

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred with my vote to the adoption of the present Judgment of the Inter-American Court of Human Rights, regarding the request for interpretation of the Judgment on the case of *Moiwana Community versus Suriname*, only because the Court has shown itself willing to “resolve” the issues presented by the State and the representatives of the victims and their families, and because I do not disagree with the brief clarification made by the Court in paragraph 19 of the present Judgment, in reference to the only point that truly refers to an *interpretation* of the previous Judgment (that of 15/06/2005) in the *cas d’espèce*. Nevertheless, I think that paragraphs 18 and 19 of the present Judgment “resolve” the issues presented before the Court in a manifestly insufficient and unsatisfactory manner, and are contradictory with the previous paragraphs 14 and 17 of the same Judgment.

2. In this respect, it should not pass unnoticed that the representatives’ written brief (of 11/9/2005) was prompted by the State’s request (of 10/4/2005), and formulated as a response to it. In the present Separate Opinion I am only referring to the question that should have, to my knowledge, been the cause of much reflection for the Court, the question to which I attribute the most relevance: the delimitation, demarcation, titling and the return of land to the victims and their families, as a form of reparation. The Court could have, and should have, developed paragraph 19 of the present Judgment in such manner that would truly have “resolved” that which was submitted, but it limited and refrained itself amidst a juridical formalism and a lack of humane sensitiveness that are unacceptable to me.

3. For this reason I find myself in the duty to proceed to the development of a reasoning of my own, in a manner that will supply what the Court preferred to abstain from doing, leaving on record my personal reflections, as a basis for my position, like I did in my Separate Opinion to the Court’s Judgment (of 6/15/2005) regarding the present case of *Moiwana Community*. My reflections will focus mainly on three basic points: a) the delimitation, demarcation, titling and return of land as a form of reparation; b) the guarantee of the option of a voluntary and sustainable return to the land; and c) the need to reconstruct and preserve cultural identity. The field will then be open for the presentation of my conclusion regarding the instant request for interpretation of the Judgment, and an epilogue as a brief metajudicial reflection.

I. Delimitation, Demarcation, Titling and the Return of Land as a Form of Reparation.

4. Firstly, I do not exempt myself from underlining the relevance that I attribute, in circumstances like those of the present case of *Moiwana Community versus*

Suriname, with regard to the delimitation, demarcation and the return of land as a form of non-pecuniary reparation, ordered by the Court in the exercise of its inherent faculty, and in conformity with the terms of Article 63(1) of the American Convention on Human Rights. By means of delimitation, demarcation, titling, in the circumstances of the *cas d'espèce*, the effective protection (*effet utile*) of the rights guaranteed in Articles 21 and 22 of the American Convention is ensured. This latter is implicit under Article 33 (prohibition of *refoulement*) of the Convention on the Status of Refugees of 1951.

5. It may be recalled that, in fact, in the leading case of the *Community Mayagna Awas Tingni versus Nicaragua* (Judgment of 8/31/2001), in the application filed before the Court the Inter-American Commission on Human Rights claimed, for the first time in the history of the Tribunal, the lack of demarcation of the lands possessed by that Community, as well as the lack of an effective procedure in Nicaragua for the demarcation of those lands. The Court ordered in its Judgment the creation of "an effective mechanism for delimitation, demarcation and titling of the properties of the indigenous communities, in accordance with their customary laws, values, uses and customs" (operative paragraph n. 3). That Judgment forms part of the specialized juridical bibliography, and constitutes a landmark in the Court's jurisprudence regarding the question at issue.

6. Subsequently, in the case of *Yakye Axa Indigenous Community versus Paraguay* (Judgment of 6/16/2005), the victims' representatives claimed that the "right of indigenous communities to communal property ownership of their lands is made concrete," *inter alia*, through "the obligation of the State to delimit, demark, and title, the land of the respective villages." (para. 121(d)). The Court also recognized the linking of the "right to community property of the indigenous communities over their traditional territories and the natural resources linked to their culture" with the term "goods" as contained in Article 21 of the Convention, and gave value to the guarantee of traditional expressions, customary law, the values and philosophy of those communities (paras. 137 and 154), and ordered the State to "identify the traditional territory of the members of the indigenous community of Yakye Axa and provide this free of charge" (operative paragraph n. 6).

