

Saramaka People v. Suriname

ABSTRACT¹

This case addresses indigenous peoples' rights to their land and their struggle against encroachment by mining and logging companies carrying out activities on their territory on the basis of concessions granted by the State without consultation with the indigenous people. The Court found State committed violations of the American Convention against the members of the Saramaka people, a tribal community living in the Upper Suriname River region, by failing to adopt effective measures to recognize the Saramaka people's right to the use and enjoyment of the territory they traditionally occupied and used. The State also failed to provide the Saramaka people with the right to effective access to justice for the protection of their fundamental rights, particularly the right to own property in accordance with their communal traditions. Lastly, the State failed to adopt domestic legal provisions in order to ensure and guarantee such rights to the Saramaka people.

I. FACTS

A. Chronology of Events

June 15, 1982: Suriname adopts Decree L-1, which provides that the State will respect indigenous and tribal people's property rights when land is allocated to indigenous groups.²

1986: The State adopts decrees on mining that dictate property owners must be compensated when the State grants mining concessions on their

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2. Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 108-110 (Nov. 28, 2007).

land.³ In order to receive compensation, landowners must hold some form of registered right or title issued by the State.⁴ Many indigenous people do not qualify for compensation under the mining decrees, as they do not hold registered rights to their land.⁵

1987: The State adopts a new Constitution that does not explicitly guarantee land rights of the Saramaka tribe.⁶

1992: The State adopts the Forest Management Act (“Act”).⁷ The Act permits “community forest” grants to indigenous groups at the sole discretion of the Minister in charge of forest management.⁸ Under the Act, Community forest grants are revocable, and the State must only respect rights of tribal inhabitants “as much as possible.”⁹

During the 1990’s: The State of Suriname grants logging and mining contracts in the Upper Suriname River and Saramaka Territory, without consulting the Saramaka people.¹⁰ The State grants the concessions mainly to non-Surinamese companies such as Chinese Companies Tacoba Forestry Consultants and Ji Shen.¹¹ The Saramaka people first hear about the concessions when the employees of the third party companies arrive to begin operations.¹² The logging and mining operations increase water pollution, damage the forests, and restrict the Saramaka people’s access to the land they need to hunt, fish, and farm.¹³ The State does not oversee the proper application of forestry and environmental laws.¹⁴ The forestry concessions awarded by the State damage the environment and negatively impact on the lands that the Saramaka community traditionally use and occupy.¹⁵

B. Other Relevant Facts

3. *Id.* ¶ 111.

4. *Id.*

5. *See id.*

6. *Id.* ¶ 107.

7. *Id.* ¶ 112.

8. *Id.* ¶ 113.

9. *Id.* ¶¶ 113-114.

10. *Saramaka People v. Suriname*, Petition to the Court, Inter-Am. Comm’n H.R. Case No. 12.338, ¶ 107 (June 23, 2006).

11. *Saramaka People v. Suriname*, Admissibility Report, Report No. 9/06, Inter-Am. Comm’n H.R., Case No. 12.338, ¶ 205 (March 2, 2006).

12. *Id.* ¶ 69.

13. *Id.* ¶ 73.

14. *Id.* ¶ 76.

15. *Saramaka People v. Suriname*, Petition to the Court, ¶ 115.

The Saramaka people are one of the six distinct Maroon groups in Suriname whose ancestors were African slaves forcibly taken to Suriname during European colonization in the seventeenth century.¹⁶ The Saramaka people are organized in twelve matrilineal clans with an estimated population ranging from 25,000 to 34,000 members.¹⁷ The Saramaka clans are spread over sixty-three communities on the Upper Suriname River and in several displaced communities located to the north and west of this area.¹⁸

The Saramaka ancestral territory is necessary to the life and cultural identity for the Saramaka people who hunt, fish, farm, and also gather water, plants for medicinal purposes, oils, minerals, and wood from the territory.¹⁹ The Saramaka people regulate their community by their own norms, customs, and traditions.²⁰

II. PROCEDURAL HISTORY

A. Before the Commission

September 30, 2000: The Saramaka people submit a petition to the Inter-American Commission of Human Rights alleging that the State of Suriname violated their people's rights to property, cultural integrity, and due process.²¹ Petitioners also request that the Commission grant precautionary measures to suspend current and future logging and mining activity in Saramaka territory, because it threatens permanent and irreparable damage to the cultural and physical safety of the Saramaka people.²²

August 8, 2002: The Commission adopts Precautionary Measures, and requests the State to suspend all concessions, including permits and licenses for mining and logging activities, and other activities exploiting natural resources in the lands used and occupied by the Saramaka

16. Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, ¶ 80.

