

Kichwa Indigenous People of Sarayaku v. Ecuador

ABSTRACT¹

This case is about a twenty-year struggle by indigenous people in Ecuador's Amazon forest to defend their land against encroachment by oil companies. This case is notable because it is the first one where the Court did an on-site visit. Eventually, Ecuador admitted responsibility and the Court found violation of several articles of the Convention.

I. FACTS

A. Chronology of Events

1960: The State begins to expand its exploration for oil in its Amazonian region.² Nine years later, it discovers oil in the northeastern area.³

1972: The State begins to export oil from its Amazonian region.⁴ The State works to seize total control of the oil industry and resources, deeming it an important asset for the State.⁵

May 12, 1992: The State gives the indigenous communities along the Bobonaza River a singular, contiguous parcel of land in the Pastaza province.⁶ One of the communities included in the grant is the Kichwa People of Sarayaku, who are given 135,000 hectares of land.⁷ The grant includes the provision that the subterranean resources, and the right to exploit them pursuant to environmental protection laws, remain property of the State.⁸

1. John Kelly, Author; Emily Williams, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Kichwa v. Ecuador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 58 (June 27, 2012).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 59.

6. *Id.* ¶ 61.

7. *Id.*

8. *Kichwa v. Ecuador*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.465, ¶ 60 (April 26, 2010).

June 26, 1995: The State's Special Bidding Committee (*Comité Especial de Licitación*; "CEL") seeks proposals for "exploration and exploitation" of crude oil and other resources in various regions.⁹ One of the areas the Committee seeks proposals for is Pastaza.¹⁰

July 26, 1996: PETROECUADOR (the State Oil Company) and a consortium made up of Compañía General de Combustibles S.A. ("CGC") and Petrolera Argentina San Jorge S.A. agree to a contract for the "exploration and exploitation of hydrocarbons in Block No. 23."¹¹ Block No. 23 is 200,000 hectares and includes territory held by the Sarayaku, Jatun Molino, Pacayaku, Canelos, Shami, and Uyumi communities,¹² with the Sarayaku holding around sixty-five percent of the block.¹³ The contract calls for an Environmental Impact Assessment to be signed by the Ministry of Energy and Mines, followed by a four-year seismic survey (a mining technique used to discover oil deposits, involving explosives being placed in the ground), all followed by a twenty-year exploitation phase.¹⁴ Additionally, the contract calls for the consortium to maintain the current environmental state and receive any necessary right of way permits from third parties.¹⁵

April 23, 1999: Indigenous peoples of the area destroy camps and interfere with the oil workers, resulting in the State temporarily suspending oil activities in Block No 23.¹⁶

May 2000: CGC tries to gain access to Sarayaku territory through bribes – offering \$60,000 for "development projects," five hundred jobs for members of the community,¹⁷ and a program that offers medical care – in exchange for signing a list approving CGC access, thereby circumventing Sarayaku political organizations, and creating groups in the community that support CGC access.¹⁸

June 25, 2000: The Sarayaku decide to turn down CGC's offer of money

9. *Id.* ¶ 61.

10. *Id.*

11. *Id.* ¶ 62.

12. *Id.* ¶ 63.

13. *Id.*

14. *Kichwa v. Ecuador*, Petition to the Court, ¶¶ 64-65.

15. *Kichwa v. Ecuador*, Merits, Reparations and Costs, ¶ 67.

16. *Id.* ¶ 72.

17. *Id.* ¶ 74.

18. *Id.* ¶ 73.

and jobs.¹⁹ The surrounding communities of Pakayaku, Shaimi, Jatún Molino, and Canelos agree to CGC's offers.²⁰

August 18, 2000: The Promotion of Investment and Citizen Participation Act is passed by the State, mandating that prior to the exploitation of oil on indigenous land, oil companies must meet with indigenous communities to explain their activities.²¹

2001: The consortium hires Daymi Services, sociologists and anthropologists, to develop and implement strategies to divide the Sarayaku, manipulate their leaders, and discredit them within the community.²² Further, the consortium creates a group called the "Community of Independents of Sarayaku" to secure an agreement allowing it to enter the Sarayaku territory.²³

February 13, 2001: The State adopts regulations that require oil companies, before drilling, to meet with and listen to members of communities living on the land.²⁴ Furthermore, the regulations require the companies to pay compensation for any impacts to the environment and any property damage potentially caused by drilling.²⁵

July 30, 2001: The Ministry of Defense signs a Military Security Cooperation Agreement with the oil companies in the State.²⁶ In the agreement, the State pledges to guarantee the security of oil facilities and the employees of the facilities.²⁷

Between 2002 and 2005: Military outposts are set up, and the military begins searches for members of the Sarayaku community.²⁸

April 13, 2002: The Sarayaku voice their opposition to the oil companies entering their territory to the Ministry of Energy and Mines.²⁹

19. *Id.* ¶ 74.