7. Additionally, in the case of *Moiwana Community versus Suriname* (Judgment of 6/15/2005), the victims' representatives argued that the violations of the right to property (article 21 of the Convention) by the State are "continued" to the detriment of the "indigenous and tribal communities that have been forcefully displaced from their traditional lands," and that the State has not established legal mechanisms for the victims to "reclaim and secure their rights to the tenancy of the land" (para. 122). The Court, after establishing its competence to rule regarding the "continued displacement of the community and its traditional territories" (para. 126), affirmed that the lack of an "effective investigation" of the events occurred in the *cas d'espece* "has prevented the members of the village from once again living in their ancestral territories in a safe and non-violent fashion" (para. 128).

8. In the same case, the Court expressed its understanding that in the case of the members of indigenous communities, "possession of land should suffice when it comes to obtaining official recognition of the property and the consequential registration" (para. 131). It added that members of the Moiwana Community should be considered "legitimate owners" of their "traditional territories", of which they have been deprived until the present day as a result of the massacre of 1986 and the subsequent failure by the State to investigate adequately the events (para. 134).

9. The representatives of the victims claimed "restitution and legal recognition of their right to their land and traditional resources as communal property" as a form of "guaranteeing the non-repetition" of the harmful events (para. 199(2)(f)). Consequently, the Court ordered that:

"[T]he State should adopt all the legislative and administrative measures and any others which are necessary to ensure the property rights of the members of the Moiwana Village in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories. These measure shall include the creation of an effective mechanism for the delimitation, demarcation, and titling of said traditional territories, in terms of paragraphs 209-211 of this Judgment." (operative paragraph n. 3).

10. I understand that the determination of the delimitation, demarcation, titling and return of the communal lands constitutes a legitimate and necessary form of non-pecuniary reparation, in the circumstances of the *cas d'espece*, which the Inter-American Court has full authority to order, in accordance with article 63(1) of the American Convention. It is not only a matter of *restitutio*, returning to the vulnerable *statu quo ante* of the victimized community, but also ensuring the *guarantee of non-repetition* of the harmful and especially grave events (the 1986 massacre).

II. The Guarantee of a Voluntary and Sustainable Return.

11. In the case of the members of the communities subjected to violence as a whole, like the Moiwana Community, the lack of compliance with the aforementioned form of reparation would imply a violation of the principle of non-discrimination. The delimitation, demarcation, and titling of the Community's lands become of fundamental importance, also to guarantee a *sustainable return*. Here once again the convergence between International Human Rights Law and International Refugee Law (as well as International Humanitarian Law), which I have been supporting for many years¹, are manifest.

12. Since return - evidently voluntary - was not dealt with by the Convention on the Statute of Refugees of 1951 nor by its Protocol of 1967², the specialized doctrine has given considerable attention to the question in the last few years, in order to

¹ Cf., for an acutalization of my thesis on this topic, A.A. Cançado Trindade, "Aproximaciones y Convergencias Revisitadas: Diez Años de Interacción entre el Derecho Internacional de los Derechos Humanos, el Derecho Internacional de los Refugiados, y el Derecho Internacional Humanitario (De Cartagena/1984 a San José/1994 y México/2004)", in *Memoria del Vigésimo Aniversario de la Declaración de Cartagena sobre los Refugiados (1984-2004)*, 1st. ed., San José of Costa Rica/Mexico, UNHCR, 2005, pp. 139 -191.

