

INTER-AMERICAN COURT OF HUMAN RIGHTS**CASE OF THE KICHWA INDIGENOUS PEOPLE OF SARAYAKU v. ECUADOR****JUDGMENT OF JUNE 27, 2012
(Merits and reparations)**

In the *Case of the Kichwa Indigenous People of Sarayaku*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice-President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge; and

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court¹ (hereinafter "the Rules of Procedure"), delivers this Judgment, which is structured in the following manner:

¹ The Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, which apply to this case in accordance with the provisions of Article 79 of these Rules of Procedure. According to Article 79(2) of the Rules of Procedure: "[i]n cases in which the Commission has adopted a report under Article 50 of the Convention before these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim's Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply." Therefore, Articles 33 and 34 of the previous Rules of Procedure approved by the Court at its forty-ninth regular session will apply to the presentation of this case.

B.10 Conclusion

231. On previous occasions, in cases concerning indigenous and tribal communities or peoples, the Court has declared violations to the detriment of the members of indigenous or tribal communities and peoples.³⁰⁰ However, international law on indigenous or tribal communities and peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such communities or peoples.³⁰¹ In view of the fact that indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise some rights recognized by the Convention on a collective basis, the Court points out that the legal considerations expressed or indicated in this Judgment should be understood from that collective perspective.

232. The State, by failing to consult the Sarayaku People on the execution of a project that would have a direct impact on their territory, failed to comply with its obligations, under the principles of international law and its own domestic law, to adopt all necessary measures to guarantee the participation of the Sarayaku People, through their own institutions and mechanisms and in accordance with their values, practices, customs and forms of organization, in the decisions made regarding matters and policies that had or could have an impact on their territory, their life and their cultural and social identity, affecting their rights to communal property and to cultural identity. Consequently, the Court finds that the State is responsible for the violation of the right to communal property of the Sarayaku People recognized in Article 21 of the Convention, in relation to the right to cultural identity, in the terms of Articles 1(1) and (2) of this instrument.

VIII.2

RIGHTS TO LIFE, TO PERSONAL INTEGRITY AND TO PERSONAL LIBERTY

A. Arguments of the parties

A.1 Right to Life³⁰²

233. The Commission argued that the State of Ecuador is responsible for having violated Article 4 of the Convention, in relation to Article 1(1) thereof, to the detriment of the Sarayaku People and its members, because its failure to comply with its obligation to guarantee them the right to property, allowing explosives to be buried on their territory, has created a permanent situation of danger that

³⁰⁰ Cf. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*; *Case of the Moiwana Community v. Suriname, Preliminary objections, merits, reparations and costs*; *Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, reparations and costs*; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*; *Case of the Saramaka People v. Suriname, Preliminary objections, merits, reparations and costs*, and *Case of the Xákmok Kásek Indigenous People v. Paraguay*.

³⁰¹ Thus, for example, Article 1 of the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* establishes that: "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law." Article 3.1 of ILO Convention No. 169 states that: "Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms, without hindrance or discrimination. The provisions of this Convention shall apply without discrimination to male and female members of these peoples." Similarly, the Committee on Economic, Social and Cultural Rights, in General Comment No. 17 of November 2005, expressly stated that the right to benefit from the protection of the moral and material interests resulting from scientific, literary or artistic production also applies to indigenous peoples as collective subjects and not only to their members as individuals (paras. 7, 8 and 32). Subsequently, in General Comment No. 21 of 2009, the Committee interpreted that the expression "everyone" in Article 15.1.a) of the Convention "may denote both the individual and the collective subject. In other words, cultural rights may be exercised by a person: (a) as an individual; (b) in association with others, or (c) within a community or a group" (para. 8). In addition, other regional protection instruments, such as the 1986 African Charter on Human and Peoples' Rights, have established special protection for certain rights of tribal peoples based on the exercise of collective rights. See, *inter alia*, the African Charter on Human and Peoples' Rights: Article 20 which protects the right to life and self-determination of peoples; Article 21 which protects the right to freely dispose of their land and natural resources, and Article 22 which guarantees the right to development.

³⁰² Article 4(1) of the American Convention states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

caused and, therefore, in addition to pecuniary compensation, the measures of restitution and satisfaction and guarantees of non-repetition are especially relevant.³³⁹

281. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective damage. Consequently, the Court must observe this concurrence in order to rule appropriately and according to law.³⁴⁰

282. At the end of the proceedings before the Court, the State reiterated its willingness, expressed during the visit to the Sarayaku territory, to reach an agreement with the People regarding the reparations in this case (*supra* paras. 23 and 25). During this visit, the *Tayak Apu*, or President of the Sarayaku, José Gualinga, indicated that it was the People's will that the Court deliver judgment. At the time of drafting the judgment, the Court has not been informed of any specific agreements on reparations, which, evidently, does not preclude these from being reached at the domestic level at any time after delivery of the Judgment.

283. Consequently, and without detriment to any form of reparation subsequently agreed between the State and the Sarayaku People, based on the violations of the American Convention declared in this Judgment, the Court will proceed to order measures aimed at repairing the damage caused to the Sarayaku. To this end, the Court will take into account the claims of the Commission and the representatives, together with the State's arguments, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make reparation.³⁴¹

A. Injured Party

284. Under Article 63(1) of the American Convention, the Court considers the injured party to be the Kichwa Indigenous People of Sarayaku, who suffered the violations declared in the chapter on Merits of this Judgment (*supra* paras. 231, 232, 249, 271 and 278), and are therefore considered beneficiaries of the reparations that it orders.

B. Measures of restitution and satisfaction and guarantees of non-repetition

285. The Court will determine the measures aimed at repairing the non-pecuniary damages that are not of a pecuniary nature, as well as measures of public scope and impact.³⁴² International case law and, in particular, the case law of the Court, has repeatedly held that the judgment *per se* is a form of reparation.³⁴³ However, considering the circumstances of the case *sub judice*, and based on the damage caused to the Sarayaku People and the pecuniary and non-pecuniary consequences of the violations of the American Convention declared to their detriment, the Court finds it appropriate to establish measures of restitution and satisfaction and guarantees of non-repetition.

286. The Commission asked the Court to order the State to:

- i. "Adopt the measures necessary to ensure and protect the right to property of the Kichwa Indigenous People of Sarayaku and its members with respect to their ancestral territory, taking particular care to ensure the special relationship they have to their land";

³³⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Pacheco Teruel et al. v. Honduras*, para. 91.

³⁴⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Forneron and daughter v. Argentina*, para. 146.

³⁴¹ Cf. *Case of Velásquez Rodríguez v. Honduras, Reparations and costs*, paras. 25 to 27 and *Case of Forneron and daughter v. Argentina*, para. 147.

³⁴² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, Judgment of May 26, 2011. Series C No. 77, para. 84 and *Case of Atala Riffo and daughters v. Chile*, para 251.

³⁴³ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56 and *Case of Forneron and daughter v. Argentina*, para. 149.