17. *Id.*

18. *Id.*

19. *Id.* ¶ 82.

20. *Id.* ¶ 84.

21. Saramaka People v. Suriname, Petition to the Court, ¶ 11. The Petition to the Court and the Merits, Reparations, and Costs Judgment do not indicate the exact Article violations alleged by the victims. *See id.* ¶ 11; Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 1 (Nov. 28, 2007).

22. Saramaka People v. Suriname, Petition to the Court, ¶ 11.

clans.²³ The Commission also requests the State protect the physical safety of the Saramaka clans.²⁴

December 27, 2002: The State argues that the petition is inadmissible because the Saramaka people have not exhausted all domestic remedies.²⁵

October 15, 2003: The petitioners request provisional measures from the Inter-American Court of Human Rights requiring Suriname to suspend all logging and other natural resource development on the lands and territory owned and occupied by the Saramaka clans.²⁶

March 2, 2006: The Commission approves the Admissibility and Merits Report 09/06.²⁷ The Commission finds that the State violated Article 21 (Right to Property) of the American Convention by not adopting effective measures to recognize the Saramaka people's communal property right to lands they have traditionally occupied and used.²⁸ The Commission finds that the State violated the Saramaka peoples' right to judicial protection enshrined in Article 25 (Right to Judicial Protection) of the American Convention by not providing them effective access to justice for the protection of their fundamental rights.²⁹ Finally, the Commission finds these violations in relation to Articles 1 (Obligation to Respect Rights) and 2 (Domestic Legal Effect) of the American Convention by failing to recognize or give effect to the collective rights of the Saramaka people to their lands and territories.³⁰

The Commission recommends that the State remove the legal provisions that impede protection of the right to property, and adopt domestic legislation and administration to protect the Saramaka people's right to communal property.³¹ The Commission also recommends that the State refrain from acts that might affect the right to property or integrity of the territory of the Saramaka people, repair the environmental damage caused by the logging concessions, and provide reparations and compensation to the Saramaka people.³² Finally, the Commission recommends that the State approve legislative and other

23. *Id.* ¶ 43.

24. *Id.* ¶ 44.

25. *Id.* ¶ 21.

26. *Id.* ¶ 33.

27. *Id.* ¶ 69.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* ¶ 70(1).

32. *Id.* ¶ 70(2)-(3).

measures needed to provide judicial protection and recognize the collective and individual rights of the Saramaka people in relation to the territory they have traditionally occupied and used.³³

B. Before the Court

June 23, 2006: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁴

1. Violations Alleged by Commission³⁵

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

2. Violations Alleged by Representatives of the Victims³⁶

Same Violations Alleged by Commission, plus:

Article 3 (Right to Juridical Personality) of the American Convention.³⁷

October 6, 2006: The State appoints Mr. Alwin Rene Baarh as judge *ad hoc*.³⁸

Sometime between September 2006 and March 2007: The State submits preliminary objections arguing that the petitioners lack legal standing before the Commission; the representatives lack legal standing before the Court; irregularities occurred during the proceedings before the Commission; the application did not comply with Articles 50 and 51

33. *Id.* ¶ 70(4).

34. *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

35. *Id.* ¶ 3.

36. *Id.* ¶ 4. Mr. Fergus MacKay, Mr. David Padilla, and the Association of Saramaka Authorities served as representatives of the Saramaka people.

37. *Id.* ¶ 4. The victims argued that the State also violated Article 3 (Right to Juridical Personality) of the American Convention by “failing to recognize the legal personality of the Saramaka people.”

