include the schedule requested in the Secretariat's note of February 8, 2010 (*supra* Having Seen clause 9), for the transfer of the amounts still owed to the development fund and for the implementation of the development process proposed in the document "Strategy for the Sustainable Development of the Moiwana Village," submitted to the Court during the private hearing (*supra* Having Seen clause 8). In its notes, the Secretariat repeated its request and indicated that once a schedule was received, the Commission and the representatives would have an opportunity to submit observations to all of the State's submissions (*supra* Having Seen clause 11). Finally, through its note of October 28, 2010, the Secretariat indicated that due to the State's failure to submit the requested schedule, the parties would have until November 3, 2010, for the submission of observations to the representatives' brief of February 28, 2010, and the State's brief of March 2, 2010 (*supra* Having Seen clauses 10 and 11).

13. The brief of November 5, 2010, whereby the Commission submitted observations to the representatives' brief of February 28, 2010, and the State's brief of March 2, 2010 (*supra* Having Seen clauses 10 and 11).

14. The brief of November 12, 2010, whereby the State submitted information on the transfer of the amounts still owed to the development fund and the implementation of the development process proposed in the document "Strategy for the Sustainable Development of the Moiwana Village" (*supra* Having Seen clause 12).

15. The brief of November 15, 2010, in which the representatives submitted observations to the State's brief regarding the transfer of monies to the development fund and the implementation of the development process referred to above (*supra* Having Seen clauses 12 and 14).

16. The brief dated November 17, 2010, whereby the Inter-American Commission submitted observations to the State's brief regarding the transfer of monies to the development fund and the implementation of the development process referred to above (*supra* Having Seen clauses 12 and 14).

CONSIDERING THAT:

1. Monitoring compliance with its decisions is an inherent power of the judicial functions of the Court.

2. Suriname became a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and recognized the jurisdiction of the Court, pursuant to Article 62 of the Convention, on November 12, 1987.

3. Pursuant to Article 68(1) of the American Convention, "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Thus, States must ensure that the decisions of the Court are implemented domestically.[2]

4. Given that in accordance with Article 67 of the American Convention, the Court's judgments are final and not subject to appeal, the State must fully and promptly comply with the judgments delivered by the Court.

5. The obligation to comply with the Court's judgments conforms to a basic principle of International Law, supported by international jurisprudence, according to which States must comply with their international treaty obligations in good faith *(pacta sunt servanda)* and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their domestic laws to escape their pre-established international responsibility.[3] State Parties' obligations under the Convention bind all State branches and organs.[4] This obligation includes the duty to inform the Court about actions adopted to comply with the reparations it has ordered which are pending fulfillment.

6. States Parties to the Convention must guarantee compliance with its provisions and their effects (*effet utile*) in their domestic legal orders. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those on the rights protected), but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in such a way that the protected

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[2] *Cf. Case of Baena Ricardo v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Ivcher Bronstein v. Peru*. *Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 27, 2010, Considering clause three; and *Case of Tristán Donoso v. Panama*. *Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering clause three.

[3] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of De la Cruz Flores v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering clause five; and *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment, supra* note 2, Considering clause five.

[4] *Cf. Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering clause three; *Case of Tristán Donoso v. Panama*. *Monitoring Compliance with Judgment*, *supra* note 2, Considering clause five; and *Case of Ivcher Bronstein v. Peru*. *Monitoring Compliance with Judgment, supra* nota 2, Considering clause four.

guarantee is truly useful and effective, considering the special nature of human rights treaties.[5]

7. States Parties to the Convention that have accepted the Court's binding jurisdiction have a duty to comply with the obligations established by the Tribunal. This includes the obligation to inform the Court on the measures adopted in order to comply with its decisions. The State's timely observance of the obligation to indicate how it is complying with each of the Court's orders is fundamental for evaluating its compliance with the Judgment as a whole.[6]

a) Obligation to investigate the facts of the case and to identify, prosecute, and punish the responsible parties, if applicable (Operative Paragraph one of the Judgment)

8. The State reported that the Public Prosecutions Department has asked witnesses to testify and identify the perpetrators on several occasions. Testimonies can be made at any police station or at the Public Prosecutions Department in order to guarantee the safety of witnesses; however, despite there being sufficient safety mechanisms in place, no witnesses have agreed to testify. The State also mentioned that it has established a "Coordination Team" chaired by the Attorney General for the purpose of investigating the case. At the private hearing, the State indicated that it cannot prosecute without having identified possible perpetrators; however, it also stated that because one of the alleged perpetrators is currently the subject of another investigation, authorities will be able to devote "more time and attention" to this case after the first trial has concluded. Finally, the State requested "advice" from the Inter-American Commission, the Tribunal, or the representatives on how to encourage witnesses to testify and proposed that interrogations be carried out at the seat of the Inter-American Court.

9. The representatives indicated that the State has made no "demonstrable progress towards compliance" other than the establishment, in 2005, of a "Coordination Team" for the purpose of "'preparing the investigation and judicial process.'" Moreover, the State has apparently put "the onus for moving the process forward on the victims." According to the representatives, there are victims "willing to testify if effective guarantees for their safety are in place"; however, "the victims' attempts to establish a mechanism [...] for their safety have not resulted in an agreement with the State." Though they "believe that viable and less onerous

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[5] *Cf. Case of Ivcher Bronstein v. Peru. Competence.* Judgment of the Inter-American Court of Human Rights of September 24, 1999, para. 37; *Case of Ivcher Bronstein v. Peru. Monitoring Compliance with Judgment, supra* note 2, Considering clause five; and *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment, supra* note 2, Considering clause six.

