ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 23, 2011

CASE OF THE SARAMAKA PEOPLE *V.* SURINAME

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations, and costs (hereinafter, "the Saramaka Judgment" or "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on November 28, 2007, in which it:

> DECLARE[D],
>
> Unanimously, that:
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> 1. [t]he State violated, to the detriment of the members of the Saramaka people, the right to property, as recognized in Article 21 of the American Convention on Human Rights, in relation to the obligations to respect, ensure, and to give domestic legal effect to [that] right [established in] Articles 1(1) and 2 thereof, in [accordance with] paragraphs 78 to 158 of th[e] Judgment[;]
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> 2. [t]he State violated, to the detriment of the members of the Saramaka people, the right to juridical personality established in Article 3 of the American Convention on Human Rights, in relation to the right to property recognized in Article 21 of [that] instrument and the right to judicial protection under Article 25 thereof, as well as in connection to the obligations to respect, ensure, and to give domestic legal effect to those rights, in accordance with Articles 1(1) and 2 thereof, [all of this in accordance with] paragraphs 159 to 175 of th[e] Judgment[;]
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> 3. [t]he State violated, to the detriment of the members of the Saramaka people, the right to judicial protection, as recognized in Article 25 of the American Convention on Human Rights, in conjunction with the obligations to respect and guarantee the rights established under Articles 21 and 1(1) thereof, in [accordance with] paragraphs 176 to 185 of th[e] Judgment.
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> AND DECIDE[D],
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> Unanimously, that:
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> […]
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> 5. [t]he State shall delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective[,] and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. Until [the] delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead […] agents of the State […] 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 regar[d] to the concessions already granted within traditional Saramaka territory, the State must review them in light of the […] Judgment

and the Court's jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people, in [accordance with] paragraphs 101, 115, 129-137, 143, 147, 155, 157, 158, and 194(a) of th[e] Judgment[;]

6. [t]he State shall grant the members of the Saramaka people legal recognition of the collective juridical capacity pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions, in [accordance with] paragraphs 174 and 194(b) of th[e] Judgment[;]

7. [t]he State shall remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective[,] and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee[,] and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural[,] and economic survival, as well as manage, distribute, and effectively control [that] territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities, in [accordance with] paragraphs 97-116 and 194(c) of th[e] Judgment[;]

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

9. [t]he 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 [accordance with] paragraphs 129, 133, 143, 146, 148, 155, 158, and 194(e) of th[e] Judgment[;]

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

11. [t]he State shall translate into Dutch and publish Chapter VII of the […] Judgment, without the corresponding footnotes, as well as [O]perative [P]aragraphs one through fifteen, in the State's Official Gazette and in another national daily newspaper, in [accordance with] paragraphs 196(a) and 197 of th[e] Judgment[;]

12. [t]he State shall finance two radio broadcasts, in the Saramaka language, of the content of paragraphs 2, 4, 5, 17, 77, 80-86, 88, 90, 91, 115, 116, 121, 122, 127-129, 146, 150, 154, 156, 172, and 178 of the […] Judgment, without the corresponding footnotes, as well as Operative Paragraphs [one] through [fifteen] [t]hereof, in a radio station accessible to the Saramaka people, in [accordance with] paragraphs 196(b) and 197 of th[e] Judgment[;]

13. [t]he State shall allocate the amounts set in [the] Judgment as compensation for [pecuniary] and non-[pecuniary] damages in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory, in [accordance with] paragraphs 199, 201, 202, 208, and 210-212 thereof[; and]

14. [t]he State shall reimburse […] costs and expenses, in [accordance with] paragraphs 206, 207, and 209-211 of th[e] Judgment […].

2. The Judgment on Interpretation of the Saramaka Judgment (hereinafter, "the Judgment on Interpretation") delivered by the Court on August 12, 2008, in which it:

DECIDE[D],

[U]nanimously,

1. [t]o declare […]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* [admissible], pursuant to paragraph 10 of th[e] Judgment.

2. [t]o determine the scope of the content of Operative Paragraphs [five] through [nine] 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 th[e] Judgment. […]

3. The reports submitted on August 6, 2009, and May 13, 2010, whereby the State informed the Court on the status of its compliance with the Judgment, and the communication of November 17, 2009, whereby the State submitted "three (3) additional documents [relating] to [its] [f]irst [periodic] [r]eport."

4. The briefs of September 12, 2009, and June 8, 2010, whereby the representatives submitted observations to the State's reports (*supra* Having Seen clause 3).

5. The briefs of December 3, 2009, and July 15, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted observations to the State's reports (*supra* Having Seen clause 3).

6. The private hearing held at the seat of the Court on September 2, 2010.[1]

7. The Secretariat's note of September 14, 2010, whereby the Court required the parties to submit, by September 20, 2010, information regarding the alleged concessions granted in Saramaka territory without the victims' consent after the Judgment was issued, including information on whether environmental and social impact assessments (hereinafter "ESIAs") were carried out in relation to those alleged concessions; information on any agreements reached between the parties concerning a schedule for compliance; any additional information on obligations pending fulfillment; and supporting documentation. The parties were also asked to submit information on: the date on which the amounts deposited in the development fund would be available for the victims to use; whether Chapter VII and Operative Paragraphs one through fifteen of the Judgment were published in the State's Official Gazette; the names of the radio stations that allegedly broadcasted the translations of the Judgment in the Saramaka language, as well as the dates and times of those broadcasts; and the places where Saramaka territory overlaps with the neighboring territories. Through its note of September 29, 2010, the Secretariat reiterated this request to the State.

8. The communications of September 20, 2010, whereby the representatives of the victims and the Commission, respectively, submitted the information required by the Court (*supra* Having Seen clause 7).

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[1] The following persons appeared at the hearing: a) on behalf of the State, Patricia Meulenhof, Deputy Director of the Ministry of Regional Development and Head of the delegation; Renate Burgrust, Head of the Stafunit International Relations of the Ministry of Regional Development; Jornell Vinkwolk, Head of the Human Rights Bureau; Jozef Amautan, Senior Policy Officer of the Ministry of Physical Planning, Land and Forest Management; and Monique Pool, Translator; b) on behalf of the representatives, S. Hugo Jabini, Association of Saramaka Authorities; Fergus MacKay, Counsel of Record, Forest Peoples Programme; and Alancay Morales Garro, Forest Peoples Programme; and c) on behalf of the Inter-American Commission, Lilly Ching Soto, Attorney of the Executive Secretariat.

9. The communication of October 6, 2010, in which the representatives "observe[d] that Suriname has repeatedly failed to comply with the orders of the Court requesting information about [the] implementation of the [J]udgment" and submitted various requests to the Tribunal.

10. The Secretariat's note of June 14, 2011, in which the parties were asked to submit, no later than July 15, 2011, observations to the briefs submitted by the Inter-American Commission and the representatives on September 20, 2010, respectively, and the brief submitted by the representatives on October 6, 2010 (*supra* Having Seen clauses 8 and 9). Through the Secretariat's note of July 8, 2011, the State was granted an extension of time expiring on August 1, 2011, for the submission of its observations.

11. The briefs of July 15 and 19, 2011, whereby the representatives and the Commission, respectively, submitted their observations to the parties' briefs of September 20, 2010 (*supra* Having Seen clause 8).

12. The communication of July 29, 2011, whereby the State submitted information requested through the Secretariat's notes of September 14 and 29, 2010 (supra Having Seen clause 7).

13. The briefs of August 26 and October 3, 2011, whereby the representatives and the Commission submitted their observations to the State's brief of July 29, 2011, respectively (*supra* Having Seen clause 12). Through the Secretariat's notes of September 7 and 14 and November 8, 2011, the State was asked to submit its observations to the briefs of September 20, 2010, submitted by the representatives and the Commission, respectively, and to the representatives' communication of October 6, 2010 (*supra* Having Seen clauses 8 and 9), as soon as possible. At the time this Order was approved, the State had not submitted the observations requested.

