

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

NOVEMBER 21, 2018

CASE OF THE MOIWANA COMMUNITY V. SURINAME

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on preliminary objections, merits, reparations and costs (hereinafter "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on June 15, 2005.¹ In this case, the Court declared the international responsibility of the Republic of Suriname (hereinafter "the State" or "Suriname") for the acts perpetrated against the inhabitants of the village of Moiwana, members of the N'djuka people. On November 29, 1986, the State carried out a military operation in this village which resulted in the death of 39 members of the community, including women, children and the elderly, as well as injuries to other community members. Furthermore, during the operation, community property was set on fire and destroyed, and the survivors were forced to flee. Since then, they have lived in poverty, away from the village and their traditional lands; also, the practice of their traditional means of subsistence has been severely affected. In addition, at the time of the judgment, the members of the community had not recovered the remains of their family members who died in the attack. Lastly, the events were not investigated. Consequently, the Court determined that the State was responsible for violating the right to personal integrity, to freedom of movement and residence, to property, and to judicial guarantees and judicial protection established in the American Convention on Human Rights² "of the members of the Moiwana community." The Court established that its judgment constituted, *per se*, a form of reparation and ordered the State to adopt additional measures of reparation (*infra considerandum* 1).

* Judge Humberto A. Sierra Porto did not take part in the deliberation and signature of this order for reasons beyond his control.

¹ Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. The text of this judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf. The judgment was notified to the State on July 14, 2005.

² Suriname submitted a preliminary objection of lack of jurisdiction *ratione temporis*. The Court determined that it had jurisdiction with regard to the failure to investigate the 1986 massacre and prosecute those responsible; the impossibility of the members of the displaced community returning to this territory, and the violations that occurred after November 12, 1987, the date of which the State accepted the Court's jurisdiction.

2. The interpretation judgment delivered by the Court on February 8, 2006.³
3. The three orders on monitoring compliance with the judgment issued by the Court between November 2007 and November 2010.⁴
4. The private hearing on monitoring compliance with the judgment held on June 22, 2012.⁵
5. The note from the Court's Secretariat of October 19, 2012, in which, on the instructions of the President of the Court, the State was asked to forward information on the meeting it had held with members of the Moiwana community following the hearing, and also to present a work plan and a timetable of the actions to be taken to comply with the measures of reparation pending compliance.
6. The five notes from the Secretariat, sent between November 2012 and February 2015, reminding the State that it should present the report that had been requested on October 19, 2012.
7. The report presented by the State on April 27, 2015.
8. The brief with observations submitted by the representatives of the victims⁶ (hereinafter "the representatives") on July 20, 2015.
9. The brief with observations submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on June 18, 2015.
10. The note from the Court's Secretariat of December 15, 2016, in which, on the instructions of the President of the Court, the State was required to present a report on compliance with the reparations, and the Secretariat's notes of August 9 and October 4, 2017, in which, on the instructions of the President of the Court, the State was reminded that the time limit for presenting the said report had expired on March 3, 2017, and was asked once again to present it.

³ Cf. *Case of the Moiwana Community v. Suriname. Interpretation of the judgment on merits, reparations and costs*. Judgment of February 8, 2006. The complete text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_145_ing.pdf.

⁴ Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010 available at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_22_11_10_ing.pdf.

Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of December 18, 2009, available at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_18_12_09.pdf.

Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 21, 2007, available at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_21_11_07.pdf.

⁵ The hearing was attended by: (a) for the victims, Fergus MacKay, representative of the Forest Peoples Programme; (b) for the State, Margo Waterval and Jornell Vinkwolk, and (c) for the Inter-American Commission, Karla Quintana Osuna and Silvia Serrano Guzmán. Pursuant to Article 6(2) of its Rules of Procedure, the Court held the hearing with a committee consisting of Judges Manuel E. Ventura Robles, Alberto Pérez Pérez and Margarete May Macaulay.

⁶ The Forest Peoples Programme represents the victims in this case.

CONSIDERING THAT:

1. In the exercise of its jurisdictional function of monitoring compliance with its decisions,⁷ the Court has been monitoring execution of the judgment handed down in this case more than twelve years ago (*supra* having seen paragraph 1). The Court issued three orders on monitoring compliance between 2007 and 2010 (*supra* having seen paragraph 3), in which it declared that the State had complied fully with four measures of reparations,⁸ and partially with one reparation,⁹ and that five measures of reparation remained pending (*infra consideranda* 5, 21, 26, 33 and 38).

2. As established in Article 68(1) of the American Convention, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” This obligation includes the State’s duty to inform the Court of the measures taken to comply with each aspect ordered, which is essential to enable the Court to evaluate the status of compliance with the judgment as a whole.¹⁰ The States Parties to the Convention must guarantee compliance with the provisions of the Convention and their practical effects (*effet utile*) within their respective domestic laws. This obligation must be interpreted and applied so that the guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.¹¹

3. The States Parties to the American Convention have the treaty-based obligation to implement, at both the international and the domestic level, as well as promptly and fully, the decisions taken by the Court in the judgments that concern them. This obligation, as indicated by international customary law and as the Court has recalled, is binding on all the powers and organs of the State¹² and, if it is not observed, the State commits an internationally wrongful act. In this regard, it should be added that, again according to international customary law and as affirmed by the Court, when a wrongful act occurs that can be attributed to a State, that State incurs international responsibility for the violation of an international norm, thus generating a new legal relationship that consists in the obligation to make reparation.¹³ As the Court has

⁷ This authority is also revealed by the provisions of Articles 33, 62(1), 62(30 and 65 of the American Convention and 30 of the Court’s Statute, and is regulated by Article 60 of its Rules of Procedure.

⁸ Suriname has complied fully with the following measures of reparations: (i) carry out a public ceremony whereby it recognizes its international responsibility and issues an apology (*sixth operative paragraph of the judgment*); (ii) pay compensation to the members of the Moiwana community for the pecuniary and non-pecuniary damage suffered (*eighth and ninth operative paragraphs of the judgment*); (iii) pay the costs of the Forest Peoples Programme and the Association Moiwana (*tenth operative paragraph of the judgment*), and (iv) build a memorial in a suitable public place (*seventh operative paragraph of the judgment*).

⁹ Suriname has complied partially with the measure of reparations corresponding to the establishment of a community development fund (*fifth operative paragraph of the judgment*).

¹⁰ Cf. *Case of the Barrios Family v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 2, 2015, *considerandum 2*, and *Case of the Dismissed Employees of PetroPeru et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 26, 2018, *considerandum 2*.

