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Inter-American System

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III INTER-AMERICAN SYSTEM

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During the period covered by this report, the Inter-American Court on Human Rights (hereinafter the 'Court') issued several decisions on merits, which include: *Case of Escué-Zapata vs Colombia*, *Case of Zambrano-Vélez et al. vs Ecuador*, *Case of García-Prieto et al. vs El Salvador*, *Case of Boyce et al. vs Barbados*, *Case of Chaparro Álvarez y Lapo Ñíguez vs Ecuador*, *Case of Albán Cornejo et al. vs Ecuador*, *Case of the Saramaka People vs Suriname*, *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) vs Peru*.

The present report will analyse the Court's decisions in the cases of *Saramaka People vs Suriname*, *Goiburú et al. vs Paraguay* and *La Cantuta vs Peru* and the immense political and economic implications they have, not only within the respective countries, but also for the world as a whole. In *Saramaka*, the Court wrestled with the issues associated with ownership of natural resources and in *Goiburú et al.* and *La Cantuta*, further underscored the necessity of holding those culpable for human rights violations through extradition.

The full text of the decisions mentioned in this report can be found in English on the website of the Court at: www.corteidh.or.cr.

1. TRIBAL COMMUNITIES AND PROPERTY RIGHTS

In the case of the *Saramaka People vs Suriname*,¹ the Court further developed and solidified the ancestral property rights of tribal communities beyond the Court's previous holdings. This case represents a significant advance towards the protection of indigenous peoples and the preservation of their cultural integrity. Moreover, the judgement can be considered a landmark decision due to the magnitude of its economic ramifications, specifically the insistence on the restricted access of the State to the coveted natural resources found on *Saramaka* territory, such as gold and

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¹ Inter-American Court on Human Rights, *Case of the Saramaka People vs Suriname*, Judgement of 28 November 2007, Series C, No. 172.

timber. This has given enormous economic power to the community, who prior to the case was merely 'privileged' to utilise the land at the State's discretion.

The *Saramaka* people are not indigenous to Suriname; however, the community has inhabited the Upper Suriname River region for several centuries and share similar characteristics with indigenous tribes, such as having a distinct social identity and different cultural and economic practices from the dominant Suriname population. The *Saramaka* people are divided into 12 autonomous clans called *Iös*, which are spread throughout the region, but the entire area is considered communally owned. The *Saramaka* people live entirely off the land they occupy and have an integral relationship with their environment. They hunt, fish, cultivate crops, and build their homes using only the natural resources found on the territory. The estimated contemporary population of the community is approximately 25,000 to 34,000.

Between 1997 and 2004, there is evidence that the State issued various logging and mining concessions within the *Saramaka* territory. The Court found that, while the American Convention on Human Rights (hereinafter 'American Convention' or 'Convention'), specifically Article 21, does not entirely restrict the State from granting these concessions, the State did not consult the *Saramaka* people prior to these operations. According to expert testimony, the logging activities in particular were 'highly destructive and caused massive damage to a substantial area of the *Saramaka* people's forest and the ecological and cultural functions and services it provided.'² Specifically, the expert testimony indicated that the logging restricted the *Saramaka* people's access to their primary source of potable water and flooded large areas of land, which were typically used for cultivating crops.

The representatives of the *Saramaka* people before the Court submitted additional evidence of the 'ongoing and continuous effects' associated with the construction of a hydroelectric dam during the 1960s.³ In their account, the representatives described the displacement of various communities and the damage to sacred burial sites caused by flooding. The Court restated that petitioners may submit additional legal arguments to those alleged by the Inter-American Commission on Human Rights (hereinafter 'Commission'), but cannot argue facts different from those included in the application presented by the Commission to this tribunal, unless they are supervening. In the present case, the Court dismissed petitioners' claims regarding the effects of the dam construction because they were not included in the original application of the Commission to the Court.

The Court faced various complex issues in this case concerning the property rights of the *Saramaka* people and the State's failure to recognise these rights through domestic legal measures. The specific allegations against the State included the non-compliance with Article 2 and violation of Articles 3, 21, and 25 of the American Convention.

² *Ibidem*, para. 150.

³ *Ibidem*, para. 11.

The first question that the Court was compelled to answer, was whether the *Saramaka* people constituted a 'tribal community', entitled to special measures that ensure the full exercise of its rights based on Article 1(I) of the American Convention. As previously noted, the *Saramaka* people are not indigenous to the region which they inhabit. However, because of their dependence on the land and their 'profound' spiritual connection with their ancestral territory, the Court held that the *Saramaka* people do in fact constitute a tribal community entitled to protection under the Convention. In its analysis, the Court indicated that it had drawn a similar conclusion in the *Moiwana Community vs Suriname* case and that no reason existed to depart from that decision.⁴

The next pressing issue was whether Article 21 of the American Convention recognised the rights of the *Saramaka* people to use and enjoy communal property. The Court has previously addressed this issue regarding indigenous communities in *Mayagna (Sumo) Awas Tingni Community vs Nicaragua*,⁵ *Indigenous Community Yakye Axa vs Paraguay*,⁶ and *Indigenous Community Sawhoyamaxa vs Paraguay*,⁷ and concluded that Article 21 protected the right of these communities to use the land in accordance with their communal tradition. These decisions are rooted in the idea that the physical and cultural survival of these peoples rests heavily on their special relationship with the land. In the present case, the Court extended a similar interpretation to tribal communities, such as the *Saramakas*. The Court stated that Article 21 must be interpreted in light of Article 29(b) of the American Convention, which prohibits the interpretation of any provision of this treaty to a lesser extent than what is recognized under the domestic laws of the State concerned or any other treaty to which that State is a party. In that vein, the Court found that common Article 1 of the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights – both treaties to which Suriname is a party – and Article 27 of the ICCPR are relevant for this analysis, because they support an interpretation that indigenous and tribal communities have a right to enjoy property in accordance with their communal tradition. Consequently, in the present case, the Court found that Article 21 as interpreted in light of Suriname's other international human rights obligations, ensures the right of the *Saramaka* people to use and enjoy communal property.

The Court then scrutinised the State's domestic legal structure and determined that the property rights granted by the Convention to the *Saramakas* did not exist

⁴ Inter-American Court on Human Rights, *Case of the Moiwana Community vs Suriname*, Judgement of 15 June 2005, Series C, No. 124.

⁵ Inter-American Court on Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community vs Nicaragua*, Merits, Reparations and Costs, Judgement of 31 August 2001, Series C, No. 79.

⁶ Inter-American Court on Human Rights, *Case of the Yakye Axa Indigenous Community vs Paraguay*, Merits, Reparations and Costs, Judgement of 17 June 2005, Series C, No. 125.

⁷ Inter-American Court on Human Rights, *Case of the Sawhoyamaxa Indigenous Community vs Paraguay*, Merits, Reparations and Costs, Judgement of 29 March 2006, Series C, No. 146.

within the current model. The State enumerated several reasons why it did not recognise the property rights of this tribal community, including a reluctance to enact 'discriminatory' legislation towards the rest of the population, all of which were rejected by the Court. The Court noted that the State had only granted the *Saramaka* people a privilege to use the land, but not the right to effectively control their territory without outside interference. To achieve that result, the State must proceed to delimit and demarcate the *Saramaka's* territory, in consultation with the community and other neighbouring peoples, and grant them full title to their territory.

Related to this issue, the Court concluded that an additional obstacle for realising the right to communal property of the *Saramakas* was a lack of recognition of this tribal community as a legal entity under domestic law. Under the current legal framework, only individuals have the legal capacity to claim a right to property and to seek judicial protection against violations of that right. The Court determined that this situation violated Article 3 of the American Convention, which protects the right to juridical personality defined 'as the right to be legally recognized as a subject of rights and obligations.'⁸ Though the Court has found violations of this right in regard to individuals, this case represents the first time in which the Court finds that a group, as such, can claim rights under the American Convention. This departure from previous case law is justified by the need to provide full title to the *Saramaka* people in order to ensure full enjoyment of property rights of their communal territory. Lack of juridical personality also prevented the *Saramaka* people from having access to judicial remedies to protect their right to communal property in violation of Article 25 of the American Convention.

The crux of the case and perhaps the most compelling aspect of the decision was the determination of ownership of the natural resources found within the *Saramaka* territory. The State argued that, according to Suriname's Constitution, ownership rights of all natural resources were vested in the State. On the other hand, petitioners alleged that according to *Saramakas's* customary laws, ownership of all natural resources within and subjacent to its territory were vested in its community. Following previous cases, the Court held that members of tribal and indigenous communities have ownership of the natural resources they have traditionally used within their territory, because these resources are central to the survival of these groups. Notwithstanding, the Court noted that property rights granted under Article 21 are not absolute and that the State may restrict these rights, including issuing concessions for the exploration and extraction of natural resources within *Saramaka* territory under certain circumstances.

Next, the Court analysed the scope of the permissible restrictions of the right to property in the present case and concluded that a crucial factor that must be considered, is 'whether the restriction amounts to the denial of their traditions and

⁸ Inter-American Court on Human Rights, *Case of the Saramaka People vs Suriname*, *supra* note 1, para. 166.

customs in a way that endangers the very survival of the group and of its members.⁹ In that vein, the Court articulated three safety measures that the State must utilise when granting a concession for the exploration and extraction of a natural resource in *Saramaka*'s territory, which would guarantee the survival of that community. First, the State must consult the *Saramaka* people and ensure effective participation in regard to any development, exploration, or extraction plan within the *Saramaka* territory. However, in cases of major developments or investment plans that may have a profound impact on the property rights of the *Saramaka* people and may affect their traditional territory, the State must also obtain the free, prior and informed consent of the *Saramakas* in accordance with their traditions and customs. Second, the State must guarantee that the *Saramaka* people receive a benefit from any activity that takes place within their property. Third, the State cannot issue any concession, unless it has consulted with an independent entity to assess the social and environmental impact of the requested project.

In regard to the logging and mining concessions already granted by Suriname in *Saramaka* territory, the Court found that the State had failed to comply with these safeguards, which was a violation of Article 21, in relation to Article 1(1), of the American Convention. It is worth noting that the Court held that the State must review the concessions already granted and assess, in light of the American Convention and the Court's jurisprudence, whether modifications or restrictions of private property rights are necessary to ensure the survival of the *Saramaka* people.

In addition to these procedural 'safeguards', the Court issued further reparations pursuant to Article 63(1) of the Convention. The Court ordered the State to demarcate the *Saramaka* territory and grant a collective property title to the *Saramaka* people. Moreover, the Court ordered that the State amend and ratify any legislation that might impede or encroach upon the *Saramaka* people's right to juridical recognition, access to legal remedies, and the use and enjoyment of their property. Also, it ordered the State to adopt any necessary measures to ensure the right of the *Saramaka* people to consultation or, if necessary, a process through which they could grant or withhold consent in regard to large-scale projects that may affect their territory. Moreover, the State must ensure that the environmental and social assessments are conducted by independent and competent agencies.

Furthermore, as part of the measures of satisfaction, the Court ordered the State to translate and publish relevant parts of the decision into Dutch and radio broadcast the content of certain paragraphs of the same decision in the *Saramaka* language.

In terms of monetary compensation, the Court declared that due to the severe environmental damage caused by the various logging concessions granted by the State, the State owed the *Saramaka* community USD 70,000, which would be deposited into a fund dedicated to the community and serve to finance education, housing,

⁹ *Ibidem*, para. 128.

agricultural and health projects. In addition to this amount, the Court ordered the State to allocate an incremental USD 600,000 to this fund for the suffering and distress the *Saramaka* community has endured as a result of the State's failure to recognise and respect its rights. Furthermore, the State would reimburse the *Saramaka* people for the majority of the legal expenses they have incurred. In total, the State would pay damages amounting to USD 760,000 in total.

2. EXTRADITION AND THE PRINCIPLE *AUT DEDERE AUT PUNIRE*

Another relevant development in the case law of the Court with regard to the scope of the duty to investigate crimes against humanity is analysed in *Goiburú et al. vs. Paraguay*¹⁰ and *La Cantuta vs Peru*.¹¹

The *Goiburú et al.* case relates to the detention, torture, and subsequent disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and the brothers, Rodolfo Feliciano and Benjamín de Jesús Ramírez Villalba ('Ramírez Villalba brothers'), who were political dissidents during the Alfredo Stroessner Matiauda dictatorship. The victims were subjected to forced disappearance by the Paraguayan authorities with the support of the Argentine security forces within the framework of 'Operation Condor'. The Stroessner dictatorship, lasting from 1954 to 1989, involved a 'systematic practice of arbitrary detention, prolonged imprisonment without trial, torture and cruel, inhuman and degrading treatment, death during torture, and the political assassination of individuals who were said to be "subversive" or against the regime.'¹²

Goiburú Giménez, Mancuello Bareiro, and the Ramírez Villalba brothers all disappeared through a manner 'in which agents of the Paraguayan State illegally detained, maintained incommunicado, tortured and disappeared individuals whose political activities were opposed to General Stroessner's regime or who were identified as his enemies.'¹³ Goiburú was a doctor, a Colorado Party member, and founder of an opposition party against Stroessner. While living and practicing his profession in Argentina, Goiburú was arbitrarily detained by Argentine security forces on 9 February 1977, under Operation Condor, handed over to Paraguayan officials who transferred him to the Asunción Police Investigations Department, where he was held *incommunicado*, tortured, and then disappeared. Mancuello Bareiro was a

¹⁰ Inter-American Court on Human Rights, *Case of Goiburú et al. vs Paraguay*, Merits, Reparations and Costs, Judgement of 22 September 2006, Series C, No. 153.

¹¹ Inter-American Court on Human Rights, *Case of La Cantuta vs Peru*, Merits, Reparations and Costs, Judgement of 29 November 2006, Series C, No. 162.

¹² Inter-American Court on Human Rights, *Case of Goiburú et al. vs Paraguay*, *supra* note 10, para. 61.3.

¹³ *Ibidem*, para. 61.14.

Paraguayan citizen detained on 25 November 1974, with his wife and baby, as they passed through Paraguayan customs on his return from Argentina, where Mancuello Bareiro studied engineering. On 25 November 1974, Paraguay similarly detained Benjamín Ramírez Villalba on his way to Paraguay from Argentina and detained his brother, Rodolfo, in Asunción. The State accused Mancuello Bareiro and the Ramírez Villalba brothers of conspiring to kill Stroessner in a terrorist group allegedly led by Goiburú. The three men were detained in several government offices, including the Investigations Department, where they were detained for 22 months, tortured, held *incommunicado*, and later disappeared. The criminal proceedings for all the victims only resulted in judgements for violators who were subsequently granted parole, were already deceased, were not extradited from other countries, or remained in the system due to continued proceedings.

The State acknowledged international responsibility for the forced disappearance of the four victims in this case.

In *Goiburú et al.*, the Court found that the duty to investigate crimes against humanity, such as forced disappearance, includes the obligation to request the extradition of alleged perpetrators, who are not in the jurisdiction of the State. In that case, at least two of the alleged perpetrators, General Alfredo Stroessner, former President of Paraguay, and Sabino Augusto Montanaro, former Minister of Interior, were granted asylum in Brazil and Honduras respectively. On several occasions, the victims' next of kin requested that Paraguay ask for the extradition of Stroessner and Montanaro, to no avail. Although the courts in charge of the criminal investigation requested the Ministry of Foreign Affairs to proceed with the extradition request, at the time of the Court's decision, it was unclear if the State had done so. Moreover, as the Court acknowledged, former President Stroessner passed away in Brazil on 16 August 2006. The Court also noted that there was no evidence of criminal investigations initiated in Brazil or Honduras to prosecute Stroessner and Montanaro for the alleged perpetration of crimes against humanity.

The Court held that given the nature of the crimes involved in *Goiburú et al.* and the corresponding obligation under international law to punish the perpetrators of those human rights violations, Article 1(1) of the American Convention imposed upon Paraguay a 'compulsory obligation to have requested the extradition of the accused promptly and with due diligence.'¹⁴ Lack of extradition treaties with the States where the alleged perpetrators of crimes against humanity are residing, should not prevent the State from proceeding with the request. According to the Court, access to justice is a *jus cogens* norm and, as such, creates an *erga omnes* obligation upon States to cooperate in ensuring that these crimes do not remain unpunished. Furthermore, the

¹⁴ *Ibidem*, para. 130.

State Parties to the American Convention cannot grant protection to those accused of crimes against humanity. On the contrary,

the mechanisms of collective guarantee established in the American Convention, together with the regional and universal international obligations on this issue, bind the States of the region to collaborate in good faith in this respect, either by conceding extradition or prosecuting those responsible for the facts of this case in their territory.¹⁵

As part of the reparations, the Court ordered Paraguay to remove all *de facto* and *de jure* obstacles that had impeded the criminal investigation of the alleged perpetrators of the victims' forced disappearances. The State was also ordered to expedite the criminal investigation by requesting the extradition of Mr Montanaro and completing the proceedings in this case. In addition,

Paraguay and the other States Parties to the Convention should collaborate to eliminate the impunity of the violations committed in this case by the prosecution and, if applicable, punishment of those responsible and should collaborate in good faith either through the extradition of those responsible for the facts or by prosecuting them on their own territory.¹⁶

The *La Cantuta Case* involved the disappearance of nine students and one professor at La Cantuta University in Peru at the hands of several members of the Peruvian Army, who entered the campus of the University and abducted the victims on 18 July 1992. The soldiers, who carried out the operation at La Cantuta University, were members of the Colina Group, a death squad connected with the National Intelligence Service and known by both the Commander General of the Army as well as the President of Peru, Alberto Fujimori. Though the next of kin and representatives of the victims filed *habeas corpus* petitions and reported the disappearances of the victims to the criminal courts, they were denied redress. After the fall of former President Alberto Fujimori, new investigations and proceedings were commenced in the ordinary criminal courts of Peru that led to his recent extradition from Chile.

During proceedings before the Court, the State acknowledged the abduction, illegal detention, execution, and forced disappearance of the victims of La Cantuta. The State acknowledged violation of Articles 3, 4, 5, 7, 8 and 25 of the American Convention and partially acquiesced in the legal consequences of the established facts.

Unlike Paraguay, Peru started extradition proceedings against former President Alberto Fujimori in connection with the facts that transpired in *La Cantuta*. At the time that the case was decided by the Court, however, Chile – the State where Fujimori was residing – had not decided to concede to the extradition of Fujimori to Peru. Therefore, the Court, in applying the precedent established in *Goiburú et*

¹⁵ *Ibidem*, para. 132.

¹⁶ *Ibidem*, para. 192, operative para. 5.

al., reaffirmed the principle that under the American Convention, State parties must cooperate to ensure that crimes against humanity, such as those that transpired in *La Cantuta*, do not go unpunished. To that end, States must either exercise their authority to prosecute those responsible under their domestic law and international law or extradite them to the State that has requested the extradition.

The Court's decision in the case of *La Cantuta vs Peru* has acted as a catalyst for the extradition of the former President of Peru, Alberto Fujimori, for his alleged involvement in the gross human rights violations that occurred during his period in office. The Court's decision of *La Cantuta*, among others, further intensified the accusations against Alberto Fujimori, which then played a vital role in Chile's Supreme Court's decision to extradite the former President to Peru in 2007.