20. *Id.*

21. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 76.

22. *Id.* ¶ 75.

23. *Id.*

24. *Id.* ¶ 77.

25. *Id.*

26. *Id.* ¶ 78.

27. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 78.

28. *Kichwa v. Ecuador, Petition to the Court*, ¶ 80.

29. *Kichwa v. Ecuador, Merits, Reparations, and Costs*, ¶ 80.

July 2, 2002: The Ministry of Energy and Mines approves an updated Environmental Management Plan submitted by CGC that calls for moving forward with surveys conducted through seismic activity and outlines additional efforts in providing healthcare projects, education, community programs, and infrastructure.³⁰

Beginning October 2002: The oil companies advance into Sarayaku territory, pump 467 wells and place 1,433 kilograms of explosives on the land.³¹

November 2002: The Association of Sarayaku Kichwa People announces a state of emergency, which, for several months, stops all “economic, administrative, and school activities” within the community.³² The Sarayaku create six perimeter camps in the jungle along the boundaries of the territory.³³ While the Sarayaku are in the jungle, their crops die and food supplies are depleted.³⁴ The State no longer provides medical assistance to the Sarayaku.³⁵

November 22, 2002: The Vice President and members of the Rural Parochial Board of Sarayaku submit a complaint with the Ombudsman (an official who is appointed to investigate individual complaints against the administration) of Pastaza.³⁶ In their complaint, they protest CGC entering their territory and the military searches.³⁷

November 27, 2002: The National Ombudsman puts the Sarayaku community under his protection and issues a statement that the freedom of movement of the Sarayaku cannot be restricted.³⁸

November 28, 2002: The president of the Organization of Indigenous Peoples of Pastaza files a constitutional *amparo* claim with the First Civil Court of Pastaza against the CGC and Daymi Services.³⁹

November 29, 2002: The First Civil Judge of Pastaza orders CGC to

30. *Id.* ¶¶ 79, 81.

31. *Kichwa v. Ecuador*, Petition to the Court, ¶ 77.

32. *Id.* ¶ 79.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* ¶ 71.

37. *Kichwa v. Ecuador*, Petition to the Court, ¶ 71.

38. *Id.*

39. *Id.* ¶ 73.

cease and desist any activity that may affect the rights of the petitioners behind the *amparo* claim.⁴⁰

December 4, 2002: The Sarayaku, the Governor of Pastaza, the oil companies, the Under-Secretariat for Environmental Protection of the Ministry of Energy and Mines, and the Canelos meet to discuss a suspension of all activities; however, the parties are not able to reach a consensus.⁴¹

December 12, 2002: The Pastaza District Superior Court informs the First Civil Judge of Pastaza that it has discovered irregularities in its processes and that the court's failure to proceed is disturbing.⁴² An "Agreement of Intent" is reached between the Under-Secretary of the Ministry of the Interior and the indigenous communities.⁴³ The agreement – although not successful – calls for a peaceful solution to the current situation, the release of workers detained by the Shaimi and the Sarayaku, a call for suspension of the consortium's activities in Block 23, and the establishment of a commission to find a solution to the current conflict.⁴⁴

January 13, 2003: Members of the Jatún Molino fire at members of the Sarayaku traveling on the Bobonaza River.⁴⁵

January 25, 2003: The State arrests Mr. Reinaldo Alejandro Gualinga Aranda, Mr. Elvis Fernando Gualinga Malver, Mr. Marco Marcelo Gualinga Gualinga and Mr. Fabián Grefa, all members of the Sarayaku, on the charge that they are armed and dangerous.⁴⁶ The State takes them to the city of Puyo, where they are turned over to the police and later let go.⁴⁷

January 29, 2003: An army unit and CGC workers stop young Sarayaku girls, Ms. Marisela Yuri Gualinga Santa and Ms. Tatiana Gualinga Dachá.⁴⁸ The workers threaten to rape the girls, but the army unit intervenes and rescues them.⁴⁹

February 6, 2003: The Association of Ecuadorian Hydrocarbons reports

40. *Id.* ¶ 74.

41. *Kichwa v. Ecuador*, Merits, Reparations, and Costs, ¶ 94.

42. *Kichwa v. Ecuador*, Petition to the Court, ¶ 74.

43. *Kichwa v. Ecuador*, Merits, Reparations, and Costs, ¶ 96.

44. *Id.*

45. *Kichwa v. Ecuador*, Petition to the Court, ¶ 82.