¹¹ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of the Dismissed Employees of PetroPeru et al, v. Peru, supra* footnote 10, *considerandum 2*.

¹² Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, *considerandum 3*, and *Case of the Saramaka People v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 26, 2018, *considerandum 3*.

¹³ Cf. *Case of Garrido and Baigorria. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of the Saramaka People v. Suriname, supra* footnote 12, *considerandum 3*.

indicated,¹⁴ Article 63(1) of the Convention reproduces the text of a customary rule that constitutes one of the fundamental principles of the law on the international responsibility of States.¹⁵ The failure to execute the reparations in the domestic sphere signifies denial of the right of access to international justice.¹⁶

4. Following the Court's order of 2010 (*supra considerandum 1*), the State has presented information on two occasions, the most recent of these in April 2015. Suriname did not present the report requested by the President of the Court in December 2016 (*supra* having seen paragraph 10). The Court will assess the degree of compliance with the reparations based on the information provided by the parties and will structure its considerations as follows:

<i>A. Obligation to investigate, prosecute and, as appropriate, punish</i>	- 4 -
<i>B. Recover the remains of the members of the Moiwana community</i>	- 10 -
<i>C. Adopt the measures required to ensure the property rights of the members of the Moiwana community</i>	- 12 -
<i>D. Guarantee the safety of the community members who decide to return to the Moiwana community</i>	- 15 -
<i>E. Establish a community development fund</i>	- 16 -
<i>F. Pending report and possible monitoring visit</i>	- 18 -

A. Obligation to investigate, prosecute and, as appropriate, punish

A.1. Measure ordered by the Court and monitored in previous orders

5. In the first operative paragraph and in paragraphs 202 to 207 of the judgment, the Court established the obligation of the State "to implement the measures ordered with respect to its obligation to investigate the facts of the case, as well as to identify, prosecute and punish the responsible parties." The Court indicated that "in response to the extrajudicial killings that occurred on November 29, 1986, the State must immediately carry out an effective and prompt investigation and judicial proceeding leading to the clarification of the facts, punishment of the responsible parties, and appropriate compensation for the victims."

6. In addition, the Court determined that, "[i]n fulfillment of its obligation to investigate and punish the responsible parties, Suriname must: (a) remove all obstacles *de facto* and *de jure* that perpetuate impunity; (b) use all means at its disposal to expedite the investigation and judicial proceedings; (c) punish, according to the appropriate domestic laws, any public officials, as well as private individuals, who are found responsible for having obstructed the criminal investigation into the attack on the Moiwana village, and (d) provide adequate safety guarantees to the victims, other witnesses, judicial agents, prosecutors, and other relevant law enforcement officials."

¹⁴ Cf. *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, para. 50, and *Case of the Saramaka People v. Suriname*, *supra* footnote 12, *considerandum 3*.

¹⁵ Cf. *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 184*; *Case concerning the Factory at Chorzów (Claim for indemnity) (Merits)*, Judgment No. 13, September 13, 1928, PCIJ. Series A-No. 17, p. 29, and *Case of the Saramaka People v. Suriname*, *supra* footnote 12, *considerandum 3*.

¹⁶ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 83, and *Case of the Saramaka People v. Suriname*, *supra* footnote 12, *considerandum 3*.

7. In the order of November 2010, the Court assessed the information presented by the State,¹⁷ and reminded the State that it must “undertake two separate lines of investigation: one relating to the events of November 1986 and another relating to the obstruction of justice.” The Court affirmed that it “is lamentable that twenty-four years after the attack, and five years after service of the Judgment, the State has not been able to provide the Tribunal with any details on advances in either one of these investigations”. It also noted that “the State has not provided any information on the progress or the findings of the ‘Coordination Team’ established five years ago for the investigation of the massacre at Moiwana Village.” Regarding the investigation of the events of November 1986, the Court considered that the State should “consult with the representatives in order to learn what measures they consider indispensable so that victims will come forward to testify, and it must report its findings and achievements to the Tribunal.” In addition, the Court reiterated that “investigations cannot depend upon the initiative of victims and their family members or upon their submission of evidence” and underscored “the importance of this obligation for the integral reparation of the victims and their family members.” It also found that “the State’s efforts to date have been insufficient to instill confidence in witnesses as to their safety...” In this regard, it indicated that the State must “reactivate the judicial investigations into the events of November 29, 1986, and ensure that these are not suspended because investigations in other cases are ongoing.” Lastly, the Court requested specific information (*infra considerandum* 8).

A.2. Considerations of the Court

8. The Court recalls that, in the judgment delivered in June 2005, it had emphasized “that by carrying out or tolerating actions leading to extrajudicial killings, by not investigating such actions adequately, and by not punishing those responsible, the State breaches its duty to ensure the rights recognized in the Convention and prevents society as a whole from learning the truth regarding those facts.”¹⁸ Also, in the order issued on November 22, 2010, it asked the State to present information on: “(a) the activities of the “Coordination Team” established in 2005; (b) investigations into those persons that have allegedly acknowledged their responsibility for the attack; and (c) the measures it has taken in order to ensure that the Amnesty Law referred to by the representatives will not be applied in this case,” as well as information on the measures taken to continue the investigation into obstruction of justice (*supra considerandum* 5).

9. With regard to the effects of the Amnesty Act, it is noted from information provided by the parties that a law was enacted on April 5, 2012, amending the

¹⁷ Regarding this measure, the State had indicated before the 2010 order that “the Public Prosecutions Department has asked witnesses to testify and identify the perpetrators on several occasions. Testimonies can be made at any police station or at the Public Prosecutions Department in order to guarantee the safety of witnesses[...]”. The State had also advised that it had “established a ‘Coordination Team’ chaired by the Attorney General for the purpose of investigating the case”. During the private hearing, the State indicated “cannot prosecute without having identified possible perpetrators” and declared that “because one of the alleged perpetrators is currently the subject of another investigation, authorities will be able to devote ‘more time and attention’ to this case after the trial has concluded.” The State also requested the “advice” of the Inter-American Commission, the Court or the representatives on “how to encourage witnesses to testify and proposed that interrogations be carried out at the seat of the Inter-American Court”; *Cf. Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2010, considerandum* 8.