14. The communication of September 30, 2011, in which the representatives of the victims "entreat[ed] the Court to [issue] an Order" during its 44th Extraordinary Period of Sessions, held at Bridgetown, Barbados, from October 10 to 14, 2011, and informed the Tribunal of statements allegedly made by the State "before the [United Nations] Human Rights Council during the Universal [Periodic] Review." Through its note of October 6, 2011, the Secretariat requested that the State and the Inter-American Commission submit observations to the representatives' brief by October 17, 2011, at the latest. Through the Secretariat's note of October 21, 2011, the Commission was granted an extension of time until October 31, 2011, in order to do so, and it submitted its observations on this latter date. At the time this Order was approved, the State had not submitted the observations requested.

CONSIDERING THAT:

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

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

3. 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 therewith. Additionally, pursuant to Article 68(1) of the Convention, "The State 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. The obligation to comply with the rulings of the Court conforms to a basic principle of law, supported by international jurisprudence, according to which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has previously stated and as set forth 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] States Parties' obligations under the Convention bind all State branches and organs.[4]

5. The 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 addressing the rights protected), but also in connection with procedural rules, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and implemented in such a way that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.[5]

6. In its brief of September 30, 2011 (*supra* Having Seen clause 14), the representatives informed the Tribunal of statements made by the Surinamese government before the United Nations Human Rights Council in response to its Universal Periodic Review of May 6, 2011, to the effect that it "c[ould] not support" recommendations that it comply with the Court's Judgment in this case, particularly with respect to indigenous and land rights issues, as it is planning a "[n]ational land [r]ights conference" in order to discuss these issues with stakeholders, civil society, and the UN Special Rapporteur "on land rights [*sic*]."[6] The Commission expressed concern that the State's affirmations before the United Nations Human Rights Council "confirm[ed] that [it] is not complying with the orders of the […] Court" and requested that the Tribunal "require the State to provide information on the steps being taken [with respect] to every

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[2] *Cf. Case of Baena Ricardo v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 60; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of October 10, 2011, Considering clause four.

[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; and *Case of the Yean and Bosico Girls v. Dominican Republic. 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, Considering clause three; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment, supra* note 2, Considering clause five.

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

[6] According to the representatives, the members of the Saramaka community have been told that their traditional authorities will only be able to attend the "national land rights conference" (*supra* Considering clause 6) as "'observers.'" Additionally, the representatives submitted a document entitled, "Report of the Working Group on the Universal Periodic Review" with respect to Suriname," UN Doc. A/HRC/18/12. This document states that Suriname indicated that it had "implemented several aspects of the [Inter-American] Court's [J]udgment[, while] other aspects called for more in-depth consultation with the communities concerned." Additionally, Suriname expressed that the "Implementation of the part of the judgment[] which dealt with the amendment of laws and regulations[] was pending," and that it had, for this purpose, "requested information and technical assistance on best practices regarding the drafting of legislation on the issue and procedures to be enacted, including consultation procedures." In the "National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1," A/HRC/WG.6/11/SUR/1, Suriname manifested its willingness to comply with the Judgment of the Inter-American Court of Human Rights and to recognize the collective rights of indigenous and maroon peoples.

[…] order" pending compliance. The State did not respond to these allegations. In that regard, the Court recalls that State Parties to the Convention that have recognized the binding jurisdiction of the Court have the duty to comply with the obligations it establishes. This obligation includes the duty of the State to inform the Court on the measures adopted to comply with the latter's 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.[7]

a) The duty to delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people; the duty to abstain, until the first obligation has been fulfilled, from acts which might affect the existence, value, use, or enjoyment of Saramaka territory without consent; and the duty to review concessions already granted within traditional Saramaka territory *(Operative Paragraph five of the Judgment)*

7. The Court notes, first of all, that Operative Paragraph five of the Judgment contains at least three separate obligations: 1) the delimitation, demarcation, and granting of collective title over Saramaka territory; 2) abstention from acts which might affect the existence, value, use, or enjoyment of that territory without the Saramaka people's consent before the delimitation, demarcation, and titling has been carried out; and 3) the review of concessions already granted within traditional Saramaka territory with the aim of preserving the survival of the Saramaka people. The Court will first analyze the State's compliance with its duty to grant collective title to the members of the Saramaka people; as the State's latter obligations relate to existing or future concessions or other acts that may affect Saramaka territories, the Court considers it appropriate to analyze them together.

a.1) The duty to delimit, demarcate, and grant collective title

8. The State initially reported that it was "pursu[ing] an integral approach [to] the national issue of the recognition of tribal rights" through the project "Support for the Sustainable Development of the Interior" (hereinafter, "SSDI"), which had the "delimitation and demarcation of living areas of tribal communities" as one of its objectives. According to the State, reports prepared as part of the SSDI project indicated the existence of overlaps between Saramaka lands and those of other tribal communities, requiring it to ensure that the process of delimitation and demarcation was conducted in consultation with all of these.[8] However, the State later indicated that on December 15, 2010, the SSDI project was "officially […] stop[ped]" after consultation with the Association of Saramaka Authorities proved that the project lacked "adequate stakeholder support." Instead, an "agreement [wa]s signed between the Ministry of Regional Development and [N]ational Resources and Environmental Assessment (Narena) [and] the GIS Department of the Centre for Agricultural Research in Suriname (CELOS)" in order to "assist the Saramaka people in the delineation and demarcation of

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[7] *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; and *Case of the "Las Dos Erres" Massacre v. Guatemala. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of July 06, 2011, Considering clause six.

[8] During the private hearing, the State submitted four draft reports developed by the Amazon Conservation Team, a non-governmental organization, as part of the SSDI project. The reports were entitled: a) "Land Rights, Tenure and Use of Indigenous Peoples and Maroons in Suriname"; b) "Strategy for the Sustainable Development of the Moiwana Village"; c) "Participatory Mapping in Lands of Indigenous Peoples and Maroons in Suriname"; and d) "Support to the Traditional Authority Structure of Indigenous Peoples and Maroons in Suriname."

[…] Saramaka areas." The State mentioned that it had already developed a "sketch map" that was used by the Association of Saramaka Authorities to hold "consultations in […] Saramaka areas"; however, it did not submit this map to the Tribunal. With respect to the consultation that the State must carry out with the Saramaka people, the State reported that it has signed an agreement with the Association of Saramaka Authorities on the implementation of the Judgment, and that it is meeting on a weekly basis with representatives of the "Traditional Authorities of the Maroons and Indigenous people" in order to seek "solution models […] to solve the land rights issue of the Maroons and Indigenous people."

9. The representatives indicated that the "SSDI project ha[d] been formally rejected by […] the Saramaka people" and stressed that "there are no disputes [regarding overlaps of land, a fact which] was confirmed in written agreements with [neighboring communities], all of which were submitted to the State." They also confirmed that the State had cancelled the SSDI project and subscribed "an agreement with a number of institutions concerning support for the delimitation of Saramaka territory[.] […] [O]n this basis, a sketch map ha[d] been developed and used in internal meetings conducted by the Saramaka." However, "the State ha[d] objected to the inclusion [in that map] of certain lands in the northern reaches of Saramaka territory [because] some of these lands were granted as plantations during the early colonial era [and] the title holders [could not] be ascertained at [the time]." According to the representatives, given "that the State [wa]s unable to even identify the 'owners' of these plantations, there [wa]s no reason that the State [could not] recogni[z]e Saramaka ownership rights in accordance with standard condemnation procedures." Additionally, the representatives indicated that the State had failed to meet the deadlines established in the agreement subscribed with the Saramaka on October 21, 2010, for the implementation of this order of the Court (*supra* Considering clause 8). They also indicated that "the weekly meetings referred to by the State in its report […] rarely directly concern[ed] matters specifically related to the implementation of the [J]udgment."

10. The Commission indicated that the State has "failed to delimit the Saramaka territory." It also indicated that according to the information provided by the representatives, "the State ha[d] not taken specific steps to comply with this measure of reparation, nor […] duly consulted the Saramaka people regarding the implementation of the order."

