

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF MOIWANA VILLAGE V. SURINAME**

**INTERPRETATION OF THE JUNE 15, 2005 JUDGMENT ON THE PRELIMINARY OBJECTIONS,  
MERITS AND REPARATIONS  
(ARTICLE 67 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)**

**JUDGMENT OF FEBRUARY 8, 2006**

In the *Case of Moiwana Village*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), composed of the following judges<sup>1</sup>:

Sergio García-Ramírez, President;  
Alirio Abreu-Burelli, Vice-President;  
Oliver Jackman, Judge;  
Antônio A. Cançado-Trindade, Judge;  
Cecilia Medina-Quiroga, Judge, and  
Manuel E. Ventura-Robles, Judge;

also present,

Pablo Saavedra-Alessandri, Registrar, and  
Emilia Segares-Rodríguez, Deputy Registrar;

---

<sup>1</sup> Judge Diego García-Sayán informed the Court that, due to reasons of *force majeur*, he was not able to be present during the deliberation and signature of the present Judgment.

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 59 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), the Court delivers the present decision regarding the request for interpretation of its June 15, 2005 judgment on preliminary exceptions, merits, and reparations in the *Case of Moiwana Village*, submitted by the State of Suriname (hereinafter "the State" or "Suriname") on October 4, 2005.

**I**  
**JUDGMENT ON THE PRELIMINARY OBJECTIONS, MERITS AND REPARATIONS**

1. On June 15, 2005, the Court delivered the judgment in the present case, which, in pertinent part:

DECIDE[D],

Unanimously,

1. To dismiss the State's preliminary objections.

DECLARE[D],

Unanimously, that:

1. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of that treaty, to the detriment of the Moiwana community members, in the terms of paragraph 103 of this judgment.

2. The State violated the right to freedom of movement and residence enshrined in Article 22 of the American Convention, in relation to Article 1(1) of that treaty, to the detriment of the Moiwana community members, in the terms of paragraph 121 of this judgment.

3. The State violated the right to property enshrined in Article 21 of the American Convention, in relation to Article 1(1) of that treaty, to the detriment of the Moiwana community members, in the terms of paragraph 135 of this judgment.

4. The State violated the rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of that treaty, to the detriment of the Moiwana community members, in the terms of paragraphs 163 and 164 of this judgment.

5. This judgment constitutes, *per se*, a form of reparation, in the terms of paragraph 192 of this judgment.

AND DECIDE[D],

Unanimously, that:

1. The State shall implement the measures ordered with respect to its obligation to investigate the facts of the case, as well as identify, prosecute, and punish the responsible parties, in the terms of paragraphs 202 – 207 of this judgment.

2. The State shall, as soon as possible, recover the remains of the Moiwana community members killed during the events of November 29, 1986, and deliver them to the surviving community members, in the terms of paragraph 208 of this judgment.

3. The State shall adopt such legislative, administrative, and other measures as are necessary to ensure the property rights of the members of the Moiwana community

in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories, in the terms of paragraphs 209 – 211 of this judgment.

4. The State shall guarantee the safety of those community members who decide to return to Moiwana Village, in the terms of paragraph 212 of this judgment.

5. The State shall establish a community development fund, in the terms of paragraphs 213 – 215 of this judgment.

6. The State shall carry out a public ceremony, whereby Suriname recognizes its international responsibility and issues an apology, in the terms of paragraphs 216 – 217 of this judgment.

7. The State shall build a memorial in a suitable public location, in the terms of paragraph 218 of this judgment.

8. The State shall pay the compensation ordered in paragraph 187 of the instant judgment to the Moiwana community members for material damages, in the terms of paragraphs 178 – 181 and 225 – 231 of this judgment.

9. The State shall pay the compensation ordered in paragraph 196 of the instant judgment to the Moiwana community members for moral damages, in the terms of paragraphs 178 – 181 and 225 – 231 of this judgment.

10. The State shall pay the compensation ordered in paragraph 223 of the instant judgment for costs, in the terms of paragraphs 223 – 231 of this judgment.

11. The Court will monitor compliance with this judgment and will close this case once the State has fully implemented all of the provisions. Within one year of the date of notification of this judgment, the State shall furnish the Court with a report on the measures taken in compliance therewith, in the terms of paragraph 232 of said judgment.