¹⁸ *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of June 15, 2005. Series C No. 124, para. 153*

Amnesty Act¹⁹ promulgated on August 19, 1992.²⁰ The amendment expanded the list of conducts that are protected by the amnesty²¹ and required the creation of a Truth and Reconciliation Commission to investigate and establish the truth about the human rights violations committed between 1980 and 1985. Despite this, the text of the said law was accompanied by an annex entitled "Explanatory Memorandum", which expressly indicates that "the Moiwana Judgment of the Inter-American Court of Human Rights does not fall within the scope of the Amnesty Law, and therefore must be implemented unabridged." The representatives pointed out that the legal effects of this "Explanatory Memorandum" were unclear and that in view of the total absence of an investigation by the State (*infra considerandum* 13), it was not possible to know its potential effects.

10. Additionally, in their 2015 brief, the representatives provided, as evidence, a report that Suriname had presented to the Human Rights Committee in 2014 which revealed that the Constitutional Court had been called on to determine whether the adoption of the amendment entailed a violation of the Surinamese Constitution.²² Furthermore, according to an Amnesty International report attached to the representatives' brief, this legal remedy could not be decided until the Constitutional Court of Suriname had been installed.²³ It is unclear from the information available whether the said amnesty law is in force following the filing of this appeal. The parties have not sent any relevant updated information since 2015.

11. In this regard, the Court reiterates that "amnesty laws, statutes of limitation and related provisions that attempt to hinder the investigation and punishment of serious human rights violations – such as those of the present case, summary, extra-legal or arbitrary executions – are inadmissible, as such violations contravene non-derogable rights recognized in international human rights law." Thus, although the Explanatory Memorandum attached to the 2012 amendment to the law (*supra considerandum* 9) explicitly excludes the application of amnesties to the facts of this case, the Court notes that there is a lack of information as regards the legal force of this part of the document. The absence of this information, added to the failure to investigate the facts of the case and the lack of clarity as to whether any decision has

¹⁹ The judgment established that "[o]n August 19, 1992, the President of Suriname officially promulgated the 'Amnesty Act 1989,' which grants amnesty to those who committed certain criminal acts, with the exception of crimes against humanity, during the period from January 1, 1985, until August 20, 1992. Crimes against humanity are defined by the statute as 'those crimes which according to international law are classified as such.'"

²⁰ Official Gazette of the Republic of Suriname No. 49, Law of April 5, 2012, amending the 1989 Amnesty Act (annex to the representatives' email of June 15, 2012).

²¹ For example, provisions were incorporated that provide for the application of the amnesty to those who "have committed and/or are suspected of and/or have been summoned to appear in court for criminal offences within the context of the defence of the State and/or overturning the lawful authorities"; to those who "committed criminal offences within the context of the conflict in the interior and/or the events of December 1982 and/or other conflicts connected to those referred to in paragraphs a and b in the period from 1 April 1980 to 20 August 1992 and/or who are suspected of them...", and to those who "are regarded as suspects and have been summoned to appear in court as such in connection with acts committed on 7, 8 or 9 December 1982".

²² Human Rights Committee, "Consideration of reports submitted by States parties under article 40 of the Covenant: Third periodic reports of States parties due in 2008, Suriname", Third periodic report of Suriname dated March 7, 2014, CCPR/C/SUR/3, para. 42, available at: <http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSUR%2f3&Lang=en> (link provided in the representatives' brief of July 20, 2015).

²³ Amnesty International, Annual Report, Suriname 2013, available at: <https://www.amnestyusa.org/reports/annual-report-Suriname-2013/> (link provided in the representatives' brief of July 20, 2015).

been taken concerning the judicial control of this law (*infra consideranda* 13 to 20), preclude this Court from determining whether or not the said Amnesty Act constitutes an obstacle to the investigation of this case. Consequently, the State is requested to present updated information clarifying that the facts of this case cannot be subject to the amnesties established in the 1989 Amnesty Act, as amended in 2012.

12. Regarding the said judicial control of the Amnesty Act, the Court recalls that all the authorities of a State Party to the American Convention, including the judges and organs involved in the administration of justice, have the obligation to exercise "conventionality control" – evidently within the framework of their respective competencies and the corresponding procedural regulations – to ensure that the interpretation and application of domestic law is consistent with the State's international human rights obligations.²⁴ The Court has also indicated that, regarding the execution of any specific judgment of the Inter-American Court, "the judicial organ has the function of ensuring that the American Convention and the rulings of this Court prevail over domestic law, as well as interpretations and practices that obstruct compliance with the decisions take in any particular case."²⁵

13. With regard to the investigation into the facts of this case, during the hearing held in 2012, the State acknowledged that, up until that date, no actions had been taken in relation to the investigation of the facts of the case. On that occasion, the State indicated that the lack of progress in the investigation arose from the fact that the victims had not come forward, even though they had been called to testify. To the contrary, the State noted that the victims were waiting for the Public Prosecution Department to come to them to take their declarations. In its 2015 report, the State merely indicated that the "Public Prosecutions Department published a call for witnesses to come forward, which unfortunately did not happen". The State also indicated that Mr. Ajintoena, who they identified as a representative of the victims/surviving families, had stated that the witnesses were waiting for the State to summon them. The State indicated that, at the meeting held on August 10, 2012, the Prosecutor had indicated that no one can be forced to be a witness. In the case of the individuals living in French Guiana, the Public Prosecutor indicated that the State is unable to approach them to question them, because they reside in the territory of another nation. Mr. Ajintoena indicated "to be willing to act as a witness, and would further pass on names of other persons who will witness to the State". Lastly, the State referred to the communication between the State and Mr. Ajintoena, as a representative of the victims, and advised that "it was not as good as before" because "Mr. Ajintoena is difficult to reach".

14. The Commission observed that the State had "not present[ed] updated information regarding the existence and status of an investigation" and recalled that "the State has the obligation to act *ex officio* in human rights violations cases. Therefore, it cannot justify its omission to carry on a diligence investigation on the

²⁴ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Members of the Chichupac village and neighboring communities in the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 328, para. 289; *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 93 and *Case of Barrios Altos and Case of La Cantuta v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of May 30, 2018, *considerandum* 65.

²⁵ *Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of March 20, 2013, *considerandum* 73, and *Cases of Barrios Altos and La Cantuta v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of May 30, 2018, *considerandum* 65.

alleged lack of contact with the representatives of the victims". Meanwhile, the representatives noted that the State "continues to unashamedly blame the victims for its prolonged and unjustifiable lack of action on this respect" to comply with this measure. They also indicated that the State "has done nothing to reassure potential witnesses of their safety should they come forward, despite repeated calls to this effect from the victims". The representatives considered that the State "ignore[s] the fact that there is considerable and reliable non-testimonial evidence available" and that "the manner in which the criminal trial of the suspects in the 'December Murders' has been *de facto* suspended, renders the likelihood of a meaningful investigation of the Moiwana massacre...". Lastly, they concluded that "the State is simply unwilling to comply with the Court's order".