38. *Id.* ¶ 6 n.3.

of the American Convention; domestic remedies were not exhausted; the duplication of international proceedings; and the Court's lack of jurisdiction *ratione temporis*.³⁹

November 28, 2007: The Court unanimously dismisses the State's preliminary objections.⁴⁰ Regarding the petitioner's alleged lack of legal standing before the Commission, the State asserts that the Association of Saramaka Authorities and the twelve Saramaka Captains do not have standing before the Commission because they did not consult the paramount leader of the Saramakas, the *Gaa'man*, about filing the petition.⁴¹ The Court finds that the Saramaka people can be considered a "group of persons" under Article 44 of the Convention for purposes of petitioning to the Commission and that the petitioners do not need to obtain authorization from the *Gaa'man* in order to file a petition before the Commission.⁴²

Regarding the representatives' alleged lack of legal standing before the Court, the State asserts that only the State and the Commission may bring a case to the Court and appear before this Tribunal in accordance with Article 51 and 61 of the Convention.⁴³ The Court finds that because the alleged victims are subjects of international rights law, they have a right of access to justice and preventing them from advancing their own legal arguments would be an undue restriction of that right.⁴⁴ The Court limits the alleged victims' participation to the facts already included in their application and holds that their participation does not infringe on the State's right to defend itself.⁴⁵

Regarding the irregularities in the proceedings before the Commission, the State contends that the Commission accommodated the alleged victims by allowing multiple petitions and by allowing Mr. David Padilla, the former Assistant Executive Secretary of the Commission, to advise and counsel the petitioners, while failing to respond to State's requests and submissions.⁴⁶ The Court finds that the State has not demonstrated how the Commission's behavior with regard to the parties has implicated an error that has affected the State's right

39. *Id.* ¶¶ 19-59.

40. *Id.*

41. *Id.* ¶ 19.

42. *Id.* ¶¶ 22-24.

43. *Id.* ¶ 25.

44. *Id.* ¶ 26.

45. *Id.* ¶¶ 27-28.

46. *Id.* ¶ 30.

of defense during the proceedings before the Commission.⁴⁷

Regarding the non-compliance with Articles 50 and 51 of the American Convention, the State asserts that the application should be barred because it was submitted after the three-month period established in Article 51(1) American Convention.⁴⁸ The Court finds that because the Article 50 report was transmitted to the State on March 23, 2006 and the case was referred to the Court on June 23, 2006, it was within the three-month timeframe established under Article 51(1) of the American Convention.⁴⁹ Furthermore, the State maintains that the Commission did not take into consideration the State's submission describing its implementation of the recommendations of the Commission's Article 50 report.⁵⁰ The Court dismisses the preliminary objection in this regard as well because there is no evidence that the Commission failed to comply with the relevant provisions of the Convention or its Rules of Procedure.⁵¹

Regarding the State's assertion that the petitioners did not exhaust the domestic remedies before filing a petition, the Court finds that because the State did not raise this objection in its first submission in the proceedings before the Commission, the State has tacitly waived the issue of non-exhaustion of domestic remedies.⁵²

Regarding the State's assertion of duplication of international proceedings, the Court finds that because the object, purpose, and nature of the complaints lodged with the United Nations Human Rights Committee and the United Nations Committee on Elimination of Racial Discrimination are not the same as the petition submitted before the Court, *litis pendentia* does not apply.⁵³ Similarly, because no identity between subjects or objects of this and a previous case can be found, *res judicata* does not apply.⁵⁴

Regarding the State's assertion of lack of jurisdiction *ratione temporis* over the construction of the Afobaka dam, the Court finds that it is not competent to hear the alleged violations as to the construction of the Afobaka dam in the present case because the Commission did not

47. *Id.* ¶ 32.

48. Article 51(1) sets forth a maximum three-month period in which the Commission can submit a case to the Court; After the three months have passed, the Commission's capacity to submit a case to the Court expires. *Id.* ¶ 34.

49. *Id.* ¶ 37.

50. *Id.* ¶ 39.

51. *Id.* ¶ 40.

52. *Id.* ¶ 44.

53. *Id.* ¶¶ 45-54.

54. *Id.* ¶¶ 56-57.

include such facts in its application.⁵⁵

III. MERITS

A. *Composition of the Court*⁵⁶

Sergio García Ramírez, President
Cecilia Medina Quiroga, Vice-President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 28, 2007: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁵⁷

The Court found unanimously that Suriname had violated:

Article 21 (Right to Property), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effect) of the Convention, to the detriment of the Saramaka people,⁵⁸ because:

The Court's jurisprudence regarding indigenous peoples' right to communal property applied to the Saramaka people as a tribal community because they share distinct social, cultural, and economic characteristics, and have a special relationship with their ancestral territories.⁵⁹ These property rights require special measures to guarantee physical and cultural survival under international human rights law.⁶⁰

55. *Id.* ¶ 61.

