



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of Salvador Chiriboga
(Case 12.054)
Against the Republic of Ecuador

DELEGATES:

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF ECUADOR**

**CASE 12.054
SALVADOR CHIRIBOGA**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Tribunal") an application in Case 12.054, María Salvador Chiriboga and Guillermo Salvador Chiriboga¹ ("the victims", "the Salvador Chiriboga siblings" or "the injured party"), against the Republic of Ecuador (the "State" or "the Ecuadorian State"), alleging its international responsibility arising from the expropriation of an area of land belonging to the Salvador Chiriboga siblings, through a proceeding in which they were deprived of its use and enjoyment without having received in exchange the just compensation to which they were entitled under Ecuadorian law and the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

2. In 1991, the Municipal Council of Quito decided to declare a property of 58,000 square meters belonging to the siblings Guillermo and María Salvador Chiriboga to be "of public utility" and subject to "immediate occupation". In 1996 the Municipality of Quito filed an action for expropriation and, in 1997, entered the property and began to carry out works in order to convert the property into part of what is at present the Metropolitan Park of Quito. The victims in the case presented a series of appeals to halt the expropriation or, if that failed, to seek just compensation for the value of the property. However, all of said appeals were unsuccessful and, to date, neither María Salvador Chiriboga nor the heirs of Guillermo Salvador Chiriboga have received just compensation for the property. Furthermore, the victims have been seeking protection for their violated rights since 1994 but the Ecuadorian courts have failed to issue a final decision settling their claim.

3. The IACHR requests the Inter-American Court to establish the international responsibility of the State of Ecuador for violation of the rights of the victims under Articles 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection) of the American Convention, in connection with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of that treaty.

4. The instant case has been processed in accordance with the American Convention and is presented to the Inter-American Court in keeping with Article 33 of the Court's Rules of Procedure. The Commission attaches as an appendix to the instant application a copy of Report No. 78/05, drawn up under Article 50 of the American Convention.² The deadline granted to Ecuador, which was extended on several occasions, expired without the State presenting information indicating its compliance with the recommendations of the IACHR. On December 8, 2006, the Commission decided to refer the case to the Court in accordance with the provisions contained in Articles 51(1) of the Convention and 44 of its Rules of Procedure.

¹ Mr. Guillermo Salvador Chiriboga died on January 9, 2003. Nevertheless, the expressions "victims" or "injured party" shall be used to refer to both Ms. María Salvador Chiriboga and Mr. Guillermo Salvador Chiriboga or, as appropriate, to their successors or heirs.

² Appendix 1, IACHR, Report 78/05, Case 12.054, María Salvador Chiriboga and Guillermo Salvador Chiriboga, Merits, Ecuador, OEA/Ser/L/V/II.123, Doc. 41, October 15, 2005.

5. The decision to refer the case to the Court is grounded in the need for the injured party to obtain justice and reparation, which it has been compelled to seek at the international level. Furthermore, the case reflects the issue of human rights violations connected with problems in the administration of justice in Ecuador, a situation to which the Inter-American Commission has drawn attention in its general reports since the late 1990's.

II. PURPOSE OF THE APPLICATION

6. The purpose of the instant application is to request the Inter-American Court to find that the State of Ecuador has violated the rights to a fair trial, judicial protection, and property of the victims, in conjunction with the obligation to ensure rights enshrined in the American Convention and with its duty to adopt the necessary legal provisions at the domestic level to ensure the rights and freedoms contained therein.

7. Based on the foregoing, the IACHR requests the Inter-American Court to order the State:

- a. to adopt all the measures necessary to give effect, in practice, to the laws on expropriation;
- b. to adopt all the measures necessary to ensure the adequate reparation or mitigation of the injury caused to the victims or their beneficiaries, including material damages, as well as a just compensation that takes into account the value of the property expropriated from the victims and the length of time for which they have been deprived of the use and enjoyment of said property;
- c. to adopt all legal, administrative and any other measures necessary to prevent the recurrence of acts of this nature in the future, in keeping with the duties to protect and ensure fundamental rights recognized by the American Convention; and
- d. to pay the Court costs and legal expenses incurred by the victims, their beneficiaries, and their representatives in pursuing the case, both at the domestic level and in the inter-American jurisdiction.

III. REPRESENTATION

8. In conformity with Articles 22 and 33 of the Rules of Procedure of the Court, the Commission has designated Commissioner Evelio Fernández Arévalos and Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Attorneys Ariel E. Dulitzky, Elizabeth Abi-Mershed, Mario López Garelli and Lilly Ching Soto, specialists of the Executive Secretariat of the IACHR, have been designated to act as legal advisers.

IV. JURISDICTION OF THE INTER-AMERICAN COURT

9. The Inter-American Court is competent to hear the instant case. The State ratified the American Convention on December 28, 1977. According to Article 62(3), the jurisdiction of the Inter-American Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the State Party to the case recognizes or has recognized such jurisdiction. Ecuador accepted the contentious jurisdiction of the Honorable Court on July 24, 1984, in accordance with Article 62 of the American Convention. Said recognition was accompanied by the following declaration made in conformity with article 62 (2) of said international instrument:

As provided in Article 62, paragraph 1, of the Convention in reference, the Government of Ecuador declares that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This recognition of jurisdiction is for an indeterminate period and on condition of reciprocity. The Ecuadorian State reserves the right to withdraw its recognition of this competence and this jurisdiction whenever it may deem it necessary.

10. The claims here presented to the Inter-American Court refer to acts that occurred after the ratification of the Inter-American Convention by the State.

V. PROCESSING BY THE IACHR

11. The Commission received the original petition on June 3, 1998. On October 2, 1998, the Commission communicated the petition to the State and requested a response within 90 days. On December 11, 1998, the Commission received a communication from the State, which included information from the then-Mayor of Quito. This information was transmitted to the petitioners on December 31, 1998 with a request that observations be presented within 30 days.

12. On May 3, 1999, the Commission received the petitioner's observations which are dated March 8, 1999. These observations, in turn, were communicated to the State on July 13, 1999 with a request for any further information to be presented within 30 days. On September 22, 1999, the Commission received a second communication from the State, which again included information from the Mayor of Quito.

13. The Inter-American Commission held a hearing on this case on October 5, 1999, at its 104th regular session. At the hearing, the Mediation Center of the Attorney General's Office offered to mediate the dispute and to initiate a dialogue between the parties with a view to reaching a friendly settlement. The parties agreed to provide information to the IACHR on their proposals and the estimated time that they believed the mediation process would take.

14. On October 13, 1999, the Commission requested the parties to provide information, within 30 days, on their proposals and the estimated duration of the procedure. On November 29, 1999, the Commission received a communication from the State's Attorney General dated November 18, 1999, in which were enclosed, *inter alia*, copies of the notifications to the parties for the initiation of the mediation process.

15. The Commission held a second hearing on the case on March 2, 2000. On June 16 of that year, the petitioners submitted comments on the response of the Ecuadorian State and the positions adopted by the latter at the hearing of March 2. These comments were transmitted to the State on August 14, 2000, and it was given 30 days to respond. On January 18, 2001, the petitioners requested another hearing before the Commission, which was rejected due to the large number of requests for hearings at that session.

16. On January 26, 2001, the Commission received a communication from the State dated January 24 of that year, in which it reiterated its interest in seeking a friendly settlement of the matter. That communication was forwarded to the petitioners on March 21, 2001. The communication of the State included a letter from the Attorney General which included a list of the judicial proceedings that the petitioners had instituted in the domestic courts, and noted that domestic remedies had not been exhausted.

17. The IACHR received additional information from the petitioners on February 23, March 15, and April 26, 2001. Later, the Commission received a communication from the State on September 10, 2001, dated September 6, 2001, in which it ratified its earlier submissions to the effect that the Ecuadorian State acted pursuant to the constitutional laws and norms which govern the State. The pertinent portions of this reply were relayed to the petitioners on September 25, 2001. On October 27, 2001, the Inter-American Commission received the observations of the petitioners on the response of the State, which were transmitted to the State on October 31, 2001, with a request for observations within 30 days. In 2002, the Commission received additional information from the petitioners dated February 5, July 2, August 6, and November 8.