[6] *Cf. Case of "Five Pensioners" v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause five; *Case of the Serrano Cruz Sisters v. El Salvador. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of February 3, 2010, Considering clause seven; and *Case of Ximenes Lopes v. Brazil. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 17, 2010, Considering clause seven.

alternatives exist," the representatives signaled their willingness to accept, under certain conditions,[7] the State's proposal that witnesses render their testimonies at the Inter-American Court. Still, the representatives stressed that the State "has done little[,] if anything[,] to assess other […] forms of evidence that may be probative of the events of […] 1986." This is so despite the fact that "there is ample documentary and other evidence available to the State, including […] public admissions of responsibility by the then-military leadership, which could form the basis of a judicial process." They indicated, moreover, that "the notion that the State can only conduct one investigation at a time […] is deeply troubling." The State's failure to investigate in this case is "a major source of fear for the victims," given that persons who "publicly took responsibility for the massacre continue to be active in public life" and at least one has "made threatening and widely heard public statements about the [investigation of] the massacre without any public response by State officials." The representatives also affirmed that "[t]here is no available evidence [to] show that the State has taken any steps […] to 'remove all obstacles […] that perpetuate impunity.'" In particular, the representatives expressed concern with respect to the applicability of the 1992 Amnesty Law to the massacre at Moiwana Village, which "can only be determined once the facts of the case and the bases for suspect liability have been ascertained." Finally, the representatives highlighted that the State has also failed to investigate and prosecute those responsible for "obstructing the 1989 criminal investigation," even though this obligation does not depend on the testimonies of the victims themselves.

10. The Commission indicated that after more than twenty years, there are still no advances in the investigation of the massacre. It stated that the fact that witnesses do not come forward to testify may be due to fear arising from continued impunity; thus, the State must adopt sufficient security mechanisms so that witnesses feel safe. In any case, the lack of testimonies cannot be used as an excuse for not proceeding with investigations, as there is other evidence available to the State, including alleged perpetrators' public acknowledgments of responsibility. Therefore, the Commission urged the Court to "request a full report from the State" on the steps it has taken to comply with this obligation.

11. In its Judgment, the Court held that Suriname's gravely deficient investigation into the November 29, 1986 attack upon Moiwana Village, its violent obstruction of justice, and the extended period of time that had transpired without the facts having been brought to light and the responsible parties sanctioned defied the standards for access to justice and due process established in the American Convention.[8] The

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[7] For the representatives to accept, the State must agree to the payment of all associated costs. It must also agree that the victims who "choose to testify shall have, individually or collectively, legal counsel of their choice – if necessary, paid for by the State – [at] every occasion that their testimony may be taken or that they are otherwise interviewed by State officials." Furthermore, those who consent to testify must have "the right to revoke their consent at any time and for any reason," and the State must ensure "the victims' safety on their return to Suriname or French Guiana" in a manner "agreed to beforehand by the victims." Finally the State must ensure that "any threatening or otherwise inappropriate public statements about the massacre or the investigation thereof made by […] former or present military leaders or persons acting on […] their behalf are immediately and publicly refuted by high ranking State officials and sanctioned where warranted." All of this or "some other mutually acceptable arrangement" must be "memorialized in a binding and enforceable legal agreement."

[8] *Cf. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 15, 2005. Series C No. 124, para. 202.

Tribunal highlights that in this case, the State is thus bound to undertake two separate lines of investigation: one relating to the events of November 1986 and another relating to the obstruction of justice.[9] It is lamentable that twenty-four years after the attack, and five years after service of the Judgment, the State has not been able to provide the Tribunal with any details on advances in either one of these investigations. The Court notes, in particular, that the State has not provided any information on the progress or the findings of the "Coordination Team" established five years ago for the investigation of the massacre at Moiwana Village.

12. Accordingly, with respect to the investigations into the attack, the State must consult with the representatives in order to learn what measures they consider indispensable so that victims will come forward to testify, and it must report its findings and achievements to the Tribunal. In light of the State's proposal that witnesses be interrogated at its seat, the Tribunal reminds the parties that it is not a criminal court in which the criminal responsibility of individuals may be analyzed.[10] The State must be able to fulfill its duties relating to the protection of witnesses subject to its jurisdiction. The Court reiterates that it is the State's responsibility to "provide adequate safety guarantees to […] victims, […] witnesses, judicial officers, prosecutors, and other […] law enforcement officials"[11] participating in the investigation and prosecution of crimes. In particular, the State must protect these parties from harassment and threats designed to obstruct proceedings and to prevent the identification of those responsible for the attacks.[12] The Court finds that the State's efforts to date have been insufficient to instill confidence in witnesses as to their safety, and it notes the representatives' allegations of threats by a person in a "prominent political position" in Suriname with particular concern. Therefore, the Court finds it necessary to request specific information from the State on the threats alleged and on the measures it is undertaking to confront possible intimidation against potential witnesses.

13. Moreover, this Court has repeatedly stated that investigations cannot depend upon the initiative of victims and their family members or upon their submission of evidence.[13] Even so, the State has provided no information on other avenues it has pursued in order to investigate the 1986 attack against Moiwana Village, nor has it

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9 *Cf. Case of the Moiwana Community, supra* note 8, paras. 205-207.

10 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 134; *Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 24, 2009. Series C No. 204, footnote 79; and *Case of Barreto Leiva v. Venezuela*. *Merits, Reparations, and Costs.* Judgment of November 17, 2009. Series C No. 206, para. 24.

11 *Case of the Moiwana Community v. Suriname*, *supra* note 8, para. 207.

