

**Order of the President of the
Inter-American Court of Human Rights
of December 18, 2009**

Case of the Moiwana Village v. Suriname

Monitoring Compliance with Judgment

Having seen:

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

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 th[e] [J]udgment.
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 th[e] [J]udgment.
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 th[e] [J]udgment.
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 th[e] [J]udgment.
5. This judgment constitutes, *per se*, a form of reparation, in the terms of paragraph 192 of th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] [J]udgment.

5. The State shall establish a community development fund, in the terms of paragraphs 213 – 215 of th[e] [J]udgment.

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 th[e] [J]udgment.

7. The State shall build a memorial in a suitable public location, in the terms of paragraph 218 of th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] [J]udgment.

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 th[e] 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 [J]udgment.

2. The judgment on interpretation of the Moiwana Judgment delivered by the Court on February 8, 2006, in which it:

DECIDE[D],

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 th[e] 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.

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

1. That, in accordance with the consideration found in Whereas paragraph 9, the State has fully complied with the Operative Paragraph 6 of the Judgment [...], regarding its obligation to hold a public ceremony of recognition and apology.

2. That, in accordance with the consideration found in Whereas paragraphs 17-19, the State has fully complied with Operative Paragraphs 8 and 9 of the Judgment, regarding the order to effect the payment of compensation to the Moiwana community members for material and moral damages.
3. That, in accordance with the consideration found in Whereas paragraph 20 *supra*, the State has fully complied with Operative Paragraph 10 of the Judgment regarding the order to effect the payment of compensation for costs to Forest Peoples Programme and Association Moiwana.
4. That the Tribunal will keep open the proceedings for monitoring compliance with the orders pending fulfillment, namely the obligations to:
 - a) implement the necessary measures to investigate the facts of the case, as well as to identify, prosecute, and eventually punish the responsible parties (Operative Paragraph 1 of the Judgement);
 - b) recover of the remains of the Moiwana community members killed during the events of November 29, 1986, as soon as possible, and deliver them to the surviving community members (Operative Paragraph 2 of the Judgement);
 - c) adopt legislative, administrative, and other measures necessary to ensure property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories (Operative Paragraph 3 of the Judgment on preliminary objections, merits, reparations and costs, and Operative Paragraph 1 of the Interpretation Judgement);
 - d) guarantee the safety of those community members who decide to return to Moiwana Village (Operative Paragraph 4 of the Judgement);
 - e) establish a community development fund (Operative Paragraph 5 of the Judgement), and
 - f) build a memorial in a suitable public location (Operative Paragraph 7 of the Judgment).

Through said order, the Court further decided:

1. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the preliminary objections, merits, reparations and costs, delivered by the Court on June 15, 2005 and this Order, according to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To require the State to submit to the Court, before March 25, 2008, a detailed report on the actions taken in order to comply with the reparations ordered by the Court which are still pending, as set forth in Whereas paragraphs 10 to 16 and Declares paragraph 4 of th[e] Order. In particular, the report shall contain detailed information about, but should not be limited to, the following:
 - a. with respect to the obligation to investigate the facts of the case and to identify, prosecute, and eventually punish the responsible parties, the State shall inform the Court of its efforts to ensure a mechanism by which the victims can give their testimony with due guarantees for their safety and the effective advancements of the judicial process;
 - b. with respect to the recovery of the remains of the victims and their delivery to the surviving community members, the State shall inform the Court of the specific efforts taken to employ all technical and scientific means available to recover the remains with due diligence. The State shall also report on the status of its analysis of the human remains found at the grave site in 1993;
 - c. with respect to the adoption of such legislative, administrative, and other measures as are necessary to ensure property rights of the members of the

Moiwana community in relation to their traditional territories, the State shall inform the Court of the composition and specific mandate of the National Commission on Land Rights as well as the status of its deliberations in developing a national policy. The State shall also inform the Court about the measures it has taken to achieve the "informed consent of the victims" in this deliberative process;

d. with respect to the community development fund, the State shall inform the Court about the progress of the implementation committee in developing concrete plans and proposals created with the goal of providing for the health, housing and education of the Moiwana community and provide information about any such projects that have been funded. The State shall also inform the Court on the funds transferred and the measures taken in order to establish an operative budget to guarantee that the Committee can perform all necessary operative and logistical matters of its mandate; and

e. with regard to the memorial, the State shall inform the Court about the status of the project's completion, including any additional photographs or other descriptions as they become available.

3. To request the Representatives of the victims and their family members and the Inter-American Commission on Human Rights to file comments on the above-mentioned brief of the State within four and six weeks, respectively, as from the date of receipt of the report.

[...]

4. The Secretariat's notes of October 22, 2008 and May 13, 2009, by which the State was advised that, according to the Second Operative paragraph of the aforementioned Order, the term to submit a detailed report on the actions taken to comply with the reparations ordered by the Tribunal that are still pending fulfillment had expired on March, 25, 2008 and it had not been received. Accordingly, the State was requested to submit such report as soon as possible. Later, in accordance with the Secretariat's note of September 2, 2009, a new deadline was given for the State to submit it, which expired on October 2, 2009 without said report having been received. Therefore, by means of the Secretariat's note of October 22, 2009 the State was requested to submit said report as soon as possible.

Considering:

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

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

3. That pursuant to Article 68(1) of the American Convention, "[t]he State Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Therefore, State Parties must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Barrios Altos v. Peru. Monitoring Compliance with Judgment*. Order of the Court of December 7, 2009, considering clause No. 3, and *Case of Las Palmeras v. Colombia. Monitoring Compliance with Judgment*. Order of the Court of December 7, 2009, considering clause No. 4.