11. The Court notes that the State and the representatives have come to an agreement regarding the former's compliance with the Judgment and with this order in particular, and that regular meetings are being held to that end. Nevertheless, the Court notes that the State has failed to comply with the deadlines established in that agreement.[9] Furthermore, the Court notes that in its first and second reports on compliance, as well as during the private hearing, the State had indicated that the SSDI project would serve as the basis of its implementation of this order; however, the State has not indicated, now that the SSDI project has been cancelled, the specific measures it has taken pursuant to the agreement signed by Narena and CELOS (*supra* Considering clause 8) in order to implement this measure of reparation. Nor has the State indicated whether it accepts the representatives' position that the Saramaka currently have no disputes with their neighbors regarding overlapping territories, or made any mention of the alleged disagreement with the victims regarding lands that may have been "granted as plantations during the early colonial era" (*supra* Considering clause 9). Additionally, the Court notes that its Judgment ordered the State to begin the process of delimitation,

[9] "Agreement for the Implementation of the Sentence of the Inter-American Court [of] Human Rights Concerning the Saramaka People (Ser C No[.] 172 and Ser C No. 185)" (case file on monitoring of compliance, tome I, folios 661-664).

demarcation, and titling of traditional Saramaka territory within three months as of the date that the decision was served, and that the process was to be completed within three years of that date.[10] Therefore, this measure of reparation should have been implemented by December 2010, at the latest.[11]

12. Consequently, this Court finds that the State has not complied with this obligation and must thus submit updated and detailed information on the specific measures it is implementing in order to delimit, demarcate, and title Saramaka territories as indicated in the Judgment (*supra* Having Seen clause 1). Additionally, the State must report on the specific actions it is taking in order to consult the Saramaka people on the implementation of this particular order, as well as on the results of those consultations. The State must also submit a detailed schedule for compliance with this obligation, given that it has already failed to meet the deadlines established in the Judgment, and it must tender the map referred to in the State's and the representatives' submissions (*supra* Considering clauses 8 and 9). Finally, the Court reminds the State that timely compliance with requests for information is an obligation under Article 68(1) of the Convention (*supra* Considering clauses 3, 5, and 6).

a.2) The duty to abstain from acts which might lead agents of the State or third parties acting with its acquiescence or tolerance to affect the existence, value, use or enjoyment of Saramaka territories before their delimitation, demarcation, and titling has been carried out, and the duty to review concessions granted prior to the issuance of the Judgment

13. The State did not report on its compliance with the duty to review concessions existing on Saramaka territories prior to the issuance of the Judgment. With respect to the granting of new concessions in that territory (*infra* Considering clause 14), the State indicated that "The Ministry of Regional Development is in the process of gathering […] information [on this point] from the Ministry of Physical Planning, Land and Forest Management." When that information was gathered, "involved agencies [would] be informed and corrective measures [would] be taken, where needed."

14. The representatives stated that they "are not aware of any efforts by the State to review [concessions existing] within Saramaka territory" before the Judgment was issued. Furthermore, during the private hearing, the representatives informed the Court that at least six logging and mining concessions had been granted in Saramaka territory since the date the Judgment was issued, allegedly without notice or consultation with the Saramaka people, and that several of these activities would require the latter's consent. According to the representatives, none of these concessions "have been revoked or modified by the State – despite formal petitions submitted by the Saramaka requesting the same. [Nor] has the State responded to their requests for information about these concessions." To the best of the representatives' knowledge, "none of the logging concessions issued in Saramaka territory have been or are presently being exploited." However, the stone mining concession "has been operational for over a year[,][…] to the extreme detriment of nearby Saramaka families […]. [According to the representatives, the] adverse impacts include the destruction of farming areas, extensive pollution of air and water sources by mining waste, the usurpation and denial of Saramaka ownership rights over [those] lands and resources, and the denial of their right to effectively control their traditional territory." Moreover, the concession was allegedly issued without the completion of a "prior and independent environmental and social impact assessment and

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[10] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 194 a).

[11] The Judgment was served upon the State on December 19, 2007.

without the institution of effective mitigating measures."

15. The representatives also informed the Court of a project for the upgrading of the Afobaka Road in Saramaka territory. While the Saramaka are not necessarily opposed to the project, the representatives highlighted that they had not been consulted on the matter, despite the fact that the upgrade "will greatly increase access to Saramaka territory by a variety of users." The representatives also indicated that the Inter-American Development Bank did not disburse funds requested by the State for the purpose of conducting environmental and social impact assessments of this project. Finally, in their observations to the State's communication of July 29, 2011, the representatives alleged that "the State ha[d] […] issued a land title within Saramaka territory […] on 16 July 2010" in the name of a private company "for the purpose of maintaining a tourism resort," without the effective participation of the Saramaka people. The representatives maintained that this represents "an internationally illegitimate expropriation of Saramaka lands in fav[o]r of a non-Saramaka person without […] due process." In light of the above, the representatives requested that the Court order the State to immediately revoke both the land title and the concessions granted in Saramaka territory after the Judgment was issued, to "immediately commenc[e] structured discussions with the Saramaka people [on] the road upgrade so as to obtain their consent, including [with respect to] how appropriate ESIAs may be undertaken with their effective participation and in accordance with international standards and best practice, and [to] compensat[e] the Saramaka for any damages sustained to date."

16. The Commission considered "the fact that the State ha[d] allegedly granted new concessions and land titles [in Saramaka territory] after the […] judgment" had been served to be of "grave concern." Thus, it requested that the Court require the State to submit "complete and detailed information" on this matter.

17. The Court notes that despite its repeated requests (*supra* Having Seen clauses 7, 10, and 13), the State has not adequately reported on the measures taken to review concessions existing in Saramaka territory prior to the issuance of the Judgment, nor on the alleged upgrades to the Afobaka road or the logging and mining concessions allegedly granted in Saramaka territory after the Judgment was served. Regarding this latter point, the Court observes that the representatives have submitted evidence that a mining concession was granted in Saramaka territory in April of 2008,[12] that a logging concession was granted in May 2010,[13] and, in its observations to the State's communication of July 29, 2011, that a land lease was granted to the "Anaula Nature Resort NV" on July 16, 2010 for the purpose of carrying out "tourism activities."[14]

18. In that regard, the Court reminds the State that in its Judgment, it ordered Suriname to abstain, until the delimitation, demarcation, and titling of Saramaka territory has been carried out, from acts which might lead the agents of the State or third parties acting with its acquiescence or tolerance to affect the existence, value, use, or enjoyment of that territory, unless the State had obtained the free, informed, and prior consent of the Saramaka people.[15] At the same time, the Court held that:

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[12] *Cf.* Letter of the Ministry of Natural Resources, Geological and Mining Department, of December 14, 2009 (case file on monitoring of compliance, tome I, folio 267).

[13] *Cf.* Grant of concession from the Minister of Physical Planning, Land and Forest Management to Kayserberg Industry N.V. (case file on monitoring of compliance, tome I, folio 553).

[14] *Cf.* Grant of land lease for tourism activities from the Minister of Physical Planning, Land and Forest Management to Anaula Nature Resort NV (case file on monitoring of compliance, tome I, folio 658).

[15] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, para. 194 a).

> 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: [f]irst, 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 […][16] within Saramaka territory[;] [s]econd, the State must guarantee that the Saramak[a] will receive a reasonable benefit from any such plan within their territory[;] [and third,] 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.[17]

19. In light of the above, given that the titling of Saramaka lands has not yet been carried out (*supra* Considering clause 12), the Court considers that the granting of any new concessions in those territories after December 19, 2007, the date on which the Judgment was served, without the consent of the Saramaka and without prior environmental and social impact assessments, would constitute a direct contravention of the Court's decision and, accordingly, of the State's international treaty obligations (*supra* Considering clauses 3-6).

20. Consequently, the Court finds that the State must provide detailed information on whether it has reviewed concessions existing in Saramaka territory prior to the issuance of the Judgment. For each of these concessions, the State must report on: whether it has consulted with the Saramaka and ensured their effective participation in those reviews; how it is guaranteeing that the Saramaka will receive reasonable benefits from those concessions; and whether environmental and social impact assessments have been carried out. In addition, the State must report on all of the logging and mining concessions allegedly granted after the Judgment was served; on the title of land lease apparently granted to the "Anaula Nature Resort NV"; on any upgrades to the Afobaka road in Saramaka territory; and on any other action that could affect the existence, value, use, or enjoyment of the territory of the members of the Saramaka people.