12 *Cf. Case of Myrna Mack Chang v. Guatemala*. *Merits, Reparations, and Costs.* Judgment of November 25, 2003. Series C No. 101, para. 199; *Case of the Rochela Massacre v. Colombia*. *Merits, Reparations, and Costs.* Judgment of May 11, 2007. Series C No. 163, para. 171; and *Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 176.

13 *Cf. Case of the Moiwana Community v. Suriname*, *supra* note 8, para. 146. See also *Case of Velásquez Rodríguez v. Honduras, supra* note 10, para. 177; *Case of Rosendo Cantú and other v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 175; and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 153.

indicated whether the persons referred to by the representatives have been investigated. The State has also identified at least one person as a possible perpetrator; however, due to an alleged lack of resources, it has subordinated the investigation into his responsibility for the attacks in this case to the conclusion of another, presumably unrelated, investigation. The Court reiterates the importance of this obligation for the integral reparation of the victims and their family members. As long as impunity persists in this case, surviving victims will continue to fear for their personal safety and will not be able to return to their ancestral lands, as they dread that spirits angered by their failure to secure justice will seek vengeance against them.[14] Therefore, the State must reactivate the judicial investigations into the events of November 29, 1986, and ensure that these are not suspended because investigations in other cases are ongoing. It must use all legal means available in order to bring all of the facts of the case to light and to prosecute and sanction those responsible, particularly when State agents are involved.[15] As stated in the Judgment, the State must also eliminate all obstacles, *de facto and de jure*, that perpetuate impunity.[16] Additionally, the Court deems it necessary that the State report on all of the measures it is taking in order to move investigations forward in this case. In particular, it must provide detailed information on: a) the activities of the "Coordination Team" established in 2005; b) investigations into those persons that have allegedly acknowledged their responsibility for the attack; and c) the measures it has taken in order to ensure that the Amnesty Law referred to by the representatives will not be applied in this case.

14. Finally, the Court notes that the investigations into the obstruction of justice committed by State authorities do not require witness statements in order to proceed, yet the State has offered no information as to its progress in complying with this order. Therefore, the Court requires detailed information from the State on the measures taken to further these investigations.

b) Obligation to recover the remains of Moiwana Community members killed during the events of November 29, 1986, and deliver them to surviving community members (Operative Paragraph two of the Judgment)

15. The State reported that it had located some of the remains of the Moiwana Community members in December 2008. It also stated that in February 2009, victims and their representatives traveled to the cemetery where the remains were found in order to perform burial ceremonies according to their traditional customs. During the private hearing (*supra* Having Seen clause 8), the State submitted

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[14] *Cf. Case of the Moiwana Community v. Suriname*, *supra* note 8, paras. 86(10), 86(43), and 195(a).

[15] *Cf. Case of Goiburú et al. v. Paraguay*. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 117; *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 101; and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits and Reparations.* Judgment of May 26, 2010. Series C No. 213, para. 117.

[16] *Cf. Case of the Moiwana Community*, *supra* note 8, para. 207.

photographs of the place were the remains are ostensibly located.[17] The State indicated that the victims have requested that a plaque be placed at the burial site, and it is willing to finance this. Finally, the State affirmed that is currently undertaking a more exhaustive investigation in order to fulfill this obligation.

16. The representatives stated that "[a] simple request for information sent by the Attorney General to the Police led to the identification of the location of some of the remains, yet the State has previously and adamantly asserted […] that [it] has no knowledge of these matters."

17. The Commission valued the information presented by the State and considered it to be a positive step towards compliance with this obligation. Nevertheless, it underscored the importance of this obligation in light of the Moiwana Community's "deeply held religious and cultural traditions" and considered the prompt submission of detailed information on the State's efforts to comply with this obligation to be essential.

18. The Court values the positive steps taken by the State in order to locate the victims' remains. However, it also considers that the information provided by the parties is insufficient for the purpose of evaluating the State's compliance with this obligation. The documents submitted by the State,[18] which date back to 1993, provide a description of the remains of various persons, but do not indicate whether those remains are the same ones that were discovered at a gravesite in 1993,[19] nor do they state how the remains have been identified as belonging to victims of the 1986 attack on Moiwana Village. Similarly, it is not clear from the parties' submissions whether the State has properly identified the remains located in 2008 and, if so, whether it has delivered those remains to the surviving members of the Moiwana Community. The Tribunal highlights the importance of this obligation, given the Moiwana Community's beliefs regarding the proper burial of the deceased,[20] and requests that the parties provide detailed information on whether the remains found in 1993 and in 2008 have been properly identified as belonging to the victims in this case. The Court reminds the State that its obligation does not merely consist in finding remains, but also in conducting tests or analyses to show that the remains recovered belong to victims in the present case.[21] Thus, the State must also submit information regarding the "technical and scientific means" it has used in order to

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17 *Cf.* Letter from the Major of Police to the Prosecutor General of June 16, 2008, and attached photographs (case file on monitoring of compliance, tome II, folios 331-335).

18 *Cf.* Documents dated June 23, 1993, and signed by Dr. M.A. Vrede, pathologist of the Pathological Anatomy Laboratory of the Academic Hospital in Paramaribo (case file on monitoring of compliance, tome II, folios 313-330). These documents were submitted by the State during the private hearing (*supra* Having Seen clause 8).

19 *Cf. Case of the Moiwana Community*, *supra* note 8, para. 86(31).

20 *Cf. Case of the Moiwana Community*, *supra* note 8, paras. 86(7)-86(9).