4. That the judgments of the Court are final and not subject to appeal; therefore, pursuant to the provisions of Article 67 of the American Convention, the State must promptly and fully comply with them within the term set for this purpose.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of law regarding the international responsibility of the State. That is, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has previously stated and is set forth in Article 27 of the Vienna Convention on the Law of Treaties of 1969, they cannot invoke their municipal laws to escape their pre-established international responsibility. The State Parties' obligations under the Convention bind all State branches and organs.²

6. That States Parties to the Convention must guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic-law level. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.*, those addressing the protected rights), but also in connection with their procedural provisions, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

7. That State Parties to the Convention that have also recognized the binding jurisdiction of the Court have the duty to comply with the obligations established by it. Accordingly, Suriname shall adopt all necessary measures to give effect to the Court's decisions, as contained in its Order of November 21, 2007 (*supra* Having Seen clause No. 3). This obligation includes the duty to inform the Court about the actions adopted to comply with the reparations ordered by the Court, which are pending fulfilment.

8. That providing sufficient information on compliance with the Judgment is a duty of the State, repeatedly stated by this Court.⁴ However, in accordance with the referred Order of the Tribunal (*supra* Having Seen clause No. 3), the State had a specific duty to submit, by March 25, 2008, a detailed report on the actions taken in compliance with the Judgment. Said report has not been received as of today. Moreover, pursuant to the instructions of the President, in several communications the State was required to submit such report as soon as possible, and it was even granted a new term to do it (*supra* Having Seen clause No. 4). Nevertheless, the State also failed to submit said report within the new term granted.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of La Cantuta v. Peru. Monitoring Compliance with Judgment*. Order of the Court of December 7, 2009, considering clause No. 5, and *Case of Cantoral-Benavides v. Peru. Monitoring Compliance with Judgment*. Order of the Court of July 9, 2009, considering clause No. 5.

³ Cf. *Case of Ivcher-Bronstein v. Peru. Competence. Judgment of September 24, 1999*. Series C No. 54, para. 37; *Case of La Cantuta v. Peru*, *supra* note 2, Considering clause No. 6, and *Case of Cantoral-Benavides v. Peru*, *supra* note 2, considering clause No. 6.

⁴ Cf. *Case of Neira Alegria et al v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 28, 2002, considering clause No. 9; *Case of Cantoral-Benavides v. Peru*, *supra* note 2, considering clause No. 20, and *Case of Palamara-Iribarne v. Chile. Monitoring Compliance with Judgment*. Order of the Court of November 30, 2007, considering clause No. 7.

9. That this Court has considered that timely fulfillment of the State's duty to inform the Tribunal is essential to assess the status of compliance with the Judgment⁵. Moreover, in order for the Tribunal to be able to adequately meet its obligation to report to the General Assembly of the OAS regarding compliance with its rulings, the latter has stated that the States Parties to the Convention must provide the Court with such information as it may require in timely fashion.⁶

10. That the duty to provide information to the Court is not complied with merely through the formal submission of a document to the Court; rather, it is a two-fold obligation which requires in order to be effectively complied with, the formal submission of a document that addresses the topics that are the subject-matter of said obligation in a full, specific, certain, current and detailed manner.⁷ In this case, the State has failed to inform the Court in proper and timely fashion.

11. That with regards to the supervision of compliance with the judgments and other decisions, Article 63 of the Rules of Procedure states:

1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out by means of 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.

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 shall also require expert declarations or reports it considers appropriate.

3. When it deems appropriate, the Tribunal may convene the parties to a hearing in order to monitor compliance with its decisions.

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

12. That in the instant case it is pertinent and necessary to convene the State, the Commission and the representatives to a private hearing for the Court to receive complete and updated information, from the State regarding compliance with the Judgment, as well as the respective observations and comments from the Commission and the representatives.

Therefore:

The President of the Inter-American Court of Human Rights,

in accordance with Articles 33, 67 and, 68(1) of the American Convention on Human Rights, Articles 24(1), 25(1) and 25(2) of the Statute of the Court, and Articles 4, 15(1), 30(2) and 63 of its Rules of Procedure,

⁵ Cf. *Case of Barrios Altos. Monitoring Compliance with Judgment*. Order of the Court of November 17, 2004, considering clause No. 7; *Case of Cantoral-Benavides v. Peru*, *supra* note 2, considering clause No. 21, and *Case of Palamara-Iribarne*, *supra* note 2, considering clause No. 7.

⁶ General Assembly, Resolution AG/RES. 2500 (XXXIV-O/09), adopted at 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."

⁷ Cf. *Matter of María Leontina Millacura-Llaipén et al. Provisional Measures*. Order of the Court of July 6, 2006, considering clause No. 20; *Case of Cantoral-Benavides*, *supra* note 2, considering clause No. 21, and *Matter of Marta Colomina and Liliana Velásquez. Provisional Measures*. Order of the Court of July 4, 2006, considering clause No. 9.

Decides:

1. To convene the Inter-American Commission, the representatives of the victims and the State to a private hearing that will take place at the seat of the Inter-American Court on February 1, 2010, starting at 9:00 a.m. up to 10:30 a.m., during its LXXXVI Regular Period of Sessions, in order to receive complete and updated information from the State on the actions taken in compliance with the Judgment issued in this case, as well as the observations from the Commission and the representatives.
2. To require the Secretariat of the Court to serve notice of the present Order on the State, the Inter-American Commission on Human Rights, and the representatives of the victims.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Registrar

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Registrar