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ORGANIZATION OF AMERICAN STATES
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

CASE 12.338
SARAMAKA PEOPLE
SURINAME

WRITTEN OBSERVATIONS OF THE INTER AMERICAN COMMISSION ON HUMAN
RIGHTS IN RESPONSE TO THE REQUEST FILED BY THE STATE PURSUANT TO
ARTICLE 67 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") has reviewed the request for interpretation submitted by the Republic of Suriname (hereinafter "the Surinamese State," "Suriname," or "the State") to the Inter-American Court of Human Rights (hereinafter "the Court") regarding the Judgment issued on November 28, 2007 on Case 12.338, *Saramaka People*, and hereby submits its written comments.

2. To summarize, the Commission considers that the communication presented by the State does not meet the requirements set forth in Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), or Articles 29(3) and 59 of the Rules of Procedure of the Court. Article 67 of the American Convention clearly indicates that the judgments of the Court are final and not subject to appeal. Requests for interpretation are permissible insofar as appropriate to clarify the scope or meaning of the judgment.

3. The request presented by Suriname attempts to appeal aspects of the decision which the State finds unfavorable, or to induce the Tribunal to interpret some passages of the judgment according to the State's interpretation of the facts and the procedure and its disagreement with the sentence.

4. The State has not pointed to any ambiguity or lack of clarity in the text of the judgment. In this regard, as the Court has stated previously

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.¹

¹ See for example, I/A Court H. R., *Case of the Moiwana Community, Request of Interpretation of the Judgment of Merits, Reparations and Costs*. (Art. 67 American Convention on Human Rights). Judgment of February 8, 2006. Series C No. 145, para. 14.

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5. 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.²

6. The objective to be met at this stage of the proceedings is full compliance with the orders of the Court regarding the measures of reparation for the human rights violations committed against the Saramaka People.

II. GENERAL OBSERVATIONS

7. Article 67 of the Convention establishes that

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

8. Article 29(3) of the Court's Rules of Procedure further specifies that "Judgments and orders of the Court may not be contested in any way." Article 59 of those Rules sets forth the procedure for presenting such requests, and indicates that such requests must present "issues relating to the meaning or scope of the judgment" in question. Accordingly, while the individual case system provides a mechanism to enable parties to request clarification in order to fully understand the scope or meaning of a judgment of the Inter-American Court, it expressly precludes the possibility of appeal.

9. The Court has clearly delineated the permissible purpose and scope of a request for interpretation under the terms of Article 67. As the Court has indicated, "[t]he task of interpretation that corresponds to an international court entails the clarification of a text, not only as regards the decisions in the operative paragraphs, but also as regards determining the scope, meaning and purpose of its considerations."³

10. The Court has indicated that, in very exceptional circumstances, an appeal for review may be admissible when a fact has come to light after the judgment has been delivered and *affects* the contents of the decision, or reveals a substantial defect in it.⁴ In the case *sub judice*, the State has made no reference to a relevant subsequent fact that would or could substantially modify the ruling of the Court. The request for review is based on arguments concerning admissibility, merits and

² *Idem*, para. 15.

³ I/A Court H. R., *Case of Juan Humberto Sánchez. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations*. (Art. 67 American Convention on Human Rights), Judgment of November 25, 2003. Series C No. 102, para. 14.

⁴ I/A Court H.R., *González Lacayo Case. Application for judicial review of the Judgment of January 29, 1997*. Order of the Court of September 13, 1997. Series C No. 45, paras. 10-12.

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reparations with respect to which all parties were accorded a full procedural opportunity to present their positions."⁵ The State had the procedural opportunity to refer to these issues during both the written proceedings before the Court and during the public hearing; there is no legal basis for the State to re-litigate these points subsequent to the issuance of the Court's judgment.

III. SPECIFIC OBSERVATIONS

A. Regarding the effective participation of the Saramaka People in the process to issue concessions in their traditional territory

11. In its request for interpretation, the State asks the Court to specify which traditional authority of the Saramaka People it is supposed to deal with when setting up and supervising the system of effective participation in the process of issuance of concessions within the Saramaka territories.

12. The State suggests that it is unclear if it should communicate during this process with the collective of Saramaka Captains, with individual Saramaka Captains, with the Gaa'man of the Saramaka People or with other entities within the culture, custom and traditions of the Saramaka People, because in its judgment the Court rejected the State's first preliminary objection and decided that every individual can file a petition in the Inter-American human rights system.

13. The Commission considers that the question presented would not provide a basis to define the scope or meaning of the sentence. In fact, the sentence has fully addressed this point taking into account the right and necessity for the Saramaka People to define their mechanisms of representation.

14. Throughout the judgment the Court has made very clear that the participation of the Saramaka People in such process shall take place in conformity with their customs and traditions (See para. 129 of the judgment).

15. Furthermore, the Court clearly stated in its decision that

the question of whether certain self-identified members of the Saramaka people may assert certain communal rights on behalf of the juridical personality of such people is a question that must be resolved by the Saramaka people in accordance with their own traditional customs and norms, not by the State or this Court in this particular case

[...]

the State has constantly objected to whether the twelve captains of the twelve Saramaka clans (*lós*) truly represent the will of the community as a whole (*supra* paras. 19-24). The State additionally asserted that the true representative of the community should be the *Gaa'man*, and not others. This

⁵ I/A Court H. R., *Case of Lori Berenson Mejia. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations*. (Art. 67 American Convention on Human Rights). Judgment of June 23, 2005. Series C No. 128.

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controversy over who actually represents the Saramaka people is precisely a natural consequence of the lack of recognition of their juridical personality.

The recognition of their juridical personality is a way, albeit not the only one, to ensure that the community, as a whole, will be able to fully enjoy and exercise their right to property, in accordance with their communal property system, and the right to equal access to judicial protection against violations of such right.⁶

16. Consequently, since the text of the judgment is clear as to how the State must ensure the effective participation of the Saramaka People in the issuance of concessions within their territory, the point raised does not constitute a valid basis for a request for interpretation under Article 67 of the Convention.

B. Regarding the benefit sharing with the Saramaka People from concessions granted by the State within their territory

17. The State argues that it alone should take charge in determining the system of benefit sharing with the Saramaka People from concessions granted within their territory. The reason for such an approach being, according to the State, that demands for benefits from the Saramaka People themselves to the concession holders would be a huge obstruction to the general development of the country.

18. The concept of benefit sharing is included by the Court in its judgment as a means of remembering past human rights violations and preventing future violations of the American Convention. Accordingly, the Commission observes that the Court's sentence does not require the State to act in such a way as to obstruct development, but rather sets forth the principles under which development may take place in conformity with respect for the rights of those affected by it.

19. In sum, the point raised does not constitute a valid basis for a request for interpretation under Article 67 of the Convention.

C. Regarding the State's understanding of compliance with the requirements set forth in paragraph 129 of the judgment

20. The State points out that its understanding from the text of the judgment is that any person or company who wants to obtain a concession within Saramaka territory can present a request to the State but must comply with the three requirements mentioned in paragraph 129 of the Court's Decision.

21. In this regard the Commission is unable to identify an issue in the State's communication that would constitute a valid request for interpretation.

22. However the Commission understands that it was not the intention of Tribunal to impose an additional burden on members of the Saramaka People, by

⁶ I/A Court H. R., *Case of the Saramaka People. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, paras. 164, 170 and 171.

obliging them to obtain concessions in order to use the natural resources which traditionally the tribe has used.

23. The Court decided that the evidence in the present case "shows that the members of the Saramaka people have traditionally harvested, used, traded and sold timber and non-timber forest products, and continue to do so until the present day." The Commission considers that it must be ensured that they continue to do so in the future.

D. Regarding the meaning of the obligation of the State to guarantee the survival of the Saramaka People as a collective tribe

24. The State maintains that every concession granted within Saramaka territory most likely will have an effect on the members of the Saramaka People living in the vicinity. Thus, it requires the Court to say that any impact of the concession for the Saramaka People which does not amount to a denial of survival is acceptable.

25. The State argues that a different interpretation could lead to an obstruction of the development of the country.

26. The Commission observes that the judgment in the instant case clearly states that

the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, [their relationship with] the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy [...] to preserve their cultural legacy and transmit it to future generations.⁸

27. Thus, the Commission considers that when the Court uses the term 'survival' it does not refer only to the obligation of the State to ensure the right to life of the victims but rather to take all the appropriate measures to ensure the continuance of the relationship of the Saramaka People with their land or their culture.

E. Regarding the arguments of the State on the violation of Article 3 of the American Convention

28. The State argues that it is not clear how the Court addressed its second argument on the violation of Article 3 of the American Convention, that is, "the American Convention guarantees that every 'person' has the right to be recognized as such before the law and not as a 'distinct people', as argued by the representatives."

⁷ I/A Court H. R., *Case of the Saramaka People. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 146.

⁸ I/A Court H. R., *Case of the Saramaka People. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 90.

29. The Commission is unable to identify an issue in this section of the State's communication that would constitute a valid request for interpretation. The State appears to be presenting a challenge to the Court's reasoning to declare a violation of Article 3 of the Convention, which would clearly fall outside the framework of such a request, therefore the point raised does not constitute a valid basis for a request for interpretation under Article 67 of the Convention.

IV. CONCLUSIONS

30. The Commission considers that the request presented by the State of Suriname is a manifestation of points with respect to which it disputes or disagrees with the determinations of fact and law established by the Honorable Court. As such, it seeks not a determination of the scope and meaning of the decision, as contemplated under Article 67 of the American Convention, but rather a reversal or modification of decisions it considers unfavorable. Consequently, the request should be deemed inadmissible for presenting nothing further than arguments for appeal.

31. As indicated in Article 59(4) of the Court's Rules of Procedure, "[a] request for interpretation shall not suspend the effect of the judgment." The Commission respectfully requests that the Court continue to supervise the proceedings until full compliance has been achieved.

32. Finally, taking into account the complexity of the subject matter at issue, the Commission observes that there may be instances in which further development of the Court's criteria would be helpful to the State in implementing the orders issued. While the Commission considers that the request presented by the State is framed in the terms of an appeal of questions already decided and explained in the judgment, the Commission also notes that the issues raised indicate that the State may require further guidance with respect to certain criteria in order to implement the Court's orders.