21 *Cf. Case of La Cantuta v. Peru. Merits, Reparations, and Costs.* Judgment of November 29, 2006. Series C, No. 162, para. 114; *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 34; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra* note 13, para. 82.

identify the remains found, taking into account forensic standards, as ordered in the Judgment.[22]

c) Duty to adopt legislative, administrative, and other measures necessary to ensure the property rights of the members of the Moiwana Community in relation to the traditional territories from which they were expelled (Operative Paragraph three of the Judgment and Operative Paragraph one of the Judgment on Interpretation)

19. The State reported during the private hearing (*supra* Having Seen clause 8) that in the years 2007 to 2009, it carried out workshops with the participation of civil society and indigenous and maroon communities in order to raise national awareness on land rights. It also carried out a national conference that resulted in a tentative timeline for compliance with this obligation and the prioritization of related issues. The State indicated, furthermore, that it is working to include collective land rights in the Constitution of Suriname. It also affirmed that the National Commission on Land Rights (hereinafter "the National Commission), whose mandate ended in December 2007, issued a "Final Report" that was presented to the government in February 2008 for comments; however, no comments have been received. Though the National Commission faced several obstacles that limited its access to indigenous and maroon communities for consultations, including a lack of funding,[23] the Report is to be used in the drafting of legislation intended to remedy existing regulations that offer insufficient guarantees to the Moiwana Community with respect to concessions in their territory. In addition, the National Commission was able to map the Moiwana territory with the Community's cooperation. As a result of its work, the State asked the Amazon Conservation Team (hereinafter, "the ACT"), a private, non-governmental organization, to conduct a study on that territory. According to the State, the ACT mapped Moiwana territories, collected data essential for demarcation, and in May 2007 issued a draft report entitled "Strategy for the Sustainable Development of the Moiwana Village" as part of the State's "Support for the Sustainable Development of the Interior" (hereinafter, "SSDI") project, which is "in a final phase." This report was to be discussed with the victims in February 2010 and presented to the government in March 2010. The State affirmed that it is regularly consulting and working in close cooperation with target groups in order to demarcate their lands. However, it also indicated that "this strategy is not specifically intended for the territory of the Moiwana [V]illage[,] but [for] the whole interior of Suriname," and stated that a schedule for implementation "will be sen[t] to the Court after consultation with stakeholders." Finally, in response to statements made by the representatives and the Inter-American Commission (*infra* Considering clauses 20 and 23), the State clarified that it had requested assistance from the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms (hereinafter, "the Special Rapporteur") for the implementation of another judgment;

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[22] *Case of the Moiwana Community v. Suriname*, *supra* note 8, para. 208.

[23] According to the State, other obstacles included flooding in the hinterlands that limited access to the indigenous and maroon communities, as well as the fact that that these communities do not have a "uniform perspective" on land rights and that some of their members that have moved to the city have "no interest in collective rights."

nevertheless, international experts, including the Special Rapporteur, "will be involved in the solution of the lands rights issue."

20. The representatives observed little progress in the State's compliance with this order. They noted, first of all, that while in 2008 the State had asked the UN Special Rapporteur for support in the drafting of a law that would regularize tribal peoples' property rights, the Special Rapporteur's 2009 Report indicated that the State had not followed up on that request. They also indicated that the State has subordinated compliance with this order to a "national process for implementing the [*Saramaka People* judgment]," and stressed that the existence of efforts to regularize community property rights at the national level "does not relieve the State of its obligations […] in the instant case." According to the representatives, "the State has also failed to consult with the victims, the Cottica N'djuka people generally, and the neighbouring indigenous communities about these measures [or] in order to obtain their consent to delimitation, demarcation[,] and titling." They consider that "structured consultations" are necessary so that this latter process may commence, "irrespective of whether the legislative framework is [yet] in place." Furthermore, the representatives indicated that two years after its completion, the "Final Report" of the National Commission (*supra* Considering clause 19) has received no official comment, and there is no evidence to show that the State is actively considering its recommendations. They stated, moreover, that the National Commission "lacked any meaningful funds to carry out its mandate and barely met with representatives of indigenous and tribal peoples." While the representatives generally endorsed the Final Report, they indicated that some of its recommendations "potentially contradict the Court's jurisprudence."[24]

21. The representatives also expressed several objections to the SSDI project (*supra* Considering clause 19). They first questioned the ACT's impartiality and independence, given that its Chairperson of the Board "represented the State before the Court in [the case of the *Moiwana Community*] and continues to [do so] today," and "has repeatedly advocated positions that may be characterised as detrimental to the rights of indigenous and tribal peoples." The representatives also indicated that the ACT "has little, if any, experience regularizing indigenous and tribal peoples' rights." They further stated that there has been a lack of meaningful participation by indigenous and tribal peoples in the design and oversight of the SSDI project. For "these and other reasons," the project "has been rejected by the Association of Indigenous Village Leaders in Suriname, the national indigenous peoples' organization, and by the Saramaka people." Additionally, because the project is national in scope, the representatives found that it is of little relevance to the State's compliance in this specific case. Moreover, according to the representatives, one of the entities funding the SSDI project will provide "no further financing" for its activities because "an investigation of that project concluded that it had been conducted in a non-participatory manner and without due regard to the wishes of indigenous and tribal peoples."

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[24] The representatives cited the recommendation "that the law contain a distinction in terms of rights between residential areas and areas used for hunting and fishing, including different rights in relation to the granting [of] concessions in th[ose] respective areas," as an example. They also singled out the recommendation that the property rights of third parties be upheld over those of indigenous and tribal peoples, noting that it only provides for compensation and fails to recognize "that a right to restitution may apply, particularly given indigenous and tribal peoples' profound relationships to their territories."