15. The Court notes that, in previous orders, it has already analyzed the information presented by the State after 2012. Once again, the State sent information on the difficulty of obtaining the victims' testimony (*supra considerandum* 13), and failed to present information on any measures taken to grant safety guarantees and inspire confidence in the said victims to encourage them to come forward (*supra considerandum* 7). In this regard, the Court repeats the indications it gave in its 2010 order, that the State "must protect these parties from harassment and threats designed to obstruct proceedings and to prevent the identification of those responsible for the attacks". Furthermore, it failed to advise whether it was taking any action, *ex officio*, other than obtaining the victims' declarations.

16. The Court points out that, more than 30 years after the attack on the village of Moiwana and more than 12 years after its judgment was handed down, the information provided by the State had failed to reveal any strategy aimed at investigating the events that took place in 1986 with due diligence. The State has the obligation to act *ex officio* in those situations in which gross human rights violations are committed.²⁶ The Court finds it necessary to recall that the duty to investigate is an obligation of means and not of results, that must be undertaken by the State as an inherent legal obligation and not as a mere formality predestined to be ineffective, or as a measure taken by private interests²⁷ that depends on the procedural initiative of the victims or their family members or upon their submission of evidence.²⁸ Moreover, the State must ensure that the victims have "full access and capacity to act" at all stages of the investigation and trial.²⁹

²⁶ Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 145.

²⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 146, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 350, para. 151. See also, *Case of Kawas Fernández* and *Case of Luna López v. Honduras. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 50.

²⁸ Cf. *Case of Velásquez Rodríguez v. Honduras* *supra* footnote 27, para. 177; *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 146, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, *supra* footnote 27, para. 151. See also, *Case of Kawas Fernández* and *Case of Luna López v. Honduras. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 50.

²⁹ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 147, and *Case of Ortíz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 193. See also, *Case of Kawas Fernández* and *Case of Luna López v. Honduras. Monitoring*

17. The investigation must be serious, impartial and effective and be aimed at determining the truth, and the pursuit, capture, prosecution and eventual punishment of the perpetrators of the facts.³⁰ In addition, the Court has indicated that the body that investigates an alleged human rights violation must use all available means to execute, within a reasonable time, all those actions and inquiries that are necessary to try and obtain the result sought.³¹ This obligation to investigate with due diligence is particularly strong and important given the severity of the crimes committed and the nature of the rights violated. The Court recalls that a lack of diligence means that, with the passage of time, the possibility of obtaining and presenting pertinent evidence that leads to clarifying the facts and determining the corresponding responsibilities is unduly affected, and thus the State contributes to impunity. This Court has defined this situation as the absence of investigation, pursuit, capture, prosecution and conviction of those responsible for violating the rights protected by the American Convention.³²

18. In the judgment, the Court also determined that such “long-standing impunity, fostered by the State’s efforts to obstruct justice [...], humiliates and infuriates the community members, as it fills them with dread that offended spirits will seek revenge upon them [...]. In addition, due to the absence of a criminal investigation by the State, community members are fearful that they could once again confront hostilities if they were to return to their traditional lands.”

19. In this regard, the Court reiterates its 2010 order in which it determined that “investigations cannot depend on the initiative of the victims and their family members or on their presentation of evidence”³³. Moreover, as revealed in this order, the State has persisted in its failure to present information on options to continue the investigation into the events that occurred against the members of the Moiwana community in 1986. The Court also reiterates that, in its order of November 2010 it expressly established that “the investigations into the obstruction of justice committed by State authorities do not require witness statements in order to proceed,”³⁴ because, in the judgment, the Court had already indicated that “there is

compliance with judgment. Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 50.

³⁰ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 147, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs.* Judgment of March 13, 2018. Series C No. 352, para. 102. See also, *Case of Kawas Fernández and Luna López v. Honduras. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 50.

³¹ Cf. *Case of Velásquez Rodríguez v. Honduras* supra footnote 25, para. 177 y *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 25, 2017. Series C No. 334, para. 136. See also, *Case of Kawas Fernández y Luna López v. Honduras. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 51.

³² Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 172, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 181. See also, *Case of Kawas Fernández and Luna López v. Honduras. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of August 30, 2017, *considerandum* 51.

³³ Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum* 13.

³⁴ Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum* 14.

abundant evidence in the record that attests to the involvement of Suriname's military regime in the overt obstruction of justice in the instant case"³⁵.

20. Consequently, it is noted that impunity subsists in this case owing to the ineffectiveness and the unjustified delays in the investigations and criminal proceedings. Based on this and on the foregoing considerations, the Court concludes that the measure of reparation is pending that refers to "immediately carry out an effective, swift investigation and judicial process, leading to the clarification of the facts, punishment of the responsible parties and appropriate compensation of the victims". Accordingly, once again, it requires the State to present updated information on any actions it is taking to advance the investigations and the criminal proceedings against those responsible for the attack that took place in November 1986, and against those responsible for obstructing the criminal investigation into these facts, in keeping with paragraph 207 of the judgment (*supra considerandum* 6).

B. Recover the remains of the members of the Moiwana community

B.1. Measure ordered by the Court and monitored in previous orders

21. In the second operative paragraph and in paragraph 208 of the judgment, the Court ordered the State to "[r]ecover the remains of the members of the Moiwana community killed during the events of November 29, 1986, and deliver them to the surviving members of the Moiwana community." Moreover, paragraph 208 established that Suriname "must employ all technical and scientific means possible – taking into account the relevant standards in the field, such as those set out in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions – to recover promptly the remains of the Moiwana community members killed during the 1986 attack. If such remains are found by the State, it shall deliver them as soon as possible thereafter to the surviving community members so that the deceased may be honored according to the rituals of the N'djuka culture. Moreover, the State shall conclude, within a reasonable time, the analysis of the human remains found at the grave site in 1993, [...] and communicate the results of said analysis to the representatives of the victims."

22. In its 2010 order, the Court positively assessed the information presented by the State,³⁶ but considered that "the information provided by the parties is insufficient for the purpose of evaluating the State's compliance with this obligation. The documents submitted by the State, which date back to 1993, provide a description of the remains of various persons, but do not indicate whether those remains are the same ones that were discovered at a gravesite in 1993, nor do they state how the remains have been identified as belonging to victims of the 1986 attack on Moiwana Village. Similarly, it is not clear from the parties' submissions whether the State has properly identified the remains located in 2008 and, if so, whether it has delivered

³⁵ Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 157.