² Although the termination clauses have do with it. The Convention of the OAU Governing the Specific Aspects of Refugee Problems in Africa of 1969 continues to be the only treaty that deals explicitly with the question of voluntary return.

address the new needs of protection of the human being.³ In Latin America, the issue has not passed unnoticed by the Declarations of Cartagena (1984), San José of Costa Rica (1994) and Mexico (2004), regarding refugees and displaced persons. I have closely accompanied this historic process, and also participated in it, and I am of the conviction that the Inter-American Court cannot remain indifferent or insensitive to it.

13. In the present case of *Moiwana Community*, following the Court's Judgment of 6/15/2005, a ceremony took place in Suriname on 11/29/2005 that should not pass unnoticed, and that well reveals the advances of human conscience within our region. A communication emitted the following day (11/30/2005) by the *Forest Peoples Programme* and *Reuters Foundation*, reported that:

"Surviving relatives of 39 Maroon people killed in Suriname's Moiwana village massacre have returned to their birthplace for the first time since the 1986 killings for a memorial service. Women of the N'djuka people, dressed in blue and white mourning wraps, wept during the ceremony held on Tuesday near three giant memorial oil lamps while Moiwana dignitaries sprinkled the soil with water to ward off evil.

The ceremony took place after Suriname agreed this week to heed an International Court order to compensate victims of the 1986 massacre when soldiers killed 39 unarmed N'djuka Maroon people, mainly women and children. (...) The Inter-American Court of Human Rights in Costa Rica in June told the government [of Suriname] to compensate the surviving relatives and punish those responsible in a ruling that made the return of the villagers possible. (...) The Maroon people represent about 15 percent of Suriname's population and are descendants of escaped African slaves. (...)"

14. A day later (12/1/2005), another communication of the *Caribbean Net News*, gave notice that a presidential representative affirmed in that ceremony that "the Moiwana Community will be rebuilt," and another high official promised "to give the grounds of the Moiwana community collectively to the villagers." This communication also informed that:

"In an emotional ceremony (...), surviving relatives remembered the more than 39 men, women and children killed in a military attack on the Maroon village Moiwana in Suriname. (...) It was the first time in 19 years that most of the people had come back to the now abandoned area where the innocent villagers were slaughtered.

[...It was] noted that although Suriname was convicted by the Inter-American Court of Human Rights and the relatives of the victims will receive compensation, 'this will not take away the pain in our hearts'. During the ceremony survivors recounted the events of that tragic day, how brothers, sisters, pregnant women and old men were gunned down at point blank range by army troops. (...)"

15. In the present case of the *Moiwana Community* the issue of the *return* – evidently voluntary, the only type admissible – of those surviving community members who opt for it, comes to the fore. This brings to the forefront the issues of delimitation,

³ Cf., e.g., *inter alia*, A.A. Cançado Trindade and J. Ruiz de Santiago, *La Nueva Dimensión de las Necesidades de Protección del Ser Humano en el Inicio del Siglo XXI*, 3rd. ed., San José of Costa Rica, UNHCR, 2004, pp. 17-1212.

demarcation and titling of the community's territories ordered by the Court (*supra*). The question of the *return* (of refugees and displaced persons) has been the object of particular attention in recent years, within the United Nations (in particular, by the High Commissioner for Refugees (UNHCR) and its Commission on Human Rights). The UNHCR has included it in its recent *Global Consultations on International Protection*, in which I had the opportunity to take part. In the 4th session of those Consultations (April 2002), for example, particular concern was expressed in assuring the effective security of returnees, their means of survival, work conditions, social reintegration, and the sustainability of the return, which includes attention to, *inter alia*, aspects regarding land ownership.⁴

16. In line with the jurisprudence *in statu nascendi* of this Court on the matter (*supra*), in recent years an international practice in the area of restitution of property has been developed on various continents (e.g., Guatemala, South Africa, Cambodia, Bosnia-Herzegovina, Kosovo, Croatia, among others). The Executive Programme Committee of the UNHCR concluded, in October 2004, that all returnees have the right to have returned to them "any home, land, or property of which they were illegally, discriminatorily or arbitrarily deprived, before or during exile, or to receive indemnity for it"; additionally, it underlined the need for creation of "just and effective mechanisms" for the return of property and for granting compensation to the returnees.⁵