22. The representatives also had substantive disagreements with the report. They noted that it contains factual errors, as well as statements "that are likely contrary to the Court's jurisprudence." Furthermore, the representatives considered that the report placed "undue reliance on community land use mapping, which […] does not provide much insight into indigenous and tribal peoples' customs, laws[, values and] land tenure systems," all of which must be considered in the required process of delimitation, demarcation, and titling. They stated that instead of respecting traditional tenure patterns and laws, "the report […] advocates the use of a zoning system that conforms to the 'survey standards of [Suriname].'" Moreover, the report "appears to deny indigenous and tribal peoples' legal personality in relation to holding and exercising property rights." Finally, in response to the report's contention that Moiwana Community members want individual land titles, the representatives indicated that "some [Community members have] decided this precisely because they have not been provided any information about alternative sources of credit [and] have been told by State officials that they must accept individual titles [in order] to secure financ[ing]." The representatives stressed that "the State cannot simply assign […] collectively owned lands to individuals without the consent of the N'djuka people as a whole[, as that] would amount to a non-consensual alienation of collective […] lands."

23. During the hearing, the Commission indicated that it valued the steps taken by the State in order to comply with this obligation. However, it also stated that the extent of the impact of these measures on the members of the Moiwana Community is unclear and requested updated information on the State's work with the UN Special Rapporteur (*supra* Considering clause 19). Subsequently, the Commission affirmed that "the State has not taken specific steps to comply with this measure of reparation, nor […] duly consulted with the Moiwana people regarding the implementation of the order." It further noted that the State did not provide information on the "Presidential Commission" referred to in its previous report, nor on the manner in which the SSDI project "has or will have a direct effect in the present case," and expressed concern that the State still has not provided the schedule requested by the Court in February 2010. Finally, the Commission highlighted "the amount of time that has passed since the order of the Court" and requested that the Tribunal require specific information on this obligation, as well as a timeline for the State's compliance therewith.

24. The Court values the steps taken in order to achieve compliance with this order, such as possible consultations with international experts. However, though the Court recognizes the initiatives of the State aimed at a achieving a national solution to the land rights issue, the complexity of those initiatives is causing excessive delays in the State's compliance with specific orders of the Tribunal meant to safeguard the land rights of the Moiwana Community in this case. Therefore, the Court reiterates that pursuant to Article 68(1) of the Convention, the State must fully and promptly comply with the Judgment regardless of its efforts to comply with other decisions or to implement changes at a national level (*supra* Considering clause 3). Furthermore, in light of the representatives' many concerns regarding the implementation of this order and, specifically, regarding the Final Report of the National Commission on Land Rights and the draft report of the Amazon Conservation Team, the Court reminds the State that measures taken in order to

comply with the Judgment must conform to the specific orders contained therein and to the Court's jurisprudence on the property rights of indigenous peoples.[25] Thus, in order to ensure the property rights of the members of the Moiwana Community, as the Court has stated in its jurisprudence, legislative, administrative, and other measures implemented by the State pursuant to the Court's orders, including the delimitation, demarcation, and titling of lands, must be carried out in a way that recognizes the culture, usages, customs, and beliefs of that Community.[26]

25. Furthermore, all of these measures must be planned and implemented "with the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages, and the neighboring indigenous communities, including the community of Alfonsdorp."[27] The Court notes that there is strong disagreement between the parties regarding the level of the participation that the Moiwana Community has had in the steps taken thus far in order to comply with this obligation. Additionally, the representatives have expressed unease as to how the Moiwana Community will legally be able to hold and exercise property rights. Therefore, the Court reminds the State that "the right to have their juridical personality recognized […] 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 territor[ies] 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."[28] The Court notes that the Final Report of the National Commission indicates that indigenous and maroon tribes in Suriname must have legal status in order to exercise a collective property right.[29] Additionally, the Court reminds the State that the fact that some individual members of the Moiwana Community may have expressed interest in individual property rights

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[25] In the Judgment, the Court found that "the Moiwana [C]ommunity members, a N'djuka tribal people, possess an 'all-encompassing relationship' to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole. Thus, this Court's [jurisprudence] with regard to indigenous communities and their communal rights to property under Article 21 of the Convention must also apply to the tribal Moiwana [C]ommunity members […]." *Case of the Moiwana Community v. Suriname, supra* note 8, para. 133.

[26] *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 120; and *Case of the Xákmok Kásek Indigenous Community. v. Paraguay.* Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 87. Additionally, the Court reminds the State that "the members of indigenous peoples who have unwillingly left their traditional lands […] maintain property rights [to those lands] even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; […] when those lands have been lawfully transferred to innocent third parties, [indigenous peoples] are entitled to restitution thereof or to […] other lands of equal extension and quality." *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, *supra*, para. 128. The Court considers that this holding is applicable to the Moiwana Community, a maroon, tribal people.

[27] *Case of Moiwana Community v. Suriname, supra* note 8, para. 210.

[28] *Case of the Saramaka People. v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 172; see also *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 149.

[29] *Cf.* "Final Report of the Commission Land Rights" (case file on monitoring of compliance, tome II, folio 307).

does not affect the distinctiveness of the Community nor its communal use and enjoyment of land.[30]

26. Moreover, the Court reminds the State that "[u]ntil the Moiwana [C]ommunity members' right to property with respect to their traditional territories is secured, [it] shall refrain from actions […] that would affect the existence, value, use[,] or enjoyment of the property located in the geographical area where the Moiwana [C]ommunity members traditionally lived until the events of November 29, 1986."[31] This includes the granting of concessions in that territory.