46. *Id.* ¶ 91.

47. *Id.*

48. *Id.* ¶ 93.

49. *Id.*

CGC has stopped work due to circumstances outside of their control.⁵⁰

February 10, 2003: The State announces that CGC is still willing to move forward with the seismic survey.⁵¹

March 3, 2003: The Ecuadorian Inter-Institutional Commission and Franco Viteri, President of the Sarayaku, petition the Commission for precautionary measures to protect the Sarayaku, Mr. Franco Viteri, Mr. Jose Gualinga Santi, and Mr. Cristina Gualinga.⁵²

April 10, 2003: The Ombudsman of Pastaza issues a resolution on the November 2002 *amparo* claim,⁵³ finding that the Minister of Energy and Mines, the chairman of the board of directors of PETROECUADOR, and the attorney for CGC violated the Constitution, Convention No. 169 on the Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization, and Principle 10 of the Rio Declaration on Environmental Development.⁵⁴

May 5, 2003: The Commission issues precautionary measures to the State.⁵⁵

May 8, 2003: The Human Rights Committee of the Congress of the Republic finds the State has violated the Constitution by not communicating its plans with the community.⁵⁶ It also finds the State had violated human rights by attempting to create discord in the community, destroying the environment, and causing harm to members of the Sarayaku through its acts of intimidation and arrests.⁵⁷

July 2003: The CGC destroys a tree at a Pingullu, Lispungu⁵⁸ This tree has religious and spiritual significance to Mr. Cesar Vargas, a spiritual leader, and its destruction robs him of the ability to get medicine to cure his family.⁵⁹

50. *Id.* ¶ 82; *See also* Kichwa v. Ecuador, Merits, Reparations and Costs, ¶ 102.

51. Kichwa v. Ecuador, Petition to the Court, ¶ 82.

52. Kichwa v. Ecuador, Admissibility Report, Report No. 64/04, Inter-Am. Comm'n H.R., Case No. 12.465, ¶ 7 (October 13, 2014).

53. Kichwa v. Ecuador, Merits, Reparations and Costs, ¶ 103.

54. *Id.*

55. Kichwa v. Ecuador, Admissibility Report, ¶ 9.

56. Kichwa v. Ecuador, Merits, Reparations and Costs, ¶ 106.

57. *Id.*

58. Kichwa v. Ecuador, Petition to the Court, ¶ 97.

59. *Id.*

July 6, 2003: The Canelos, Pacayacu, and Sarayaku hold a meeting, where the Canelos and Pacayacu try to get the Sarayaku to sell their land, but the Sarayaku refuse.⁶⁰ The Canelos and Pacayacu resolve to block passage to the Sarayaku.⁶¹

October 7, 2003: The First Criminal Court of Pastaza issues warrants for Mr. Reinaldo Aranda, Mr. Elvis Malver, Mr. Marco Gualinga, and Mr. Fabián Grefa for theft and aggravated assault.⁶² The charges are dismissed for Mr. Elvis Malver, Mr. Reinaldo Aranda, and Mr. Fabián Grefa.⁶³ Mr. Marco Gualinga serves a year in prison for possessing explosives.⁶⁴

December 1, 2003: The Association of the Sarayaku Kichwa sends a communication to the Canelos for them to join in the March for Peace and Life (Paz y la Vida).⁶⁵

December 2, 2003: The Canelos announce they will not join in the march.⁶⁶

December 4, 2003: The Police Lieutenant meets with the President of Canelos about the Canelos' announcement.⁶⁷ The Canelos state that if their decision is not respected, violence will ensue.⁶⁸ That same day, the Canelos assault the Sarayaku as they head to the march.⁶⁹

December 5, 2003: The Ombudsman of Pastaza launches his own inquiry and determines the leaders of the Canelos responsible for the violence.⁷⁰

December 9, 2003: The Pastata District Attorney's office launches an investigation into the events of December 4, 2003 and calls for an examination of the victims.⁷¹

60. *Id.* ¶ 83.

61. *Id.*

62. *Id.* ¶ 92.

63. *Id.*

64. *Kichwa v. Ecuador*, Petition to the Court, ¶ 92.

65. *Id.* ¶ 84.

66. *Id.*

67. *Id.* ¶ 85.

68. *Id.*

69. *Id.* ¶ 86.

70. *Kichwa v. Ecuador*, Petition to the Court, ¶ 88.

71. *Id.* ¶ 89.