18. On October 22, 2003, the IACHR adopted Report 76/03 in which it declared Case 12.054 admissible "as regards the alleged violations of the rights protected in Articles 21(2), 8(1), 25, 2 and 1 of the American Convention".³ That decision was brought to the attention of the parties by note dated October 29, 2003. On that occasion, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention. On November 26, 2003, the representatives of the injured party expressed their willingness to seek a settlement of the case.

19. The representatives of the victims presented additional observations on the merits of the case on December 29, 2003; and February 17, October 5, and October 15, 2005. These communications were forwarded to the Ecuadorian State.

20. On October 15, 2005, at its 123rd regular session, the IACHR adopted report 78/05 on the merits of the case, in accordance with Article 50 of the American Convention. In that report, the Commission concluded that the Ecuadorian State was responsible for violation of the rights of the victims to a fair trial (Article 8), property (Article 21), and judicial protection (Article 25), in conjunction with the general obligation to respect and ensure rights contained in Article 1(1) of the American Convention and with the duty to adopt provisions in domestic law provided at Article 2 of said international instrument.

21. In Report N° 78/05, the Commission made the following recommendations to the State:

1. Grant full reparation, which means paying just compensation for the value of the property as determined impartially and independently, and for the time during which [the petitioners] have been deprived of the use and enjoyment thereof.
2. Take the measures necessary to effectively enforce in practice the legislation on expropriation.
3. Adopt the measures necessary to prevent the occurrence of similar events in the future.

22. The report on merits was transmitted to the State on December 12, 2005, with a period of two months to provide information on the steps taken to implement the recommendations contained in it. On December 12, 2005, and January 9, 2006, the IACHR notified the petitioners of the adoption of the report on merits and its transmission to the State, and requested the former to express their position as regards referral of the case to the Inter-American Court pursuant to the provisions of article 43(3) of the Rules of Procedure.

³ Appendix 2, IACHR, Report 76/03, Case 12.054, María Salvador Chiriboga and Guillermo Salvador Chiriboga, Admissibility, Ecuador, OEA/Ser/L/V/II.118, Doc. 42, October 22, 2002.

23. On February 9, 2006, the representative of the victims presented his observations, including, *inter alia*, a request to refer the case to the Inter-American Court. For its part, on February 16 and 20, 2006, the State sought a three-month extension of the deadline provided at Article 51(1) of the American Convention. In those communications the State said that it "expressly waive[d] invocation of preliminary objections with respect to compliance with the prescribed time limit."

24. On February 28, 2006, the Commission notified the parties of its decision to grant the requested extension and advised the petitioners that the State was required to present a report on progress made in complying with the recommendations on April 12, 2006, and a final report on compliance with the recommendations on the following May 12.

25. On March 13, 2006, the State submitted information on the case and on May 12 and 17, 2006, presented a number of communications on the compliance with the Commission's recommendations as well as a request for another three-month extension to implement the recommendations contained in the report on merits. On May 24, 2006, the Commission informed the parties of its decision to grant the extension requested. In the communication to the State, the IACHR requested the presentation of a first report on compliance on July 12, 2006, and the presentation of a final report on the same matter on the following August 12.

26. On June 7, July 3, July 12, July 14, July 21, and August 16, 2006, the victims submitted briefs containing additional information. The State also presented a report on compliance with the recommendations on August 17, 2006, and by notes of August 22 and 23, 2006, requested that it be granted another extension in order to implement the recommendations of the IACHR. In order to ensure it had the necessary information to decide whether or not to grant the extension sought, on August 25, 2006, the IACHR requested the State to provide specific information on progress in the steps taken to comply with the recommendations contained in the report on merits.

27. The State supplied additional information on August 25, 28, and 29, 2006. On September 5, 2006, the Inter-American Commission granted the State a third extension to implement the recommendations contained in the report on merits of October 15, 2005. On this occasion, it also requested the State to present a report on measures adopted in compliance with the recommendations on October 12, 2006 and a final report on said matter on the following November 12.

28. On October 20, 2006, in the course of its 126th regular session, the Commission held a public hearing to hear the submissions of both parties on the compliance with the recommendations contained in the report on merits.

29. On November 15, 2006, the State sent a communication in which it mentioned that the judge presiding over the case had died. Due to the fact that the deadline for the State to present the final report had lapsed, the IACHR responded with a request for specific information on the compliance with the recommendations.

30. On December 4, 2006, the victims requested referral of the case to the Court.

31. On December 4, 5, and 6, 2006, the State presented information on the death of the judge, the procedure to replace him, and the appointment of an expert. On December 8, 2006, the periods granted to Ecuador having expired, based on information provided by the parties and in accordance with the provisions of Articles 51(1) of the American Convention and 44 of its Rules of Procedure, the IACHR decided to submit the instant case to the jurisdiction of the Court.

VI. FACTS

32. Based on the submissions of the parties, the evidence in the case, and the observations of the IACHR in accordance with its Rules of Procedure, the Inter-American Commission proceeds to recount the facts in the case that gave rise to the violations committed by the State.

A. The Property

33. Between 1974 and 1977 the victims inherited a property of 60 hectares, designated N° 108, on the lot known as "Batán de Merizalde" or simply "El Batán", situated in the northeastern part of what is at present the Metropolitan District of Quito. This property originally belonged to Mr. Guillermo Salvador Tobar, the father of the Salvador Chiriboga siblings.

B. From the public utility declaration

34. On May 13, 1991, the then-Municipal Council of Quito resolved to declare certain properties to be of public utility and subject to immediate occupation, in order to expropriate them. Among those properties was the one that belonged to the victims.

35. In response to the administrative decision of the Municipality and in accordance with the applicable laws, the Salvador Chiriboga siblings appealed the decision to the Ministry of the Interior, pursuant to Article 253 of the Law of Municipal Regimes.

36. In addition, the victims applied to the Municipality of Quito for authorization to build on approximately 3 hectares of their property. On September 7, 1994, that application was rejected by the Planning and a Nomenclature Commission and on January 12, 1995, the victims filed a claim for a "subjective or full jurisdiction" remedy (*recurso subjetivo o de plena jurisdicción*) with the First District Administrative Court. In that action, they requested that the administrative decision of the Planning and Nomenclature Commission refusing their application be declared null, void and illegal.

37. Despite the fact that final decisions had not been returned on the proceedings initiated, on August 28, 1996, the Municipality of Quito brought an expropriation action against the victims. Consequently, on September 24, 1996, the Judge of the Ninth Civil Court of Pichincha, authorized the immediate occupation of the land, since the Municipality had made a payment for the property consisting of an amount whose value it had unilaterally determined, which the owners of the land refused to accept because they considered it insufficient.

38. The petitioners were informed of the action on June 6, 1997. The Salvador Chiriboga siblings asked, in the context of that case, that the admissibility ruling on the expropriation action be voided as various requirements provided in Ecuadorian law in order for expropriation to be admissible had not been met.

39. On July 10, 1997, the Municipality entered the western section of the property and began construction, including felling trees, while at the same time it prevented the owners from entering the area.

40. On September 4, 1997, the judge of the Ninth Civil Court of Pichincha ruled on the petitioners' request that the ruling on admissibility of the suit be rendered null. The judge found that the Municipality had not met all the requirements established in Article 62 of the Constitution and

Article 42 of the Public Procurement Law and its regulations, and for this reason revoked the aforesaid decision.

41. On September 16, 1997, the Ministry of the Interior issued "Ministerial Decision 408", annulling the decision to declare the property to be of public utility. However, two days later, on September 18, the Ministry issued "Ministerial Decision 417" rendering without effect the aforementioned decision.

42. On September 23, 1997, the Municipality appealed that decision of September 4, 1997; however, the judge rejected the appeal as inadmissible on the same day. Nevertheless, on February 17, 1998, the Judge of the Ninth Civil Court of Pichincha, who had cognizance of the case in which the Municipality of Quito requested expropriation of the entire property, recused himself and referred the record to the First District Administrative Court. In spite of the foregoing, the case was never taken up by the District Administrative Court.