21. With respect to the representatives' request that the Tribunal order the immediate revocation of the land title and concessions issued after the Judgment was served and that it compensate the Saramaka for any damages sustained to date due to upgrades on the Afobaka road (Considering clause 15), the Court notes that this was not ordered in the Judgment, and, therefore, exceeds the object of the present proceedings for monitoring compliance with the *Saramaka* Judgment. Consequently, the Court cannot grant the representatives' request.

b) The duty to ensure that environmental and social impact assessments are conducted prior to awarding a concession for any development or investment project within traditional Saramaka territory, and to implement adequate safeguards in order to minimize the damaging effects such projects may have upon the social, economic, and cultural survival of the Saramaka people (*Operative Paragraph nine*)

22. The State indicated that information on whether environmental and social impact

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[16] "By 'development or investment plan,' the Court mean[t] 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." *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*, *supra* note 10, footnote 127.

[17] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, para. 129.

assessments were carried out prior to the alleged awarding of concessions in Saramaka territory without the consent of the Saramaka people was "not yet available."

23. The representatives indicated that the Afobaka Road project was being carried out and a stone mining concession had been granted in Saramaka territory despite that no prior ESIAs had been conducted. They also stated that they were unaware of whether an ESIA had been carried out prior to the grant of the abovementioned logging concession in May 2010 (*supra* Considering clauses 14, 15, 17, and 20). According to the representatives, "The Saramaka are therefore unable to evaluate possible risks and impacts, singular or cumulative, as part of considering whether to knowingly and voluntarily accept the project to upgrade the road."

24. The Commission maintained that the State "did not [provide] specific information" on this issue. It therefore requested that the Court require information on the steps being taken in order to comply with this order.

25. With respect to the Afobaka road project and the logging concession granted in May 2010 (*supra* Considering clauses 14, 15, 17, and 20), the Court reminds the State that the granting of any new concessions without prior environmental and social impact assessments would constitute a direct contravention of the Court's decision, and, accordingly, of the State's international treaty obligations (*supra* Considering clauses 3-6). Furthermore, the Court notes that it lacks information on what the State is doing to ensure that environmental and social impact assessments are conducted by independent and technically competent entities prior to awarding concessions for development or investment projects in traditional Saramaka territory.

26. In light of the above, the Court considers it necessary that the State indicate, for each concession or development project mentioned in Considering clause 20 above, whether prior environmental and social impact assessments were carried out. In addition, the State must indicate how it will ensure that ESIAs are conducted as indicated in the Judgment and in the Judgment on Interpretation (*supra* Having Seen clauses 1 and 2) prior to awarding concessions in the future for any development or investment project within traditional Saramaka territory.

c) The duty to legally recognize the collective juridical capacity of the members of the Saramaka people; to amend or remove legal provisions that impede the protection of the victims' right to property and to implement legal and other measures necessary to ensure their right to hold collective title; to adopt legislative, administrative, and other measures necessary to guarantee the right of the Saramaka people to be consulted, or when necessary, the right to give or withhold their consent, with regard to development or investment projects that may affect their territory, and to reasonably share in the benefits of those projects; and to adopt legislative, administrative, and other measures necessary to provide the victims with adequate and effective recourses against acts that violate their right to the use and enjoyment of property *(Operative Paragraphs six, seven, eight, and ten)*

27. The State initially reported that the SSDI project was to "provide the building blocks for […] the legal framework [and] collective rights." However, the State subsequently informed the Court that it had "officially put a stop" to the project on December 15, 2010.

28. The representatives stated that "[t]here has been little progress on the development of the legislative and other measures required to give effect to the

[J]udgment. [Indeed,] not one single word has been drafted that could lead to the adoption of the required measures." The representatives further observed that the State, "at the request of the Saramaka, [invited] the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Suriname, *inter alia,* to discuss the development of legislation to recogni[z]e indigenous and tribal peoples' rights, including as ordered by the Court in the *Saramaka People* [J]udgment. This visit took place in late March 2011, [and the] Special Rapporteur submitted a note to the State in April 2011 setting forth his recommendations and views […]. However, to date, the State has given no indication that it intends to follow up on [those] recommendations or the Special Rapporteur's offer of technical support." The representatives submitted a copy of the Special Rapporteur's note to the Tribunal.

29. The Commission considered it "worrisome" that despite "being an order of vital importance and despite the specific recommendations of the UN Special Rapporteur submitted [i]n April 2011, the State has not adopted any legislative measures required to implement the [J]udgment," nor indicated how it will "follow up" on those recommendations. It requested that the State provide detailed information regarding the Special Rapporteur's report and "welcome[d the report's suggestion] that the Surinamese government 'seek the assistance of the Inter-American Commission on Human Rights to help facilitate and orient initial negotiations.'"

30. The Court notes that the Judgment ordered the State to implement the measures of reparation involving changes to its domestic law "within a reasonable time."[18] It also highlights that it has been almost four years since the Judgment was served, yet the State has not reported any progress toward the implementation of these orders after the SSDI project's cancellation in December 2010 (*supra* Considering clauses 8, 9, and 11). The Court thus considers it necessary that the State report, in detail, on the steps it is taking to comply with Operative Paragraphs six, seven, eight, and ten of the Judgment and submit any bills that it may have proposed to its legislative body. Additionally, the State must submit a schedule for its compliance with these measures of reparation.

d) Duty to translate into Dutch and publish Chapter VII and Operative Paragraphs one through fifteen of the Judgment in the State's Official Gazette and in another national daily newspaper *(Operative Paragraph eleven of the Judgment)*

31. The State reported that it had published, in Dutch, Chapter VII and Operative Paragraphs one through fifteen of the Judgment in a national daily newspaper and in Suriname's Official Gazette of 19 November 2010, No. 17.002/10 (S.B. 2010 no. 168).

32. The representatives acknowledged that the State published the Dutch translation of the Judgment in a national daily newspaper and in the Official Gazette.

33. The Commission did not specifically refer to this obligation in its most recent communications to the Court.

34. In light of the information submitted by the State and the representatives, and given that there is no dispute between the parties, the Court finds that the State has complied with Operative Paragraph eleven of the Judgment.

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[18] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, para. 194 b), c), d), and f).

e) Duty to finance two radio broadcasts, in the Saramaka language, of parts of the Judgment, including Operative Paragraphs one through fifteen, in a radio station accessible to the Saramaka people *(Operative Paragraph twelve of the Judgment)*

35. The State reported that it had published the Judgment "in episodes," pursuant to an agreement with the Association of Saramaka Authorities, through six radio stations, three of Paramaribo and three of the interior. Of the six broadcasts, all carried out in the year 2010, three were in the Saramaka language.[19]

36. The representatives "acknowledge[d] that broadcasts of the [J]udgment via radio stations took place."

37. The Commission did not specifically refer to this obligation in its most recent communications to the Court.

38. In consideration of the information submitted by the State and the representatives, the Court finds that the State has complied with Operative Paragraph twelve of the Judgment.

f) Duty to allocate the amounts set in the Judgment as compensation for pecuniary and non-pecuniary damages in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory *(Operative Paragraph thirteen of the Judgment)*

39. The State reported that "the foundation for the Saramaka people Community Development Fund was established in compliance with the [order of the Court requiring that it] be staffed by a representative of the Saramaka people, a representative of the State[,] and a joint representative." It also stated that "[a]n amount of [USD $600,000.00 (six hundred thousand dollars of the United States of America) had already been] transferred to the account [of the Development Fund,] and about [USD $5,151.51 (five thousand one hundred fifty one and 51/100 dollars of the United States of America) had already been] used for a meeting (Grankrutu) with the traditional authorities of the Saramaka clan [held on December 17, 2010]."

40. In their brief of July 15, 2011 (*supra* Having Seen clause 11), the representatives acknowledged that "the funds have been transmitted to the development fund ordered by the Court," but indicated that "no funds ha[d] been used for activities in Saramaka territory to date."