56. *Id.* ¶ 1. By reason of *force majeure*, *ad hoc* Judge Alwin Rene Baarh was not able to participate in the deliberation and signing of the Judgment. *See id.* ¶ 1 n.*.

57. *Id.*

58. *Id.* ¶¶ 78-158.

59. *Id.* ¶ 86.

60. *Id.*

The State failed to recognize the Saramaka peoples' property rights.⁶¹ The domestic legislation⁶² that recognizes certain interests of the members of tribal peoples to the land was not sufficient to guarantee the Saramaka people the right to effectively control their territory without outside interference.⁶³

The State additionally violated Article 21 (Right to Property) in conjunction with Article 1 of the Convention by allowing logging and mining companies to explore and extract natural resources found on Saramaka territory.⁶⁴ The State may only restrict the Saramaka peoples' use and enjoyment of the right to property where the restrictions previously established by law are necessary and proportional, and where the restriction does not deny the Saramaka peoples' survival.⁶⁵

The State violated Article 21 (Right to Property) because it did not abide by the three mandated safeguards when granting concessions.⁶⁶ First, the State did not ensure the effective participation of the Saramaka people.⁶⁷ The State failed to consult the Saramaka people regarding development or investment plans in their territory and also failed to obtain their free, prior, and informed consent to large-scale projects with a major impact.⁶⁸ Second, the State did not reasonably share the benefits of development or investment projects with the Saramaka people.⁶⁹ Third, the State did not ensure that independent and capable entities performed a prior environmental and social impact assessment before issuing a concession.⁷⁰

Article 3 (Right to Juridical Personality), in relation to Articles 1(1) (Obligation to Respect Rights), 2 (Domestic Legal Effect), 21 (Right to Property), and 25 (Right to Judicial Protection) of the Convention, to the detriment of the Saramaka people,⁷¹ because:

The State did not recognize the right of the Saramaka people to enjoy

61. *Id.* ¶ 116.

62. The State referred to the 1987 Constitution, the L-1 Decrees of 1982, the Mining Decree of 1986, and the Forest Management Act of 1992. *Id.* ¶ 106.

63. *Id.* ¶ 115.

64. *Id.* ¶ 158.

65. *Id.* ¶¶ 127-128.

66. *Id.* ¶ 129.

67. *Id.* ¶¶ 133-134.

68. *Id.*

69. *Id.* ¶ 138.

70. *Id.* ¶ 129.

71. *Id.* ¶¶ 159-175.

and exercise the use of their property as a community, which places them in a vulnerable position where individual property rights may trump their rights over communal property.⁷² The Court decided that the State must recognize the Saramaka people's juridical personality to ensure that they are able to enjoy their territory in accordance with their own traditions.⁷³ As a result, the Court found that the state violated Article 3 (Right to Juridical Personality).⁷⁴

Article 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation to Respect Rights) and 21 (Right to Property) of the Convention, to the detriment of the Saramaka people,⁷⁵ because:

The State did not afford the Saramaka people effective judicial recourse against acts that violate their fundamental rights.⁷⁶ Suriname's Civil Code was inadequate to remedy alleged violations of the Saramaka peoples' communal property rights because it did not recognize their legal personality nor their legal right to communal property.⁷⁷ The Mining Decree of 1986 was an inadequate source of legal protection for the Saramaka people because they do not hold title to their traditional territory and therefore cannot qualify as a rightful claimant or a third party in order to appeal decisions about their land to the judiciary.⁷⁸ Though the Forest Management Act of 1992 allows tribal groups to appeal to the President when their customary rights are not respected, this does not provide them with adequate and effective judicial remedies under Article 25 (Right to Judicial Protection).⁷⁹

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

72. *Id.* ¶ 173.

73. *Id.* ¶ 172.

74. *Id.* ¶¶ 159-175.

75. *Id.* ¶¶ 176-185.

76. *Id.* ¶ 177.

77. *Id.* ¶ 179.

78. *Id.* ¶ 183.

79. *Id.* ¶ 184.