³⁶ The State advised that it "had located some of the remains of the Moiwana Community members in December 2008. It also stated that in February 2009, victims and their representatives traveled to the cemetery where the remains were found in order to perform burial ceremonies according to their traditional customs. [...] The State indicated that the victims have requested that a plaque be placed at the burial site, and it is willing to finance this. Finally, the State affirmed that it is currently undertaking a more exhaustive investigation in order to fulfill this obligation". Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum*15.

those remains to the surviving members of the Moiwana Community. The Tribunal highlights the importance of this obligation, given the Moiwana Community's beliefs regarding the proper burial of the deceased, and requests that the parties provide detailed information on whether the remains found in 1993 and in 2008 have been properly identified as belonging to the victims in this case. The Court reminds the State that its obligation does not merely consist in finding remains, but also in conducting tests or analyses to show that the remains recovered belong to victims in the present case. Thus, the State must also submit information regarding the 'technical and scientific means' it has used in order to identify the remains found, taking into account forensic standards, as ordered in the Judgment".

B.2. Considerations of the Court

23. Based on the information provided since 2012, the State has merely indicated that "[i]n 1993 the mortal remains of the victims were collected and brought to the mortuary of the[...] Landshospitaal (State Hospital) for a pathological examination. After this examination they were buried in a public cemetery in Paramaribo. With the assistance of the funeral parlour Hamdard and the police the correct location was determined in the cemetery where the mortal remains were buried. In December 2008 the Prosecutor General gave permission to the surviving relatives to visit the site. Together with the representatives of the surviving relatives and the Secretary of the Committee a group visited in 2009 the cemetery and performed rituals at the designated site by the surviving relatives/the survivors after which they (the surviving relatives) would report to the traditional authorities headed by the Paramount Chief. In the meeting of 10 August 2012 the representatives of the victims and or surviving relatives indicated that they indeed visited the designated site and that they performed rituals, but that they are not certain whether the remains are indeed of their family members. Earlier the surviving relatives had already expressed their dissatisfaction about the fact that they do not precisely know whether the mortal remains are indeed buried in the location designated. In response to this the late Paramount Chief of the Auka stated in a discussion with the State that the mortal remains buried in the city should not be exhumed again, because what has been buried must remain buried. The representatives then said that the Paramount Chief only spoke about the remains that are buried at Moiwana". The State failed to submit any evidence to support these assertions.

24. The Commission noted that "the State did not present updated information regarding any measures taken in this aspect" and indicated its wish "to underscore the importance of this obligation, especially in light of the Moiwana community's deeply held religious and cultural traditions and its reverence for proper burials for the dead". Meanwhile, the representatives observed that the State "has done nothing to locate and return the remains of the victims' deceased kin" and "concur[red] with the observations of the Inter-American Commission on Human Rights [...] on this point".

25. The Court notes that the State has not provided precise information on the steps it is taking to locate and return the remains of the victims' next of kin; it has merely advised that the victims in this case have expressed their dissatisfaction, without describing any actions designed to remedy or improve the situation. The Court recalls that, as established in the judgment, "[t]he N'djuka people have specific and complex rituals that must be precisely followed upon the death of a community member. Furthermore, it is extremely important to have possession of the physical remains of the deceased, as the corpse must be treated in a particular manner during the N'djuka funeral ceremonies and must be placed in the burial ground of the

appropriate family group.”³⁷ In addition, in the order of November 2010, the Court reminded the State that “its obligation does not merely consist in finding remains, but also in conducting tests or analyses to show that the remains recovered belong to victims in the present case”³⁸. Consequently, this Court agrees with the Commission that failure to comply with this measure is particularly serious bearing in mind its relevance for the members of the Moiwana community. Thus, the fact that more than 30 years have passed since the events occurred without the State having taken the steps required to comply with this measure constitutes gross non-compliance by the State of Suriname. Lastly, the Court notes that the State failed to provide information on the aspects requested in the 2010 order, namely: (i) whether the remains found in 1993 and in 2008 had been properly identified as belonging to the victims in this case, and (ii) the scientific and technological methods used to identify the remains that have been found, taking into account forensic standards. Consequently, the Court requires the State, as soon as possible, to present specific, detailed and updated information on this measure of reparation.

C. Adopt the measures required to ensure the property rights of the members of the Moiwana community

C.1. Measure ordered by the Court and monitored in previous orders

26. In the third operative paragraph and in paragraphs 209 to 211 of the judgment, the Court established that the State must “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 the said traditional territories.” In paragraph 210 of the judgment, the Court ordered the State to “take these measures 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, including the community of Alfonsdorp.” In paragraph 211, the Court indicated that “[u]ntil the Moiwana community members’ right to property with respect to their traditional territories is secured, Suriname shall refrain from actions – either of State agents or third parties acting with State acquiescence or tolerance – that would affect the existence, value, use or enjoyment of the property located in the geographical area where the Moiwana community members traditionally lived until the events of November 29, 1986.”

27. In its 2010 order, the Court “value[d] the steps taken in order to achieve compliance with this order, such as possible consultations with international expert; nevertheless, it reiterated “that pursuant to Article 68(1) of the Convention, the State must fully and promptly comply with the Judgement regardless of its efforts to comply with other decisions or to implement changes at a national level”. Consequently, the Court considered that “the State has not complied with this obligation and must therefore submit updated and detailed information on the steps it is taking to ensure the Moiwana Community’s property rights in accordance with the Judgment and the Court’s jurisprudence on collective land rights [...]. In particular, the Court requests the

³⁷ Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 98.

³⁸ Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum* 18.

State to submit information on: a) the steps it is taking in order to enact the legislation necessary to ensure collective land rights in a way that takes indigenous, maroon, and tribal peoples' cultures, usages, customs, and beliefs into account, including legislation regarding the juridical personality of those peoples; b) the specific measures it is taking in order to delimit, demarcate, and title the lands of the Moiwana Community; and c) the specific actions it is taking in order to obtain 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, including the community of Alfonsdorp. Additionally, the State must indicate to the Court whether it has taken any action that would affect the existence, value, use, or enjoyment of the geographical area where the Moiwana Community traditionally lived until November 1986. Furthermore, the State must inform the Court on the status of the reports of the National Commission and the ACT and indicate whether it intends to follow their recommendations^[39]. If so, the State must ensure that its implementation of those recommendations adheres to the orders contained in Judgment, and it must report on the measures it is undertaking to that end. The State must also submit a detailed schedule for compliance with this obligation”.