III. The Need for Reconstruction and Preservation of Cultural Identity.

17. The delimitation, demarcation and titling of communal territories of the N'djukas of the Moiwana Community, as a form of non-pecuniary reparation, carries much greater repercussions than one can *prima facie* anticipate. The Inter-American Court has recognized, in its Judgment of 6/15/2005 in this case, the relationship between the N'djuka community with their traditional territory as of "vital spiritual, cultural and material importance," even in preserving the "integrity and identity" of their culture. The Court has warned that "larger territorial land rights are vested in the entire people, according to N'djuka custom; community members consider such rights to exist in perpetuity and to be unalienable." (para. 86(6)).

18. In my Separate Opinion (which I originally wrote in English) to that Court's Judgment in the present case of the *Moiwana Community versus Suriname*, I recalled that the members of the Moiwana Community, at the public hearing before the Court of 9/9/2004, indicated that the massacre of 1986, planned by the State, had "destroyed the cultural tradition (...) of the Maroon communities in Moiwana" (para. 80). Beyond moral damages, in my Opinion I referred to the occurrence of a truly *spiritual damage* (paras. 71-81) and, beyond damages to the *project of life*, I dared to elaborate

⁴ UNHCR, document EC/GC/02/5, del 25.04.2002, pp. 1, 3, 5-6 y 11; y cf. UNHCR, document EC/54/SC/CRP.12, del 07.06.2004, pp. 1-2 y 5 (restitution and compensation). And cf. also U.N./G.A., document A/AC.96/887, del 09.09.1997, pp. 1-3 y 7; U.N./ECOSOC, document E/CN.4/1998/53/Add.2, del 11.02.1998, p. 8; UNHCR, *The Problem of Access to Land and Ownership in Repatriation Operations - Inspection and Evaluation Service*, document EVAL/03/98, May 1998, pp. 1-31.

⁵ U.N./G.A., document A/AC.96/1003, of 10.12.2004, p. 3.

conceptually on the *damages to the project of after-life* (paras. 67-70 and the following).

19. The Inter-American Court should, in my opinion, *say what the law is*, and not simply limit itself to resolving a matter in controversy. This is my ample understanding of an international tribunal of human rights, - and in this particular issue I am aware of the fact that I am in a minority position (the majority has an entirely different position that is much more restrictive) - and one which I maintain with determination. Aside from resolving the current controversy, the Court should respond to a specific portion of Suriname's request, which was adequately answered by the victims' representatives, and demonstrate - above all convince the State of - the imperious necessity to repair the *spiritual damages* suffered by the N'djukas of the Moiwana Community, and create conditions for a speedy reconstruction of their cultural tradition.

20. Accordingly, I find delimitation, demarcation, tilting and the return of their traditional territories indeed essential. This is a matter of survival of the cultural identity of the N'djukas, so that they may conserve their memory, both personally and collectively. Only then will their fundamental right to life *lato sensu* be rightfully protected, including their right to cultural identity.

21. The *universal juridical conscience*, which is, in my understanding, the *material* source of all Law, has evolved in such a manner that it recognizes this urgent need. It is illustrated in the significant triad of the Conventions of UNESCO, formed by the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage; the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and, more recently, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

22. The 1972 UNESCO Convention warns in its preamble that the deterioration or disappearance of any item of the cultural or natural heritage regrettably weakens the cultural heritage of "all the nations of the world," because that heritage is of the most significant interest and needs to be preserved as a "part of the world heritage of mankind as a whole"; and from there on to establish "an effective system of collective protection of the cultural and natural heritage of outstanding universal value."⁶ The 2003 UNESCO Convention seeks the safeguard of the *intangible cultural heritage* (for this it invokes the international instruments on human rights), and conceptualizes this latter as "the practices, representations, expressions, knowledge, skills (...) that communities, groups, and in some cases individuals, recognize as part of their cultural heritage."⁷

23. The recent 2005 UNESCO Convention was preceded by its 2001 Universal Declaration on Cultural Diversity, which conceptualizes cultural diversity as the *common heritage of humanity*, and it expresses its aspiration for greater solidarity on the basis of recognition of cultural diversity, of the "awareness of the unity of humankind."⁸ After the 2001 Declaration, the 2005 Convention, which was adopted (10/20/2005) after debates in depth⁹, reiterated the idea of cultural diversity as a *common heritage*

⁶ *Whereas* 1 and 5.