December 19, 2003: The Sarayaku, the *Centro de Derechos Económicos y Sociales* (“CDES”), and the Center for Justice and International Law (“CEJIL”) file a petition to the Inter-American Commission for Human Rights (“the Commission”).⁷²

April 23, 2004: Three men wearing disguises beat Mr. José Serrano Salgado, the attorney for the Sarayaku, and warn him to stop working for the Sarayaku.⁷³ Mr. Serrano Salgado files a petition with the Pichincha District Attorney’s Office.⁷⁴

April 30, 2004: The Commission approves the request for precautionary measures for Mr. Serrano Salgado.⁷⁵

June 10, 2004: The Executive Secretariat of CEDENPE (an organization that is part of the executive branch and has jurisdiction over indigenous matters) records the Statute of the Kichwa Original People of Sarayaku, which lays out the Sarayaku’s territory within Block 9,⁷⁶ and gives the Sarayaku control over their natural resources within Block 9.⁷⁷

October 13, 2004: The Commission issues the Report on Admissibility.⁷⁸

December 21 and 22, 2004: Sarayaku community leader and presidential candidate, Mr. Marlon Santi, submits a complaint to the State that he received calls from an unknown number where he was told if he did not withdraw his candidacy, he would be killed.⁷⁹ The United Nations calls to the State to respond to the threat and take note of the other threats being perpetrated.⁸⁰

April 10, 2005: The Canelos vote to allow members of the Sarayaku to travel along the Bobonaza River as long as they follow the July 6, 2003 resolutions and withdraw their legal cases.⁸¹

August 3, 2007: The Ministry of Mines and Petroleum and the National

72. Kichwa v. Ecuador, Merits, Reparations and Costs, ¶ 1.

73. Kichwa v. Ecuador, Petition to the Court, ¶ 94.

74. *Id.*

75. *Id.* ¶ 40.

76. Kichwa v. Ecuador, Merits, Reparations and Costs, ¶ 61.

77. *Id.*

78. Kichwa v. Ecuador, Petition to the Court, ¶ 2.

79. *Id.* ¶ 95.

80. *Id.* ¶ 96.

81. *Id.* ¶ 90.

Police reach an agreement on how to comply with the provisional measure to remove the explosives from the Sarayaku's land.⁸²

October 20, 2008: Article 57 of the Constitution goes into effect and establishes that the State will comply and protect indigenous collective rights as established by the Constitution, human rights conventions, and other "international instruments."⁸³

April 20, 2009: PETROECUADOR ends the February 6, 2003 postponement of activities in Block 23 and allows for the renewal of activities outlined in its partnership contracts.⁸⁴

July 2009: The State informs the Commission that it has begun the process to end its contracts with CGC.⁸⁵

October 2, 2009: The Ministry of Non-Renewable Natural Resources and the National Police reach an agreement on how to remove the explosives from the Sarayaku's land.⁸⁶

December 17, 2009: The State digs up fourteen kilograms of buried explosives from Sarayaku territory.⁸⁷

December 18, 2009: The Commission issues its Report on the Merits No. 138/09.⁸⁸

September 16, 2010: The Under-Secretary for Environmental Quality orders CGC to set forth a timetable for removing the explosives, explain the current state of the explosives, and explain the environmental cost of finding and removing the explosives.⁸⁹

November 19, 2010: The State and CGC reach an agreement to terminate their contracts.⁹⁰

82. *Kichwa v. Ecuador*, Merits, Reparations and Costs, ¶ 114.

83. *Id.* ¶ 116.

84. *Id.* ¶ 117.

85. *Id.* ¶ 119.

86. *Id.* ¶ 120.

87. *Id.*

88. *Kichwa v. Ecuador*, Petition to the Court, ¶ 27.

89. *Kichwa v. Ecuador*, Merits, Reparations and Costs, ¶ 122.

90. *Id.* ¶ 123.

B. Other Relevant Facts

1. The Oil Industry in Ecuador

During the State's early years of oil drilling, the State undergoes a process of economic expansion, sees a rise in its exports, and begins to modernize the "infrastructure of its main cities" in order to take advantage of the oil industry.⁹¹ A power grab is motivated by a nationalist philosophy that sees the oil industry as critical from an economic and political perspective.⁹² This power grab and expansion of the oil industry comes at the expense of other factors, such as the environment, cultural and ethnic considerations – all of which the State sees as irrelevant.⁹³ In 2005, oil sales make up a quarter of the State's gross domestic product (GDP), and profits from the oil industry make up around 40% of the State's budget.⁹⁴ In 2012, compared to other Latin American countries, Ecuador ranks fifth with regard to oil production and fourth with regard to oil exports.⁹⁵

2. The Kichwa People of Sarayaku

The Kichwa people of Sarayaku are one of many subgroups of the Kichwa indigenous people in the Ecuador Amazonian region.⁹⁶ The Kichwa People of Sarayaku live in the tropical forests along the banks of the Bobonaza River,⁹⁷ and are one of the largest concentrations of the Kichwa people, with a population around 1,200.⁹⁸ The population centers of the Sarayaku are largely isolated from the rest of Ecuador and travel to the nearest town takes about two to three days by boat or eight days by land.⁹⁹ The Sarayaku follow their ancestral way of life – hunting, gathering, and farming within their territory – with a small percentage of food coming from the outside world.¹⁰⁰ The Sarayaku decide important matters through the Tayja Saruta-Sarayacu, a traditional community assembly.¹⁰¹

91. *Id.* ¶ 58.