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation

The Court indicated that the judgment in and of itself constitutes a *per se* form of reparation.⁸⁰ The Judgment served as a form of satisfaction that recognized that the State violated the rights of the members of the Saramaka people.⁸¹

2. Delimit, Demarcate, and Grant Collective Title Over the Territory of the Members of the Saramaka People

The Court ordered the State to delimit, demarcate, and title the Saramaka territory in accordance with Saramaka customary laws.⁸² During this process, the State must consult with and fully inform the Saramaka people.⁸³ The State must abstain from acts that might affect the existence, value, use, or enjoyment of the Saramaka territory.⁸⁴ The State must also review concessions granted to logging and mining companies in light of the present Judgment and evaluate whether a modification of the rights of these companies is necessary to preserve the survival of the Saramaka people.⁸⁵

3. Grant the Members of the Saramaka People Legal Recognition

The Court ordered the State to legally recognize the Saramaka people's collective juridical capacity to ensure the full exercise and enjoyment of their right to communal property and their collective access to justice.⁸⁶

4. Reform Current Laws

80. *Id.* ¶ 195.

81. *Id.*

82. *Id.* ¶ 194(a).

83. *Id.*

84. *Id.*

85. *Id.*; *see id.* ¶ 124.

86. *Id.* ¶ 194(b).

The Court ordered the State to remove or amend current legal provisions that impede the Saramaka peoples' protection of the right to property.⁸⁷ The State must adopt domestic legislation to protect and recognize the Saramaka people's right to hold collective title to their territory and resources.⁸⁸

The State must consult the Saramaka people and, when necessary, ensure they have the right to give or withhold their free, informed, and prior consent regarding development or investment projects that may affect their territory.⁸⁹ The Saramaka people should also reasonably share the benefits of such projects.⁹⁰

The State must adopt legislation to provide the members of the Saramaka people with effective recourse to enforce their right to the use and enjoyment of their communal property.⁹¹

5. Review Concession's Environmental and Social Impact

The Court ordered the State to ensure that independent and technically competent entities conduct environmental and social impact assessments prior to awarding concessions for any development or investment project within the traditional Saramaka territory.⁹² The Court additionally ordered the State to implement safeguards to minimize the damaging effects such projects may have on the survival of the Saramaka people.⁹³

6. Publish the Judgment

The Court ordered the State to translate its Judgment into Dutch and publish Chapter VII of the Judgment in the State's official gazette and in an additional national daily newspaper.⁹⁴ The Court also ordered the State to finance two radio broadcasts of the pertinent parts and operative paragraphs of the Judgment in the Saramaka language.⁹⁵ One of the broadcasts must be on a radio station accessible to the Saramaka people.⁹⁶

87. *Id.* ¶ 194(c).

88. *Id.*

89. *Id.* ¶ 194(d).

90. *Id.*

91. *Id.* ¶ 194(f).

92. *Id.* ¶ 194(e).

93. *Id.*

94. *Id.* ¶ 196(a).

95. *Id.* ¶ 196(b).

96. *Id.*

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must provide \$75,000 for the Saramaka community members for the considerable quantity of timber extracted from the Saramaka territory without consultation or compensation and for the material property damage from the logging concessions.⁹⁷

2. Non-Pecuniary Damages

The State must supply \$600,000 for a community development fund created for the benefit of the Saramaka people.⁹⁸ The Court awarded this amount as compensation for the suffering and distress the Saramaka people endured as a result of the struggle for legal recognition of their right to the territory they traditionally used and occupied, and because the State's domestic legal system did not protect them against violations of their right to communal property.⁹⁹ The community development fund will finance educational, housing, agricultural, and health projects as well as provide electricity and drinking water, if necessary, to the Saramaka people.¹⁰⁰

3. Costs and Expenses

The Court awarded \$15,000 to the Forest Peoples Programme for the costs they incurred in the present case.¹⁰¹

The Court awarded \$70,000 to the Association of Saramaka Authorities as an equitable and reasonable award for the costs and expenses related to the domestic and international proceedings.¹⁰²

4. Total Compensation (including Costs and Expenses ordered):

97. *Id.* ¶ 199.

98. *Id.* ¶ 200.

99. *Id.*

100. *Id.* ¶ 201.

101. *Id.* ¶ 206.

102. *Id.* ¶ 207.