43. In parallel to the expropriation action initiated --among other actions-- by the Municipality, on July 9, 1997, the petitioners filed a constitutional appeal of *amparo* with the First District Administrative Court, arguing that the expropriation effected by the Municipality amounted to a violation of their rights guaranteed in the Constitution, the American Convention (Article 21), and the American Declaration of the Rights and Duties of Man, and, moreover, were not in accordance with domestic law on expropriation.

44. The District Administrative Court recused itself from further oversight of the appeal, which decision was, in turn, appealed to the Constitutional Court, which ruled on September 15, 1997, that the lower court could not recuse itself and must continue to process the appeal lodged by the injured party. Accordingly, on October 2, 1997, the First District Administrative Court rejected the appeal because it felt that the expropriation process carried out by the Municipality had been legal.

45. Faced with the ineffectiveness of the challenges presented, the petitioners submitted a variety of suits. Among them, on December 17, 1997, they filed a claim for a subjective or full jurisdiction, seeking to have Ministerial Decision 417 declared illegitimate and, consequently, have their right to the property recognized and honored. The case remains pending before the Second Chamber of the First District Administrative Court, Proceeding 4431-97, instituted by María Salvador Chiriboga on her own behalf and as administrator of the estate of her brother, Guillermo Salvador Chiriboga, versus the Ministry of the Interior.

46. Faced with the decision of the First District Administrative Court on the *amparo* appeal, the victims filed another appeal with the Constitutional Court. On February 2, 1998, the Second Chamber of the Constitutional Court refused the appeal and, in consequence, upheld the legitimacy of what the Municipality had done. The Court ruled that the Municipality had acted in keeping with its legally conferred powers and, furthermore, had proceeded in accordance with previous technical and legal reports and with a court order for immediate occupation.

47. To date, none of the various administrative and judicial proceedings have produced a decision on the value of the property subject to expropriation. Therefore, the injured party has received no compensation for the property in spite of the fact that the Municipality is in possession of the property and even continues to levy taxes on it.

C Domestic laws of Ecuador applicable to this case

a. The power of the State to expropriate

i. Constitution of Ecuador

48. The power of the State of Ecuador to expropriate private property is recognized in Article 62 of the Constitution of 1978, which provides:⁴

For social order purposes established in the law, the public sector, through the proceeding and in the time period indicated by procedural rules, may expropriate, with a prior fair valuation, payment and compensation, property belonging to other sectors.

49. In order to ensure adequate protection for the constitutional right to private property, the exercise of public power to expropriate is contingent upon the existence of a prior fair valuation, payment and compensation as well as to the observance of and compliance with procedures established for the purpose.

50. In turn, the constitutional provision clearly indicates that the indemnity, which should compensate for all injuries suffered by the owners of the expropriated asset, must be paid prior to the actual disposition of the property by the governmental authorities.

ii. The procedure for expropriating private property

Public Procurement Law⁵

51. According to its first article, the Public Procurement Law of Ecuador applies “to the State and all public sector entities”. The aforesaid law contains the procedure that public bodies must observe in order to proceed with expropriating a privately owned property. In this regard, Article 36 of that law provides as follows:

ACQUIRING REAL ESTATE

ARTICLE 36. - PROCEDURE. – When the highest authority of the respective public sector body or agency has resolved to acquire a specific piece of real estate, it shall proceed to issue a declaration of public utility or social interest in accordance with the law.

Once the declaration of public utility or social interest has been completed, a direct agreement will be sought between the parties, for a period of no more than ninety days.

For this agreement, **the price shall be set, for properties located in both urban and rural sectors, based on the valuation performed by the National Directorate of Appraisals and Land Registries, which shall consider commercial prices in the area.** The price agreed upon may not exceed that appraisal by more than ten percent.

The agreement and the corresponding transfer of ownership shall be formalized in the respective public document, which shall be entered in the Property Registry.

⁴ The right to private property is protected in Article 33 of the Constitution in force, which reads:

For social order purposes established in the law, State institutions, through the proceeding and in the time period indicated by procedural rules, may expropriate, with a prior fair valuation, payment and compensation, property belonging to the private sector. All confiscation is prohibited [...]

⁵ Codification No. R. O. N° 501 of August 16, 1990.

In the event agreement cannot be reached directly between the acquiring entity and the owners of the property, there shall be an expropriation proceeding following the steps provided in the Code of Civil Procedure. The Judge handling the case is not required to adhere to the appraisal established by the National Directorate of Appraisals and Land Registries.

The acquisition of real property abroad by the State or Ecuadorian public sector entities shall be subject to Special Regulations.

In order to transfer the ownership of properties between public sector entities, no declaration of public utility or social interest shall be required, nor any judicial motion in the case of a donation. The transfer may be realized through purchase and sale, exchange, donation, offsetting of accounts, transfer of budgetary headings or assets.

The procedure shall be subject to the provisions of the regulations for this law (emphasis added).

52. According to the terms expressed in the law, in order to establish the price of the property to be expropriated, the agency involved must request the corresponding appraisal from the National Directorate of Appraisals and Land Registries, which shall consider commercial prices in the area for this purpose.

53. If the owner of the property questions the value assigned to the property, the State or its agencies are required to initiate an expropriation proceeding that, as the law itself indicates, is governed by the Code of Civil Procedure.

The Code of Civil Procedure⁶

54. As the law analyzed above indicates, the Code of Civil Procedure governs the judicial proceeding that the State or its bodies must impel and judges must apply when a direct agreement cannot be reached in order to proceed with expropriation of the property.

55. In this regard, the relevant part of the aforesaid code provides as follows:

SECTION 19a. Expropriation proceeding

Art. 792.- No one may be deprived of their property due to expropriation except in accordance with the provisions of this Section; nonetheless, special laws are provided on expropriation for construction, widening and improvement of roads, railroad beds, airfields and towns.

Art. 793.- The sole purpose for handling the **expropriation proceeding is to determine the amount that should be paid as a price for the thing appropriated**, provided it is shown that expropriation due to public utility is involved.

Art. 794.- The declaration of public utility, for the purpose of expropriation, may only be made by the State and other public sector institutions, in accordance with the functions proper to them and provided that said declaration is approved, when applicable, by the respective Ministry. **The declaration of public or social utility by the aforementioned entities, in order to proceed with expropriation of properties, may not be subject to judicial debate, may rather be subject to administrative review.**

Art. 795.- The expropriation proceeding shall be pursued before civil judges with jurisdiction based on location [...]

⁶ Codification No. 000. R.O. Sup. 687 of May 18, 1987.

[...]

Art. 797.- The following documents shall accompany the claim for expropriation:

1.- Copy of the order sent to the respective official seeking expropriation, or the original of the same order; 2.- Certificate from the respective Property Registrar, so as to know who the owner is and any liens on the property involved in the expropriation. If there is no property entry, the Registrar shall certify this fact, and the proceeding shall continue with the participation of the actual owner; 3.- Value of the estate to which the expropriation claim refers in whole or in part, which shall be established according to the price of land during the two years prior to that in which the claim is submitted. If the base does not appear in the registry, the Attorney General or representatives of the public sector institutions shall ask the respective office to perform an appraisal so that it can be attached to the claim; and 4.- Site plan corresponding to the piece of property whose expropriation is at issue.

Art. 798.- The claim shall indicate the area of land for which expropriation is sought, as well as its relationship to the entire estate, with indication of buildings and plantings in the area. It shall also indicate the name and domicile of the owners of the property and of any persons who, according to the certificate of the Property Registrar, have real or rent rights over the estate [...]

Art. 799.- Once the claim has been filed and provided the requirements specified in the previous articles have been satisfied, the judge shall appoint an expert or experts, in accordance with the provisions of this Code, to appraise the estate [...]

[...]

Art. 802.- The judge shall issue a ruling within eight days of the submission of the expert report, and the ruling shall relate solely to the price that should be paid and the claims filed by the interested parties. In setting the price, the judge is not required to abide by the appraisal established by the National Directorate of Appraisals and Land Registries.

[...]

Art. 804.- When ordering the expropriation, the ruling shall establish the borders of what is to be expropriated and the price. When deposited, the ruling shall be notarized and entered for use as the title of ownership" [emphasis added].