2. The judgment was notified to the State, the Commission and the representatives on July 14, 2005.

## II JURISDICTION AND COMPOSITION OF THE TRIBUNAL

3. Article 67 of the Convention provides that:

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

According to the foregoing Article, the Court has jurisdiction to interpret its own judgments. If possible, when examining a request for interpretation of a judgment, the Court should be composed of the same members who delivered the judgment of which the interpretation is being sought (Article 59.3 of the Rules of Procedure). In this case, the Court is composed of the same members that delivered the judgment on preliminary exceptions, merits, and reparations, the interpretation of which has been requested by the State (*supra* footnote 1).

### III THE REQUEST FOR INTERPRETATION

4. On October 4, 2005, the State of Suriname submitted a request for interpretation of the judgment on preliminary exceptions, merits, and reparations in the *Case of Moiwana Village*, as contemplated in Article 67 of the Convention and Article 59 of the Rules of Procedure.

5. In the request for interpretation, the State made, *inter alia*, the following comments:

The State acknowledges that the Convention specifically indicates that the judgment of the Court is not open to appeal. With the possibility to request an interpretation as to the meaning and scope of the judgment, the framers of the Convention gave the parties that disagree with the judgment the opportunity to petition your [...] Court.

[T]he Republic of Suriname states that it disagrees with specific parts of the Judgment of June 15, 2005, *Case of Moiwana Village v. Suriname*, taken by this [...] Court. The State respectfully requests the Court's interpretation to said parts of the judgment.

In order for the Court to hear a case, Article 61 section 2 of the Convention mandates that the procedures set forth in Articles 48 and 50 shall have been completed. The State argued in all previous communications during the proceedings and at the public hearing held in September 2004 before your [...] Court, that the Commission wrongly adopted a communication as an Article 50 Report. Based on said article 61 section 2 of the Convention, this wrongly adopted "Article 50 Report" serves as the bases to file the petition to your [...] Court. [...] The State must conclude that your [...] Court did not analyze the status or quality of said communication—the Article 50 Report—that was filed by the Commission as the basis for its petition to the Court in the issue at hand. Since the Convention explicitly demands that the procedures mentioned in Articles 48 and 50 of the Convention must be completed, as a *conditio sine qua non* for your [...] Court to exercise jurisdiction over a particular case, the State is of the opinion that your [...] Court must carefully review the procedures to determine whether the requirements mentioned in Articles 48 and 50 of the Convention are met by the Commission. Only after this analysis based on facts of law, it can be indicated that said requirements of the Convention are met by the Commission to file this case to the Court. Only then this will give your [...] Court the right as laid down in article 61 section 2 of the Convention to hear this particular case [...] The State has stated that it strongly disagrees with the determination of the Commission that said report must be labeled as an Article 50 Report. The State argued that the Commission wrongly incorporated several acts of State actors as falling under the Convention, while the State is of the opinion that if the violations occurred, they must be reviewed under the American Declaration of the Rights and Duties of Man (the Declaration), and not [under] the American Convention on Human Rights [...] In general this would not be problematic. However, Suriname was not a Convention-[S]tate on 29 November 1986, when the occurrences regrettably took place in the Village of Moiwana. As a member [s]tate of the OAS, the Declaration applies to these particular occurrences.

In addition, the State also argues that the communication labeled as an Article 51 Report by the [...] Commission, was not properly taken in conformity with the articles of the Convention, to serve as the prerequisite to petition your [...] Court in this particular case. An explanation of your [...] Court with regard to these two communications is not included in your judgment, and is tremendously important for the State. The State respectfully requests your [...] Court's interpretation/explanation on this matter.

In addition to Article 61 of the Convention, Article 57 of the Convention states: "The Commission shall appear in all cases before the Court." Based on the provision of the Convention it is clear that the only parties that may legitimately appear as an individual party before your [...] Court, are the Commission on behalf of the victim or its representatives and the States parties. Although the Republic of Suriname de facto does not have a problem by giving individuals the opportunity to address your [...] Court to