\$760,000

C. Deadlines

The State must begin the process of delimitation, demarcation, and titling of Saramaka territory within three months from the notification of the Judgment, and complete the process within three years from such date.¹⁰³

The State must legally recognize the Saramaka people's collective juridical capacity within a reasonable amount of time.¹⁰⁴

The State must implement legislative reform to recognize the right of the Saramaka people to hold collective title of their traditional territory, to ensure the right of the Saramaka people to be effectively consulted and to give or to withhold their consent regarding development or investment projects, and provide the Saramaka people with adequate and effective recourse against acts in violation of their right to property within a reasonable amount of time.¹⁰⁵

The State must publish pertinent sections of the Judgment within a year from the notification of the Judgment.¹⁰⁶

The State must designate representatives¹⁰⁷ of an implementation committee to decide how community development fund projects will be implemented, within six months from the notification of the Judgment.¹⁰⁸

The State must allocate at least \$225,000 for the purposes of the development fund within one year from the notification of the Judgment.¹⁰⁹ The total amount must be allocated within three years from the notification of the Judgment.¹¹⁰

The State must reimburse costs and expenses directly to each organization within six months from the date of notification of the Judgment.¹¹¹

The State must submit a report to the Court on the measures

103. *Id.* ¶ 194(a).

104. *Id.* ¶ 194(b).

105. *Id.* ¶¶ 194(c)-(f).

106. *Id.* ¶ 197.

107. The implementation committee will be composed of three representatives, one selected by the victims, one selected by the State, and one jointly approved by the victims and the State. *Id.* ¶ 202.

108. *Id.*

109. *Id.* ¶ 208.

110. *Id.*

111. *Id.* ¶ 209.

adopted in compliance of the instant Judgment within one year from the notification of the Judgment.¹¹²

V. INTERPRETATION AND REVISION OF JUDGMENT

March 17, 2008: The State submitted a request to the Court for an interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹¹³

The State requested interpretation as to the meaning and scope of five issues.¹¹⁴ First, the State asked with whom it must consult to establish a mechanism to guarantee the effective participation of the Saramaka people.¹¹⁵ Second, the State asked to whom it must grant just compensation when only part of the Saramaka territory is affected by granted concessions.¹¹⁶ Third, the State asked to whom and for which development and investment projects it could grant concessions within the Saramaka territory.¹¹⁷ Fourth, the State asked under what circumstances it could execute a development and investment project in Saramaka territory, particularly in relation to environmental and social impact assessments.¹¹⁸ Finally, the State asked whether the Court considered the State's arguments regarding its alleged violation of the Saramaka people's right to juridical personality.¹¹⁹

A. Composition of the Court¹²⁰

Sergio García Ramírez, President

Diego García-Sayán, Judge

Leonardo A. Franco, Judge

Margarette May Macaulay, Judge

Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary

112. *Id.* ¶ 213.

113. Saramaka People v. Suriname, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 185, ¶ 1 (Aug. 12, 2008).

114. *Id.*

115. *Id.*

116. *Id.* ¶ 1(b).

117. *Id.* ¶ 1(c).

118. *Id.* ¶ 1(d).

119. *Id.* ¶ 1(e).

120. *Id.* ¶ 1. Judges Cecilia Medina Quiroga and Manuel E. Ventura Robles were present by reason of *force majeure*. *Id.* ¶ 1 n.*.

B. Merits

Regarding the establishment of a consultation mechanism, the Court reiterated that the State must actively consult with the Saramaka people in conformity with their customs and traditions so that the Saramaka people can inform the State of which persons or group of persons will represent them in each of the consultation processes.¹²¹

Regarding the beneficiaries of just compensation, the Court reiterated that the State must consult with the Saramaka people to resolve that question and comply in accordance with their traditional customs and norms.¹²²

Regarding to whom and for which development and investment projects the State may grant concessions within the Saramaka territory, the Court reiterated that the State has a duty to comply with its obligations under the American Convention as interpreted by the Court in light of the present case and other cases involving indigenous or tribal people's real property rights.¹²³

Regarding the granting of concessions in Saramaka territory, the Court reiterated and elaborated that prior environmental and social impact assessments must be conducted in order to assess possible damage, including cumulative impact, and create awareness of the risks of a project for the Saramaka people.¹²⁴ Regarding the acceptable level of impact, the Court held projects cannot deny the members of the Saramaka people the ability to survive as a tribal people.¹²⁵

Finally, regarding the State's arguments of its alleged Article 3 (Right to Juridical Personality) violation, the Court concluded that it could not address whether it considered the State's arguments because that would constitute an impermissible appeal of the judgment.¹²⁶ The Court did, however, direct the State to Operative Paragraph 6 of the Judgment for guidance in executing its obligation to grant members of the Saramaka people legal recognition of the collective juridical capacity.¹²⁷

VI. COMPLIANCE AND FOLLOW-UP

121. *Id.* ¶ 18.