⁷ Preamble and Article 2(1).

⁸ Preamble and Article 1 of the 2001 Declaration.

of *humanity*, explaining that “culture takes diverse forms across time and space” and this diversity is incorporated “in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity.”¹⁰ The Convention added that cultural diversity can only be protected and promoted through the safeguard of human rights.¹¹

24. It is my understanding that the universal juridical conscience has evolved towards a clear recognition of the relevance of cultural diversity for the universality of human rights, and vice-versa. Additionally it has evolved toward the *humanization* of International Law, and the creation, at this beginning of the XXI century, of a new *jus gentium*, a new International Law for humankind, - and the aforementioned triad of UNESCO Conventions (of 1972, 2003, and 2005) are in my view one of the many contemporary manifestations of the human conscience to this effect.¹²

IV. Conclusion

25. The determination of measures of reparation – such as those contemplated in the present case, - is effectuated by the Court in light of the relevant provisions of the American Convention, and not of the *land rights* regulations of Suriname. To assume the contrary would deprive the Court of its powers, which are granted by the American Convention, and were accepted by Suriname upon ratification of the Convention and its acceptance of the compulsory jurisdiction of the Court; this would be inadmissible. The Court interprets and applies the American Convention, and not Suriname’s regulations on *land rights*. If these internal regulations present obstacles to compliance with the reparation measures ordered by the Court, those obstacles should be removed, and national regulations relative to *land rights* should be harmonized with the American Convention, in a manner which provides reparations to all those victimized. *Pacta sunt servanda*.

26. This is a case, in my understanding, also concerning the *land rights* in Suriname, which has been correctly resolved by the Inter-American Court in the light of the pertinent regulations of the American Convention. I hope, with this, to clarify the doubts respectfully presented to the Court by Suriname at the end of its written brief of 10/4/2005 (p. 11, para. 22). The response to the State’s brief submitted by the

⁹ Cf., e.g., UNESCO/General Conference, document 33-C/23, del 04.08.2005, pp. 1-16, and Annexes; and cf. G. Gagné (ed.), *La diversité culturelle: vers une Convention internationale effective?*, Montréal/Québec, Éd. Fides, 2005, pp. 7-164.

¹⁰ Preamble, *consideranda* 1, 2 and 7 of the 2005 Convention.

¹¹ Article 2(1) of the 2005 Convention. Cf., in general, e.g., A.Ch. Kiss and A.A. Cançado Trindade, “Two Major Challenges of Our Time: Human Rights and the Environment”, in *Human Rights, Sustainable Development and Environment* (Seminar of Brasilia of 1992, ed. A.A. Cançado Trindade), 2nd. ed., Brasilia/San José of Costa Rica, IIDH/BID, 1995, pp. 289-290; A.A. Cançado Trindade, *Direitos Humanos e Meio Ambiente: Paralelo dos Sistemas de Proteção Internacional*, Porto Alegre/Brazil, S.A. Fabris Ed., 1993, pp. 282-283.

¹² Cf. A.A. Cançado Trindade, “General Course on Public International Law - International Law for Humankind: Towards a New *Jus Gentium*”, *Recueil des Cours de l'Académie de Droit International de La Haye* (2005), ch. XIII (in print).

representatives (of 11/10/2005, paras. 24-50), on behalf of the victims, who are true subjects of International Law of Human Rights, has been adequate. Additionally, the State indicated in its aforementioned brief, its willingness to comply with its "international obligations" (pp. 11-12, para. 23, and cf. pp. 4-5, para. 9), among which compliance with the 6/15/2005 Judgment of this Court in the present case of *Moiwana Community* is included. I have the confidence that Suriname – a country with a "small economy" (as it indicated in the aforementioned brief, p. 6, para. 13) but, may I add, with a very respectable culture - will proceed in such manner, like it did in the well-known case of *Aloeboetoe et alii* (merits, 1991), in which it established a remarkable and exemplary precedent for all other States Parties to the American Convention on Human Rights.

V. Epilogue: A Brief Metajudicial Reflection

27. I would like to conclude this Separate Opinion with a brief reflection of a metajudicial character. Any relationship of dominance and submission brings with it the germ of destruction, and the only true and authentic "progress" is that which resides in an order based on human values¹³. The contemporary world can no longer be appreciated from a strictly inter-State perspective or dimension, given the displacement of millions of human beings¹⁴ and the tragic contemporary exoduses, resulting from so many injustices¹⁵. We must preserve the cultural patrimony of humankind amidst a true spirit of solidarity¹⁶, without which the future of humankind is threatened.

28. One cannot live in constant exile and displacement. Human beings share a spiritual need for roots. They cannot eternally float around a virtual world. Not surprisingly, members of traditional communities attribute particular value on their land, which they consider belongs to them, and alternatively they "belong" to their lands. In an enlightening postmortem work, regarding the need for roots, Simone Weil pondered with enlightening brilliance that:

"[A] collectivity has its roots in the past. It constitutes the sole agency for preserving the spiritual treasures accumulated by the dead, the sole transmitting agency by means of which the dead can speak to the living."¹⁷

¹³. Cf. Simone Weil, *Reflexiones sobre las Causas de la Libertad y de la Opresión Social*, Barcelona, Ed. Paidós/Universidad Autónoma de Barcelona, 1995, pp. 80 and 117.

¹⁴. A.A. Cançado Trindade and J. Ruiz de Santiago, *La Nueva Dimensión de las Necesidades de Protección...*, *op. cit. supra* n. (3), pp. 17-1212.

¹⁵. Cf., e.g., *inter alia*, C. Bordes-Benayoun and D. Schnapper, *Diasporas et nations*, Paris, O. Jacob, 2006, pp. 7, 11-12, 25, 63, 68, 129 and 216-219.

¹⁶. Cf. B. Boutros-Ghali, *Démocratiser la mondialisation*, Monaco, Ed. Rocher, 2002, pp. 65, 106-107 and 123.

¹⁷. S. Weil, *The Need for Roots*, London, Routledge, 1995 [reprint], p. 8.

29. And in the XVI century, in his penetrating *Essays* (1580), Montaigne pondered that:

"La memoria de los muertos es una recomendación para nosotros. Y yo, desde mi infancia, alimenté mi espíritu con los muertos. Tuve conocimiento de los negocios de Roma mucho antes que de los de mi casa. (...) Nunca dejo de evocar y acariciar su memoria, (...) en una unión perfecta y vivísima"¹⁸

For the great historian A.J. Toynbee, "progress" can only be measured through the knowledge truly derived from human suffering caused by the "mistakes of the civilizations". While for another scholarly historian, J. Burckhardt, it is the performances of the human spirit, rightfully preserved, defying the passing of time, that constitute the true sense of history. One must fight for the primacy of memory over human cruelty; when looking back, the misery of the human condition can only inspire a feeling of piety, since, as it has been rightly recognized,

"Time, the great destroyer, is also the great preserver. It has preserved much more than we can ever be conscious of (...). The tale of history forms a very strong bulwark against the stream of time (...).

(...) The tragic sense [of history] is the profoundest sense of our common humanity, and may therefore be a positive inspiration. If all the great societies have died, none is really dead. Their peoples have vanished, as all men must, but first they enriched the great tradition of high, enduring values"¹⁹.

30. On my part I cannot avoid the impression today that the "post-modernists" – enthusiastic, with their self-sufficient attitude, and with the frenzy of material "progress", - cannot even understand in a minimal form the world in which they live, their own environment. I have therefrom cultivated a respect for traditional cultures of those persecuted and forgotten by the world, - including the peoples of the Amazon forest. In my Separate Opinion in the previous Judgment of this Court in the present case of the *Moiwana Community*, I referred to the myth of the "eternal return," so enshrined in ancient social traditions, which attributes a cyclical structure to time, in a manner which neutralizes or annuls the virulence of the merciless passing of time (para. 36).

31. The ancient, and unduly called "primitive" peoples, had a full awareness of their own vulnerability, and that was how their spirituality was developed²⁰, and their intimate co-existence with their own dead. On the other hand, the "post-modernists", - from whom I definitively separate myself - , upon freeing themselves from the cyclical time²¹, integrated themselves into history, and in my opinion became prisoners of their

¹⁸. Montaigne, *Ensayos Escogidos*, Madrid, EDAF, 1999, p. 335.

¹⁹. H.J. Muller, *The Uses of the Past - Profiles of Former Societies*, N.Y., Mentor, 1963 [reprint], pp. 393-394, and cf. p. 388.

²⁰. Cf., in general, e.g., [Various Authors,] *Mircea Eliade - Historia de las Creencias y de las Ideas Religiosas*, 2nd. ed., Barcelona, Herder, 1999, pp. 15-563.

²¹. Cf. Mircea Eliade, *El Mito del Eterno Retorno - Arquetipos y Repetición*, 6th. ed., Madrid, Alianza Ed., 1985, pp. 9-149; and regarding the resources about the myth to confront the elusiveness of human existence, and the fight of human beings against time in religious manifestations, cf., v.g., Mircea Eliade, *Mito y Realidad*, 2nd. ed., Barcelona, Ed. Labor, 1992, pp.

own unfounded belief in linear progression carried through with technological advances. They minimized the search for regeneration, attempted to avoid or to minimize human suffering through the search of material comfort (instead of accepting suffering, assuming it and intending to draw lessons from it²²), they stopped revering their dead, and cultivating their personal and collective memory.

32. It seems that they did not even learn from the tragedies of the atrocities of the contemporary world. They continue to be petrified before their electronic devices, obtaining a mass of information that they are not able to evaluate. It seems they have lost their memory, which is what liberates and saves one's identity. On the other hand, the present case of the N'djukas of the Moiwana Community in Suriname, rich in teachings, has salvaged the importance of the preservation of cultural expressions, as a form of communication of human beings with the same unsolvable mystery of the outside world, as well as cultivating the personal and collective memory, of a healthy co-existence of the living with their dead and of the imperative primacy of justice and respect of human relations, of the living *inter se*, and of them with their dead.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Registrar

7-211.

²². There are diverse ways to learning from the suffering, that each one discovers for oneself. To this respect, it has been discussed, e.g., that "la memoria d'un uomo è la memoria del suo soffrire", el cual genera "il sentimento d'ingiustizia, di assurdità, di abbandono, di solitudine estrema (...). L'altra maniera di confrontarsi con il dolore sta nella *riconciliazione* con i propri limiti e le proprie sofferenze, anche con la morte. (...) La sofferenza infatti può offrire l'opportunità per aprire la persona umana ad altre potenzialità da sviluppare e attuare, e che rimanevano disattese. (...) Altre volte il dolore può divenire una necessaria *purificazione* da comportamenti errati o disorientanti, come anche può svolgere un *ruolo educativo* per ricostruire il bene nello stesso soggetto sofferente. Si tratta di un'esperienza universale". Ufficio Nazionale CEI per la Pastorale della Sanità, *La Sofferenza È Stata Redenta - Dallo Scandalo al Mistero* (VIII Giornata Mondiale del Malato, 11.02.2000), Torino, Ed. Camilliane, 1999, pp. 6, 24-25, 29 and 33.