41. In its brief of July 19, 2011, the Commission indicated that "the State did not submit information as to how and when the development fund [would] start working, nor as to the amount of money deposited into the fund."

42. The Court notes that in its Judgment, it ordered the payment of USD $75,000.00 (seventy-five thousand dollars of the United States of America) in pecuniary damages and of USD $600,000.00 (six hundred thousand dollars of the United States of America) in non-pecuniary damages into a community development fund.[20] The Tribunal also

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[19] The State submitted the names of the six radio stations it hired to broadcast the Judgment. In Paramaribo, the Judgment was broadcasted in the months of July, March, and August 2010, with the March broadcast done in the Saramaka language. In the interior, the three broadcasts were carried out in December 2010. The first two of these were done in the Saramaka language.

[20] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, paras. 199 and 201.

observes that the State only reported a payment of USD $600,000.00 (six hundred thousand dollars of the United States of America) into the fund, while the representatives' statement that "the funds have been transmitted" seems to imply that the State has completely fulfilled the obligation established in Operative Paragraph thirteen of the Judgment. Given that the Court was not offered evidence to verify these statements, it considers that this obligation has been partially complied with and that the State and the representatives must provide it with information regarding whether an amount of USD $75,000.00 (seventy-five thousand dollars of the United States of America) was also deposited into the community development fund in order to fully comply with this order of the Court and whether any interest payments remain pending.[21] In that regard, the Court reminds the State that the three-year deadline established in the Judgment for the payment of pecuniary and non-pecuniary damages expired on December 19, 2010.[22]

g) Reimburse costs and expenses *(Operative Paragraph fourteen of the Judgment)*

43. The State reported that it paid USD $15,000.00 (fifteen thousand dollars of the United States of America) to the Forest Peoples Programme and USD $75,000.00 (seventy-five thousand dollars of the United States of America) to the Association of Saramaka Authorities.

44. The representatives acknowledged that the payment for costs and expenses had been received, but "not within the timeframe set by the Court."

45. The Commission did not refer to this obligation in its most recent communications to the Court.

46. In light of the information submitted by the State and the representatives, the Court finds that the State has complied with Operative Paragraph fourteen of the Judgment.

h) Request for a public hearing and for communication with the Inter-American Development Bank

47. The representatives requested that the Court convene a public hearing in this case so that the parties may submit additional information to its consideration. In their brief of September 30, 2011, the representatives also requested that the Court "communicat[e] with the Inter-American Development Bank to request that it ensur[e] respect for the […] [J]udgment in projects that it may finance in Suriname and that may affect the Saramaka people and their territory."

48. The Commission considered the representatives' request for a public hearing so that the State may submit detailed information on this case "to be pertinent."

49. The State did not submit observations on the representatives' requests (*supra* Considering clause 47).

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[21] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, para. 212.

[22] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs, supra* note 10, para. 208. The Judgment was served upon the State on December 19, 2007.

50. With respect to the representatives' first request, given the Republic of Suriname's alleged statements before the UN Human Rights Council to the effect that it cannot support recommendations that it comply with the *Saramaka* Judgment (*supra* Having Seen clause 14 and Considering clause 6); the fact that most of the Court's orders in the Judgment have not been implemented despite the expiration of the deadlines set therein; and the State's failure to fulfill its obligation to duly inform the Court on its implementation of the Judgment, the Court finds it appropriate to convene a private hearing during the year 2012, on a date to be decided, as part of the proceedings in this case. In this regard, the Court reminds the State that integral and prompt compliance with the Court's judgments is an obligation under Article 67 of the Convention, and that the duty to comply with international treaty obligations in good faith is a basic principle of law. At the same time, States cannot invoke their domestic laws to escape pre-established international responsibility (*supra* Considering clauses 3 and 4).

51. As to the representatives' second request, the Tribunal notes that it does not have jurisdiction under the American Convention to request that the Inter-American Development Bank ensure the State's compliance in this case.

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, and 68(1) of the American Convention on Human Rights, Articles 24, 25 and 30 of the Statute of the Court, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. In accordance with the Considering clauses of this Order, the State has complied with the following obligations established in the Judgment:

   a) translate into Dutch and publish Chapter VII of the Judgment, without the corresponding footnotes, as well as Operative Paragraphs one through fifteen, in the State's Official Gazette and in another national daily newspaper (*Operative Paragraph eleven of the Judgment and Considering clauses 31 to 34*);

   b) finance two radio broadcasts, in the Saramaka language, of the content of paragraphs 2, 4, 5, 17, 77, 80-86, 88, 90, 91, 115, 116, 121, 122, 127-129, 146, 150, 154, 156, 172, and 178 of the Judgment, without the corresponding footnotes, as well as Operative Paragraphs one through fifteen thereof, in a radio station accessible to the Saramaka people (*Operative Paragraph twelve of the Judgment and Considering clauses 35 to 38*); and

   c) reimburse costs and expenses (*Operative Paragraph fourteen of the Judgment and Considering clauses 43 to 46*).

2. In accordance with the Considering clauses of this Order, the State has partially complied with the obligation to allocate the amounts set in the Judgment as compensation for pecuniary and non-pecuniary damages in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory (*Operative Paragraph thirteen of the Judgment and Considering clauses 39 to 42*).

3. In accordance with the Considering clauses of this Order, the State has not complied with the following obligations established in the Judgment:

a) delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective, and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. Until the delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead agents of the State 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 regard to the concessions already granted within traditional Saramaka territory, the State must review them in light of the 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 (*Operative Paragraph five of the Judgment and Considering clauses 7 to 21*);

b) 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 (*Operative Paragraph six of the Judgment and Considering clauses 27 to 30*);

c) remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee, and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural, and economic survival, as well as manage, distribute, and effectively control that territory in accordance with their customary laws and traditional collective land tenure system and without prejudice to other tribal and indigenous communities (*Operative Paragraph seven of the Judgment and Considering clauses 27 to 30*);

d) adopt legislative, administrative, and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent with regard to development or investment projects that may affect their territory, and to reasonably share in the benefits of those projects, should they ultimately be carried out. The Saramaka people must be consulted during the process established to comply with this form of reparation (*Operative Paragraph eight of the Judgment and Considering clauses 27 to 30*);

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

survival of the Saramaka people, (*Operative Paragraph nine of the Judgment and Considering clauses 22 to 26*);

f) adopt legislative, administrative, and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal property system, (*Operative Paragraph ten of the Judgment and Considering clauses 27 to 30*);

AND DECIDES:

1. To require the Republic of Suriname to adopt all measures necessary to effectively and promptly comply with each of the Operative Paragraphs indicated in Declarative Paragraphs two and three above, in accordance with Article 68(1) of the American Convention on Human Rights.

2. To require the Republic of Suriname to submit, by March 30, 2012, at the latest, a detailed report on the measures it is undertaking to comply with the reparations that remain pending, as well as the timelines requested in this Order, in accordance with Considering clauses 7 to 51 thereof. In its report, the State must refer to the position set out before the United Nations Human Rights Council during its Universal Periodic Review with respect to its compliance with the Judgment issued in this case. Subsequently, the Republic of Suriname must submit reports on its compliance with the Judgment every three months.

3. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit observations to the State reports required in Operative Paragraph two of this Order within four and six weeks, respectively, as of the date on which the reports are served.

4. To convene a private hearing on the Republic of Suriname's compliance with the Judgment during the year 2012, on a date to be decided, in accordance with Considering clause 51 of this Order.

5. To continue proceedings for monitoring compliance with the orders of the Judgment pending fulfillment, indicated in Declarative Paragraphs two and three of this Order.

6. To require 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.

Judges García-Sayán and Vio Grossi informed the Court that they would be submitting Concurring Opinions; these accompany the present Order.