92. *Id.* ¶ 59.

93. *Id.*

94. *Id.* ¶ 60.

95. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 60.

96. *Id.* ¶ 51.

97. *Id.* ¶ 52.

98. *Id.*

99. *Id.* ¶ 53.

100. *Id.* ¶ 54.

101. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 55.

A council of community leaders is used to interact with outside authorities; however, the Tayaja Saruta-Sarayacu is the main governing body.¹⁰² The Sarayaku's culture and religion is connected to the jungle, which is seen as alive and infused with spirits called Supay.¹⁰³ The presence of Supay makes certain areas sacred and off limits to anyone but community elders.¹⁰⁴

II. PROCEDURAL HISTORY

A. Before the Commission

March 3, 2003: The Ecuadorian Inter-Institutional Commission and the President of the Sarayaku ask the Commission for precautionary measures to protect community leaders, Mr. Viteri, Mr. Santi, and Mr. Gualinga.¹⁰⁵

May 5, 2003: The Commission issues precautionary measures to the State, requiring it to: (1) do everything in its power to protect members of the Sarayaku, including but not limited to the community leaders and the girls who might be subject to threats; (2) investigate the events of January 26, 2003; (3) punish those responsible; (4) protect the relationship between the Sarayaku and their territory; and (5) come to an agreement on precautionary measures with the Sarayaku.¹⁰⁶

October 16, 2003: The Ecuadorian Inter-Institutional Commission and the President of the Sarayaku request an extension of the precautionary measures.¹⁰⁷

December 17, 2003: The Commission approves the extension of precautionary measures for six months.¹⁰⁸

December 19, 2003: The Sarayaku, the *Centro de Derechos Económicos y Sociales* (“CDES”), and the Center for Justice and International Law (“CEJIL”) file a petition with the Commission.¹⁰⁹

102. *Id.*

103. *Id.* ¶ 57.

104. *Id.*

105. *Kichwa v. Ecuador*, Admissibility Report, ¶ 7.

106. *Id.* ¶ 9.

107. *Id.* ¶ 12.

108. *Id.* ¶ 13.

109. *Kichwa v. Ecuador*, Merits, Reparations and Costs, ¶ 1.

April 8, 2004: The petitioners request provisional measures for the Sarayaku from the Court.¹¹⁰

April 29, 2004: The petitioners resubmit their need for provisional measures for the Sarayaku and precautionary measures for Mr. Serrano Salgado.¹¹¹

April 30, 2004: The Commission approves the request for precautionary measures for Mr. Serrano Salgado.¹¹²

June 15, 2004: The Commission sends an application for provisional measures for the Saryaku to the Court.¹¹³

July 6, 2004: The Court requires the State to: (1) adopt all measures to protect the Kichwa and those defending them; (2) guarantee the right to freedom of movement; and (3) investigate the events necessitating the provisional measures and prosecute the responsible parties.¹¹⁴

October 13, 2004: The Commission issues the Report on Admissibility No. 62/04.¹¹⁵ The State claims the petition is not admissible because the Petitioners have not exhausted all domestic remedies.¹¹⁶ The Commission finds that petitioners do not have to exhaust domestic remedies because the State created unnecessary delay in the matter.¹¹⁷ The Commission find that the petition is admissible in relation to alleged violations of Article 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 12 (Freedom of Conscience and Religion), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), 19 (Rights of the Child), 21 (Right to Property), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights).¹¹⁸ The Commission finds that the petition is inadmissible in

110. Kichwa v. Ecuador, Admissibility Report, ¶ 15.

111. *Id.* ¶ 16.

112. *Id.*

113. *Id.* ¶ 17.

114. *Id.* ¶ 18.

115. Kichwa v. Ecuador, Merits, Reparations and Costs, ¶.

116. Kichwa v. Ecuador, Admissibility Report, ¶ 50.

117. *Id.* ¶ 70.

118. *Id.* "Decides" ¶ 1.

relation to alleged violations of Article 3 (Right to Juridical Personality).¹¹⁹

March 13, 2006: The State proposes a friendly settlement.¹²⁰

May 3, 2006: The Sarayaku refuse to enter into a friendly settlement process with the State because of the State's failure to honor previous agreements between the parties.¹²¹

December 18, 2009: The Commission issues Report on the Merits No. 138/09, offering recommendations to the State.¹²² The Commission found the State violated Article 21 (Right to Property), in relation to Articles 13 (Freedom of Thought and Expression), 23 (Right to Participate in Government) and 1(1) (Obligation of Non-Discrimination), to the detriment of the Kichwa people; Articles 4 (Right to Life), 8 (Right to a Fair Trial), 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of the Kichwa people; and Article 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of members of Kichwa people; and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.¹²³

Specifically, the Commission recommends the State protect the Sarayaku's territory, remove the explosives, protect indigenous peoples' right to be consulted, enact legislation to codify indigenous peoples' right to consultation, make reparations, and ensure these types of violations do not occur again.¹²⁴

B. Before the Court

April 26, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹²⁵

119. *Id.* "Decides," ¶ 2.

120. *Id.* ¶ 14.

121. *Id.* ¶ 17.

122. *Kichwa v. Ecuador*, Admissibility Report, ¶ 27.

123. *Kichwa v. Ecuador*, Merits, Reparations and Costs, n.3.

124. *Id.*

125. *Id.* ¶ 1.

1. Violations Alleged by Commission¹²⁶

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

Article 21 (Right to Property)

Article 22 (Freedom of Movement and Residence)

Article 23 (Right to Participate in Government)

Article 25 (Right of Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹²⁷

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 7 (Right to Personal Liberty)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture.

March 12, 2011: The State submits a preliminary objection that the petitioners failed to exhaust domestic remedies.¹²⁸

April 29, 2011 – July 22, 2011: International Human Rights Clinic of Seattle University Law School, the Legal Clinic at the Universidad de San Francisco Quito School, the Human Rights Center at the Pontificia Universidad Católica de Ecuador, Amnesty International, the Regional Alliance for Freedom of Expression and Information, Allard K.

126. *Id.* ¶ 3.

127. *Id.* ¶ 6.

128. *Id.* ¶ 9.

Lowestein International Human Rights Clinic of Yale University, and the Forest Peoples Programme present *amicus curiae* briefs.¹²⁹

April 21, 2012: A delegation of the Court goes to visit the territory of the Sarayaku people; it is the first time in the history of the Court where a delegation of the Court goes to visit the site where the alleged events took place.¹³⁰ The Court meets with members of the Sarayaku community and takes part in various cultural practices and rituals.¹³¹ The delegation also visits the village of Jatun Molino, meeting with people there.¹³² The Secretary of Legal Affairs of the Presidency of the Republic, Alexis Mera, formally recognizes the State's responsibility.¹³³

May 15, 2012: The State asks the Court to acknowledge its acceptance of international responsibility as a form of reparation and to move forward with the rest of the merits and reparations of the case.¹³⁴

III. MERITS

A. Composition of the Court

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

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

June 27, 2012: The Court issues its Judgment on Merits and Reparations.¹³⁵

129. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 13, n.16.

130. *Id.* ¶ 21.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* ¶ 25.

135. *Kichwa v. Ecuador, Merits, Reparations and Costs*, “Declares” ¶ 1.

The Court found unanimously to:

Dismiss the State's preliminary objection.¹³⁶

*The Court found there was no reason to analyze the preliminary objection because the State had already accepted responsibility.*¹³⁷

The Court found unanimously that the State had violated:

Article 21 (Right to Property), in relation to Articles 1(1) and 2 of the Convention, to the detriment of the Kichwa people,¹³⁸ because:

The State's failure to discuss the oil excavation with the Sarayaku people had a direct, detrimental effect on their "cultural identity," and their right to "communal property."¹³⁹ Additionally, the State's failure to involve the Sarayaku is supported by the State's acknowledgment of guilt.¹⁴⁰ Furthermore, the State failed to enact domestic measures that would have prevented the State's failure to consult the Sarayaku.¹⁴¹ Thus, the State violated Article 21 (Right to Property).¹⁴²

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Articles 1(1) and 21 of the Convention, to the detriment of members of the Kichwa people,¹⁴³ because:

The State, by allowing the laying of the explosives on the Sarayaku's territory, put the Sarayaku's right to life in great peril.¹⁴⁴ Also, the Court found that the State's failure to follow up on complaints of violence against the Sarayaku and to follow up on the complaint filed by Mr. Serrano Salgado with the Pichincha District Attorney's Office constituted violations of personal integrity.¹⁴⁵

136. *Id.* "Declares" ¶ 1.

137. *Id.* ¶ 30.

138. *Id.* "Declares" ¶ 2.

139. *Id.* ¶ 232.

140. *Id.* ¶ 211.

141. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 227.

142. *Id.* ¶ 232.

143. *Id.* "Declares" ¶ 3.

144. *Id.* "Orders" ¶¶ 248-49.

145. *Id.* ¶¶ 268, 270-71.

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Articles 1(1) of the Convention, to the detriment of members of the Kichwa people,¹⁴⁶ because:

The State failed to provide an effective judicial remedy to the Sarayaku and to give proper weight to the few judicial decisions made for the Sarayaku people.¹⁴⁷ Furthermore, the State failed to move forward or adequately with the Sarayaku's original amparo complaint filed November 28, 2002,¹⁴⁸ or to give proper effect to the precautionary measures ordered on November 29, 2002.¹⁴⁹

The Court dismissed:

Articles 7 (Right to Personal Liberty), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention, and Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture,¹⁵⁰ because:

The Court found that there was not enough evidence to analyze Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture, or Article 7 (Right to Personal Liberty) and Article 22 (Freedom of Movement and Residence) of the Convention.¹⁵¹ The Court found that the arguments related to the alleged violations under Articles 13 (Freedom of Thought and Expression), 23 (Right to Participate in Government), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) were better analyzed under other Articles of the Convention.¹⁵²

C. Dissenting and Concurring Opinions

[None]

146. *Id.* “Declares” ¶ 4.

147. *Kichwa v. Ecuador*, Merits, Reparations and Costs, ¶ 278.

148. *Id.* ¶ 273.

149. *Id.* ¶¶ 274-75.

150. *Id.* “Declares” ¶ 5.

151. *Id.* ¶¶ 228, 254.

152. *Id.* ¶¶ 229-30.

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court explained that the judgment itself was “*per se* a form of reparation.”¹⁵³

2. Remove Explosives from the Sarayaku’s Territory

The Court ordered the State to remove explosives from Sarayaku territory in the way least damaging to the people and the environment.¹⁵⁴ Also, the State must sufficiently bury any devices that cannot be removed, and enact measures to ensure that people will be alerted to their presence.¹⁵⁵

3. Include the Sarayku

The Court ordered the State to discuss with and involve the Sarayaku in any future projects or activities that either take place in Sarayaku territory or could affect Sarayaku territory.¹⁵⁶

4. Protect the Sarayaku’s Right to Consultation through Legislation

The Court ordered the State to adopt measures to implement the Sarayaku’s right to consultation, and remove any detrimental measures.¹⁵⁷

5. Implement Modules on National and International Standards for Human Rights for State Officials

The Court found that because the State’s violations emerged from

153. Kichwa v. Ecuador, Merits, Reparations and Costs, “Orders” ¶ 1.

154. *Id.* ¶ 293.

155. *Id.*

156. *Id.* ¶ 300.

157. *Id.* ¶ 301.

local officials' lack of understanding, the State must implement, within a reasonable time, an educational program to inform officials of indigenous people's rights under national and international law.¹⁵⁸

6. Carry out an Act of International Acknowledgement

The Court ordered the State to hold a public ceremony, including the Sarayaku, to acknowledge guilt.¹⁵⁹ The ceremony was to be broadcast and published in Spanish and the language of the Kichwa.¹⁶⁰

7. Publish the Judgment

The Court ordered the State to publish the Court's judgment as follows: (1) the official summary once in the Official Gazette; (2) the official summary once in another national newspaper; (3) the full judgment online; and (4) the official summary four times on the first Sunday of the month through a radio broadcast.¹⁶¹

8. Annul Provisional Measures

The Court annulled its previous provisional measures because the measures were effectively incorporated into the reparations.¹⁶²

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded pecuniary damages of \$90,000 to the Petitioners.¹⁶³ The amount was awarded for the expenses the Sarayaku took on at the domestic level defending their rights, the damage to their territory, and the overall loss of production.¹⁶⁴ The amount was to be paid to the Association of the Sarayaku so that they may decide how they want to use the money to benefit their community.¹⁶⁵

158. *Id.* ¶ 302.

159. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 305.

160. *Id.*

161. *Id.* ¶¶ 306-08.

162. *Id.* ¶ 340.

163. *Id.* ¶ 317.

164. *Id.* ¶ 316.

165. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 317.

2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages of \$1.25 million to the Petitioners.¹⁶⁶ The amount was awarded for the suffering inflicted on the Sarayaku, specifically the forced changes to their lifestyle and explosives still in their territory.¹⁶⁷ The amount was to be paid to the Association of the Sarayaku so that they may decide how they want to use the money to benefit their community.¹⁶⁸

3. Costs and Expenses

The Court awarded \$58,000 to Petitioners for the costs and expenses they incurred presenting their case to the Commission and ordered that \$18,000 be paid directly to the CEJIL.¹⁶⁹

4. Victim's Legal Assistance Fund

The Court awarded \$6,344.62 to the Victim's Legal Assistance Fund.¹⁷⁰

5. Total Compensation (including Costs and Expenses ordered):

\$1,404,344.62

C. Deadlines

The State must remove the explosives within three years.¹⁷¹ The State must meet with the Sarayaku and draw up a plan to remove the remaining explosives that are buried deeper than the others and report back to the Court within six months and every six months after that.¹⁷²

Within a reasonable time, the State must enact the appropriate reforms to guarantee the Sarayaku and other indigenous people's right to be informed and involved with matters that concern themselves and their territory.¹⁷³

166. *Id.* ¶ 323.

167. *Id.*

168. *Id.*

169. *Id.* ¶ 331.

170. *Id.* ¶ 334.

171. *Kichwa v. Ecuador, Merits, Reparations and Costs*, ¶ 295.

172. *Id.*

173. *Id.* ¶ 301.

The State must hold the ceremony with the public acknowledgment of its guilt within one year.¹⁷⁴

The State must make the newspaper and online publications within six months and must make the four radio broadcasts within one year.¹⁷⁵

The State must pay the pecuniary damages and non-pecuniary damages within one year and the Victim's Legal Aid Fund within 90 days.¹⁷⁶

The State must submit a report on its compliance with the judgment within one year.¹⁷⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

June 22, 2016: The Court found the State complied with its obligation to hold a public ceremony where it acknowledged its guilt,¹⁷⁸ published the judgment and summaries,¹⁷⁹ and paid pecuniary and nonpecuniary damages, and costs and expenses.¹⁸⁰ The Court found that the State had not completed its obligation to fully implement a mandatory education system to inform state officials about national and international standards of human rights that affect indigenous peoples.¹⁸¹ The Court orders the State to continue to work to implement the education system and to send an update on its progress by November 7, 2016.¹⁸²

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

174. *Id.* ¶ 305.

175. *Id.* ¶¶ 307-08.

176. *Id.* ¶¶ 317, 323, 334.

177. *Kichwa v. Ecuador*, Merits, Reparations and Costs, "Orders" ¶ 9.

178. *Kichwa v. Ecuador*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 21 (June 22, 2016).

179. *Id.* ¶ 34.

180. *Id.* ¶ 38.

181. *Id.* "Declares" ¶ 3.

182. *Id.*

2. Decisions on Merits, Reparations and Costs

[Kichwa v. Ecuador, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 245 \(June 27, 2012\).](#)

3. Provisional Measures

[Kichwa v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 3, 2011\).](#)

[Kichwa v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 17, 2011\).](#)

[Kichwa v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 20, 2012\).](#)[Kichwa v. Ecuador, Provisional Measures, Reimbursement to Victims, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 14, 2013\).](#)

4. Compliance Monitoring

[Kichwa v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 22, 2016\).](#)

5. Review and Interpretation of Judgment

[None]

B. *Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Kichwa v. Ecuador, Admissibility Report, Report No. 64/04, Inter-Am. Comm'n H.R., Case No. 12.465 \(Oct. 13, 2014\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Kichwa v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.465, \(April 26, 2010\).](#)

VIII. BIBLIOGRAPHY

[Cultural Survival, *Confirming Rights: Inter-American Court Ruling Marks Key Victory for Sarayaku People in Ecuador*, <https://www.cultural-survival.org/publications/cultural-survival-quarterly/confirming-rights-inter-american-court-ruling-marks-key> \(last updated on Jan 2015\).](https://www.cultural-survival.org/publications/cultural-survival-quarterly/confirming-rights-inter-american-court-ruling-marks-key)

[International Network for Economic, Social & Cultural Rights, *Pueblo Indígena Kichwa de Sarayaku vs. Ecuador*, <https://www.escri-net.org/caselaw/2012/pueblo-indigena-kichwa-sarayaku-vs-ecuador> \(last visited July 30, 2016, 9:00 PM\).](https://www.escri-net.org/caselaw/2012/pueblo-indigena-kichwa-sarayaku-vs-ecuador)

[Judith Kimerling, *Transnational Operations, Bi-National Injustice: Chevron-Texaco and Indigenous Huaorani and Kichwa in the Amazon Rainforest in Ecuador*, 31 *Am. Indian L. Rev.* 445, \(2007\).](#)