56. As established in the provisions transcribed above, it is obvious that the sole purpose of the expropriation proceeding is to determine the value of the property subject to expropriation, so that based on the fair valuation thereof the owner's property right is compensated for the exercise of the State's power to expropriate. It is thus possible to strike a balance between the government's power to dispose of certain assets or properties of a private nature when required by objectives involving the common good, on the one hand, and the right of individuals, on the other hand, to have their property rights respected and to arrive at equity in terms of public burdens.

57. The aforementioned code also provides that declarations of public utility are not subject to judicial challenge.

The Law of Municipal Regimes⁷

58. The Law of Municipal Regimes governs the jurisdiction of municipalities and in particular the power to declare a property subject to public utility and to proceed with its expropriation. In this respect, the relevant sections of the aforementioned law provide as follows:

SECTION 3a.

REGULAR MEETINGS OF THE MUNICIPAL COUNCIL

Art. 122.- During the course of its regular meetings, the Council shall be required to hear and resolve the matters indicated below:

[...]

8.- **Declarations of public utility or social interest with respect to property subject to expropriation;**

TITLE III

MUNICIPAL ADMINISTRATION

CHAPTER I

THE FUNCTIONS OF MUNICIPAL ADMINISTRATION

Public works

Art. 162.- In the area of public works, the municipal administration is responsible for:

[...]

d) Asking the Council to declare of public utility and social interest properties that must be expropriated in order to carry out cantonal physical development plans and plans to regulate urban development and municipal projects and services;

[...]

CHAPTER IV

EXPROPRIATIONS

Art. 251.- Expropriations that Municipalities need to carry out require a prior declaration of public utility or social interest, expressing the purpose to which the object expropriated shall be applied.

[...]

All decisions referred to in this article shall require the favorable vote of two-thirds of the council members in attendance.

Art. 252.- Once the public utility or social interest of a property has been declared generically or specifically, **the Council may issue the agreement on occupation of all or part of the portion that is strictly essential for purposes of the expropriation.** Property whose occupation is necessary may also include those that are indispensable for foreseeable expansions of the work or purpose involved.

[...]

Art. 253.- Those interested in the expropriation proceeding shall be informed of the declaration of public utility and the occupation decision within three days of their issue.

[...]

An interested party who is opposed to the occupation agreement or the declaration of public utility shall submit to the Council within three days of the date of notice any pertinent

⁷ Codification No. 000. RO/ Sup 331 of October 15, 1971.

observations. If he or she does not receive a response within ten days, or if the response is totally or partially negative, he or she may submit their claim to the Ministry of the Interior within three days of when the previous deadline expires, or within three days of the response.

That Ministry shall hear the observations of the respective Municipality and with this background shall issue the appropriate finding, for which purpose it may seek advice from public or private organizations qualified on the subject.

Art. 255.- The determination of the price applicable to the property subject to expropriation shall also follow the provisions established in the Code of Civil Procedure and other laws.⁸

Art. 259.- The Municipality may reach agreement with the individual affected by the expropriation on the acquisition of assets or rights subject to expropriation freely and by mutual agreement; in such case and once the terms of the acquisition have been agreed upon, the case initiated shall be deemed to have been completed.

Art. 260.- In areas where this Law is silent, the provisions of the Code of Civil Procedure shall be applicable with respect to expropriations [emphasis added].

59. As can be inferred from the above-transcribed provisions, the Law of Municipal Regimes establishes the jurisdiction of municipalities to declare that certain properties are of public utility and, consequently, subject to expropriation. These provisions establish the procedure that municipalities must apply when there is agreement between the municipality and the owner regarding the declaration of public utility and the price of the property, and also establish, in cases where no such agreement exists with respect to the first of these aspects, an administrative proceeding that the Ministry of the Interior is responsible for resolving.

60. Furthermore, in the event of agreement regarding the value of the expropriated property, under the provisions of the Public Procurement Law and the Code of Civil Procedure, said law refers to the proceeding governed by the aforementioned Code of Civil Procedure.

b. Damages

61. The injured party in the instant case has sustained material and non-pecuniary damages as a result of the dispossession of their property. Said party has also incurred costs in the proceedings at the domestic and international levels.

VII. LEGAL ARGUMENTS

A. Violation of the right to property (Article 21 of the American Convention)

62. Article 21(1) of the American Convention provides that:

Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

63. The previous Constitution of Ecuador which was adopted by referendum in 1978 and entered into force on August 10, 1979, says at Article 63 that:

The ownership of property, in any form, constitutes a right that the State recognizes and ensures for the organization of its economy, provided it fulfils its social function [...]

⁸ Article substituted by Law 104, Published in Official Gazette 315 of August 26, 1982.

64. Based on Article 21 of the American Convention and the Constitution of Ecuador it would be possible to deduce that the right to property is recognized and ensured in Ecuador, although that right may be subordinated to the general interest. However, given that the second sentence of Article 21(1) of the American Convention must be interpreted in the light of the general principle enunciated in the first sentence, the means used in each case to restrict the right of a person to make use of their property must be proportional to the purpose pursued in doing so. The European Court of Human Rights has ruled accordingly in analyzing Article 1 of Protocol 1 of the European Convention on Human Rights.⁹

65. On that respect, it is important to clarify, first, the scope that should normally be assigned to the right to property in the framework of the inter-American system for protection of human rights and, in particular, under what circumstances States parties are entitled to expropriate it. For that purpose it is essential to detail, on one hand, the relevant provisions of the American Convention and, on the other, the interpretations provided for them by the IACHR and the Inter-American Court of Human Rights.

66. As the Inter-American Court has mentioned on several occasions, the wording of Article 21 of the American Convention is clear as regards recognition of the right to property. In this connection, the Inter-American Court has found that the “property” to which the American Convention refers may be defined as

those material objects that may be appropriated, and also any right that may form part of a person’s patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.¹⁰

67. There is no doubt about the general principle contained in the American Convention that no one may be deprived by the State of property that, in its various manifestations, is part of their patrimony. That principle is founded in the protection of the right to property expressly recognized in the American Convention. Having said that, the aforesaid instrument also contains an exception to that general rule.

68. Indeed, as the American Convention expressly provides, in certain circumstances States parties may dispossess private citizens of their property in order to use it to fulfil a purpose for the common good. It is understood that in such cases the State seeks to accomplish objectives for the general well-being that cannot be achieved by less onerous means.

69. However, inasmuch as no one may be required to bear the public burden asymmetrically vis-à-vis the rest of society, the State’s exercise of the power to expropriate is not discretionary nor is it free of any limitations.

70. On the contrary, the American Convention expressly establishes certain conditions and prerequisites that must be observed by public authorities so that the exercise of this power does not become, quite simply, a case of confiscation. Unlike expropriation, confiscation represents the arbitrary and unjustified deprivation of a person’s property and, therefore, is undoubtedly prohibited under the inter-American norms.

71. Consequently, in order for the deprivation of someone’s property to be compatible with the right to property embodied in the Convention, it must be based on reasons of public utility

⁹ ECHR, *Agosi v. The UK*, judgment of 24 October 1986, Series A No. 108 14/1984/86/133, par. 52.

¹⁰ I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C, No. 74, par. 122.

or social interest, subject to the payment of just compensation and, finally, it must be limited to the cases and carried out according to the methods defined by law.

72. With respect to the requirement to pay compensation, in order for such compensation to be just as required by the Convention, it must be comprehensive, that is, it must leave the person whose property is expropriated as well off as they were before. Compensation must also be paid prior to when the expropriation becomes effective or, possibly, within a brief period of time after the State takes possession of the property. This is because it is only through the effective payment of compensation that a balance is struck between the individual's right to property and the power of States to dispose of that property on an exceptional basis when justified by the public interest.

73. If, on the other hand, States parties were able to dispose of people's property for prolonged periods of time without in return paying the compensation due to them, there is no doubt that the right to property that the Convention protects would be subject to the mere will of those in government, a situation that would in turn make the effective enjoyment and protection of that right illusory.