C.2. Considerations of the Court

28. During the 2012 hearing, the State advised that an opportunity for dialogue had been created between State authorities and representatives of the Moiwana community in order to decide how to comply with this measure of reparation. However, it indicated that the meeting had ended “abruptly” because the representatives of the Moiwana community demanded ownership of everything that lay under the lands that were claimed. In this regard, the State asserted that it should be understood that anything that lay under the lands that corresponded to the community was owned by the State. Subsequently, in its April 2015 report, the State indicated that “there are disputes between the indigenous and maroon people in respect of the Moiwana area. Despite this, the State of Suriname is convinced of [finding] a solution of this issue of legal recognition of the rights of the Moiwana community [which is why] this issue is at the top of the list of priorities of the State of Suriname”. Lastly, it indicated that it was “appl[ying] an integral approach to finding a solution to this problem. This integral approach is adopted in consultation with the Indigenous and maroon communities. This approach is also applicabl[e] to the Moiwana community as part of the ndjuka tribe”. The State did not provide further information on the “comprehensive approach” or present any evidence in this regard.

29. Meanwhile, the Commission noted that “the State has not adopted any measure to ensure the right to collective property of the Community. Furthermore, the State continues to reiterate its position to not recognize the rights to indigenous and tribal rights to collective property based on arguments already dismissed by the Court [in the judgment]”. It therefore asked the Court to require “the State to provide specific information regarding the measures to be carried out, with due consultation with the representatives, along with a timeline for such activities”.

³⁹ In its 2010 order, the Court noted that “the reports of the National Commission and the Amazon Conservation Team contain different sets of recommendations on how to proceed with the implementation of this order, yet neither report has effectively incorporated the views of the victims in this case”, which is why it considered that “the State’s apparent intention to use this report for the purpose of drafting legislation that will impact the Moiwana Community to be problematic”. *Cf. Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum* 27.

30. In their 2015 observations, the representatives indicated that the State “ha[d] yet to present evidence that there is [in] fact such an integral approach, what it may entail and whether any progress is being made that could count toward compliance with the Court’s order”. The representatives also indicated that in its 2014 report to the Human Rights Committee, the State had reaffirmed its “obligation to ensure that national regulations and policies do not attribute any form of favorable treatment to specific segments of the population resulting in discriminating the remainder,” and also stated in this report that “[t]he State ha[d] committed itself to a social-economic development contract with the Surinamese population, by strategically exploitation of the countries natural resources. [... A] large segment of the Surinamese population fears that its legitimate development interests are marginalized at the expense of the interests of the tribal communities.”⁴⁰ Lastly, the representatives stated that “the State has not been and is not now engaged in any process of drafting legislation on this or any related issue” to “ensure the property rights in relation to traditional territories of the members of the Moiwana Community”⁴¹; moreover, neither has it “held any structured consultation with any of the affected parties to ascertain their views or proactively attempted to resolve any conflicts that may exist”. With regard to the State’s assertion regarding its claim to ownership of anything found under the lands that correspond to the Moiwana community, the representatives indicated during the hearing held in 2012 that this claim should be resolved in a dialogue between the State and the community.

31. The Court notes that, since 2010, the State has merely indicated that it considered this measure a priority, without describing the actions taken to comply with it. The Court recalls that, in the judgment, it established that “the Moiwana community members, a N’djuka tribal people, possess an ‘all-encompassing relationship’ to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole. [...T]heir traditional occupancy of Moiwana village and its surrounding lands – which has been recognized and respected by neighboring N’djuka clans and indigenous communities over the years [...] – should suffice to obtain State recognition of their ownership.” Despite this, and the actions ordered by the Court, the State has not taken any steps to comply with this measure even though more than 12 years have passed since the judgment was handed down.

32. On this basis, the Court finds it pertinent to ask the State to present clear, detailed and precise information on the actions it is taking to comply with this measure; in particular with regard to the request made in the 2010 order (*supra considerandum* 27), and also to present a timetable showing how long it will take to execute such actions.

⁴⁰ “Consideration of reports submitted by States parties under article 40 of the Covenant: Third periodic reports of States parties due in 2008, Suriname”, CCPR/C/SUR/3, 7 March 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSUR%2f3&Lang=en. (Link provided by the representatives in their brief of July 20, 2015).

⁴¹ The representatives also noted that “[w]hile it is true that the massacre occurred at locations in Alfonsdorp’s lands [one of the eight communities involved in the *Kaliña and Lokono Peoples* case], where members of Moiwana had established camps along the east-west highway, the traditional lands of Moiwana and the site of Moiwana village itself, are located some 20 kilometers to the northwest of these camps in the territory of the Cottica N’djuka people to which Moiwana belongs”.

D. Guarantee the safety of the community members who decide to return to the Moiwana community

D.1. Measure ordered by the Court and monitored in previous orders

33. In the fourth operative paragraph and in paragraph 212 of the judgment, the Court imposed on the State the obligation to “guarantee the safety of those members of the community who decide to return to the village of Moiwana.” Paragraph 212 stipulates that “[t]he Court is aware that the Moiwana community members do not wish to return to their traditional lands until: (1) the territory is purified according to cultural rituals, and (2) they no longer fear that further hostilities will be directed toward their community. Neither of these elements is possible without an effective investigation and judicial process, leading to the clarification of the facts and punishment of the responsible parties. As these processes are carried out and reach a conclusion, only the community members themselves can decide when exactly it would be appropriate to return to the village of Moiwana. When community members are satisfied that the necessary conditions have been reached to permit their return, the State must guarantee their safety. To that effect, upon the community members’ return to the village of Moiwana, the State shall send representatives to the village every month during the first year in order to consult with the Moiwana residents. If the community members express concern regarding their safety during those monthly meetings, the State must take appropriate measures to guarantee their security, which shall be designed in strict consultation with the said community.”

34. In the 2010 order, the Court “acknowledges the relationship that exists between the different orders of the Judgment and, in particular, the connection between the State’s failure to investigate [...] and its lack of compliance with the obligation to guarantee the victims a safe return to Moiwana Village. The Court finds [...]that it is not clear whether the construction or renovation of police stations in the vicinity of Moiwana, as informed by the State, constitute effective measures toward compliance with this obligation. The State has not indicated whether it has adopted or plans to adopt other measures in order to guarantee the Community members of Moiwana Village a safe return. Therefore, the Court finds it necessary to require additional information from the parties on the number of members of the Moiwana Community that wish to return to Moiwana Village and on the measures, other than the renovation of police departments, that the State is implementing in order to ensure their safety. The Court stresses that the security of the members of the Moiwana Community depends, in large part, on the State’s commitment to carrying out serious investigations that bring the facts of the case to light and lead to the sanction of all those responsible”.