27. Last, the Court notes that the reports of the National Commission and the Amazon Conservation Team contain different sets of recommendations on how to proceed with the implementation of this order,[32] yet neither report has effectively incorporated the views of the victims in this case. With respect to the former, given that the report itself attests to the National Commission's lack of consultation with the victims,[33] the Court finds the State's apparent intention to use this report for the purpose of drafting legislation that will impact the Moiwana Community to be problematic. Additionally, the Court observes that the State has not provided any information as to why there has been no official response to this report's recommendations, which were issued almost three years ago (*supra* Considering clause 19). Similarly, the State has provided no information as to the results of its presentation of the draft report of the ACT to the Moiwana Community in February 2010 and to the Surinamese government in March 2010, nor has it explained what it meant when it stated that the SSDI project, which the ACT report is a part of, is "in a final phase," particularly with respect to its recommendations on communal property rights. The Court highlights that it requested a schedule for the implementation of the development process proposed in the ACT's report on at least four occasions, yet no timeline has been received (*supra* Having Seen clauses 9 and 12). Finally, the Court notes that the State allegedly carried out a national conference that resulted in a tentative timeline for compliance with this obligation and the prioritization of related issues, yet it has never submitted that timeline to the Tribunal.

28. Consequently, this Court considers that the State has not complied with this obligation and must therefore submit updated and detailed information on the steps it is taking to ensure the Moiwana Community's property rights in accordance with the Judgment and the Court's jurisprudence on collective land rights (*supra* Considering clauses 24 to 26). In particular, the Court requests the State to submit information on: a) the steps it is taking in order to enact the legislation necessary to ensure collective land rights in a way that takes indigenous, maroon, and tribal

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30 *Cf. Case of the Saramaka People, supra* note 28, para. 164.

31 *Case of Moiwana Community v. Suriname, supra* note 8, para. 211.

32 *Cf.* "Strategy for the Sustainable Development of the Moiwana Village" (case file on monitoring of compliance, tome II, folio 282) and "Final Report of the Commission Land Rights" (case file on monitoring of compliance, tome II, folio 309). These documents were submitted by the State during the private hearing (*supra* Having Seen clause 8).

33 *Cf.* "Final Report of the Commission Land Rights" (case file on monitoring compliance, tome II, folios 293-294). This document was submitted by the State during the private hearing (*supra* Having Seen clause 8).

peoples' cultures, usages, customs, and beliefs into account, including legislation regarding the juridical personality of those peoples; b) the specific measures it is taking in order to delimit, demarcate, and title the lands of the Moiwana Community; and c) the specific actions it is taking in order to obtain the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages, and the neighboring indigenous communities, including the community of Alfonsdorp. Additionally, the State must indicate to the Court whether it has taken any action that would affect the existence, value, use, or enjoyment of the geographical area where the Moiwana Community traditionally lived until November 1986. Furthermore, the State must inform the Court on the status of the reports of the National Commission and the ACT and indicate whether it intends to follow their recommendations. If so, the State must ensure that its implementation of those recommendations adheres to the orders contained in Judgment, and it must report on the measures it is undertaking to that end. The State must also submit a detailed schedule for compliance with this obligation. Finally, the Court reminds the State that timely compliance with requests for information is an obligation under Article 68(1) of the Convention (*supra* Having Seen clauses 9 and 12).

d) Duty to guarantee the safety of those Community members who decide to return to Moiwana Village (Operative Paragraph four of the Judgment)

29. The State reported that even though there is no certainty as to the number of members of the Community that wish to return, whenever they do decide to return, the State will guarantee their safety. To that end, police departments in the area have been renovated.

30. The representatives informed the Court that the State's failure to undertake serious measures "to even minimally investigate the massacre" constitutes a "major source of fear for the victims." The representatives thus urged concrete action on the State's part to investigate and prosecute those responsible for the massacre.

31. The Commission highlighted "the fact that the Court intended […] an ongoing dialogue between the parties to form part of the foundation for an eventual return," and stated that in its Judgment, "the Court [had] required the State to meet with [C]ommunity members on a monthly basis to discuss their plans." It also noted that the State did not provide specific information on its compliance with this obligation; therefore, it was "unable to conclude that the State ha[d] taken any steps to comply with this [order]."

32. The Court acknowledges the relationship that exists between the different orders of the Judgment and, in particular, the connection between the State's failure to investigate (*supra* Considering clauses 11 to 14) and its lack of compliance with the obligation to guarantee the victims a safe return to Moiwana Village. The Court finds, as it did in its last order on compliance (supra Having Seen clause 3, Whereas

clause 14), that it is not clear whether the construction or renovation of police stations in the vicinity of Moiwana, as informed by the State, constitute effective measures toward compliance with this obligation. The State has not indicated whether it has adopted or plans to adopt other measures in order to guarantee the Community members of Moiwana Village a safe return. Therefore, the Court finds it necessary to require additional information from the parties on the number of members of the Moiwana Community that wish to return to Moiwana Village and on the measures, other than the renovation of police departments, that the State is implementing in order to ensure their safety. The Court stresses that the security of the members of the Moiwana Community depends, in large part, on the State's commitment to carrying out serious investigations that bring the facts of the case to light and lead to the sanction of all those responsible.

33. Finally, the Tribunal notes that according to its Judgment, "upon the [C]ommunity members' return to Moiwana Village, the State shall send representatives every month to Moiwana Village during the first year in order to consult with the Moiwana residents. If […] [C]ommunity members express concern regarding their safety during those monthly meetings, the State must take appropriate measures to guarantee their security[. These] shall be designed in strict consultation" with the members of the Community.[34]

e) Duty to establish a community development fund for health, housing, and educational programs (*Operative Paragraph five of the Judgment*)

34. The State reported that because the Moiwana Community is still in French Guiana, an independent consultant was hired in order to inquire as to whether the members of the Community were willing to return, the type of houses they preferred, and where they wanted the houses to be located. According to the State, Community members responded that they wanted the houses to be located at the original site, so construction begun there. However, it was halted for new consultations with a neighboring indigenous community. Additionally, the State decided, in consultation with the Moiwana Community, not to undertake the construction of a school or medical center, given that the Community had identified the construction of housing as its top priority. The State indicated that it had earmarked US$ 1,200,000.00 (one million two hundred thousand dollars of the United States of America) for this purpose and submitted a schedule showing that this amount was to be paid in five installments over the years 2006 to 2010. According to the State, "the two last transfer[s] of funds were sen[t] […] on October 5, 2010," and the "final transfer to the [f]und is still pending." The State is willing to transfer this amount over the course of this year. Furthermore, five houses have already been built, two more are almost complete, and the foundations of five more have been laid. However, the State indicated that not all of the Community members will have houses, and many victims will not be able to return because their children are attending school in French Guiana. Finally, the State indicated that the execution of the SSDI project (*supra* Considering Clause 19) is "in a final phase."

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[34] *Case of the Moiwana Community v. Suriname, supra* note 8, para. 212.

35. The representatives indicated that the State still has not transferred the "full amount of funds to the development committee." They also stated that "[u]ntil the territory from which the Moiwana [C]ommunity was expelled has been delimited, demarcated[,] and titled, the development committee cannot begin to implement the activities of the development fund, which includes building houses and providing services for those victims who decide to return. Houses, a school[,] and [a] health centre cannot be constructed until such time as the precise location of the lands in question is ascertained and agreed upon, and is legally recognised and secured." According to the representatives, the construction of houses next to the indigenous village of Alfonsdorp has led to tensions in the area and, "[a]s it stands now, it is entirely possible that the five houses constructed by the State are in a location that will not be agreed to by the indigenous peoples and other Cottica N'djuka communities and […] will therefore have to be dismantled and moved elsewhere." Finally, the representatives indicated that the draft report issued by the Amazon Conservation Team as part of the SSDI project (*supra* Considering Clause 19) is "inaccurate to the extent that it claims that the State is leading an adequate and effective participation process" toward a long-term development plan. According to the representatives, the draft report also suggests that the Moiwana Community leadership should apply for legal status either as a traditional authority under the Minister of Regional Development or as an independent foundation so that the State may transfer responsibility for administrative and financial matters to Community leaders."

36. The Commission "recognize[d] and value[d] that [the State] has transferred the majority of the total sum of funds ordered by the Court." However, it stated that "the information [provided by the State] is unclear as to the [amount pending] and as to the specific date [on] which [the final transfer will be carried out]." Therefore, the Commission requested that the Court require the State to submit this information, as well as documentation to certify previous transfers. It also expressed concern that "no information has been provided by the State to indicate the amounts" that health, housing, and educational projects for the Moiwana Community have received. Furthermore, the Commission inquired as to the precise location of the houses constructed by the State and as to whether the victims had been informed of their construction, and expressed concern that the houses may have been erected on territory that did not belong to the Moiwana.

37. The Court values that the State has taken steps toward the implementation of this order. It notes, in particular, that the State has transferred at least some of the monies ordered in the Judgment[35] to the development fund and has submitted video footage of the houses it has built for the Moiwana Community. Even so, the Court considers that the information provided by the State is insufficient for the purpose of evaluating the extent of its compliance, particularly with respect to the five following issues: 1) the amount of the monies transferred to the development fund; 2) the construction of houses; 3) the location of these houses; 4) the construction of facilities for education and healthcare; and 5) the status of the SSDI project. First, according to the schedule submitted to the Tribunal, the total amount ordered in the

[35] The Court ordered the transfer of US $1,200,000.00 to the development fund. *Cf. Case of the Moiwana Community v. Suriname*, *supra* note 8, para. 214.

Judgment was to be paid in five installments; four of these were scheduled to be paid over the years 2006 to 2009 and one was scheduled for the year 2010. Therefore, it is not clear what the State means when it indicates that the "last two transfer[s] of funds" were sent on October 5, 2010, and that one remains pending. The Court notes that the State has not indicated the date on which it will pay the total amount awarded in the Judgment to the development fund; nor is it clear whether the State has paid interest on the amounts owed to the Community. Second, the Court notes that the Amazon Conservation Team's May 2009 draft report issued as part of the SSDI project (*supra* Considering clause 19) refers to the construction of five of the thirty houses that are to be built and indicates that "[t]he [C]ommunity [had] request[ed] common areas with a church, sport facilities, [a] kindergarten, [a] school, [a] clinic, [and a] recreation facility," as well as other projects. The report states that those initiatives must "be assessed for their feasibility, and then can be planned on the land in accordance with the [C]ommunity map." However, it is unclear whether the implementation committee ordered by the Court to oversee the development fund[36] had any role in the development of the draft report and its proposals or in the decision to build the five houses mentioned.

38. Third, and related to this last issue, it is unclear whether the five houses that were built are located in Moiwana territory. Accordingly, the Court highlights the importance of the delimitation and titling of Moiwana lands for the integral fulfillment of the orders contained in the Judgment. Fourth, the draft report mentions that the Moiwana Community had requested the construction of facilities for education and healthcare, yet the State indicated at the private hearing (*supra* Having Seen clause 8) that programs on education and healthcare had been set aside at the request of the Community so that the construction of houses could be given top priority. The Court observes that the representatives did not provide information on this issue. However, the Court also notes that the State was asked to submit a schedule for the implementation of the "Strategy for the Sustainable Development of the Moiwana Village" contained in the draft report on at least four separate occasions, yet no timeline has been received (*supra* Having Seen clauses 9 and 12). Fifth, as mentioned above (*supra* Considering clause 27), although the State indicated that the implementation of the SSDI project was "in a final phase," it provided no further details on the matter and made no mention of the presentations of the ACT´s report to the victims and the government that were supposed to have taken place in February and March 2010, respectively.