74. Based on the foregoing considerations and the proven facts in the case, the IACHR notes that no impartial and independent organ has yet issued a judicial decision definitively establishing the value of the expropriated property and ordering the immediate payment of just compensation. This emerges from the information submitted by both parties on the various proceedings initiated as a consequence of the expropriation of the victims' land by the Municipality of Quito.

75. More than 15 years have elapsed since the Municipal Council of Quito declared the plot of land belonging to the Salvador Chiriboga siblings to be of public utility and subject to immediate occupation for purposes of expropriation. Despite that, the injured party has not yet obtained the compensation due to them for the loss they have sustained.

76. In this respect, the European Court of Human Rights has indicated as follows:

Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose property has been expropriated, putting him in a position of uncertainty, especially when the monetary depreciation which occurs in certain States is taken into account.¹¹

77. In addition, the European Court of Human Rights, upon reviewing a case in which the petitioners claimed delay in the payment of compensation due to them for the expropriation of their property, found that "the delay in paying for the additional compensation awarded by the domestic courts was attributable to the expropriating authority and caused the owner a loss additional to that of the expropriated land" and that "[a]s a result of that delay and the length of the proceedings as a whole, the Court finds that the applicants have had to bear an individual and excessive burden that has upset the fair balance that must be maintained between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions."¹²

78. Added to this is the fact that, during this period of time, the Municipality has been in possession of the property declared to be of public utility, so that the petitioners have been

¹¹ ECHR, Case of Akkuş v. Turkey, 60/1996/679/869, Judgment of 9 July 1997, § 29; Akkuş v. Turkey, no. 107/1997/891/1103, Judgment of 23 September 1998, §49.

¹² Eur. Court H.R., Case of Baskan v. Turkey, no. 66995/01, 21 July 2005, § 21.

prevented from exercising the attributes of land ownership, particularly the right of owners to the use and enjoyment thereof.

79. Furthermore, it must be noted that, when filing its action, the Municipality deposited the value that it unilaterally assigned to the expropriated property which is not sufficient to have complied with the requirement under Article 21 of the Convention, that is, payment of just compensation. The reason for the foregoing is that various provisions in Ecuador's system of laws establish that in cases such as the instant one, where the parties do not agree on the value that should be assigned to the property declared to be subject to public utility, it is up to the judges to determine what that amount should be.¹³

80. The Convention and domestic Ecuadorian law also indicate that such judicial determination should occur within a brief period of time. It should be recalled, in this regard, that Ecuador's Code of Civil Procedure provides that the decision should be issued within eight days of submission of the expert's report, and no objections of any kind are allowed.

81. In addition, it should be noted that the Inter-American Court¹⁴ has concluded that when determining whether or not the right to property has been violated "the Court should not restrict itself to evaluating whether a formal dispossession or expropriation [of the property in question] took place, but should look beyond mere appearances and establish the real situation behind the situation that was denounced."¹⁵

82. In this case the judicial determination has not been made, given that in response to the petitioners' questions with respect to the amount of compensation, the judge revoked the decision admitting the suit and, in response to the appeals filed by the Municipality, disqualified himself from continuing to hear the case.

83. In this regard, the offers to trade that the Municipality has made to the petitioners and that have been highlighted in its various communications do not improve its position. This is because, as indicated in Ecuador's domestic legislation and in the Convention, in order for States parties to fulfill their duty to compensate those whose property has been expropriated, the compensation must consist of a sum of money unless the individuals whose property has been expropriated accept the offer to trade, which is not the situation in the instant case.

84. In this regard, the Commission's view is that since there was no judicial determination regarding the value of the property nor any payment of compensation, considering the time elapsed, the petitioners have in fact been deprived of their right to the property. Thus, the Commission finds that Ecuador's conduct, in expropriating land belonging to the petitioners and holding it for more than ten years without making the corresponding payment during that time, constitutes a violation of Article 21 of the American Convention.

B. Right to judicial protection (Article 25 of the American Convention)

85. The right to judicial recourse expressed in Article 25 of the American Convention is a fundamental tool for the protection of individual rights in the framework of the American Convention's object and purpose. It is so important that the IACHR has concluded that not even

¹³ Article 36 of the Public Procurement Law, Article 793 of the Code of Civil Procedure, and Article 255 of the Law of Municipal Regimes.

¹⁴ I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C, No. 74, para. 124.

¹⁵ Eur. Court H.R., *Case of Belvedere Alberghiera S.R.L. v. Italy*, Judgment of 30 May 2000, par. 53. Cited in Report 20/03, Chile, par. 56.

the imposition of states of emergency could entail the suppression or ineffectiveness of the judicial guarantees.¹⁶ The Inter-American Court has steadfastly reiterated the importance of the right to judicial protection in its case law.¹⁷

86. Article 25(1) of the American Convention provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

87. As the Court has also found,

the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective¹⁸.

88. In the case under review, the aforementioned precedents and that fact that the petitioners have failed to obtain a solution to their problem, even after several years, shows that the injured party has not had access to simple, prompt or effective remedies.

89. Additionally, the Inter-American Court has held:

for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. That could be the case, for example, when practice has shown its ineffectiveness: when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice, as when there is an unjustified delay in the decision; or when, for any reason, the alleged victim is denied access to a judicial remedy.¹⁹

90. Consequently, it is the understanding of the Commission that to determine if the petitioners have had access to an effective remedy, it is necessary to ascertain if in the country's

¹⁶ IACHR, Annual Report 1997, Report 30/97 (Case 10.087 – Gustavo Carranza), Argentina, OEA/ser.L/V/II.98 Doc.6 rev., April 13, 1998, par. 80, p. 275.

¹⁷ See, for example, I/A Court H.R., Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/87 of October 6, 1987, Series A, N° 9, par. 24; *Suárez Rosero Case*, Judgment of November 12, 1997, Series C, N° 35, pars. 61-66; *Loayza Tamayo Case*, Judgment of September 17, 1997, Series C, N° 33, pars. 52-55; and Habeas Corpus in Emergency Situations, Advisory Opinion OC-8/87 of January 30, 1987.

¹⁸ I/A Court H.R., *Constitutional Court Case*, Judgment of January 31, 2001. Series C, No. 71, par. 89; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 23.

¹⁹ I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9, párr. 24.

domestic system there are procedural mechanisms or instruments in place designed to ensure rights, in this case the right to property. Furthermore, if such remedies exist, they must be capable of repairing the infringed right. The Court considered as much when it ruled that,

Adequate domestic remedies are those which are suitable to address an infringement of a legal right.²⁰

91. This is the perspective from which it is necessary to view the facts in the case, where, despite having access to the remedies afforded under the domestic law, such as the appeal to the Ministry of the Interior; being a party in an expropriation proceeding; and filing for writ of *amparo*, the victims did not obtain a solution to their violated rights at the domestic level.

92. The expropriation proceeding failed to produce any result whatever, this left the victims in a state of legal uncertainty for a protracted length of time. Furthermore, the petitioners filed an *amparo* petition with the Administrative Court to ensure that administrative acts of the State did not violate constitutional precepts or norms. However, said Court rejected the petition on October 2, 1997, a decision ratified by the Constitutional Court on February 2, 1998.

93. Based on the submissions of the parties analyzed *supra*, the Inter-American Commission considers that the right to judicial protection of the injured party has indeed proved illusory. To date no final decision has been rendered on any of the many different judicial remedies invoked by the victims to obtain a judicial decision on the just compensation to which they are entitled under the Convention and the Constitution.

94. In spite of the time elapsed since these remedies were initiated –10 years for most of them and nearly 14 in the case of some– not one has led to a final decision on the amount of compensation that the Ecuadorian State must pay to the injured party in order provide redress for the injury resulting from the dispossession of the land they owned.

95. Accordingly, the IACHR submits that the State violated the right to judicial protection enshrined in Article 25 of the Convention, to the detriment of the victims, a situation, therefore, that binds its international responsibility as regards its obligations in the framework of the American Convention.

C. Violation of the right to a fair trial (Article 8 of the American Convention)

96. Article 8(1) of the American Convention recognizes that,

[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

97. In the instant case, the State has failed to ensure the fundamental rights of the Salvador Chiriboga siblings and, moreover, has violated the guarantees set down at Article 8 of the American Convention. In view of the time elapsed, the Inter-American Commission proceeds to examine the facts in light of the guarantee of a hearing within a reasonable time.