122. *Id.* ¶¶ 25-26.

123. *Id.* ¶ 54.

124. *Id.* ¶ 40.

125. *Id.* ¶ 42.

126. *Id.* ¶ 61.

127. *Id.*

August 6, 2009: The State submitted a report to the Court on its compliance with the Judgment.¹²⁸

November 17, 2009: The State submitted three additional documents relating to its first periodic report.¹²⁹

April 20, 2010: The President of the Court required the State to provide additional updated information regarding the following: the State's efforts to delimit, demarcate, and grant collective title over the Saramaka territory; the State's progress towards effectively granting legal recognition to the members of the Saramaka people; the status of the State's drafted and pending legislation that give effect to the Saramaka people's property rights; projects being considered and currently authorized within Saramaka territory and their respective environmental and social impact assessments; the implementation of legislative, administrative, and other measures necessary to provide adequate and effective recourse against acts that violate the Saramaka people's right to enjoyment and use of property; and the publication of pertinent sections of the Judgment.¹³⁰

The President additionally required the State to provide additional updated information regarding the current status of the Development Fund and requested an accounting of all relevant monetary transfers regarding payment of material and non-material damages.¹³¹

The President acknowledged the State's reimbursement to each organization, but requested that the State verify alleged contradictions indicated by the Commission concerning the total payments.¹³²

The President decided to convene a private hearing with the Commission, the representatives of the victims, and the State on May 26, 2010.¹³³

May 13, 2010: The State submitted a report informing the Court of the status of its compliance with the Judgment.¹³⁴

September 2, 2010: The Court held a private hearing with the

128. *Saramaka People v. Suriname*, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 3 (Apr. 20, 2010).

129. *Id.*

130. *Id.* ¶¶ 11, 15, 19, 26, 30, 34.

131. *Id.* ¶ 38.

132. *Id.* ¶¶ 41-42.

133. *Id.* ¶ 44.

134. *Saramaka People v. Suriname*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am Ct. H.R. "Considering" ¶ 3 (Nov. 23, 2011).

Commission, representatives of the victims, and the State.¹³⁵

November 23, 2011: The Court found that the State had not complied with the obligation to delimit, demarcate, and title the traditional Saramaka territory by the deadline.¹³⁶ The State thus must submit updated and detailed information regarding its implementation of this obligation.¹³⁷

The Court found that despite repeated requests, the State failed to review concessions granted before the Judgment.¹³⁸ The Court also considered that because the State had not yet titled the territory, the granting of any new concessions without the Saramaka people's consent and without prior environmental and social impact assessments would constitute a direct contravention of the Court's decision.¹³⁹ The Court ordered the State to provide updated and detailed information regarding this obligation.¹⁴⁰ The Court also requested a detailed report of environmental and social impact assessments for each existing concession or development project.¹⁴¹

The Court ordered the State to provide a detailed report on the steps it is taking to comply with its obligations to change domestic law to recognize the Saramaka peoples' collective juridical capacity, give legal effect to the Saramaka people's right to property, to be consulted, and give or withhold consent, and to provide effective and adequate recourse against acts that violate their right to use and enjoy their property.¹⁴² The Court found that the State complied with its obligation to publish pertinent parts of the Judgment.¹⁴³ The Court also found that the State partially complied with the duty to allocate funds to a community fund for the Saramaka people.¹⁴⁴ The Court ordered the State to provide information regarding whether the \$75,000 was deposited into the community fund in order to fully comply with its obligation.¹⁴⁵ The Court found that the State complied with its obligation to reimburse costs and expenses.¹⁴⁶ The Court contemplated reporting the State to the General Assembly of the Organization of

135. *Id.* ¶ 6.

136. *Id.* ¶ 12.

137. *Id.*

138. *Id.* ¶ 17.

139. *Id.* ¶ 19.

140. *Id.* ¶ 20.

141. *Id.* ¶ 26.

142. *Id.* ¶ 30.

143. *Id.* ¶¶ 31-38.

144. *Id.* ¶ 42.

145. *Id.*

146. *Id.* ¶ 46.

American States for failure to comply with the Judgment, but did not do so.¹⁴⁷

In a concurring opinion, Judge Diego García-Sayán asserted that the Court should not report the State's partial compliance to the General Assembly because partial compliance is not an express refusal to comply with the Judgment.¹⁴⁸

In another concurring opinion, Judge Eduardo Vio Grossi stated that the Court should inform the General Assembly of the State's lack of compliance because the extended amount of time that has elapsed since the Judgment is imprudent and unreasonable.¹⁴⁹ The mechanism of monitoring compliance is not meant to extend the amount of time a State is allotted to comply with a judgment.¹⁵⁰

May 22, 2013: The representatives of the Saramaka people filed a brief requesting provisional measures.¹⁵¹ The representatives indicated that the State had taken action to intimidate and coerce the Saramaka to renounce their legal representatives and threatened the *Gaa'man's* salary if he did not renounce the representatives of the Saramaka people before the Court.¹⁵²

May 28, 2013: A private hearing on monitoring compliance with the Judgment of the case was held attended by the representatives of the Commission, the State, and the victims.¹⁵³

September 4, 2013: The Court found that the State's pressure on the Saramaka leaders to revoke their legal representation under the threat of salary termination did not meet the three requirements of extreme gravity, urgency, and irreparability of damage to life or personal integrity that would justify the adoption of provisional measures.¹⁵⁴

The Court reiterated that the State has a constant and permanent duty to comply with its obligations under Article 1(1) (Obligation to Respect Rights) of the Convention to respect and ensure the free and

147. See *Saramaka People v. Suriname*, Monitoring Compliance with Judgment, Concurring Opinion of Judge Diego García-Sayán, Inter-Am Ct. H.R. "Having Seen" ¶ 7-8 (Nov. 23, 2011).

148. *Id.*

149. *Saramaka People v. Suriname*, Monitoring Compliance with Judgment, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am Ct. H.R. "Having Seen" (Nov. 23, 2011).

150. *Id.*

151. *Saramaka People v. Suriname*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am Ct. H.R. "Having Seen" ¶ 6 (Sept. 4, 2013).

152. *Id.*

153. *Id.* ¶ 8.

154. *Id.* ¶¶ 14-15.

full exercise of the rights and freedoms recognized therein.¹⁵⁵

The Court found that it was unnecessary to grant the Saramaka people's requested provisional measure to prohibit the mining concession granted to the International African Mining Gold Corporation ("IAMGOLD") because the State is already under an obligation to comply with this monitoring compliance of the Judgment in this case.¹⁵⁶ The Court also ordered the State to submit a complete, detailed, and specific report on the alleged grant of mining concession within the Saramaka territory to IAMGOLD including information of scope of the concession, consultation of the Saramaka people, a prior environmental and social impact assessment, and the benefits to the Saramaka people.¹⁵⁷

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 172, \(Nov. 28, 2007\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Saramaka People v. Suriname, Monitoring Compliance with Judgment, Order of the Court, Inter-Am Ct. H.R. \(Sept. 4, 2013\).](#)

155. *Id.* "Considering That" ¶¶ 14-15.

156. *Id.* ¶ 23.

157. *Id.* ¶¶ 24-25.

[Saramaka People v. Suriname, Monitoring Compliance with Judgment, Order of the Court, Inter-Am Ct. H.R. \(Nov. 23, 2011\).](#)

[Saramaka People v. Suriname, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Apr. 20, 2010\).](#)

5. Review and Interpretation of Judgment

[Saramaka People v. Suriname, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 185 \(Aug. 12, 2008\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Saramaka People v. Suriname, Admissibility Report, Report No. 9/06, Inter-Am. Comm'n H.R., Case No. 12.338 \(March 2, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[Saramaka People v. Suriname, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.338 \(June 23, 2006\).](#)

VIII. BIBLIOGRAPHY

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T. Ward, *The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights Within International Law*, 10 NW. U. J. INT'L HUM. RTS. 54 (2011).

R. Price, *Saramaka People v Suriname: A Human Rights Victory and its Messy Aftermath*, CULTURAL SURVIVAL (July 30, 2013), <http://www.culturalsurvival.org/news/saramaka-people-v-suriname-human-rights-victory-and-its-messy-aftermath>.