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
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN TO THE ORDER ON MONITORING COMPLIANCE WITH JUDGMENT IN THE CASE OF THE SARAMAKA PEOPLE *V.* SURINAME OF NOVEMBER 23, 2011

1. The monitoring of compliance with its own Judgments is one of the Inter-American Court of Human Right's most important powers for the protection of human rights. The Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") has exercised this power since its first decisions, and it is an essential tool for ensuring compliance therewith. The stage of monitoring compliance with judgments has become a central aspect of the protection of the human rights of the people of the Americas. This is not only because it guarantees, in the specific case in which the State is a party, "that the injured party [is] ensured the enjoyment of his right or freedom that was violated[;] that the consequences of the measure or situation that constituted the breach of such right or freedom [are] remedied[;] and that fair compensation [is] paid to the injured party,"[1] but also that a judgment's *effet utile* is spread to the other State parties, thus promoting the full effectiveness of human rights.

2. An evaluation of the procedure for monitoring compliance with the judgments issued by the Court, reinforced by hearings held for that purpose, leads me to declare that this tool has become a vital and successful mechanism.[2] By means of this mechanism, a new dynamic has been embedded into this stage, facilitating and promoting significant advances in the implementation of measures to comply with that ordered by the Court in its decisions, and generating participatory spaces for dialogue and agreement between State authorities and the victims or their representatives. This new dynamic has been regarded in a very positive light by the different actors involved in cases before the Court. In relation to the above, it is worth noting that the General Assembly of the Organization of American

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[1] Article 63 of the American Convention on Human Rights.

[2] The unchanging practice of the Court since 1989 has been to request reports from the State. Generally, this begins with a first report that must be submitted to the Court within a year from the date on which the Judgment is served. Subsequently, the observations of the victims or their representatives and of the Inter-American Commission on Human Rights are requested. Once the necessary information is obtained, the Court issues an Order evaluating the degree of process in compliance with its orders and ruling that conducive to moving forth with the measures that are still pending compliance. Even though this process was carried out mainly in writing, as of 2007, the Court implemented an innovating mechanism that consists of holding hearings for monitoring compliance with the judgments. At these hearings the parties have the opportunity of directly hearing their positions and reacting to them, and the Court has the possibility of "sugg[esting] alternativ[e] [solutions], call[ing] […] attention [to] non-compliance [due to a] lack of willingness, promo[ting] the preparation of compliance schedules for the parties involved […], and even [offering] its premises for the parties to hold conversations, which, on many occasions, are very difficult to arrange with the State involved." (*Cf.* Annual Report of the Inter-American Court of Human Rights for 2010, page 10). This practice was consolidated in Article 69(3) of the current Rules of Procedure, which expressly establishes the possibility that the Court may convene a hearing when it deems pertinent. (*Cf.* Rules of Procedure approved by the Inter-American Court in its LXXXV Regular Period of Sessions held from November 16 to 28, 2009).

States has repeatedly mentioned, since 2009, "the important and constructive practice begun by the Inter-American Court of Human Rights to hold closed hearings on the monitoring of compliance with its judgments, and the outcomes thereof."[3] In addition, it has encouraged "[t]he hearings held to monitor compliance with judgments as one of the most effective mechanisms to promote compliance [therewith]."[4]

3. As an illustration of the importance of this faculty of the Court, it is worth recalling the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. In this case, as a consequence of a private hearing held and a meeting for dialogue at the Court's seat, the State assumed a series of commitments aimed at executing the only operative paragraph of the Judgment pending compliance. This resulted in full compliance with the Judgment and the closing of the case seven months after the hearing, with the demarcation and titling of over 70,000 hectares, in conformity with the Order issued by the Court on April 3, 2009.[5] Similarly, in the case of *Valle Jaramillo v. Colombia,* during the private hearing, the State and the representatives came together for dialogue and agreement towards the implementation of the reparation measure of granting of a scholarship to study or receive training in a trade, which led less than a month after to the joint presentation of an agreement for alternative compliance with the measure, agreement that was subsequently deemed admissible by the Court.[6] In addition, after the private hearing held in the case of *Vargas Areco v. Paraguay*, the Court recognized, with regard to the obligation to pay interest on the compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses paid after the date due, "the will[ingness] of the parties to achieve progress on this point based on an agreement, and [indicated that it awaited] updated information on efforts and results achieved regarding the [State's] compliance with this aspect of the reparation."[7]

4. The confirmation of the occurrence of human rights violations by the Inter-American Court, through the exercise of its contentious jurisdiction, has led the Court to order, in conformity with Article 63 of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), different types of measures that tend to satisfy the idea of integral reparation. This includes not only pecuniary compensation, but also measures of a different nature seeking restitution, rehabilitation, satisfaction, and non-repetition of the proven violations. The implementation of these measures entails, as indicated, a gradual process over time of a complex nature, in which, in many cases, all State

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[3] General Assembly, Resolution AG/RES. 2500 (XXXIX-O/09) approved in the fourth plenary session held on June 4, 2009, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," pg 3; Resolution AG/RES. 2587 (XL-O/10) approved in the fourth plenary session held on June 8, 2010, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," pg. 2, and Resolution AG/RES. 2652 (XLI-O/11) approved in the fourth plenary session held on June 7, 2011, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," para. 6.

[4] General Assembly, Resolution AG/RES. 2500 (XXXIX-O/09), *supra* note 3, operative paragraph five; Resolution AG/RES. 2587 (XL-O/10), *supra* note 3, operative paragraph five, and Resolution AG/RES. 2652 (XLI-O/11), *supra* note 3, operative paragraph six.

[5] *Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 3, 2009, Operative Paragraphs 1 and 2.

[6] *Cf. Case of Valle Jaramillo v. Colombia.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 28, 2011, Considering clauses 34 to 37; and *Case of Valle Jaramillo v. Colombia.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 15, 2011, Considering clauses 6 to 11.

[7] *Cf. Case of Vargas Areco v. Paraguay.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering clause 39.

bodies need to participate. This is because in the implementation of reparation measures, different organs and institutions of the States – whether central or federal and at different levels- as well as the different branches established in their political constitutions can be involved.

5. As previously mentioned, due to its complex nature, this compliance process cannot be analyzed in an isolated manner or under abstract academic or mathematical logic, or by turning deadlines into objectives in and of themselves, but taking into account the different variables and factors that lead to full compliance with a Judgment issued by the Inter-American Court. For example, in relation to judicial investigation proceedings and, if applicable, the subsequent punishment of gross human rights violations (where the rights of third parties are involved), or to those reparations that require legal amendments or the design and implementation of public policies, these are complex processes in which it is essential to verify their general purpose and to follow them.

6. This reality does not imply that States can shield themselves with the slow pace of domestic institutional proceedings or complex institutional tangles in order to avoid compliance with that ordered. The Court's experience has demonstrated that compliance with these reparations entails a process in which the Court's persistence in the meticulous job of monitoring implementation of reparation measures ordered is of utmost importance. Monitoring compliance with the reparation measures ordered in the judgments issued by the Inter-American Court, as an area of jurisdiction inherent to its judicial function, is a fundamental stage for achieving the *effet utile* of its decisions in the domestic sphere. Conversely, the search for comprehensive reparation can become diluted if there is no adequate, timely, effective, and rigorous supervision. For this reason, it has become necessary to adopt specific procedures and appropriate mechanisms that allow the Court to exercise in an increasingly rigorous manner its function –and judicial duty- of monitoring in accordance with the mandate established in the American Convention, its Statute and Rules of Procedure, and at the same time, of guiding and supporting the States and the victims of human rights violations in obtaining full compliance with its orders in the most prompt and agile manner.

7. Article 65 of the American Convention is clear in ordering the Court to submit to consideration of the General Assembly of the Organization of American States a report on its work during the previous year, indicating the cases in which a State has not complied with its decisions. This does not require much commentary or analysis, as the content of this provision is evident from its text. What is important to highlight is that in order to be able to seriously comply with this mandate and to not abdicate the Court's function of guaranteeing compliance with its decisions, the stage of monitoring compliance with the judgment allows the Inter-American Court, precisely, to assess the degree of compliance with the reparations ordered and determine the time, if applicable, when the jurisdiction of the Court may be considered exhausted and thus be transferred to the General Assembly. Similarly, the monitoring of compliance with judgments and the active work of the Court in this area allow the Tribunal, precisely, and as has been regularly done, to present before the General Assembly each year, through its Annual Report on its work, the status of compliance with its judgments.

8. In this regard, the application of Article 65 of the Convention, to the effect of specifically pointing out a State to the General Assembly so that the latter may act in its capacity as collective guarantor of the Inter-American system, is limited to those exceptional cases in which a State's effective reluctance or refusal to comply with a judgment is proven. This situation has occurred in specific cases

and under very definite circumstances throughout the history of the Inter-American Court. Only when faced with a State's express refusal to fully or partially comply with that ordered, in addition to the failure of all means of supervision possible, has the Court resorted to the application of Article 65 of the American Convention, and it has understood that in such cases, it is not appropriate to continue requesting that State to provide information regarding its compliance with the judgment under consideration.[8] In my opinion, in this case, this threshold has not been met.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Registrar

[8] Order of the Inter-American Court of Human Rights of June 29, 2005. Monitoring Compliance with Judgments (Applicability of Article 65 of the American Convention on Human Rights).

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF 23 NOVEMBER 2011,
CASE OF THE SARAMAKA PEOPLE *V.* SURINAME
MONITORING COMPLIANCE WITH JUDGMENT

Introduction.

The undersigned concurs, in this Opinion, with the Order indicated in the title, hereinafter "the Order," in the understanding that according to pertinent norms and in light of the extended, and therefore imprudent or unreasonable, amount of time elapsed since the issuance of the Judgment at hand without the State concerned, hereinafter "the State," having complied with its fundamental orders, the Inter-American Court of Human Rights, hereinafter "the Court," should inform the General Assembly of the Organization of American States, hereinafter "the General Assembly of the OAS," of this lack of compliance.

I.- The norms.

Indeed, Article 65 of the American Convention on Human Rights, hereinafter "the Convention," establishes:

> *"To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations."*

For its part, Article 30 of the Court's Statute, hereinafter "the Statute," states:

> *"Report to the OAS General Assembly*
> *The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court."*

As is evident, both norms establish a strict obligation, and not a power, for the Court. The Court cannot, and certainly does not, escape the obligation of submitting an annual report to the General Assembly of the OAS on the work it has carried out during the preceding period.

The formulation used in both articles is significant in this respect, as it is expressed in the imperative, that is, it states that the Court *"shall submit"* said report to the General Assembly of the OAS.

The abovementioned norms establish, also, that in the annual report, the Court must indicate the cases in which a State has not complied with the decisions of the Court in the corresponding year. Again, both texts use an imperative formulation, that is, that the Court *"shall indicate"* those cases. We are speaking, then, of another obligation, and not another power, of the Court.

And it is appropriate to reiterate that this indication must be done in the corresponding annual report in those cases, such as the one at hand, in which not only has the established deadline expired, but too much time has passed, more than what could be considered prudent or reasonable, without the State having complied with the Judgment's fundamental aspects.

Obviously, this obligation is not fulfilled by the inclusion, in the annual report, of a list of the cases in proceedings for monitoring of compliance or by the attachment, as annexes, of the orders issued. This is because the norms transcribed are categorical in stating that the Court must "indicate" the cases in which the corresponding judgments have not been complied with. This is not fulfilled by the mere attachment of information.

II.- Jurisdiction of the General Assembly of the OAS and of the Court.

On this point, it should be recalled that the Inter-American Human Rights System gives the General Assembly of the OAS jurisdiction to adopt the measures it deems appropriate in order to achieve compliance with the judgments of the Court. It thus understood that a lack of compliance with those judgments was an issue under the competence of that political organ, and not under the competence of this judicial organ, as it relates to a sovereign State's compliance with a commitment undertaken by virtue of Article 68(1) of the Convention, which states:

> *"The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."*

It is for that reason that the Convention limits the Court's jurisdiction in the case before it once it has issued a judgment thereon:

Indeed, Article 67 states:

> *"The 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."*

That is, the only recourse available against the Court's decision is the request for interpretation submitted, as is logical, before the very Court.

For their part, the Court's Rules of Procedure, hereinafter "the Rules of Procedure," issued by the Court [1] in accordance with the power granted in the Statute,[2] allow specific conducts on the part of the Court once it has issued a judgment. Thus, in addition to serving notice of the judgment,[3] the Court may issue a judgment on reparations and costs if it has not done so,[4] interpret either or both these judgments,[5] monitor compliance therewith,[6] and

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[1] Approved by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.

[2] Art. 25**: "***Rules and regulations. …*

3. The Court shall also draw up its own Regulations."

[3] Art. 67: *"Delivery and Communication of the Judgment.*

1. When a case is ready for judgment, the Court shall deliberate in private and approve the judgment, which shall be notified by the Secretariat to the Commission; the victims or alleged victims, or their representatives; the respondent State; and, if applicable, the petitioning State

….

6. The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States Parties; the Commission; the victims or alleged victims, or their representatives; the respondent State; the petitioning State, if applicable; the Permanent Council through its Presidency; the Secretary General of the OAS; and any other interested person who requests them."

[4] Art.66: *"Judgment on reparations and costs.*

1. When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon. …."

[5] Art. 68: *"Request for Interpretation.*

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

2. The Secretary shall transmit the request for interpretation to all those participating in the case and shall invite them to submit any written comments they deem relevant within the time limit established by the Presidency.

3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same Judges who delivered the judgment whose interpretation is being sought. However, in the event of death, resignation, impediment, recusal, or disqualification, the judge in question shall be replaced pursuant to Article 17 of these Rules.

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

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

[6] Art. 69: *"Monitoring Compliance with Judgments and Other Decisions of the Court.*

1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations to those reports by the victims or their legal representatives. The Commission shall present observations to the State's reports and to the observations of the victims or their representatives.

correct obvious mistakes in the editing or calculations made.[7] This is, then, all that the Court may do with respect to a judgment it has issued. This is the case not only because of the principle that in Public Law, a body can only do what a norm permits, but also because of the principle of legal certainty involved in the issuance of a judgment, expressed in that it is definitive for the issuing tribunal, as well.

Therefore, logically, it must be understood that the proceedings for monitoring compliance with judgments established in the Rules of Procedure must be in accordance with Article 65 of the Convention and Article 30 of the Statute, that is, carried out so that the Court may indicate, in its annual report to the General Assembly of the OAS, the States that have not complied with its judgments in the corresponding period, and not so that it may escape this obligation.

This mechanism established in the Rules of Procedure cannot, then, hope to substitute the jurisdiction, established in the Convention, of the General Assembly of the OAS on the matter, even under the pretext that this latter organ does not exercise its jurisdiction or does not exercise it in due form. It is not for the Court to judge the actions of this political body, the highest body of the Organization.

III.- Insufficiencies and risks of the established mechanisms.

Nor can the cited mechanism provided for in the Rules of Procedure find its justification in that the applicable norms of the Convention do not establish a more adequate mechanism to effectively guarantee compliance with the Court's judgments, as this latter organ has competence only to apply and interpret the Convention,[8] and not to modify it, a function which is the exclusive responsibility of the States Parties thereto.[9] This is so

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2. The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate.

3. When it deems it appropriate, the Tribunal may convene the State and the victims' representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.

4. Once the Tribunal has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders.

5. These rules also apply to cases that have not been submitted by the Commission."

[7] Art. 76: *"Rectification of errors in judgments and other decisions.*

The Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified."

[8] Art. 62 of the Convention: "*1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding*, ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention. 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court. 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."*

[9] Art. 76 *Idem*: *"1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General. 2.*

much so, that Article 30 of the Statute, after alluding to the annual report and to the indication of the cases in which States have not complied with the Court's judgments, adds in the same paragraph that the Court "*may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.*" That is, if the Court considers that the current system is inefficient or inadequate, the proper course is to propose the modifications of that system that it considers necessary to the General Assembly of the OAS, and not that it alter, through the Rules of Procedure, what has been established in the Convention and the Statute.

Similarly, it is not appropriate to transform the regulatory mechanism of monitoring compliance with judgment into the prolongation of the proceeding in which a judgment has already been delivered, or into a new proceeding or, finally, into a device that, all things considered, entails both an excuse for not informing the OAS General Assembly of the failure to comply with the Court's rulings, and grants the State an extension, without any time limit, to comply with the judgment. And this is because, in this hypothesis, on the one hand, the victims of the human rights violations are placed in a situation of disadvantage, because they must continue litigating, this time against arguments relating to domestic law that the State usually invokes in order not to comply with the Court's decision and that obviously were not admissible in the proceeding itself[10] and, on the other hand, the Court itself is placed in a position in which, without having the necessary powers to enforce compliance with its judgments, it must resort to entreaties or to political pressure in order to make the State in question honor the commitment to

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Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification."

Art. 39 of the Vienna Convention on the Law of Treaties*: "General rule regarding the amendment of treaties.*

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide."

Art. 40 *idem*: "*Amendment of multilateral treaties* .

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement."

[10] Art. 27 idem: "*Internal law and observance of treaties.*
A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

comply with them that it assumed freely and of its sovereign will.[11] Consequently, the said mechanism cannot divest the final judgment of its intrinsic value as "*final and not subject to appeal*,"[12] or affect the dignity of the Court's function.

Furthermore, in particular, prolonging the regulatory mechanism of monitoring compliance with judgment without informing the OAS General Assembly about the failure to comply with it, as has occurred in this case, cannot be justified given that the Court has many cases of this kind still open, so that, providing this information in one of them, would oblige it to do so also in most of the others, which could give rise to a major political problem in the inter-American system as well as implying recognition of the inefficiency of the human rights judicial system.

And that circumstance cannot be used as a justification in this matter, because it is political in nature (a domain that is prohibited to the Court), rather than juridical, which is the only domain that pertains to it.

IV. Responsibilities.

But, furthermore, it is not appropriate to invoke that circumstance, because, this would suppose that the issue of compliance with judgments is a matter that is the exclusive responsibility of the Court and not of the States; in other words, that the inefficiency of the human rights judicial system in this regard would be a matter that the Court should resolve rather than the States.

In other words, the provisions of Articles 65 of the Convention and 30 of the Court's Statute have the precise objective that the OAS General Assembly, namely, the States, should be officially informed of and, consequently, assume the problem of non-compliance, in some cases, with the judgments of the Court, and adopt, if they deem pertinent, the corresponding measures. Moreover, it is the States, of their sovereign will, that have assumed the obligation established in Article 68(1) of the Convention. Thus, the problem is their responsibility and it corresponds to them to resolve it. This is the system established in the Convention and, therefore, the Court should not prevent its normal functioning, but rather permit it to operate effectively. Consequently, the appropriate course is to allow the institutional framework provided for in the Convention to operate as it was established.

Similarly, the fact that the Court has already established a consistent and unvarying precedent in this regard would not be admissible, in order to justify failing to inform the OAS General Assembly in cases such as this of non-compliance with the judgment. Furthermore, as it has stated on other occasions,[13] not only is the Court unable to modify the provisions of the Convention, but its case law does not create law,[14] and is only

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[11] Art. 26 *idem: "Pacta sunt servanda".*
"Every treaty in force is binding upon the parties to it and must be performed by them in good faith.
[12] Art. 67 of the Convention.
[13] *Dissenting opinion of Judge Eduardo Vio Grossi with regard to the judgment of the Inter-American Court of Human Rights on merits, reparations and costs. Case of Barbani Duarte et al. v. Uruguay, of October 12, 2011, III. General considerations.*
[14] Art. 38.1.d. of the Statute of the International Court of Justice*: "1.The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: …d. subject to the provisions of Article 59, judicial*

binding for the case to which it refers,[15] and obviously may be amended by the Court itself, since there is no impediment to this, except the eventual preference that the Court could adopt in favor of a more conservative position in this regard.

Furthermore, it is not appropriate to invoke respect for human rights or the *pro homine* principle[16] as justification to prolong indefinitely, as in this case, the regulatory mechanism of monitoring compliance with judgment, without advising the OAS General Assembly as established in Article 65 of the Convention and 30 of the Statute. And this is because Article 65 does not include the hypothesis to apply that principle in the instant case; in other words, the mechanism of monitoring compliance with judgment is not a right recognized in the Convention, but rather an instrument provided by the Rules of Procedure (not by the Convention or the Statute), to allow the Court to comply in a more effective way with the obligation imposed on it by Articles 65 of the Convention and 30 of the Statute with regard to the OAS General Assembly, and thus liable to be required by the latter.

Lastly, it would not be justifiable to argue – in support of the position of not complying with the provisions of Articles 65 of the Convention and 30 of the Statute, even though a period that is more than prudent and reasonable has elapsed since the judgment was handed down without the State having executed the essential rulings – that a regulatory mechanism of monitoring compliance with judgment promotes and guarantees respect for human rights, which would not be the case if information were provided in the terms set out in those provisions.

Moreover, this argument would not be justifiable, because it disregards that, as stated on another occasion,[17] the best guarantee of respect for human rights is that the Court adjust its conduct strictly to the norms, especially those of the Convention that governs it. The unconditional respect for the "rule of law" that is required of the States in relation to human rights can also, and with greater reason, be required of the Court, especially when we recall, on the one hand, that its function is to impart justice in relation to human rights by applying the relevant law, and not to promote such rights, which falls within the competence of the Inter-American Commission on Human Rights,[18] or to

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decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law."

[15] Art. 59 *idem: "The decision of the Court has no binding force except between the parties and in respect of that particular case."*

[16] Art. 29 of the Convention: *"Restrictions regarding Interpretation.*
No provision of this Convention shall be interpreted as:
(a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
(b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

[17] See Note No. 13.

[18] Art. 41 of the Convention*: "The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:*
(a) to develop an awareness of human rights among the peoples of America;

create norms that improve the inter-American system for the promotion and protection of human rights, which corresponds, as indicated, to the States[19] and, on the other hand, that it is autonomous in the exercise of its function, which obliges it to be extremely rigorous in respecting the norms that regulate it, thereby providing a guarantee of impartiality and legal certainty.

Conclusion.

Evidently, all the foregoing is not meant to affirm that the mechanism of monitoring compliance with judgment embodied in the Rules of Procedure is not useful or even, in certain cases, effective. Nor does it affirm that the mechanism is inappropriate or that it contradicts the provisions of the Convention or the Statute. On the contrary, what is being affirmed is that its application does not exempt the Court from complying with the obligation established in Articles 65 of the Convention and 30 of the Statute and also that it has been established precisely to enable the Court to comply with the latter.

It should be recalled, in this regard, that monitoring entails *"ejercer la inspección superior en trabajos realizados por otros,"*[20] [Note: "To observe and check over a period of time," Oxford English Dictionary] so that, in this regard, moreover as the Rules of Procedure establish,[21] the Court should simply obtain information, especially by requesting reports on compliance with judgment and *"[o]nce [it] has obtained all relevant information, it shall determine the status of compliance with its decisions and issue the relevant orders."* This and nothing else, is and should be the purpose of the said regulatory mechanism and never that of avoiding or postponing compliance with the provisions of Article 65 of the Convention and 30 of the Statute. The objective of these norms is to allow the OAS General Assembly to adopt the decisions it deems appropriate in relation to failure to comply with the judgments of the Court and, consequently, this is what should be sought.

One last observation. Evidently, and in view of the said purpose, it could also be considered that the fact that the Court informs the OAS General Assembly of cases in which its judgments have not been complied with within the corresponding time frame, does not preclude the Court from continuing to use the regulatory mechanism of monitoring compliance with judgment in pertinent cases. In other words, it does not exclude the possibility that the Court continue, in the following sessions, to implement

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(b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

(c) to prepare such studies or reports as it considers advisable in the performance of its duties;

(d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

(e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

(f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

(g) to submit an annual report to the General Assembly of the Organization of American States."

[19] See Note No. 9.

[20] *Diccionario de la Lengua Española*, Real Academia Española, 2001 edition.

[21] Art. 69.

the respective regulatory monitoring procedure, in which case, it must indicate, in its subsequent annual reports, whether the non-compliance persists and, thus, contribute to the above-mentioned purpose, which is that the OAS General Assembly proceed to act, if it deems pertinent and in keeping with its powers, in the matter.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Registrar