98. The purpose of the principle of "reasonable time" is to prevent persons from remaining in that situation for a protracted period, in particular with respect to their rights and

²⁰ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, par.64.

obligations of a civil, fiscal, or any other nature.”²¹ With respect to the duration of the process, the State has observed on several occasions in the proceedings before the IACHR that the length of time elapsed is attributable to the victims.

99. At the time, the Inter-American Commission considered that the State failed sufficiently to justify the time elapsed as reasonable or to provide evidence to support its claims that the delay of the State organs in settling the substantive dispute in the case was imputable to the injured party.

100. The IACHR and the Inter-American Court have held that the reasonableness of the time in which a proceeding takes place should be analyzed according to the complexity of the case; the judicial activity of the interested party; and the conduct of the judicial authorities.²²

101. With respect to the first point, the case under review does not appear to represent a complex situation. Indeed, it is confined to the determination of the value of a property that could have been accomplished based on expert evidence, as Ecuadorian law requires and as is still being attempted at present, 15 years later.

102. As regards the second point, which concerns the procedural activity of the interested parties, the Commission found that the State has not shown that the various administrative and judicial proceedings instituted by the interested party were intended to be dilatory.

103. As to the third point, that is, the conduct of the judicial authorities, the Commission believes that there have been and continue to be obvious delays, given that an effective determination of the legal situation of the property is still pending.

104. Finally, it is impossible to ignore that it was the State itself, in its submission No. N° 4-2-285/99 of September 19, 1999, that indicated that the delay was due [to causes not attributable to the petitioners, but on the contrary] to structural problems in the Ecuadorian justice system.

105. On this point, in supporting a submission by the Municipality of Quito, the State mentioned that:

“the administrative remedies existing in Ecuadorian law were utilized by the complainants, as demonstrated by the various administrative filings against the Municipality that have not been decided, but not due to the Municipality’s actions, as will be demonstrated, but rather due to **the serious problems afflicting the administration of justice in Ecuador, an issue that also harms the Municipality**” [emphasis added].

106. The IACHR considered in its report on merits that the time elapsed without a final decision so far as to who holds the right to the property in question exceeds the principle of a reasonable time for disposing of a case. The State’s own acknowledgement of the reasons for that delay is also an indication of its international responsibility. On this point, it is important to bear in

²¹ I/A Court H.R., *Suárez Rosero Case*. Interpretation of the Judgment on Reparations. (Art. 67 American Convention on Human Rights). Judgment of November 12, 1997. Series C, No. 35, par. 70-71.

²² I/A Court H.R., *Suárez Rosero Case*, Judgment of November 12, 1997, Series C, No. 35, par. 72. *Genie-Lacayo Case*, Judgment of January 29, 1997. Series C, No. 30, par. 77; and Eur. Court H.R., *Motta* Judgment of 19 February 1991, Series A, No. 195-A, par. 30; Eur. Court H.R., *Ruiz Mateos v. Spain*, Judgment of 23 June 1993, Series A, No. 262, par. 30

mind that Ecuadorian law establishes that an expropriation proceeding must be resolved within eight days after receipt of the relevant expert report.

D. Breach of the general obligation to respect and ensure rights and of the duty to adopt domestic legal provisions (Articles 1(1) and 2 of the American Convention)

107. Finally, the Commission identified a connection between the aforementioned violations and Articles 1 and 2 of the American Convention, which establish the obligation for States parties to ensure observance of the rights protected in that instrument and require States to adopt “such legislative or other measures as may be necessary to give effect to those rights and freedoms (recognized in the Convention).” In the instant application the IACHR requests the Inter-American Court also to find said connection.

108. As the Court has held,

According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the said Article.²³

109. Thus, Ecuador, as a State Party to the Convention, has an obligation to ensure the rights protected by the Convention, make certain that those rights are faithfully protected under its domestic legal system, and are adequately and effectively enforced by the competent bodies and authorities.

110. The second obligation provided in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that by violating the property rights of the injured party, as well as their rights to judicial protection and to a fair trial, the Ecuadorian State failed its obligation to guarantee the free and full exercise of rights for all persons subject to its jurisdiction.

111. As regards the infringement of Article 2 of the Convention, the Court has found that the obligation to guarantee the full and free exercise of human rights is not exhausted by the existence of a legal system designed to make fulfillment of that obligation possible, but rather entails the need for government to conduct itself so as to ensure the actual existence of an effective guarantee of the free and full exercise of human rights.²⁴ In this regard, the Commission believes that this principle has been violated based on the facts described, in particular the analysis regarding the effectiveness of the remedy.

112. It should also be noted how this Article relates to the obligation of States parties with respect to each of the protected rights, so that any claim that one of those rights has been violated, necessarily implies that Article 1(1) of the Convention has also been infringed.

VIII. REPARATIONS AND COSTS

113. Based on the facts alleged in the instant application and on the consistent case law of the Inter-American Court, which holds that “it is a principle of International Law that all violations to an international obligation that have caused harm generate an obligation to adequately redress

²³ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N° 4, par. 169.

²⁴ See I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, No. 4, pars. 167 and 168.

said harm,"²⁵ the IACHR presents to the Court its position on the reparations and costs imputable the State of Ecuador in light of its responsibility for the violations committed to the detriment of the victims or their successors.

114. In view of the Rules of Procedure of the Court, which provide for the possibility of autonomous representation, the IACHR will only address here general criteria regarding reparations and costs that it believes it would be appropriate for the Court to apply in the instant case. The Inter-American Commission understands that it is up to the relatives of the victim and their representatives to specify their claims under Article 63 of the Convention and Article 23 and related provisions of the Rules of Procedure of the Court. Should the relatives of the victim not make use of this right, the Commission requests the Honorable Court to grant the IACHR an opportunity in the proceedings to quantify the relevant claims.

A. Obligation to make reparation and reparation measures

115. Article 63(1) of the American Convention says that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

116. This provision "codifies a rule of customary law which, moreover, is one of the fundamental principles of modern international law, which being the responsibility of States."²⁶ Reparation of the damage caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previous situation. If this is not possible, as in the instant case, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.²⁷ Furthermore, reparations have the additional and no less essential purpose of preventing and deterring violations.

B. Reparation

117. The Court has noted that reparation measures are intended to eliminate the effects of the violations that were committed.²⁸ Such measures cover the various ways a State can redress the international responsibility it has incurred, which, according to international law consist of

²⁵ I/A Court H.R., *Case of the Gómez-Paquiyaury brothers v. Peru*. Judgment of July 8, 2004, Series C, No. 110, par. 187; *Case of Myrna Mack-Chang v. Guatemala*. Judgment of November 25, 2003, Series C, No. 101, par. 141; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, Series C, No. 100, par. 72; *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003, Series C, No. 99, par. 147.

²⁶ I/A Court H.R., *Case of Carpio-Nicolle et al. v. Guatemala*. Judgment of November 22, 2004, Series C, No. 117, par. 86; I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations. Judgment of November 19, 2004 Series C, No. 116, par. 52; I/A Court H.R., *Case of De la Cruz-Flores v. Peru*. Judgment of November 18, 2004, Series C, No. 115, par. 139.

²⁷ I/A Court H.R., *Case of the Gómez-Paquiyaury brothers v. Peru*. Judgment of July 8, 2004. Series C, No. 110, par. 189; *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004, Series C, No. 109, par. 221; *Case of Molina-Theissen v. Guatemala*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of July 3, 2004, Series C, No. 108, par. 42.

²⁸ I/A Court H.R., *Case of Carpio-Nicolle et al. v. Guatemala*. Judgment of November 22, 2004, Series C, No. 117, par. 89; I/A Court H.R., *Case of De la Cruz-Flores v. Peru*. Judgment of November 18, 2004, Series C, No. 115, par. 141; I/A Court H.R., *Case of the Gómez-Paquiyaury brothers v. Peru*. Judgment of July 8, 2004. Series C, No. 110, par. 190.

restitution, compensation, rehabilitation, satisfaction, and guarantees that the violations will not be repeated.²⁹

a. Compensation

118. The Court has established basic guidelines on just compensation designed to provide adequate and effective financial reparation for injuries suffered as a result of human rights violations.³⁰

i. Material damages

119. In its case law on reparations, the Court has consistently held that material damages include consequential damages and lost earnings, as well as any non-pecuniary damages or moral injury to the victims and to their family in certain cases.³¹

120. Consequential damages have been defined as the direct and immediate financial consequences of violations. This category includes immediate and direct capital impairment caused by such violations as regards the expenses incurred by the victims in seeking justice for arbitrary arrest, trial without due process guarantees or judicial protection, violation of the right to property, and all attendant injuries.³²

121. For their part, lost earnings are defined as financial income or benefits that cease to accrue as a result of a particular act and which may be quantified based on certain measurable and objective indicators.³³

122. In the instant case, it should be borne in mind that the victims or their successors have not only been deprived of the possession of their property, but have also been fighting for years to obtain justice for the expropriation carried out by the State and, moreover, Mr. Guillermo Salvador Chiriboga died before he was able to obtain the justice due to him in the instant case. The foregoing is compounded by the situation of uncertainty created by the State, to the extent that the Municipality which appropriated the land belonging to the Salvador Chiriboga siblings even continues to charge them taxes on their land.

ii. Non-pecuniary damages

²⁹ See, UN, Final Report presented by Theo Van Boven, Special Rapporteur on Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub2/1990/10, 26 July 1990. See also, I/A Court H.R., *Blake Case*, Reparations (Art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999, Series C, N° 48, par. 31; *Suárez Rosero Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 20, 1999, Series C, N° 44, par. 41; and I/A Court H.R., *Case of Castillo-Páez v. Peru*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C, N° 43.

³⁰ See I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra*, par. 204; Case of the "Panel Blanca" (Paniagua-Morales et al.) v. Guatemala. Reparations, *supra*, par. 80; Case of Castillo Páez. Reparations, *supra*, par. 52; and *Case of Garrido and Baigorria v. Argentina*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C, N° 39, par. 41.

³¹ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004, Series C, No. 114, par. 237; I/A Court H.R., *Case of the Caracazo v. Venezuela*, Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002, Series C, No. 95; and I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C, No. 94.

³² I/A Court H.R., *Case of Loayza Tamayo*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998, Series C, N° 42, par. 147; *Case of Aloeboetoe et al.* Reparations (Art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993, Series C, N° 15, par. 50.

³³ *Ibidem*.

123. With respect to non-pecuniary damages, the Court has found that they:

[...]can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money or the granting of goods or services with a monetary value, that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion designed to restore the good name of the victims, acknowledge their dignity, console the bereaved, or broadcast a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that they do not happen again.³⁴

124. In the instant case, the non-pecuniary damages are clear, the victims or their successors have been confronting the Ecuadorian State for more than 15 years, they have been forced to appeal to the Inter-American system for protection of human rights, and even then they have been unable to obtain justice for the actions of the State.

b. Satisfaction and guarantees of non repetition

125. Satisfaction is understood as those measures that the perpetrator of a violation must adopt in accordance with international instruments or customary law in order to acknowledge the commission of a wrongdoing.³⁵ Satisfaction occurs when three actions are carried out, generally in an accumulative manner: apologies, or any other gesture that shows recognition of the authorship of the act in question; the prosecution and punishment of those responsible; and the adoption of measures to avoid repetition of the damage.³⁶

126. Accordingly, the Inter-American Commission considers that the reparation measures that the Ecuadorian State should adopt should include steps to give effect in practice to laws on expropriation in order to ensure that the guarantees that must exist in expropriation proceedings are satisfactorily governed and observed; to prevent these situations of injustice from arising; and, moreover, to prevent the prolongation of injustice over time.

C. The beneficiary of the reparations due from the State

127. Article 63(1) of the American Convention requires reparation of the consequences of the violation and "that fair compensation be paid to the injured party." The persons who are entitled to said compensation are usually those directly injured by the events of the violation in question.

128. Given the nature of the instant case and the death of Mr. Guillermo Salvador Chiriboga, the beneficiary of any reparations ordered by the Court as a result of the human rights violations perpetrated by the Ecuadorian State in this case is Ms. María Salvador Chiriboga.

³⁴ I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations. Judgment of November 19, 2004 Series C, No. 116, par. 80; I/A Court H.R., *Case of De la Cruz-Flores v. Peru*. Judgment of November 18, 2004, Series C, No. 115, párr 155; See also, I/A Court H.R., *Case of Carpio-Nicolle et al. v. Guatemala*. Judgment of November 22, 2004, Series C, No. 117, par. 117.

³⁵ Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

³⁶ *Idem*.

D. Costs and expenses

129. Based on the consistent case law of the Court, it should be understood that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the activities carried out by the victims, their successors or their representatives to access international justice imply disbursements and commitments of a financial nature that should be compensated.³⁷ The Court has also considered that the costs referred to in Article 55(1)(h) of the Rules of Procedure include the necessary and reasonable expenses that the victim or victims incur in order to have access to the supervisory bodies of the American Convention, and among such expenses are the fees of those who provide legal assistance.

130. The IACHR requests the Court, once it has heard the injured party or their representatives, to order the Ecuadorian State to pay the costs and fees duly substantiated by the former.

IX. CONCLUSIONS

131. Based on the arguments set out in the instant application, the IACHR requests the Inter-American Court to conclude and declare that the State of Ecuador has violated, to the detriment of the injured party, Articles 8 (right to a fair trial), 21 (right to private property) and 25 (right to judicial projection) of the American Convention, in conjunction with the general obligation to respect and ensure rights contained in Article 1(1) thereof and the obligation to adopt legal provisions at the domestic level provided in Article 2 of said international instrument.

X. PETITION

132. The IACHR requests the Inter-American Court to declare that the Ecuadorian State has violated Articles 8 (right to a fair trial), 21 (right to private property) and 25 (right to judicial projection) of the American Convention, in conjunction with the general obligation to respect and ensure rights contained in Article 1(1) thereof and the obligation to adopt legal provisions at the domestic level provided in Article 2 of said international instrument.

133. Based on the foregoing, the Inter-American Commission requests the Court to order the Ecuadorian State:

- a. to adopt all the measures necessary to give effect, in practice, to the laws on expropriation;
- b. to adopt all the measures necessary to ensure the adequate reparation or mitigation of the injury caused to the victims, or their beneficiaries, including material damages, as well just compensation that takes into account the value of the property expropriated from the victims and the length of time for which they have been deprived of the use and enjoyment of said property;

³⁷ I/A Court H.R., *Case of Carpio-Nicolle et al. v. Guatemala. Judgment of November 22, 2004*, Series C, No. 117, parr. 143; I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations. Judgment of November 19, 2004* Series C, No. 116, par. 115; I/A Court H.R., *Case of De la Cruz-Flores v. Peru. Judgment of November 18, 2004*, Series C, No. 115, par. 177.

- c. to adopt all legal, administrative and any other measures necessary to prevent the recurrence of acts of this nature in the future, in keeping with the duties to protect and ensure fundamental rights recognized by the American Convention; and
- d. to pay the Court costs and legal expenses incurred by the victims, their beneficiaries, and their representatives in pursuing the case, both at the domestic level and in the inter-American jurisdiction.

XI. SUPPORTING EVIDENCE

A. Documentary evidence

134. The IACHR encloses the following list of documentary evidence in support of the factual and legal arguments contained in the instant application:

APPENDIX 1: IACHR, Report 78/05, Case 12.054, María Salvador Chiriboga and Guillermo Salvador Chiriboga, Merits, Ecuador, OEA/Ser/L/V/II.123, Doc. 41, October 15, 2005

APPENDIX 2: IACHR, Report 76/03, Case 12.054, María Salvador Chiriboga and Guillermo Salvador Chiriboga, Admissibility, Ecuador, OEA/Ser/L/V/II.118, Doc. 42, October 22, 2002.

APPENDIX 3: File of the proceeding before the Inter-American Commission.

ANNEX 1: Declaration of public utility of May 13, 1991 issued by the Municipal Council of Quito.

ANNEX 2: List of persons affected by the expropriation carried out by the Municipality of Quito.

ANNEX 3: Amending Decision of the Council of the Metropolitan District of Quito of September 25, 1995.

ANNEX 4: Main parts of Expropriation Proceeding 1300-96-C initiated by the Metropolitan District of Quito against María Salvador Chiriboga de Fornasini, for her rights, those of Guillermo Salvador Chiriboga and against any presumed and unidentified heirs of Guillermo Salvador Tobar and Elvira Chiriboga, widow of Guillermo Salvador Tobar:

- a) Action filed on August 28, 1996 and related documents.
- b) Decision of September 24, 1996 (which admits the action, appoints an expert to appraise the property, and orders the occupation of the property and the entry of the decision in the Property Register.)
- c) Reply of July 4, 1997, to the action for expropriation, filed by María Piedad Salvador Chiriboga.
- d) Judicial decision of September 4, 1997, revoking the admission of the action for expropriation and annulling the immediate occupation order.
- e) Appeal of September 23, 1997, presented by the Municipality of Quito.
- f) Brief addressed to the judge hearing the case presented on November 28, 1997, requesting that the appeal presented by the respondents be rejected on the grounds that the appeal could only be brought against judgments, and requesting that the court mention the legal provisions on which the rejection should be founded.

g) Decision of February 17, 1998, in which the presiding judge in the expropriation proceeding recuses himself from further oversight of the case.

ANNEX 5: Ministerial Decision 408 of September 16, 1997.

ANNEX 6: Ministerial Decision 417 of September 18, 1997.

ANNEX 7: Request for a Judicial Inspection by the 13th Criminal Court of Pichincha of July 2, 1997, and Record of Judicial Inspection before the 13th Criminal Court of August 11, 1997.

ANNEX 8: Main proceedings in the action for constitutional relief (*amparo*) brought by María Salvador Chiriboga de Fornasini:

- a) Amparo suit filed on July 10, 1997 on behalf of herself and others.
- b) Decision of the Second Chamber of the Constitutional Court of September 15, 1997.
- c) Decision of the First District Administrative Court of October 2, 1997.
- d) Decision of the Second Chamber of the Administrative Court in and for the District of Quito of February 2, 1998.
- e) Decision of the Second Chamber of the Constitutional Court of February 27, 1998.

ANNEX 9: Copy of receipts for payment of land tax.

ANNEX 10: Official Letter 08936 of November 18, 1999, presented by the Ecuadorian State to the IACHR, enclosing:

- a) Memorandum No. 12 of October 18, 1998, requesting the appointment of a mediation expert.
- b) Official Letter 262 of October 19, 1998, approving mediation in Case 12.054 of the Inter-American Commission on Human Rights.
- c) Official Letter 99-03 of October 28, 1999 appointing a mediator, signed by Fabricio Villamar Jácome, Director of the Mediation Center of the Office of the Attorney General.

ANNEX 11: Audio recordings of the hearings held by the IACHR.

ANNEX 12: Copy of the death certificates of Guillermo Salvador Tobar, Elvira Chiriboga Lorrea, and Guillermo Salvador Chiriboga.

ANNEX 13: Extracts of the Code of Civil Procedure.

ANNEX 14: Extracts of the Law of Municipal Regimes.

ANNEX 15: Extracts of the Metropolitan District Regime Law.

ANNEX 16: Extracts of the Metropolitan District Municipal Code.

ANNEX 17: Power of attorney for representative.

ANNEX 18: *Curriculum vitae* of Mr. Edmundo Gutiérrez del Castillo, who is offered as an expert witness.

ANNEX 19: *Curriculum vitae* of Mr. Raúl Moscoso Álvarez, who is offered as an expert witness.

135. The Commission also asks the Court to request the State to furnish certified complete copies of the files from the administrative and judicial proceedings connected with the instant case.

B. Witness and expert testimony

a. Witnesses

136. The Commission presents the following list of witnesses:

1. **María Salvador Chiriboga de Fornasini**, victim. The Inter-American Commission offers this witness to testify to the Court on the effects on her and her family of the conduct of the State in connection with the violation of her rights arising from the dispossession of their land and the administrative and judicial proceedings instituted to protect their rights, as well as the timeline of events in the case, among other aspects related to the subject matter and purpose of the instant application. The address at which correspondence may be sent to her is that of her representative, which is given below.

2. **Jessica Salvador Chiriboga**, daughter of María Salvador Chiriboga. The IACHR offers this witness to testify to the Court on the effects on the Salvador family of the conduct of the State as regards the violation of the right to property in connection with the property located in the Metropolitan Park area. She will also give testimony on the specific events that have occurred since 1991 regarding the defense of the property and the way in which the Municipality of the Metropolitan District of Quito has sought to confiscate the property. The address at which correspondence may be sent to her is that of the representative of the injured party, which is given below.

3. **Susana Salvador Chiriboga**, daughter of María Salvador Chiriboga. The Inter-American Commission offers this witness to testify to the Court on the effects on the Salvador family of the conduct of the State as regards the violation of the right to property in connection with the property located in the Metropolitan Park area. She will also testify on the specific events that have occurred since 1991 regarding the defense of the property and the way in which the Municipality of the Metropolitan District of Quito has sought to confiscate the property. The address at which correspondence may be sent to her is that of the representative of the injured party, which is given below.

4. **José Luis Paredes Sánchez**, owner of another expropriated property in the Metropolitan Park case. The IACHR offers this witness to testify to the Court on the way in which the Municipality of the Metropolitan District of Quito conducted the judicial and extrajudicial procedures designed to bring about the expropriation of properties for the creation of the Metropolitan Park, among other aspects related to the subject matter and purpose of the instant application. The address at which correspondence may be sent to him is that of the representative of the injured party, which is given below.

5. **Margarita Beatriz Rafija Guerra**, owner of another expropriated property in the Metropolitan Park case. The Inter-American Commission offers this witness to testify to the Court on the way in which the Municipality of the Metropolitan District of Quito conducted the judicial and extrajudicial procedures designed to bring about the expropriation of properties for the creation of the Metropolitan Park, among other aspects related to the subject matter and purpose of the instant application. The address at which correspondence may be sent to her is that of the representative of the injured party, which is given below.

b. Experts

137. The IACHR presents the following experts:

1. **Edmundo Gutiérrez del Castillo, engineer.** The Inter-American Commission offers his expert testimony on the technical mechanisms for the appraisal of land and property in the city of Quito; present property and real estate values in the city of Quito; the technical mechanisms to be applied in appraising undeveloped property in the city of Quito, particularly in the area where the Metropolitan Park is located, and the difference between the official appraisal made by the Municipality of the Metropolitan District of Quito and the actual commercial property values in the city of Quito, among other aspects related to the subject matter and purpose of the instant application.

2. **Raúl Mosoco, expert in Ecuadorian law.** The IACHR offers his expert testimony on the nature of the declaration of public utility (the immediate occupation and public aim; the aspects of the Ecuadorian Constitution concerned with protection of the right to property); the appeal process before the Ministry of the Interior; the creation and revocation of administrative decisions; the revocation procedure on grounds of injury to the public interest [*acción de lesividad*] (due process in administrative and judicial proceedings); the nature and admissibility of contentious administrative proceedings; the obligation of direct application of international legal provisions (scope of Articles 16, 17, and 18 of the Ecuadorian Constitution); the expropriation proceeding; practice of the courts in setting compensation for expropriations; effects of recusal of the judge and ways to restore jurisdiction following recusal; and municipal taxes and fees, among other aspects related to the subject matter and purpose of the instant application.

XII. PARTICULARS OF THE ORIGINAL PETITIONERS, THE VICTIM, AND THEIR NEXT OF KIN

138. In accordance with Article 33 of the Rules of Procedure of the Court, the Inter-American Commission informs the Court that the original petitioners are Messrs. María and Guillermo Salvador Chiriboga, represented by Mr. Alejandro Ponce Villacís.

139. The victims have appointed Mr. Ponce Villacís, attorney-at-law, as their representative in the proceedings before the Inter-American Court. Mr. Ponce's address is [REDACTED]

Washington, D.C.
December 12, 2006