provide useful information as to facts and testimonies in a case, this can take place only through the Commission, because the Commission is the only party mentioned in the Convention that have locus standi before the Court on behalf of the victim or his or her representatives. The State is of the opinion that since the Convention takes precedents over internal regulations and or statutes of the [...] Commission and the [...] Court, no provisions against the text of the Convention can be adopted in these internal regulations and statutes. The State therefore argues that individuals can not be given locus standi as an individual party in the proceedings before your [...] Court [...]. Furthermore, the State points out that the issue of individual standing before the Court is important to the State, since small economies like Suriname does not have the financial resources, capability and time to hire high profile foreign international human rights attorneys, while the opposing parties are backed by financially strong organizations and institutions, with a variety of not only capital but also human resources. These opposing parties might even construct questionable claims and present those to the organs in the [I]nter-American human rights system, thus placing the State in a difficult always defending position. The State believes that treating the individuals as separate parties before the Court, which is not in conformity with the Convention, further weakened the position of States parties. This is not contemplated in the Convention. The State therefore strongly recommends that if individuals are given standing before your [...] Court, this must take place according to the provisions of the Convention, namely only through the Commission. At the preliminary meeting on 8 September 2004, in San Jose Costa Rica, the State has already brought this particular concern to the attention of your [...] Court. The State respectfully requests your [...] Court's explanation on this issue;

In paragraph 39 of the judgment this [...] Court argues "According to this principle of non-retroactivity, in the case of a continuing or permanent violation, which begins before the acceptance of the Court's jurisdiction and persists even after that acceptance, the tribunal is competent to examine the actions and omissions occurring subsequent to the recognition of jurisdiction, as well as their respective effects." This Court indicates that acts and omission that took place after the State's accession to the Convention are within the Courts' competence to examine. Conclusively, the Court indicates that acts that happened prior to the States accession to the Convention are not in its jurisdiction to examine. This is the reason why the State believes it is not necessary to provide facts and circumstances that [...] took place prior to Suriname's accession to the Convention and its acceptance of the jurisdiction of this [...] Court in November 1987, are out of the jurisdiction of this [...] Court. The State believes that it can not be punished for not providing information that is clearly out of the jurisdiction of this Tribunal reviewing the case. The State kindly requests the Court's explanation why in several parts of the judgment, the Court's analysis clearly places the State in a minority position? Maybe because facts and circumstances that are not in the jurisdiction of the Court were not sufficiently submitted to the [...] Court?

The State is of the opinion that the Court's assessment and conclusion with regard to collective title to traditional territories (see among others paragraphs 209 and others), cannot be based upon the law and facts provided and available to your [...] Court in this particular case. As the [...] Commission argued in its petition to the [...] Court, this case is primarily focused on the nature of a continuing violation, since the Commission argued that the State failed to investigate the occurrences that happened on 29 November 1986 in the Village of Moiwana in the interior of the State. The State argues that there are no facts and laws provided in this case to satisfy this Court's conclusion regarding this issue and as stated in this judgment. The State strongly argues that with regard to this particular issue, this [...] Court can only conclude that the members of the Village of Moiwana are entitled to return on any moment they want to, to the traditional lands that they fled from on 29 November 1986. Furthermore, that the State must guarantee that these villagers are entitled to freely take possession of these lands in a status prior to 29 November 1986. [...] [T]he State believes that the measures mandated by this Court in said judgment, are maybe based on decision in other cases decided by this [C]ourt, but can not be applied to this case without an in depth investigation of facts and circumstances related to this specific issue of land rights. Suriname is inhabited by more than 15 different tribal communities, among which maroons and indigenous peoples. All these groups have certain traditional areas in the interior they live on. Members of these tribal communities also live in cities in the coastal area. A decision as to measures regarding demarcation and delimitation can only be taken in the light of a case regarding the particular issue of land rights in Suriname. This case did not provide enough facts and circumstances on the specific issue of land rights to satisfy the Court's conclusion

and judgment in this respect. The State respectfully requests the Court's explanation on this particular matter because it is convinced that this Court adopted a decision on a matter that was not placed before this [...] Court and for which not enough facts and circumstances were provided to take a well accepted legally sound decision.

#### **IV PROCEEDINGS BEFORE THE COURT**

6. On October 10, 2005, in accordance with Article 59.2 of the Rules of Procedure and following the instructions of the President of the Tribunal (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") transmitted a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter "the Commission") and to the representatives of the victims and their family members (hereinafter "the representatives"). In the same communication, the Secretariat informed the Commission and the representatives that they would be granted a period of 30 days in which to submit any written comments they deemed relevant. In addition, the Secretariat delivered a communication to the State, in which it reminded the State that, according to Article 59.4 of the Rules of Procedure, "[the] request for interpretation shall not suspend the effect of the judgment."

7. On November 9, 2005 the Commission submitted its written comments upon the request for interpretation, in which it stated, *inter alia*:

Rather than seeking an interpretation of the scope and meaning of the Court's sentence, the request presented by the State of Suriname attempts to appeal aspects of the sentence which the State finds unfavorable. [...]