39. Therefore, given that the State has transferred at least some of the monies ordered in the Judgment to the development fund, the Court finds that this obligation has been partially complied with. However, the Court highlights that the Judgment set a five-year deadline, running as of the date on which the latter was served, for the implementation of the health, housing, and educational programs established through that fund.[37] Thus, the Court considers that the State must transfer the full amount ordered in the Judgment to the development fund as soon as possible. It must also provide the Court detailed information on the amounts that have already been transferred to it, the amounts still pending, a schedule containing the dates on which these transfers are to be executed, and whether the Moiwana Community has

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[36] *Cf. Case of the Moiwana Community v. Suriname*, *supra* note 8, paras. 214-215.

[37] *Cf. Case of the Moiwana Community v. Suriname, supra* note 8, para. 214.

received the interest that has accrued on the amounts awarded. It must also provide supporting documentation with respect to the amounts it has already transferred to the development fund.

40. In addition, the State must inform the Court as to the implementation committee's role in the development of the Amazon Conservation Team's draft report and in the decision to build five houses as part of the State's fulfillment of this obligation. Furthermore, the parties must inform the Court as to whether those five houses are in fact in Moiwana territory. Given that it has yet to delimit and demarcate Moiwana lands (*supra* Considering clause 28), the State must also provide the Court with information as to how it chose the site for the five houses already built and for the other houses it has planned, if applicable. Moreover, the State must indicate whether it intends to follow the recommendations of the ACT´s draft report relating to this obligation. If so, it must ensure that its implementation of those recommendations adheres to the Judgment. The State must also submit a detailed schedule containing projected dates for the measures it will undertake in compliance with this obligation, which includes the Court's orders relating to health and education. With respect to the transfer of administrative and financial responsibility to Community leaders, the Court reminds the State "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."[38] Finally, the Court reiterates that timely compliance with requests for information is an obligation under Article 68(1) of the Convention (*supra* Considering clause 3).

f) Obligation to build a memorial in a suitable public location (Operative Paragraph seven of the Judgment)

41. The State reported that a monument was "delivered" to the Moiwana Community on November 27, 2007.

42. The representatives indicated that "the monument has [been] constructed to the satisfaction of the victims and subsequent to agreement with the neighboring indigenous peoples."

43. The Commission valued the construction of the monument as progress in the State's compliance with the Judgment.

44. During the private hearing (*supra* Having Seen clause 8), the State submitted a compact disc containing video footage of the memorial built in compliance with Operative Paragraph seven of the Judgment. The Court values that the State carried

[38] *Case of the Saramaka People v. Suriname, supra* note 28, para. 172.

out the construction of this memorial in consultation with the victims and considers that this order has been fulfilled.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute of the Court, and Articles 31.2 and 69 of its Rules of Procedure,

DECLARES,

1. That in accordance with Considering clause 44 of this Order, the Republic of Suriname has fully complied with the following obligation contained in the Judgment that had been pending fulfillment:

    a) Building a memorial in a suitable public location (*Operative Paragraph seven of the Judgment*);

2. That in accordance with Considering clause 39 of this Order, the Republic of Suriname has partially complied with the following obligation contained in the Judgment:

    a) Establishing a community development fund for health, housing, and educational programs (*Operative Paragraph five of the Judgment*).

3. That the Tribunal will continue proceedings for monitoring the Republic of Suriname's compliance with the orders of the Judgment pending fulfillment, namely the obligations to:

    a) Implement the measures necessary to investigate the facts of the case, as well as to identify, prosecute, and, if applicable, punish the responsible parties (*Operative Paragraph one of the Judgment*);

    b) Recover the remains of the Moiwana Community members killed during the events of November 29, 1986, as soon as possible, and deliver them to the surviving Community members (*Operative Paragraph two of the Judgment*);

c) Adopt legislative, administrative, and other measures necessary to ensure the property rights of the members of the Moiwana Community in relation to the traditional territories from which they were expelled and provide for the members' use and enjoyment of those territories (*Operative Paragraph three of the Judgment and Operative Paragraph one of the Judgment on Interpretation*);

d) Guarantee the safety of those Community members who decide to return to Moiwana Village (*Operative Paragraph four of the Judgment*); and

e) Establish a community development fund (*Operative Paragraph five of the Judgment*).

AND DECIDES,

4. To require the Republic of Suriname to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the preliminary objections, merits, reparations and costs, delivered by the Court on June 15, 2005, and this Order, according to the provisions of Article 68(1) of the American Convention on Human Rights.

5. To continue monitoring compliance with the unfulfilled orders of the Judgment on the preliminary objections, merits, reparations, and costs of June 15, 2005.

6. To require the Republic of Suriname to submit to the Court, by March 30, 2011, a detailed report on the actions taken in order to comply with its orders on reparations still pending fulfillment, as set forth in Considering clauses 11 to 14, 18, 24 to 28, 32, 33, and 37 to 40, as well as Declarative Paragraphs 2 and 3 of this Order. The Republic of Suriname is to submit the schedules requested in Considering clauses 28 and 39 along with its report. Thereafter, the Republic of Suriname must submit a report on its compliance with the Judgment every three months.

7. To request the representatives of the victims and their family members and the Inter-American Commission on Human Rights to file observations to the Republic of Suriname's reports within four and six weeks, respectively, as of the date on which they are served.

8. To request the Secretariat of the Court to serve notice of this Order upon the Republic of Suriname, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar