

INTER-AMERICAN COURT OF HUMAN RIGHTS*

CASE OF THE KALIÑA AND LOKONO PEOPLES V. SURINAME

OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT

JUDGMENT OF NOVEMBER 25, 2015

(Merits, Reparations and Costs)

On November 25, 2015, the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) delivered judgment in the case of the *Kaliña and Lokono Peoples v. Suriname* and declared the State responsible for the violation of the rights to recognition of juridical personality, to collective property, to political rights, and to cultural identity, and of the duty to adopt domestic legal provisions. As a result of these violations, the Kaliña and Lokono peoples do not have a territory that is delimited, demarcated and titled in their favor, and part of the territory claimed is owned by third parties; their effective participation in the nature reserves that the State has established on part of this territory has not been guaranteed and, with regard to a mining project in one of the reserves, their right to participation, by means of a consultation process, has not been respected. The State has also violated the right to judicial protection in relation to the obligation to adopt domestic legal provisions and the right of access to information, since these peoples do not have appropriate or effective remedies to claim the said rights. All the above has prejudiced the Kaliña and Lokono peoples and their members.

I. Facts

The Kaliña and Lokono peoples are known as the “Lower Marowijne Peoples.” The communities that are parties to this case consist of eight villages. The villages of the Kaliña people are Christiaankondre, Langamankondre, Pierrekondre, Bigiston, Erowarte and Tapuku, while the two villages of the Lokono people are Marijkedorp (or Wan Shi Sha) and Alfonsdorp.

The representatives indicated that the traditional territory of the Kaliña and Lokono peoples covers an area of around 133,945 hectares. However, the Court noted that different parts of the territory claimed by the Kaliña and Lokono peoples adjoin settlements of the N’djuka Maroon tribe. In this regard, the Court verified that several Maroon territories and settlements were excluded from the claims of the Kaliña and Lokono peoples.

In addition, three nature reserves were established within the territory in dispute in this case, namely: (i) the Wia Wia Nature Reserve in 1966; (ii) the Galibi Nature

* Composed of the following judges: Humberto Antonio Sierra Porto, President, Roberto F. Caldas, Vice President, Manuel E. Ventura Robles, Diego García-Sayán, Alberto Pérez Pérez, Eduardo Vío Grossi, and Eduardo Ferrer Mac-Gregor Poisot.

Reserve in 1969; and (iii) the Wane Kreek Nature Reserve in 1986. Together, these reserves, allegedly cover approximately 59,800 hectares of the land claimed as ancestral territory by the Kaliña and Lokono peoples.

The Wia Wia and Galibi Nature Reserves were established to protect the sea turtle nesting beaches. During certain periods, members of the indigenous communities were prevented from accessing the Galibi Nature Reserve owing to an increase in the theft of turtle eggs, and military posts were established at the access points.

The Wane Kreek Nature Reserve was established to protect and conserve ecosystems. However, based on a 75-year concession granted in 1958, Suralco began open-cast bauxite mining operations in 1997 over an area of between 100 and 144 hectares, located within the nature reserve. The first "environmental sensitivity analysis" was made in 2005 and, among other matters, it recommended concluding the mining exploitation operations as soon as possible and remediating the damage caused. As a result of the mining operations in the reserve, hunting and fishing, which were traditional activities in the area, declined significantly. The bauxite mining operations ceased in 2009 and, today, some areas are being reforested.

Meanwhile, in 1975, the State initiated an urban subdivision project called "Tuinstad Albina" ("Garden City Albina") parallel to the Marowijne River, near the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp, in which property titles were granted to non-indigenous third parties on land that was contiguous to the homes of members of the indigenous communities.

Lastly, the Court determined that Suriname's domestic law does not recognize the possibility that indigenous peoples may constitute themselves as legal entities and, consequently, they are unable to hold collective property titles. Also, with regard to the steps taken by the Kaliña and Lokono peoples to obtain recognition of their rights, the Court verified that they had undertaken various social protests and filed administrative petitions and judicial proceedings in relation to the territory claimed in this case. The judicial proceedings were dismissed because the members of the indigenous peoples lacked legal standing as a collective entity and did not possess a collective property title to the territory claimed, and the petitions presented by the captains of the Kaliña and Lokono peoples to the President of Suriname, the Ministers of Regional Development and Natural Resources, and the State Lands Office were not answered.

II. Merits

Regarding the right to recognition of juridical personality, the Court reiterated its case law in previous cases concerning Suriname and determined that since the State's domestic law did not recognize the collective legal personality of the indigenous and tribal peoples, the State had violated Article 3 of the American Convention, in relation to Article 2 of this instrument, to the detriment of the Kaliña. This also led to the violation of other rights recognized in Articles 1(1), 21 and 25 of the Convention.

With regard to the right to collective ownership, the Court concluded that the State's failure to delimit, demarcate and grant title to the territory of the Kaliña and Lokono peoples violated the right to collective property recognized in Article 21 of the American Convention, as well as the duty to adopt domestic legal provisions established in Article 2 thereof, to the detriment of these peoples. It also indicated that the State should, through a consultation process, delimit the territories that correspond to the Kaliña and Lokono peoples, and also demarcate and grant title to

these territories, guaranteeing the peoples their effective use and enjoyment. To this end, the Court indicated that the State should also respect the rights of the Maroon communities or their members in the area. The Court also decided that the State should establish rules for peaceful and harmonious coexistence in the territory in question, by mutual agreement with the indigenous peoples and the Maroons.

Regarding the right to request the restitution of the territory in view of the existence of individual property titles issued to non-indigenous third parties, the Court found that this right of the Kaliña and Lokono peoples remained valid, and that the State should therefore weigh the private or State territorial interests against the territorial rights of the members of the indigenous communities.

The Court noted that the establishment of nature reserves and the granting of a mining concession occurred before Suriname acceded to the Convention and accepted the Court's contentious jurisdiction in 1987. Although the State did not file a preliminary objection in this regard, the Court took into account its jurisdiction *ratione temporis* in relation to the respective disputes.

Regarding the alleged maintenance of the nature reserves in the traditional territory, the Court determined that the Kaliña and Lokono peoples had the right to claim, under domestic law, the possible restitution of the parts of their traditional territory within the nature reserves that adjoin the territory that they currently possess and, in this regard, the State must weigh the rights involved, that is, the collective rights of the Kaliña and Lokono peoples against the protection of the environment as part of the public interest.

In relation to the alleged restrictions faced by the indigenous peoples in the nature reserves, the Court considered importante to refer to the need to ensure compatibility between the safeguard of protected areas and the adequate use and enjoyment of the traditional territories of indigenous peoples. Thus, the Court found that a protected area consisted not only of its biological dimension, but also of its socio-cultural dimension and that, therefore, an interdisciplinary and participatory approach was required.

Accordingly, the Court concluded that, in principle, the protection of natural areas and the right of the indigenous and tribal peoples to the protection of the natural resources in their territories were compatible, and it emphasized that, owing to their interrelationship with nature and their ways of life, the indigenous and tribal peoples can make an important contribution to nature conservation. Thus, the criteria of: (a) effective participation; (b) access and use of their traditional territories; and (c) the possibility of obtaining benefits from conservation – all of the foregoing provided they were compatible with protection and sustainable use – were essential elements to achieve the compatibility that should be evaluated by the State. Consequently, the State must have adequate mechanisms to implement those criteria as a means of guaranteeing the right to a dignified life and to cultural identity to the indigenous and tribal peoples in relation to the protection of the natural resources in their traditional territories.

Regarding the adverse effects in the nature reserves, the Court found that, in this case, no violation had been constituted by the lack of exclusive management and monitoring of the nature reserves by the indigenous peoples. However, the Court did verify the absence of explicit mechanisms that guaranteed the access, use and effective participation of the Kaliña and Lokono indigenous peoples in the conservation of the nature reserves and the benefits derived therefrom. Therefore, the Court found

that the State had violated the rights to collective property, cultural identity and participation in public affairs of the victims, mainly by preventing their effective participation and their access to some of their traditional territory and natural resources in the Galibi and Wane Kreek Nature Reserves. The State also failed to guarantee, effectively, the traditional territory of the communities affected by the environmental degradation within the Wane Kreek Nature Reserve. All of this constituted a violation of Articles 2, 21 and 23 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the Kaliña and Lokono peoples and their members.

Regarding the right to collective property in relation to the mining concession within the Wane Kreek Nature Reserve, the Court held that the State's obligation to ensure effective participation, through a consultation process, applied before any action was taken that could have an important impact on the interests of the indigenous and tribal peoples, such as the exploration and exploitation or extracting stages. In this case, although the mining concession was granted in 1958, the bauxite extraction operations began in 1997 – that is, 40 years later – when the company had determined the precise place where the extraction operations would be implemented in relation to the rest of the territory that had previously been explored. Thus, the guarantee of effective participation should have been put in practice before the start of the mining extraction or exploitation operations, which did not happen in this case.

In this regard, the Court concluded that the State had failed to ensure the effective participation, by means of a consultation process, of the Kaliña and Lokono peoples. Moreover, no social and environmental impact assessment was made and the benefits of the mining project were not shared. Similarly, Suriname has not adopted mechanisms to ensure the above-mentioned safeguards. Consequently, the State has violated Articles 21 and 23 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples and their members.

Regarding the remedies under domestic law to protect collective rights, the Court held that the norms analyzed in this case do not include appropriate and effective administrative or judicial remedies establishing procedures to protect the right to collective property of indigenous and tribal peoples. Thus, the Court found that pursuant to its case law, as well as other relevant international standards, domestic remedies should be interpreted and applied to ensure the human rights of the indigenous peoples, and it specified various criteria on the matter. The Court also found that the judicial proceedings and the petitions filed had not been effective and that the State had not provided the public information requested by the representatives or justified the impossibility of handing it over. Therefore, the State was found responsible for the violation of the right to judicial protection established in Article 25 of the American Convention, in relation to Articles 1(1), 2 and 13 of this instrument.

III. Reparations

With regard to the measures of integral reparation ordered in the judgment, the Court established that its judgment constituted, of itself, a form of reparation. It also ordered that the State: (i) as measures of *restitution*: (a) grant the Kaliña and Lokono peoples legal recognition of collective juridical personality; (b) delimit, demarcate and grant collective title to the territory of the members of the Kaliña and Lokono peoples, and ensure their effective use and enjoyment, taking into account the rights of other tribal peoples in the area; (c) determine the territorial rights of the Kaliña and Lokono

peoples in cases in which the land claimed is owned by the State or by non-indigenous and non-tribal third parties, whether natural or legal persons; (d) take the appropriate measures to ensure the access, use and participation of the Kaliña and Lokono peoples in the Galibi and Wane Kreek Nature Reserves; (e) take the necessary measures to ensure that no activities are carried out that could have an impact on the traditional territory, in particular in the Wane Kreek Nature Reserve, while the above-mentioned processes for the effective participation of the Kaliña and Lokono peoples have not been guaranteed, and (f) implement the necessary inter-institutional coordination mechanisms in order to ensure that the measures established are effective; (ii) as a measure of *rehabilitation*, implement the sufficient and necessary measures to rehabilitate the affected area in the Wane Kreek Nature Reserve; (iii) as *collective compensation*, create a community development fund for the members of the Kaliña and Lokono peoples; (iv) as measures of *satisfaction*, issued the publications and the radio broadcast; (v) as *guarantees of non-repetition*, take the necessary measures in favor of the indigenous and tribal peoples in Suriname to: (a) recognize collective juridical personality; (b) establish an effective mechanism for delimiting, demarcating and titling their territories; (c) establish domestic remedies, or adapt those that exist, in order to ensure effective collective access to justice; (d) ensure effective participation processes for these peoples, the execution of social and environmental impact assessments, and the distribution of benefits; and (e) implement permanent programs or courses on the human rights of the indigenous and tribal peoples; (vi) reimburse costs and expenses.

The Court will monitor full compliance with the Judgment, in execution of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with its provisions.

The complete text of the judgment may be consulted at the following link: <http://www.corteidh.or.cr/casos.cfm>.