The State has cited no ambiguity or lack of clarity in the text of the judgment. [...]

The request for review is based on arguments concerning admissibility, merits and reparations with respect to which all parties were accorded a full procedural opportunity to present their positions [...] [T]here is no legal basis for the State to re-litigate these points subsequent to the issuance of the Court's judgment.

Requests for interpretation which have the purpose of appealing a judgment, such as that presented by the State of Suriname, must [...] be deemed inadmissible.

8. On November 10, 2005 the representatives submitted their written comments upon the request, in which they stated, *inter alia*:

A number of Suriname's Specific Requests merely reiterate its preliminary objections [...] These preliminary objections were dismissed by the Court in its judgment and are extemporaneous and inappropriate subject matter for a request for interpretation.

[...] Suriname is not asserting that the terms of the operative parts or the associated considerations lack clarity or are imprecise and, therefore, that it requires interpretation of the scope or meaning of those parts. Rather, Suriname is contesting or otherwise expressing its disagreement with parts of the judgment *per se* or with issues extraneous to the judgment.

Additionally, each Specific Request is preceded by expositions on issues of dubious relevance and is stated in vague terms that are not amenable to precise responses.

[E]ach of the Specific Requests submitted by Suriname is inadmissible on multiple grounds, and, consequently, a pronouncement by the Court should not be required in relation to any substantive issues they may raise.

In addition to their observations regarding the State's request, the representatives also submitted the following request to the Court:

[C]onsidering the nature of Suriname's reaction – as evidenced by its statements in the Request – to the Court's ruling on the Moiwana community's communal property rights, we believe that further elucidation of the scope and meaning of Suriname's obligations with respect to the Court's ruling on this issue is both important and necessary, particularly as it may relate to assisting the State and the Victims to understand and implement the ordered measures.

[...]

With regard to interpretation of the scope and meaning of these parts of the judgment, the Victims respectfully request that the Court clarify the following two issues:

a) The scope, meaning and content of the 'informed consent' requirement contained in paragraph 210, and in particular:

- (i) that the Court explain the broad principles governing the substantive and procedural requirements that apply to obtaining the "informed consent of the Moiwana community, the other Cottica N'djuka villages and the neighboring indigenous communities;" and
- (ii) that the Court clarify that informed consent is required in relation to both the "legislative, administrative and other measures" the State must adopt to ensure the property rights of the Moiwana community "in relation to the traditional territories from which they were expelled," as well as to the actual delimitation, demarcation and titling carried out pursuant to those measures once adopted.

b) The scope and meaning of the term 'property rights' in paragraph 209 and 233 in order to clarify that:

- (i) this term encompasses collective ownership rights; the area(s) to which these rights correspond shall be delimited, demarcated and titled in accordance with the community's customary laws, values, usage and mores; and, given the finding in paragraph 86(5) of the judgment, that such ownership rights must be recognized and guaranteed in law and protected in fact; and,
- (ii) the term 'traditional territories' does not exclusively refer to the former village site as it existed prior to 29 November 1986, but also encompasses those areas which, according to N'djuka customary law, the community and its members may by right own and control or otherwise occupy and use.

## V **ADMISSIBILITY**

9. The Court will now proceed to determine if the terms of the request for interpretation comply with the applicable requirements.

10. Article 67 of the Convention provides:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as 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.

11. Article 59 of the Rules of Procedure provides:

1. The request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.
2. The Secretary shall transmit the request for interpretation to the parties to the case and shall invite them to submit any written comments they deem relevant, within the time limit established by the President.
3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought. However, in the event of death, resignation, impediment, excuse or disqualification, the judge in question shall be replaced pursuant to Article 16 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.

12. Article 29.3 of the Rules of Procedure provides:

Judgments and orders of the Court may not be contested in any way.

13. The Court notes that the State submitted the request for interpretation on October 4, 2005, within the period established in Article 67 of the Convention (*supra* para. 4).

14. As the Tribunal has pointed out on previous occasions,<sup>2</sup> a request for interpretation should not be used as a means of appealing the judgment. Rather, the sole purpose of such a request should be to clarify the meaning of a judgment when one of the parties maintains that the judgment lacks precision or clarity in any of its relevant parts. Consequently, a request that solicits the modification or the reversal of the judgment is impermissible.

15. In addition, the Court has established that the request for interpretation of a judgment may not resubmit issues of fact and law that were already raised during an earlier stage of the proceedings, and with regard to which the Tribunal has already adopted a decision.<sup>3</sup>

---

<sup>2</sup> *Cfr. Case of the Serrano Cruz Sisters.* Request for Interpretation of the Sentence on the Merits, Reparations and Legal Costs. Judgment of September 9, 2005. Series C No. 131, para. 14; *Case of Lori Berenson Mejía.* Request for Interpretation of the Judgment on the Merits, Reparations and Legal Costs. Judgment of June 23, 2005. Series C No. 128, para. 12, and *Case of Juan Humberto Sanchez.* Request for Interpretation of the Judgment on the Preliminary Objections, Merits, and Reparations. Judgment of November 26, 2003. Series C No. 102, para. 14.

<sup>3</sup> *Cfr. Case of the Serrano Cruz Sisters.* Request for Interpretation of the Sentence on the Merits, Reparations and Legal Costs, *supra* note 2, para. 15; *Case of Lori Berenson Mejía.* Request for Interpretation of the Judgment on the Merits, Reparations and Legal Costs, *supra* note 2, para. 11, and *Case of Juan Humberto Sanchez.* Request for Interpretation of the Judgment on the Preliminary Objections, Merits, and Reparations, *supra* note 2, para. 40.

16. Having analyzed the State's request that the Court provide an interpretation of its judgment, and the relevant observations submitted by the Commission and the representatives, the Tribunal considers that most of the arguments advanced by the State constitute an attempt to resubmit issues of fact and law that were already decided by this Court in the chapters on admissibility, merits, or reparations of said judgment. Rather than expressing a lack of precision or clarity in the meaning or scope of the judgment, the State's arguments merely express its disagreement with certain aspects of that judgment, or with certain Rules or procedures of this Court. In fact, Suriname's request explicitly states its view that the faculty of requesting an interpretation gives "parties that disagree with the judgment the opportunity to petition your [...] Court." This view is not substantiated by the Convention, by the Court's Rules of Procedure, or by its case law.

17. For the reasons stated above, the State's request for interpretation should be dismissed for failing to meet the requirements of Article 67 of the Convention, and of Articles 59 and 29.3 of the Rules of Procedure.

18. With regard to the request submitted by the representatives (*supra* paragraph 8), the Court points out that the opportunity to submit written comments on one party's request for interpretation, granted to the other parties on the instructions of the President of the Court and in accordance with Article 59(2) of the Rules of Procedure, is not to be understood as a renewed opportunity for those other parties to submit a request for interpretation, nor as an extension of the period for the presentation of such requests provided for in the Convention. Consequently, the representatives' request for interpretation in this case will not be considered as such by this Court. However, this Tribunal deems it pertinent to refer to its rulings contained in paragraphs 209 to 211 and the third decision referred to in the operative paragraphs of said Judgment, in order to clarify the scope of the reparations ordered in relation to the violation of Article 21 of the Convention, which was also brought up in the State's request.

19. In this respect, the Court deems pertinent to point out that, by recognizing the right of the Moiwana community members to the use and enjoyment of their traditional lands, the Court has not made any determination as to the appropriate boundaries of the territory in question. Rather, in order to render effective "the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled," and having acknowledged the lack of "formal legal title", the Court has directed the State, as a measure of reparation, to "adopt such legislative, administrative and other measures as are necessary to ensure" those rights, after due consultation with the neighboring communities. If said rights are to be properly ensured, the measures to be taken must naturally include "the delimitation, demarcation and titling of said traditional territories", with the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages and the neighboring indigenous communities. In this case, the Court has simply left the designation of the territorial boundaries in question to "an effective mechanism" of the State's design.

20. Therefore,

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

In conformity with Article 67 of the American Convention and of Articles 29.3 and 59 of the Court's Rules of Procedure,

**DECIDES:**

Unanimously,

1. To resolve the issues submitted by the State of Suriname and the representatives, as well as to clarify aspects of the judgment on preliminary objections, merits and reparations of June 15, 2005 in the *Case of Moiwana Village* set out therein, in the terms of paragraphs 13 through 19 of this decision.

2. To continue to monitor the State's compliance with the judgment of June 15, 2005 in the *Case of Moiwana Village*, in the terms of paragraph 232 of said judgment.

Judge Cançado-Trindade advised the Court of his Separate Opinion, which accompanies this judgment.

Sergio García - Ramírez  
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado-Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri  
Registrar

So ordered,

Sergio García - Ramírez  
President

Pablo Saavedra-Alessandri  
Registrar