D.2. Considerations of the Court

35. During the 2012 hearing, the State presented a copy of a note signed by the Surinamese Head of Police and addressed to the Ministry of Justice and Police of Suriname in which he indicated that, based on oral information provided to the police of the district of Marowijne, the local police had not received any reports of possible illegal acts in the area.⁴² In its report of April 2015, the State indicated that “[i]n the most adjacent settlements, including Mung and Albina, police stations have already been constructed. The station in Mungo was renovated and currently new

⁴² Letter from the Head of Police of Suriname to the Minister of Justice and Police dated June 14, 2012 (presented by the State during the hearing of June 2012).

accommodation is being built for the officers. Since 2005 neighbour police was appointed for all neighbourhoods. These officers have the task of maintaining order and safety within specific neighbourhoods. When people are ready to return to Moiwana, a neighbour police will also be installed for this village. At the meeting of 10 August 2012 the representative of the Moiwana community indicated that they almost have no need for this anymore, as they do not find the area to be unsafe". The State presented no evidence to support this assertion.

36. The Commission did not submit any observations on this point because it considered "the need to receive the representatives' observations". The representatives noted that "[t]he potential establishment of a police station does little to mitigate these facts" and that "[m]ost [of the victims] have explained that they have either no interest in permanently returning to Suriname from French Guiana, [...] or would be afraid to do so given that the self-acknowledged intellectual authors and some of the perpetrators of the massacre remain at large and/or even hold positions of power in the government".

37. The Court reiterates, as it did in its 2010 order (*supra considerandum* 34), that this measure is inextricably linked to the State's obligation to carry out "serious investigations that bring the facts of the case to light and lead to the sanction of all those responsible". In this regard, as decided in the judgment, "only the community members themselves can decide when exactly it would be appropriate to return to Moiwana village." This means that, of necessity, the State must consult them about the safety measures they consider necessary in order to take the decision to return to their village and, once these measures are implemented, the State must again consult them regarding the appropriate moment for those members who so decide to be able to return to their village protected by the safety guarantees provided by the State. Taking into consideration the information provided by the parties, this Court finds that it has insufficient information to assess compliance with this measure. Consequently, it considers it pertinent to ask the State for information concerning any other actions it is taking, in addition to the establishment of police posts in the area, to guarantee the safety of the members who decide to return to the village of Moiwana. In addition, the State is required to provide information with regard to the observations made by the representatives concerning the measures taken to ensure a safe environment for the members of the Moiwana community.

E. Establish a community development fund

E.1. Measure ordered by the Court and monitored in previous orders

38. In the fifth operative paragraph and in paragraphs 213 to 215 of the judgment, the Court ordered the State to "establish a development fund of US\$1,200,000 (one million two hundred thousand United States dollars), to finance health, housing and educational programs for the Moiwana community members. The specific aspects of these programs will be determined by an implementation committee [...]. [This] committee [...] will be in charge of determining how the developmental fund is implemented and will be composed of three members[: ...] a representative designated by the victims and another chosen by the State; the third member to be selected by mutual agreement between the representatives of the victims and the State."

39. In its 2010 order, the Court assessed the information presented by the State⁴³ and noted that “the State has transferred at least some of the monies ordered in the Judgement to the development fund”, and therefore found “that this obligation has been partially complied with”. Despite this, the Court underlined that “the Judgment set a five-year deadline, running as of the date on which the latter was served, for the implementation of the health, housing, and educational programs established through that fund”. It therefore considered that “the State must transfer the full amount ordered in the Judgement to the development fund as soon as possible. It must also provide the Court detailed information on the amounts that have already been transferred to it, the amounts still pending, a schedule containing the dates on which these transfers are to be executed, and whether the Moiwana Community has received the interest that has accrued on the amounts awarded. It must also provide supporting documentation with respect to the amounts it has already transferred to the development fund”. In addition, the Court asked the State to provide information “as to the implementation committee’s role in the development of the Amazon Conservation Team’s draft report and in the decision to build five houses as part of the State’s fulfillment of this obligation. Furthermore, the parties must inform the Court as to whether those five houses are in fact in Moiwana territory. Given that it has yet to delimit and demarcate Moiwana lands [...], the State must also provide the Court with information as to how it chose the site for the five houses already built and for the other houses it has planned, if applicable. Moreover, the State must indicate whether it intends to follow the recommendations of the ACT ’ s draft report relating to this obligation. If so, it must ensure that its implementation of those recommendations adheres to the Judgement. The State must also submit a detailed Schedule containing projected dates for the measures it will undertake in compliance with this obligation ., which includes the Court’s orders relating to health and education. With respect to the transfer of administrative and financial responsibility to Community leaders, the Court reminds the State ‘that the right to have their juridical personality recognized by the State is one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions. This is a natural consequence of the recognition of the right of members of indigenous and tribal groups to enjoy certain rights in a communal manner’. Finally, the Court reiterates that timely compliance with requests for information is an obligation under Article 68(1) of the Convention...”.

E.2. Considerations of the Court

40. The State advised, both during the 2012 hearing and in its 2015 report, that “[o]n 04 April 2006 the development fund of USD 1,200,000 was established for the Moiwana community. The objective of the establishment of this fund was the management and implementation of aforementioned amount that had to be spent on health care, housing and education for the Moiwana community. The spending would take place over a period of five years. In accordance with a memorandum of the financial management department of the Ministry of Justice and Police all tranches

⁴³ On that occasion, the Court noted that the State Estado “has transferred at least some of the monies ordered in the Judgment to the development fund and has submitted video footage of the houses it has built for the Moiwana Community”. Nevertheless, the Court considered that “the information provided by the State is insufficient for the purpose of evaluating the extent of its compliance, particularly with respect to the five following issues: 1) the amount of the monies transferred to the development fund; 2) the construction of houses; 3) the location of these houses; 4) the construction of facilities for education and healthcare; and 5) the status of the SSDI project”. Cf. *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, *considerandum* 37.

have been deposited"⁴⁴. During the monitoring hearing, the State indicated that the said amounts had been invested in the construction of twenty houses on land that did not correspond to Moiwana and that, at the present time, only two of them were inhabited.⁴⁵

41. The Commission did not present observations on this measure of reparation. The representatives observed that "the State has indeed transferred the funds to the Development Fund [...]. However, this order has not been fully complied with as it would be impossible for these funds to have been spent within the five year-long period ordered by the Court and in light of the fact that the State has failed to comply with the order to recognize and regularize the community's tenure rights". Lastly, they considered it necessary that the State "submit detailed narrative and financial reports documenting exactly how the funds have been used to date". Regarding the construction of the houses, the representatives pointed out that the fact that they had been built outside the Moiwana settlement, without consulting about where they would be built and without consulting the neighboring communities, had resulted in the investment being ineffective and, consequently, that these houses are empty. They stressed that this fund should also have been used for the community's health and education policies.

42. Based on the above, the Court assesses positively that, according to information provided by the State, it has paid the full amount owed to the community development fund; an aspect acknowledged by the representatives. However, as the representatives pointed out, the Court finds that there is a lack of clarity as to the way in which these funds were invested, particularly taking into account the construction of the twenty houses mentioned above, of which only two are inhabited owing to the failure to consult the members of the community; also regarding the lack of precise information on the other investments made, or to be made, from the said fund.

43. Consequently, the Court considers that it still has insufficient information to assess compliance with this measure, in order to declare that this reparation has been fulfilled, because the State has not indicated the programs in which this fund has invested, or the composition of the fund's implementation committee, which had to be set up by mutual agreement with the representatives. Accordingly, the Court finds it necessary that the State provide clear, precise and detailed information concerning the investment of the development fund indicating, specifically: (i) how much money was invested in medical care, housing and education; (ii) how the fund was invested, describing the projects carried out and the continuing nature of the fund, and (iii) how the fund's implementation committee is composed and how the representatives were taken into account in this regard.

F. Pending report and possible monitoring visit

44. On March 4, 2017, the time limit granted by the President of the Court to the State to present a report on compliance with all the pending measures of reparation expired. The State was reminded of this in two notes from the Secretariat (*supra* having seen paragraph 10), but the report has not been presented. Consequently,

⁴⁴ The State indicated that "[t]he payments were made as follows: Paid 1st tranche: USD 327,075 on 16-01-07 – receipt no. 29496[;] Paid 2nd tranche: USD 178,571 on 29-06-09 – receipt no. 10152[;] Paid 3rd tranche: USD 94354 on 08-10-09 – receipt no. 9093[;] Paid 4th tranche: USD 200,000 on 23-07-10 – receipt no. 13955[;] Paid 5th tranche: USD 400,000 on 05-10-10 – receipt no. 13977".

⁴⁵ During the 2012 hearing, the State provided a video in which the external construction of some of the said houses can be seen.

within the time limit established in operative paragraph 5 of this order, the State is again requested to present a report on execution of the judgment, in which it provides updated information on compliance with the pending measures of reparation.

45. In addition, taking into account that it would appear that no substantial progress has been made in fulfillment of the said measures, as well as the benefits that a visit to monitor compliance could have, the Court finds it necessary to establish that, pursuant to Article 69 of its Rules of Procedure, if appropriate, the President of the Court may delegate one or more judges of the Court or Secretariat officials to make a visit to Suriname to obtain relevant and precise information directly from the parties in order to monitor compliance with the judgment. Such a visit would be made with the consent of, and in coordination with, the State of Suriname. Similarly, in an order of September 26, 2018, the Court has also envisaged a visit in relation to the *Case of the Saramaka People*.⁴⁶

46. The Court also establishes, based on Article 69 of its Rules of Procedure, that the Court's Secretary should commence procedures to coordinate with Suriname a visit to that country, with its consent, to obtain relevant and precise information in order to monitor compliance with the pending measures of reparation in this case and, on the same occasion, make a visit in relation to the *Case of the Saramaka People (supra considerandum 45)*. If this visit takes place, the President himself could carry out this procedure on monitoring compliance with judgments or delegate the task to one or more judges of the Court or Secretariat officials. The President will take the corresponding decisions based on the provisions of the Court's Rules of Procedure.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions in accordance with Articles 33, 62(1), 62(30), 65, 67 and 68(10) of the American Convention on Human Rights, 24, 25 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECIDES:

1. To keep the procedure of monitoring compliance open with regard to the following measures of reparation:

- a) Implement the necessary measures to investigate the facts of the case, as well as identify, prosecute and punish those responsible (*first operative paragraph of the judgment*);
- b) Recover the remains of the members of the Moiwana community killed during the events of November 29, 1986, as soon as possible, and deliver them to the surviving members of the Moiwana community (*second operative paragraph of the judgment*);
- c) Adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community in

⁴⁶ Cf. *Case of the Saramaka People v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 26, 2018, *considerandum* 48.

- relation to the traditional territories from which they were expelled, and ensure their use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of the said traditional territories (*third operative paragraph of the judgment*);
- d) Guarantee the safety of the members of the Moiwana community who decide to return to the village of Moiwana (*fourth operative paragraph of the judgment*), and
 - e) Establish a community development fund (*fifth operative paragraph of the judgment*).
2. To require the State of Suriname to adopt, definitively and as soon as possible, the necessary measures to comply effectively and promptly with the reparations ordered in the judgment, in keeping with the considerations in this order, and with the provisions of Article 68(1) of the American Convention on Human Rights.
3. To establish that, pursuant to Article 39 of the Court's Rules of Procedure, following the consent of, and in coordination with, the State of Suriname, the President of the Court may visit Suriname in order to obtain relevant information directly from the parties in order to monitor compliance with the judgment, or may delegate this task to one or more judges of the Court or Secretariat officials. Similarly, in an order of September 26, 2018, the Court also envisaged a visit in relation to the *Case of the Saramaka People*.
4. To establish that, pursuant to Article 39 of the Court's Rules of Procedure, the Secretariat should commence procedures to coordinate with Suriname the possibility of making a visit to that country to obtain precise and relevant information in order to monitor compliance with the pending measures of reparation in this case and, on the same occasion, to carry out a visit in relation to the *Case of the Saramaka People*.
5. To require the State to submit to the Inter-American Court of Human Rights, by March 4, 2019, at the latest, a report indicating the measures taken to comply with the reparations ordered by this Court, in keeping with the considerations in this order.
6. To require the representatives of the victims and the Inter-American Commission on Human Rights to present observations on the State's report mentioned in the preceding operative paragraph, within four and six weeks of receiving the report, respectively.
7. To require the Secretariat of the Court to notify this order to the State, the victims' representatives and the Inter-American Commission on Human Rights.

I/A Court H.R. *Case of the Moiwana Community v. Suriname. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 21st, 2018.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar