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| Institution: | Inter-American Court of Human Rights |
| Title/Style of Cause: | Maria Salvador Chiriboga v. Ecuador |
| Doc. Type: | Judgement (Preliminary Objection and Merits) |
| Decided by: | President: Cecilia Medina-Quiroga;<br>Vice President: Diego Garcia-Sayan;<br>Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu-Blondet; Diego Rodriguez Pinzon |
| Dated: | 6 May 2008 |
| Citation: | Salvador Chiriboga v. Ecuador, Judgement (IACtHR, 6 May 2008) |
| Represented by: | APPLICANTS: Alejandro Ponce Martinez and Alejandro Ponce Villacis |



In the case of Salvador Chiriboga,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, the “Convention” or the “American Convention”) and Articles 29, 31, 37, 56, 57 and 58 of the Court’s Rules of Procedure (hereinafter, the “Rules of Procedure”) delivers this Judgment.

## I. INTRODUCTION TO THE CASE AND PURPOSE OF THE CLAIM

1. On December 12, 2006, in accordance with the terms of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter, the “Commission” or the “Inter-American Commission”) submitted an application to the Court [FN1] against the Republic of Ecuador (hereinafter, the “State” or “Ecuador”) originating in petition N° 12.054, forwarded to the Secretariat of the Commission on June 3, 1998 by María Salvador Chiriboga and Julio Guillermo Salvador Chiriboga (hereinafter, Salvador Chiriboga siblings.) [FN2] Mr. Julio Guillermo Salvador Chiriboga was declared “incapable” and her sister was appointed as her guardian by court's order. Subsequently, Mr. Salvador Chiriboga died on January 9, 2003 and her sister, María Salvador Chiriboga (hereinafter, "María Salvador Chiriboga", “Mrs. Salvador Chiriboga” or "alleged victim") was declared universal heir. [FN3] On October 22, 2003, the Commission adopted the Report on Admissibility Nº 76/03 [FN4] and on October 15, 2005, adopted the Report on the Merits No. 78/05, [FN5] under the terms of Article 50 of the Convention, which contain certain recommendations that according to the Commission, have not been satisfactorily adopted by the State and for that, the Commission decided to bring the case to the jurisdiction of the Court. [FN6]

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[FN1] The Commission requested an extension of 15 days in order to submit the original application and its appendixes, which was granted by the Court.
[FN2] During the processing of the case, both at the domestic and at the international level, Maria Salvador Chiriboga has exercised the rights she was personally entitled to and has acted on behalf of his brother until he died. By virtue of the foregoing, the term "Salvador Chiriboga siblings" o "Maria Salvador Chiriboga" will be used, during the different proceedings of the instant case, depending on the date of the proceeding as specified in the text.
[FN3] Cf. deed executed by a notary regarding the rightful possession of the legally protected interests left by Mr. Julio Guillermo Salvador Chiriboga in favor of his heir Maria Salvador Chiriboga (record of appendixes to the brief of requests and arguments, Appendixes 27 to 51, p. 3036 to 3045).
[FN4] In the Report on Admissibility Nº 76/06, the Commission decided to admit petition Nº 12.054 in relation to the rights enshrined in Articles 1, 2, 21(2), 8(1) and 25 of the American Convention.
[FN5] In the Report on the Merits Nº 78/05, the Commission concluded that the State violated the rights contained in Articles 8 (Right to a Fair Trial), 21 (Right to Property) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 2 (Domestic Legal Effects) and 1(1) (Obligation to Respect Rights) therein.
[FN6] The Commission appointed Mr. Evelio Fernández Arévalos, Commissioner and Mr. Santiago A. Canton, Executive Secretary as Delegates and Ariel E. Dulitzky, Elizabeth Abi-Mershed, Mario López Garelli and Lilly Ching Soto as legal advisors.
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2. In accordance with the facts invoked by the Inter-American Commission, between December 1974 and September 1977, Salvador Chiriboga siblings inherited from their father, Guillermo Salvador Tobar, a property of 60 hectares, designated under number 108 of lot “Batán de Merizalde”. On May 13, 1991 the then Municipal Council of Quito (hereinafter, the “Municipal Council” or the “Council”), nowadays called Council of the Metropolitan District of Quito, declared the property of Salvador Chiriboga siblings to be of public utility in order to expropriate and take immediate possession of the property belonging to Salvador Chiriboga siblings. As a consequence of said municipal decision, Salvador Chiriboga siblings have filed several lawsuits and remedies with State’s authorities in order to resolve the declaration of public utility, as well as to claim for a just compensation according to the terms of the Ecuadorian legislation and the American Convention.

3. According to the Commission, as a response to the declaration of public utility of the property, Salvador Chiriboga siblings appealed such resolution to the Ministry of Government and on September 16, 1997, such ministry issued Ministerial Agreement N°. 408, [FN7] which set aside the declaration of public utility. However, on September 18 of that same year, the Ministry of Government issued another Ministerial Agreement, Nº 417 [FN8] rendering without effect the previous Agreement Nº 408.

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[FN7] Cf. Ministerial Agreement Nº 408 (record of appendixes to the complaint, appendixes 1 and 2, p. . 83 and 85).

[FN8] Cf. Ministerial Agreement Nº 417 (record of appendixes to the complaint, appendixes 1 and 2, p. 87).
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4. In accordance with the facts pointed out by the Commission, several judicial proceedings have been initiated. Three of them are still pending resolution, namely: a) claim for subjective remedy N° 1016 filed on May 11, 1994 with the First Chamber of the Court on Administrative matters in and for the city of Quito (hereinafter, the "First Chamber") by which Salvador Chiriboga siblings appealed the declaration of public utility (infra para. 80); b) claim for subjective remedy N° 4431 filed on December 17, 1997 with the Second Chamber of the Court on Administrative matters in and for the city of Quito (hereinafter, the "Second Chamber") by Salvador Chiriboga siblings in order to declare the Ministerial Agreement N° 417 to be unlawful (infra para. 81); and c) the expropriation proceedings N° 1300-96-C initiated on July 16, 1996 [FN9] before the Ninth Trial Court on Civil matters in and for the city of Pichincha (hereinafter, "Ninth Trial Court on Civil matters" or "Ninth Trial Court"), by which the Municipality of Quito (hereinafter, the "Municipality of Quito" or the "Municipality") filed a claim regarding the condemnation of the property belonging to Salvador Chiriboga siblings. The Judge in charge of the Ninth Trial Court on Civil matters in and for the city of Pichincha (hereinafter, the "Ninth Judge on Civil matters" or "Ninth Judge"), by means of court order dated September 24, 1996, admitted the complaint and authorized the immediate possession of the property, which was notified to Mrs. Maria Salvador Chiriboga on June 6, 1997. [FN10]

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[FN9] Cf. expropriation claim filed by the Municipality against María and Julio Guillermo Salvador Chiriboga on July 16, 1996 (proceedings N° 1300- 96, record of appendixes to the brief of requests and arguments, Appendixes 6 to 8, p. 1802 to 1804).
[FN10] Cf. Record of the notice served on Mrs. Salvador Chiriboga (Proceedings N° 1300- 96, record of appendixes to the brief of requests and arguments, Appendixes 6 to 8, p.1815).
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5. With regard to the expropriation proceedings, the Commission argued that 15 years have passed since the Municipal Council declared the property to be of public use and that the possession of the property in order to expropriate it occurred on July 10, 1997, without a court order determining the final value of the property and ordering the payment of a compensation. The Commission further alleged that during that period of time, the Municipality has been in possession of the property. As a consequence, Salvador Chiriboga siblings have been barred from exercising their property rights, specially the right to use and enjoy the property they are entitled to for being their rightful owners. Furthermore, the Commission pointed out that according to the American Convention and the domestic legislation, the court's order establishing the effective condemnation must be issued within a short period of time.

6. The Commission also mentioned that the following remedies have been resolved within the domestic jurisdiction: a) subjective remedy Nº 1498-95 [FN11] filed with the Second Chamber of the District Trial Court N°1 on Administrative matters on January 12, 1995 by Salvador Chiriboga siblings, through which they requested to declare the administrative resolution issued on September 7, 1994, by the Planning and Classification Commission

(Comisión de Planificación y Nomenclatura) which, at the time, denied the petition filed by Salvador Chiriboga siblings with regard to the urbanization of only three hectares of the property, to be null and unlawful. On December 11, 2002 such Second Chamber of the District Trial Court solved the remedy; b) subjective remedy N° 2540-96 [FN12] filed on February 2, 1996 by Salvador Chiriboga siblings with the Second Chamber of the District Trial Court N° 1 on Administrative matters. By filing such remedy, they challenged the administrative resolution issued by the Municipal Prosecutor that was intended to set aside the positive administrative silence that resulted from the lack of answer from the Ministry of Government and that admitted the claim against the declaration of public utility. The Supreme Court of Justice of Ecuador denied such remedy on February 13, 2001; [FN13] and c) the writ of amparo [FN14] lodged on July 10, 1997, by Salvador Chiriboga siblings, in which they argued that the expropriation conducted by the Municipality of Quito entailed a violation of the rights enshrined in the Political Constitution of the Republic of Ecuador (hereinafter, "political constitution"), in the American Convention and in the American Declaration of the Rights and Duties of Man and that it did not adjust to the provisions established within the domestic legislation regarding the expropriation system. In such regard, the District Trial Court N°1 on Administrative matters issued a ruling regarding such remedy on October 2, 1997.

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[FN11] Cf. Subjective or Full Jurisdiction remedy Nº 1498-95 (record of appendixes to the brief of requests and arguments, Appendix 9, p. 2061 to 2070).
[FN12] Cf. Subjective or Full Jurisdiction Remedy Nº 2540-96 (record of appendixes to the brief of requests and arguments, Appendixes 10 and 11, p. 2116 to 2121).
[FN13] Cf. Court order of February 13, 2001, issued by the Supreme Court of Justice (record of appendixes to the brief of requests and arguments, Appendixes 10 and 11, p. 2139 to 2142).
[FN14] Cf. complaint of the writ of amparo of July 10, 1997 (record of appendixes to the complaint, appendixes 1 and 2, p. 92 to 103).

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7. Finally, the Commission requested the Court to declare that the State is responsible of the violation of the rights enshrined in Articles 8 (Right to a Fair Trial), 21 (Right to Private Property) and 25 (Right to Judicial Protection) of the American Convention, in relation to articles 2 (Domestic Legal Effects) and 1(1) (Obligation to Respect Rights) therein, to the detriment of Maria Salvador Chiriboga. Furthermore, it requested the Court to order the State to adopt certain measures for reparations, as well as the payment of costs and expenses.

8. The Commission's application was served on the State [FN15] and on the representatives on January 19, 2007.

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[FN15] When the application was served on the State, it was informed on the right to appoint a judge ad hoc in order to participate in the consideration of the case. On February 13, 2007, the State appointed Mr. Diego Rodriguez Pinzon as Judge ad hoc.

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9. On March 18, 2007, Mr. Alejandro Ponce Martinez and Alejandro Ponce Villacís, in their capacity of representatives of the alleged victim (hereinafter, the "representatives") filed the brief of requests, arguments and evidence (hereinafter, "brief of requests and arguments"). The representatives requested the Tribunal to declare that the State violated Articles 8 (Right to a Fair Trial), 21 (Right to Private Property), 24 (Right to Equal Protection), 25 (Right to Judicial Protection) and 29 (Restrictions regarding Interpretation) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) therein, to the detriment of María Salvador Chiriboga. Finally, they requested the Court to order the State to adopt certain measures for reparation and the payment of the costs and expenses for litigating the case before the domestic courts and the Inter-American system of protection of human rights.

10. On May 17, 2007, the State [FN16] submitted a brief containing a preliminary objection, the answer to the complaint and observations to the brief of requests and arguments (hereinafter, the "answer to the complaint"). The State alleged that it did not violate Article 21 (Right to Property) of the Convention and that the deprivation of the property belonging to Salvador Chiriboga siblings was conducted "[…] in accordance with the American Convention, it was compatible to the right to property because it was based on reasons of public utility and social interest and was subjected to the payment of a fair compensation". In relation to the alleged violation of Article 8 (Right to a Fair Trial) of the Convention, to the detriment of Salvador Chiriboga siblings, the State indicated that the alleged victim initiated several proceedings, both before constitutional as well as administrative courts "[…] which have been decided by resolutions taking into account the factual, legal and consequential elements, [... and that] in the condemnation proceeding initiated by the Municipality of Quito, it is clear the desire of the alleged victim's representatives to delay the trial". In relation to Article 25 (Right to Judicial Protection) of the Convention, the State argued that it has never hindered the access to the legal resources available at the domestic administrative courts in order to challenge, on countless occasions, the administrative orders that turned out to be prejudicial to the interests of Salvador Chiriboga siblings.

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[FN16] The State appointed Erick Roberts, Deputy Director on Human Rights' matters for the Attorney General's Office, Principal Agent and Salim Zaidán, Office of the Deputy Director on Human Rights' matters of the Attorney General's Office, Deputy Agent.

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11. With regard to the possible reparations, the State pointed out that it will only accept to pay "[…] a compensation […] fixed within the framework of the domestic or Inter-American proceedings and based on an impartial assessment, according to the real value of the property, regardless of the current increase in value, if it adjust to the reality of the country, and the annual municipal budget and above all, under the terms of [...] of the Court [...]". Lastly, it challenged the sums of money requested by the representatives as compensation, costs and expenses. In said brief, the State also raised a preliminary objection based on non- exhaustion of domestic remedies.

12. On June 24 and 25, 2007, the Commission and the representatives, respectively, submitted their closing arguments regarding the preliminary objection raised by the State and

requested the Court to disallow such objection and continue analyzing the merits of the case. The representatives attached several appendixes, which were received on June 27, 2007.

## II. PROCEEDINGS BEFORE THE COURT

13. During the proceedings before this Tribunal, on September 17, 2007, the President of the Court (hereinafter, the "President"), at the time, issued an order requesting the testimonies of six persons, [FN17] rendered by affidavit, and the expert opinions of four persons proposed by the Commission, the representatives and the State, [FN18] with regard to which the parties had the chance to submit observations. Furthermore, taking into account the particular circumstances of the case, the President convened the Inter-American Commission, the representatives and the State to a public hearing to hear the statement rendered by the alleged victim, the statement rendered by the expert witness proposed by the Commission and the representatives and the statement rendered by the expert witness proposed by the State. On October 17, 2007, the representatives filed the observations to the statements rendered by the witness and two expert witnesses submitted by the State and on October 18, 2007, the Commission pointed out that it had no observation regarding the statements submitted by the State. On October 18, 2007, the Court took [FN19] receipt of the statement rendered by one of the expert witnesses, under the same conditions indicated in the President's Order of October 2, 2007 (supra note 18).

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[FN17] On October 8, 2007, the State informed that it waived its right to submit one of the testimonies rendered by affidavit.
[FN18] Cf. Orders issued by the President of the Court on September 17, 2007 and October 2, 2007.
[FN19] Cf. Order issued by the Court on October 18, 2008. [sic]

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14. The public hearing was held on October 19, 2007 during the XXXI Period of Extraordinary Sessions of the Court in the city of Bogotá, Colombia. [FN20] On October 23, 2007, the State submitted the observations to the affidavits rendered by the witnesses and expert witnesses proposed by the Commission and the Representatives, according to the Order of the President of September 17, 2007.

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[FN20] To this hearing, there appeared: a) on behalf of the Inter-American Commission: Lilly Ching Soto and Alejandra Gonza; b) on behalf of the representatives: Alejandro Ponce Martínez and Alejandro Ponce Villacís and c) on behalf of the State: Xavier Garaicoa Ortiz, Attorney General, main agent and Salim Zaidán, in his capacity of paralegal to the Attorney General's Office, deputy agent.

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15. On November 28, 2007, the State, the Commission and the representatives filed, respectively, the brief of final arguments regarding the preliminary objection and the merits, reparations and costs. On December 4, 2007, the State submitted appendixes, as noticed in its brief of final arguments.

16. On January 30, 2008, the Secretariat, following the instructions of the President of the Court (hereinafter, the "President"), requested the State, the Commission and the representatives, in accordance with Article 45 of the Rules of Procedure, to submit certain legislation and documentation to facilitate the adjudication of the case. On February 15, 2008, the representatives filed evidence to facilitate the adjudication of the case. On February 15 and 21, 2008, the Commission and the State filed evidence to facilitate the adjudication of the case.

17. On March 14, 2008, the Secretariat, following the instructions of the President, requested the State and the representatives to submit new evidence to facilitate the adjudication of the case. On March 26 and 31, 2008 and April 2 and 8, 2008, the representatives and the State submitted, respectively, said new evidence to facilitate adjudication of the case.

III. EVIDENCE

18. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on the Court's case law regarding the evidence and the assessment thereof, the Court shall now proceed to examine and assess the documentary evidentiary elements forwarded by the Commission, the representatives, and the State at the different procedural stages or as evidence to facilitate adjudication of the case as requested by the President, as well as the oral evidence and experts' opinions rendered by affidavit during the public hearing held in the instant case. In doing so, the Tribunal shall assess them on the basis of sound judgment, within the applicable legal framework. [FN21]

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[FN21] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, Merits. Judgment of March 8, 1998. Series C, Nº 37, para. 76; Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 171, para. 26; and Case of the Saramaka People v. Suriname. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C N°. 172, para. 63.

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A) DOCUMENTARY AND TESTIMONIAL EVIDENCE AND EXPERTS OPNIONS

19. The testimonies and experts' opinions of the following people were rendered in the form of affidavits:

a) Guadalupe Jessica Salvador Chiriboga: Proposed by the Commission and the representatives; daughter of María Salvador Chiriboga. She rendered a statement on some of the details related to the judicial proceedings initiated by her mother in order to protect their rights, on the negative results regarding some of the proceedings and on the delay of the State to resolve other judicial proceedings. Among such proceedings, she focused on two mediation proceedings; one of them was suspended in October 2006, when the parties had to appear before the Inter-American Commission. Furthermore, she pointed out that despite the efforts made by the mediators, the meetings arranged within such proceeding did not continue after such appearance. She added that they have never been against the declaration of public utility of the Municipality

of Quito but that they have always claimed a fair compensation. She stated that since 1991, when the Municipality declared her mother's property to be of public utility, she has been prevented from entering into a construction work inside such place. She clarified that the condemnation proceedings initiated by the Municipality of Quito began two years after the effective possession of her mother's property in 1994. Lastly, she expressed that her mother had to bear a very heavy emotional burden that had affected her health.

b) Susana Salvador Chiriboga: Proposed by the Commission and the representatives; daughter of María Salvador Chiriboga. She rendered a very detailed statement on all the proceedings initiated by her mother in order to protect their rights. She pointed out that 16 years have passed since the declaration of public utility and 11 years since the beginning of the condemnation proceedings. She added that, despite the passage of the years since the beginning of said proceedings, no legal compensation has been determined. Moreover, she mentioned that the dominant role of the Municipality of Quito has affected her family, not just for the hiring of attorneys in order to defend their rights and live on alert for each municipal order, but also because of the conflicts within the family life, since some of her brothers have wanted to abandon the fight, "[...] since they thought it was impossible to fight on equal terms with the Municipality [...]". She ended up indicating that this fight marked the life of her family.

c) José Luis Paredes Sánchez: Proposed by the Commission and the representatives: former owner of a property located in the area now occupied by the Metropolitan Park of Quito (hereinafter, “Metropolitan Park”). He stated that, in his capacity of former owner, he has defended the rights of other owners of pieces of property located in the same region and that is why he knows lot of people; that, due to the declaration of public utility, they had been deprived of their properties without receiving any kind of compensation. He added that the Municipality has used the time in its favor in order to force the affected people to accept the offer and exchange their properties for other properties in regions very much inferior to the ones they own. He indicated that, despite the fact that he was deprived of his property, the Municipality forces him to pay taxes.

d) Margarita Beatriz Rafiha El Fil Guerra: Proposed by the Commission and the representatives; former owner of the property located in the area now occupied by the Metropolitan Park. She stated that her wealth has been reduced to three hectares as a result of the condemnation proceedings and the declarations of public utility; that, in her case, they were seizures since she has never been compensated. Moreover, she pointed out that the Municipality has deprived her of fifty per cent of the total lands she used to own. She said that, due to the financial need and a serious health condition, she accepted three parcels of land from the Municipality of Quito; however, one of them was a green area or park inside a developed area that is why she could not occupy this one. Finally, she stated that she had not try any legal proceedings against the Municipality of Quito since she knows the Municipality always delays the proceedings in its favor in order for the owner to get tired and negotiate with the Municipality, appearing to be legal.

e) Edmundo Gutiérrez del Castillo: Proposed by the Commission and the representatives; technical expert witness of the Office of the Public Prosecutor and of the Chamber of Commerce and Construction Mediation Center (Centro de Mediación de las Cámaras de Comercio y de la Construcción). He referred to certain parameters for the assessment of the land and real estate. He gave his opinion regarding the actual value of the plots of land and real estate in the city of Quito and he considered that the lands located in the west part of the Metropolitan Park, including the property of Salvador Chiriboga siblings, have some characteristics that allow

assessing the value in ninety United States dollars per square meter. Lastly, he mentioned that there is an approximate difference of 70% between the official appraisals made by the Municipality and the commercial costs of the lands and buildings.

f) Julio Raúl Moscoso Álvarez: Proposed by the Commission and the representatives; expert in Ecuadorian law. He referred to the nature of the declaration of public utility, on the requirements needed to carry out a condemnation and the ways to challenge such legal concepts. Furthermore, he made reference to the requirements for the injuriousness claim and the way the administrative resolutions are challenged. He mentioned the reasons and the effects inherent to the dismissal of a judge from hearing a case. Within the tax environment, he gave her opinion regarding the different types of taxes on real property. He referred to certain criteria to guarantee the due process at administrative and judicial venues. According to his opinion, the delays in condemnations proceedings have no legal explanation since they are supposed to be simple legal procedures. However, in practice, civil trials can be delayed for many years and this causes confiscatory situations. Furthermore, he referred to the application of constitutional rules that bind the State to "[…] comply with human rights and protect the person from […] injuries and threats coming from third parties". In line with that criterion, he pointed out that according to the domestic legislation of Ecuador, human right treaties, agreements and international conventions have a compulsory, binding and constitutional nature. Finally, he confirmed that in many cases, the declaration of public utility allows the execution of clearly confiscatory practices.

g) Gonzalo Estupiñán Orejuela: Proposed by the State; lawyer. He stated that he knows of other similar condemnation proceedings as the one in debate, since he was a legal representative of a family against whom the Municipality initiated a condemnation proceeding for a piece of property located in the area of the Metropolitan Park. He pointed out that in such case, they began negotiating, since the only purpose of the trial was the determination of a fair price as compensatory payment. According to Mr. Estupiñán Orejuela, the negotiations and the compensatory payments in the legal proceedings were prompt and without further complications.

h) Armando Bermeo Castillo and Germán Carrión Arciniegas: Proposed by the State; both, lawyers. In the expert opinion they rendered, they stated that the public sector has the authority to initiate condemnation proceedings and that such procedure is subjected to the Act of Public Procurement, prior to an appraisal conducted by the National Division of Appraisals and Land Register (Dirección Nacional de Avalúos y Catrastos). However, they pointed out that this is not applicable within the municipalities, since these are governed by a special law, on the grounds of the Political Constitution that consider them as autonomous in the functional, administrative and financial sectors. They mentioned that, in accordance with the Civil Procedural Code of Ecuador (hereinafter, "Civil Procedural Code"), the value of the condemned property is fixed according to the price that appear in the Land Register of the two years prior to the year in which the complaint was filed. Furthermore, they expressed that the values determined are related to the value that serves as guide for the determination of taxes that the owners of the properties should pay. Notwithstanding, in case of a condemnation proceeding, the judge is not under the obligation to subject to the appraisal established by the Dirección Nacional de Avalúos y Castastros, or by the municipalities, according to the Civil Procedural Code.

20. Moreover, the Court heard the following testimonies rendered in the public hearing:

a) María Salvador Chiriboga: Proposed by the Commission and the representatives; alleged victim. She stated that she and her brother, Julio Guillermo Salvador Chiriboga, dead, inherited

the property from her father. However, since 1991, she lost the possession of the property since the Municipality of Quito included her piece of land in the area that now occupies the Metropolitan Park without having received, so far, any kind of compensation, though she still pays the taxes. She indicated that she has not received the deposit the Municipality made in the condemnation proceedings regarding her property. She added that she has initiated several proceedings in Ecuador in order to protect her rights. She also mentioned that she has always good will to negotiate a fair price for the piece of land with the municipal authorities, but that such authorities have never made any specific offer. The condemnation of the property has caused her such a financial impairment that she had to sell other plots of land at low price. She also declared that regarding the emotional aspect of the issue, her whole family has been involved in such proceedings and that she, specially, has suffered some serious health breakdowns.

b) Edgar Neira Orellana: Proposed by the Commission and the representatives; lawyer. He rendered his opinion regarding administrative laws and procedures, and he pointed out that such are old administrative law dogmas that today have proved to be outdated. In all administrative proceedings, it is necessary to have a written procedural record and this tends to favor the delay in the administration of justice. He added that the protection of private property is one of the guarantees that the Political Constitution has established in order to ensure the rights of the individuals. Therefore, condemnation is only appropriate when public utility or social interest is involved, but first it is essential to have a fair appraisal and the payment of a compensation. With regard to the condemnation proceedings established by the Civil Procedural Code, he indicated that it should be solved in 38 days. Nevertheless, he pointed out that the triple of thirty-eight days is the reasonable time to decide on expropriation lawsuits, in accordance to the legal system. Furthermore, he mentioned that the "surcharge on non-serviced building land" is a penalty established by law for the owners of urban lots, for the fact that they did not build on such land and that the surcharge makes sense when the property is located within the urban perimeters and it is intended to punish the lack of building or to foster the building sites within a certain Municipality.

c) Fausto Gonzalo Estupiñán Narváez: Proposed by the State; appraisal expert witness. He rendered his opinion regarding the different criteria used to determine a fair price for the land subjected to condemnation. He indicated that, in principle, the value of the market is the only one that serves as reference in order to fix the value of the property. However, the expert witness pointed out that in the case of appraisals of properties subjected to condemnation proceedings, the value fixed will finally determine the payment of the compensation and that, after such operation, the property is no longer a trade object and therefore, losses its trade value. He added that there is still no official proceeding to appraise the property under the laws of Ecuador.

B) EVIDENCE ASSESSMENT

Assessment on the Documentary Evidence

21. In the case at hand, as in many other cases, [FN22] the Court admits the evidentiary value of such documents forwarded by the parties in the procedural stage that have not been disputed nor challenged, or its authenticity questioned.

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[FN22] Cf. Case of Velásquez Rodriguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; and Case of Albán Cornejo et al., supra note 21, para. 29; and Case of the Saramaka People; supra note 21, para.66.

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22. The Tribunal admits into the body of evidence of the instant case, according to Article 45 of the Rules of Procedure, the appendixes to the brief of arguments regarding the preliminary objection filed by the representatives; [FN23] the appendixes attached to the joint expert opinion [FN24] rendered by Mr. Armando Bermeo Castillo and Germán Carrión Arciniegas; the documents forwarded by the State during the public hearing; [FN25] the appendixes to the brief of final arguments of the State; [FN26] the documents submitted by the State, the Commission and the representatives as evidence to facilitate adjudication of the case as well as the additional documents submitted by the State [FN27] and the representatives [FN28] along with the evidence to facilitate adjudication of the case.

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[FN23] Namely: Photocopies of the official register Nº 80 of May 9, 2007, which contains the different orders issued by the Supreme Court of Justice (record of the preliminary objection, merits, reparations and costs, V II, p. 276 to 282).

[FN24] Namely: Photocopies of some articles on the following pieces of legislation: a) Political Constitution of the Republic of Ecuador; b) Act of the Municipal System (in force in 1991) and c) Civil Procedural Code (record of the preliminary objection, merits, reparations and costs; Volume IV; p.557 to 564).

[FN25] Namely: a) Resolution Nº 704 issued by the Metropolitan Council of Quito on September 27, 2007; b) bill of the Basic Law for the Execution of Judgments rendered by the Inter-American Court of Human Rights and implementation of friendly and compliance settlements agreed before the Inter-American Commission; c) metropolitan ordinance Nº 181 issued by the Metropolitan Council of Quito on May 23, 2006 and d) file of documents that contain the condemnation proceedings of the Municipality of Quito against María Salvador Chiriboga (record of documents forwarded by the State during the public hearing, p. 4190 to 4348).

[FN26] Namely: a) document named “report on proceedings finished as from the agreement of March 14, 2002" (record of the preliminary objection, merits, reparations and costs, V .V, p.816 to 818); b) maps and photographs of the Municipality of Quito and the Metropolitan Park (record of the preliminary objections, merits, reparations and costs, V. V, p. 819 to 826); c) document named “register of the regulatory maps for Quito and the metropolitan district” (record of the preliminary objection, merits, reparations and costs; V V. p. 828 and 829) d) document named “charter of prices for the rural land of the Metropolitan District of Quito” (record of the preliminary objection, merits, reparations and costs, V V, p. 830 and 831); e) document named “characteristics of the eight archeological classes of lands” (record of the preliminary objection, merits, reparations and costs, V V, p. 832 and 833); f) document named “assessment on the serviced lands, parish of Iñaquito ” (record of the preliminary objection, merits, reparations and costs, V V, p. 834 to 836); g) different journalistic publications regarding the case, that the State called "Circumstantial Evidence” (record of preliminary objection, merits, reparations and costs, V V. p. 838 to 842); and h) report on proceedings finished as from the agreement of March 14, 2002 (record of preliminary objections, merits, reparations and costs, V . V, p. 816 to 818).

[FN27] Namely: a) General Rules of Public Procurement Act, Official Registry, Supplement 622 of July 19, 2002; b) General Rules of Public Procurement Act N° 2392 of April 29, 1991; c) certified copy of the municipal ordinance N° 2157 of December 10, 1981; e) certified copy of municipal ordinance N° 2776 of May 28, 1990; f) certified copy of municipal ordinance N° 2816 of October 15, 1990, and g) information of the measures adopted by the Ninth Trial Court on Civil matters in and for the city of Pichincha (record of evidence to facilitate adjudication of the case furnished by the State, Volume II, p. 4780 to 4842 and Volume III, p. 7514 to 7571).
[FN28] Namely: A receipt of the payment made on 2008 for property and non-serviced building lot taxes and documents referred to as "Quito Plan 1980" related to Ordinance N° 2092 of January 26, 1981 (record of evidence to facilitate adjudication of the case furnished by the representatives, Volume II, p. 7166).

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23. In relation to the statements rendered by affidavit of Guadalupe Jessica Salvador Chiriboga (supra para. 19(a)) and Susana Salvador Chiriboga, supra para. 19(b)), which were challenged by the State on the ground that "they make reference to emotional issues which deserve respect but are not relevant for the purposes of these proceedings […]", the Court deems that said statements may contribute to the determination on the part of the Tribunal of the facts of the instant case, inasmuch as they coincide with the purpose defined in the Order of the President of September 17, 2007 (supra para. 18). Therefore, the Court shall assess them on the basis of sound judgment and taking into account the observations submitted by the State. Furthermore, this Tribunal notes that the testimonial statements must be assessed together with all the evidence in the case and not in isolation, since the victims or their next-of kin have a direct interest in the case. [FN29] The statements made by the victims or their next-of- kin are useful as long as they provide more information on the consequences of the alleged violations committed.

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[FN29] Cf. Case of Loayza Tamayo v. Perú. Merits. Judgment of September 17, 1997. Series C Nº 33, para. 33; and Case of Albán Cornejo et al., supra note 21, para. 33; and Case of the Saramaka People, supra note 21, para. 68.

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24. In relation to the affidavit rendered by Mr. José Luis Paredes Sánchez (supra para. 19©), the State expressed, in the observations submitted, that the witness made "[…] a subjective and uninformed interpretation […]" and that "he cannot testify on behalf of third parties nor can he generalize the situation of the condemned people". To such regard, the Court takes into account the observations submitted by the State and considers that such statement may contribute to the determination, on the part of the Tribunal, of the facts of the instant case inasmuch as it coincides with the purpose intended in the Order of the President of September 17, 2007 (supra para.18) Said statement is assessed on the basis of sound judgment. [FN30]

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[FN30] Cf. Case of the "White Van" (Paniagua Morales et al); supra note 21, para. 70; and Case of Albán Cornejo et al., supra note 21, para. 34; and Case of the Saramaka People, supra note 21, para. 63.

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25. This Tribunal admits the affidavit rendered by Mrs. Margarita Beatriz Rafiha El Fil Guerra, (supra para. 19(d)) inasmuch as it coincides with the purpose intended by the President in its Order of September 17, 2007 (supra note 18) and shall assess it within the context of the body of evidence.

26. Regarding the affidavit rendered by the expert witness Mr. Edmundo Gutiérrez (supra, para. 19(e)), in the observations, the State noted that "[h]e poses a too general criteria regarding the appraisal of the lands [and is unaware] of the fact that when a land is condemned, it is removed from the market and therefore, it is no longer viable to take as reference the market demand". As to the affidavit rendered by the expert witness Mr. Raúl Moscoso Álvarez (supra para. 19(f)), in the observations, the State expressed that his expert opinion "[...] does not restrict to the specific purpose of the expert assessment […] specially, to the judgment of the judicial orders in relation to the rules of due process […]". To such effect, this Tribunal admits said experts' opinions taking into account the purpose of such as intended in the President's Order of September 17, 2007 (supra note 18) as well as the observations submitted by the State and it shall assess them on the basis of the body of evidence and sound judgment.

27. As to the authenticated expert's opinions rendered, jointly, by Mr. Armando Bermeo Castillo and Germánd Carrión Arciniegas (supra para. 19(h)), in the observations, the representatives pointed out that the expert report is incomplete and is full of personal assessments. To such end, they expressed that despite the fact that the expert witnesses indicated that the condemnation proceedings aim at determining the fair market value of the land, they omitted to point out that such proceedings constitute a process for the execution of an administrative act and not an effective remedy to protect the rights of people in such proceedings. Moreover, they noted that the expert witnesses confirmed, in their report, that after the administrative declaration of public utility, the appraisal is no longer necessary, given the fact that according to the case- law of the Supreme Court of Justice "[...] the appraisal is necessary and in case of lack of it, the result will be the nullification of the administrative proceeding". Lastly, they pointed out that the referred expert witnesses failed to make reference to certain judgments of the Supreme Court of Justice and some laws, which they consider " it was the duty of the expert witnesses to inform the Court on the correct application of the rules on condemnation. This Court observes that in the President's Order of September 17, 2007, each one of the expert witnesses was ordered to forward its own report. Nevertheless, as proven in the records, the State forwarded only one expert report signed by the persons already mentioned. Regarding this issue, the Tribunal brings to the State's attention the fact that it should have submitted individual expert reports as ordered by the President in the orders of September 17 and October 2, 2007. Moreover, this Court admits said joint report taking into account the purpose set forth in the President's Order of September 17, 2007 (supra para. 18) and the observations made by the representatives and it shall assess them on the basis of the body of evidence and the sound judgment.

28. As to the authenticated statement rendered by Gonzalo Estupiñan Orejuela (supra para. 19(g)), in their observations, the representatives pointed out that his statement is opposite to his own manifestations published in several newspapers of the City of Quito, as well as those statements made in other condemnation proceedings forwarded in the case of the Metropolitan

Park, where he sustained that they were absolutely illegal. They added that the expert witness failed to point out that, in the case of the family he represented, the Municipality of Quito delayed the payment, "[…] therefore, it is not true that the payments are immediate". To such effect, this Tribunal admits said experts' opinions taking into account the purpose of such as intended in the President's Order of September 17, 2007 (supra note 18) as well as the observations submitted by the representatives and it shall assess them on the basis of the body of evidence and sound judgment.

29. As to the press releases submitted by the State and the representatives, this Tribunal consider that such documentation could be assessed whenever they relate to notorious and public acts or statements made by State's officers or when they bear out some aspects related to the case. [FN31]

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[FN31] Cf. Case of Velásquez Rodríguez, supra note 22, para. 146; and Case of Albán Cornejo et al., supra note 21, para. 35; and Case of the Saramaka People, supra note 21, para. 67.

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Assessment of Testimonial Evidence

30. The Tribunal admits the testimony rendered before the Court by Mrs. María Salvador Chiriboga (supra para. 20(a)) inasmuch as it coincides with the purpose intended by the President in its Order of September 17, 2007 (supra note 18) and shall assess it within the context of the body of evidence. Furthermore, the Court reasserts what has been previously pointed out with regard the assessment of such statement, given the fact that it was rendered by the alleged victim of the instant case (supra para. 23).

Assessment of Expert Evidence

31. As to the expert opinion rendered by Mr. Edgar Neira Orellana before the Court (supra para. 20(b)), this Court admits it and assess it on the basis of sound judgment and inasmuch as it complies with the purpose set forth by the Order of September 17, 2007 (supra note 18).

32. As to the statement made by Mr. Gonzalo Estupiñán Narváez (supra para. 20.c), this Tribunal admits it into the body of evidence taking into account what has been established in the ninth considering clause of the Court's Order of October 18, 2007 and the purpose of the expert report set forth in such Order (supra note 19) and assess it on the basis of the body of evidence and sound judgment rules.

IV. PRELIMINARY OBJECTION ("Non-Exhaustion of Domestic Remedies")

33. In the brief of the answer to the complaint, the State filed the preliminary objection called "Non-exhaustion of Domestic Remedies" (supra para. 10 and 11). Accordingly, the Court shall now proceed to analyze said preliminary objection.

34. In the answer to the complaint of May 17, 2007, the State raised the objection of non-exhaustion of domestic remedies. It pointed out that there is a condemnation proceeding in the

domestic jurisdiction still pending resolution and its processing has been delayed due to the filing of remedies by the alleged victim's representatives. The basis of this statement is that in the same narration of the facts contained in the brief of requests and arguments filed by the representatives, there is a description of a long process in which the representatives did not mention that it has been the alleged victim who "[…] has interrupted and delayed the proceedings by means of the filing of multiple and groundless procedural remedies […]". According to the State, the Court should sustain this objection given the fact that it was filed at the first stage of the proceedings before the Commission. Finally, the State pointed out that if the objection is not admitted "[...] it would mean not complying with the terms established in Article 47 of the Convention [...]".

35. Furthermore, the Commission filed the arguments regarding said preliminary objection and pointed out that in the admissibility stage, the State has alleged the non-exhaustion of domestic remedies on the ground that the representatives should resort to the administrative means in order to object the acts of the State agencies, but that, despite the fact that Salvador Chiriboga siblings used the administrative remedies they considered appropriate, such recourses have no final decision due to "[…] serious problems affecting the administration of justice of Ecuador".

36. Based on the foregoing, the Commission further alleged that the State, however, did not refer to the non- exhaustion of domestic remedies regarding the condemnation proceedings in the admissibility stage, but that it did refer to such in the answer to the application before the Court, in which the State argued that the expropriation proceedings was still pending. Therefore, the Commission pointed out that Ecuador was presenting arguments that were different from the ones put forward in the admissibility stage, which is inadmissible.

37. Finally, the Commission argued that the State has not "[...] furnished new elements that justify a new revision by the Court […of] an issue already duly solved by the [Commission…]" in the Report on Admissibility. Furthermore, the Commission deems it appropriate for the Court to take up the case and also it requested the Court to deny the preliminary objection raised by the State.

38. In the arguments regarding this preliminary objection, the representatives pointed out that when they filed the initial petition with the Commission, the requirement of exhaustion of domestic remedies was fulfilled, "[...] on the ground of the order of the Court on Constitutional matters that denied [a] writ of amparo in the last resort […] " filed by the alleged victim, in which the violation of several rules of the Convention was invoked. They further argued that the first time the State alleged the non-exhaustion of domestic remedies was at the hearing held before the Commission, on March 2, 2000 but that the State did not specify the remedies that remain to be exhausted.

39. Furthermore, the representatives agreed, mainly, with the arguments presented by the Commission, though they further alleged that the fact of not raising this objection in the admissibility stage before the Commission entailed an implied waiver of the right to raise it in the petition's answer before the Court. As a consequence, they alleged that the State's procedural opportunity had expired and therefore, requested the Court to deny the objection.

40. With regard to the objection of non-exhaustion of domestic remedies filed by the State, the Tribunal reasserts the criteria established in the case-law related to the filing of the preliminary objection that needs to be considered in the instant case. In the first place, the Court has pointed out that the non- exhaustion of domestic remedies is an issue related to pure admissibility and that the State who asserts such objection must specify the domestic remedies that remain to be exhausted, as well as prove that those remedies are effective. [FN32] In the second place, in order for the objection on non-exhaustion of domestic remedies to be timely, it must be pled in the State's first submission before the Commission; otherwise, it is presumed that the State has tacitly waived the right to file such argument. [FN33] In the third place, the respondent State may waive, either expressly or impliedly, the right to allege the non-exhaustion of domestic remedies. [FN34]

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[FN32] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections . Judgment of June 26, 1987. Series C No. 1, para. 88; and Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C N°. 169, para. 25; and Case of the Saramaka People, supra note 21, para. 43.
[FN33] Cf. Case of Velásquez Rodríguez, supra note 32, para. 88. Case of Garcia Prieto et al v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C N°. 168, para. 49; Case of Boyce et al., supra note 32, para. 25; and Case of the Saramaka People, supra note 21, para. 43.
[FN34] Cf. Case of Velásquez Rodríguez, supra note 32, para. 88; Case of Boyce et al., supra note 32, para. 25; and Case of the Saramaka People, supra note 21, para. 43.

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41. In the instant case, the State submitted different briefs before the Commission, among them: a) in the State's first observations submitted on December 11, 1998 before the Commission, [FN35] the State mentioned that the Municipality of Quito had solved the administrative acts related to the case and had intervened in the judicial proceedings in defense of the municipal entity. Furthermore, the State referred to the different proceedings and remedies that were instituted at the different administrative and judicial instances of the domestic jurisdiction; [FN36] b) in the second report filed with the Commission on September 22, 1999, the State informed, one more time, on the proceedings related to the case. Regarding the condemnation proceedings, the Stated pointed out that such proceedings were not finished. It further alleged that the petitioners have used the administrative remedies and that, in fact, there was no ruling, "but not due to the municipal behavior […] but for the serious problems afflicting the administration of justice in Ecuador […];" [FN37] c) in the third report to the Commission, of January 26, 2001, the State reasserted the criterion regarding the fact that the legal proceedings initiated by the petitioners have no final ruling at the domestic level, therefore the argument of non-exhaustion of domestic remedies raised by the State was not irrelevant, as the petitioners believed since this is a sine qua non requisite for the admission of the case. Moreover, it made a general description of the proceedings still in process. Finally, it pointed out that it maintain its intention to reach a friendly settlement with the petitioners [FN38]; and d) in the forth report to the Commission, of September 6, 2001, the State described the measures adopted by the Municipality of Quito in the expropriation proceedings, and informed that, at that

moment, an appeal, an appeal for review of the facts as well as law and an objection, filed by the Municipality before the Ninth Trial Court were still pending resolution. [FN39]

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[FN35] Cf. Observations submitted by the State before the Commission (record of appendixes to the complaint, Appendix 3, Volume I, p. 298).
[FN36] Cf. Official letter Nº 2894 addressed to the Executive Secretary of the Inter-American Commission on December 8, 1998 by Julio Pardo Vallejo, Permanent Representative of the State before the Organization of American States (record of appendixes to the complaint, V. I. p. 298 to 306).
[FN37] Cf. Official letter Nº 4 -2-285/99 addressed to the Executive Secretary of the Inter-American Commission on September 19, 1999 by Patricio Vivanco Riofrío, Permanent Representative of the State before the Organization of American States (record of appendixes to the complaint, V. I. p. 356 to 358).
[FN38] Cf. Official letter Nº 4 -2-17/00 addressed to the Executive Secretary of the Inter-American Commission on January 17, 2000 by Blasco Peñaherrera P, Permanent Representative of the State before the Organization of American States (record of appendixes to the complaint, Appendix 3, V. I. p. 528 to 532).
[FN39] Cf. Official letter Nº 4 -2-213/01 addressed to the Executive Secretary of the Inter-American Commission on September 6, 2001 by Rafael Veintimilla Chiriboga, Deputy Representative of the State before the Organization of American States (record of appendixes to the complaint, Appendix 3, Volume I, p. 564 to 569).
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42. Finally, the Court notes that in the answer to the complaint the State argued that there is a condemnation proceeding still pending final resolution and that "[…] the State cannot be held responsible of the delay in the resolution of [such] proceedings […] whose complexity is evidently clear as well as it was the delayed procedural acts of the interested party". It further argued that there are other proceedings initiated by the alleged victim that have no final resolution "[…] due to the constant and recurring appeals lodged by the interested party".

43. On October 22, 2003, the Commission issued the Report on Admissibility Nº 76/03, in which it established that the domestic remedies were exhausted the moment the Court on Constitutional matters denied the writ of amparo, by which Salvador Chiriboga siblings intended to protect their right of not been expropriated. Moreover, it was mentioned in such report that the petitioners filed administrative remedies, but that these were not over, according to the State, due to serious problems afflicting the administration of justice in Ecuador. Lastly, the Commission pointed out that "[…] the petitioners [were] not obliged to exhaust the domestic remedies due to the exception established in Article 46(2)(c) of the American Convention which establishes that this remedy does not necessarily be exhausted […]" in order to declare the admissibility, whenever there has been unwarranted delay in rendering a final judgment under domestic jurisdiction. As a result, the Commission declared the case to be admissible. [FN40]

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[FN40] Cf. Report on Admissibility N° 76/03 of October 22, 2003 (record of appendixes to the complaint, Appendix 3, Volume I, p. 642).

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44. In accordance with the criteria previously mentioned, the arguments of the parties and the documents forwarded to the Tribunal, in relation to the objection of non-exhaustion of domestic remedies, the Court finds no ground to reexamine the reasoning of the Inter-American Commission regarding the admissibility of the instant case, since such reasoning is compatible with the relevant provisions of the Convention. [FN41]

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[FN41] Cf. Case of the Serrano- Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C Nº. 118, para. 141.

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45. The argument related to the unwarranted delay in some of the judicial proceedings instituted by Salvador Chiriboga siblings and the State shall be analyzed by the Tribunal when examining the alleged violation of Articles 8 and 25 of the Convention.

46. Based on the foregoing, the Court denies the preliminary objection of non-exhaustion of domestic remedies raised by the State.

V. COMPETENCE

47. The Court has jurisdiction over this case in accordance with Articles 62(3) and 63(1) of the American Convention given the fact that Ecuador is a State Party to the Convention since December 28, 1977 and has accepted the binding jurisdiction of the Court on July 24, 1984. Therefore, the Tribunal shall now analyze the merits of the case at hand, in consideration of the decision regarding the preliminary objection (supra para. 40 to 46).

VI. ARTICLES 21 (RIGHT TO PROPERTY), [FN42] 8(1) (RIGHT TO A FAIR TRIAL ) [FN43] AND 25(1) (RIGHT TO JUDICIAL PROTECTION) [FN44] IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT THE RIGHTS) [FN45] AND 2 (DOMESTIC LEGAL EFFECTS) [FN46] OF THE AMERICAN CONVENTION

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[FN42] Article 21(1) and 21(2) (Right to Property) of the Convention establishes 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.
[…] No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
[…]
[FN43] Article 8(1) (Right to a Fair Trial) of the Convention establishes that:
Every 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. […]
[FN44] Article 25(1) and 25(2) (Right to Judicial Protection) of the 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. […]
[FN45] According to Article 1(1) (Obligation to Respect the Rights) of the Convention,
The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. […]
[FN46] Article 2 (Domestic Legal Effects) of the Convention establishes that:
[W]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
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48. The Court must determine, in light of the facts of the instant case, whether the limit to the right to property of Mrs. Salvador Chiriboga was imposed in accordance to the requirements established in Article 21 of the American Convention, as well as whether the State provided the right to a fair trial and the judicial guarantees enshrined in Articles 8 and 25 of the American Convention.

49. Since the facts related to the rights enshrined in such articles are interconnected between each other, the Court shall analyze them as a whole. In this way, the alleged violations of articles 8 and 25 of the Convention shall be assessed upon determining the requirements of Article 21 thereof.

50. The Commission alleged that the State has violated the right to property, since in spite of the challenges and the judicial lawsuits lodged by the alleged victim, the conduct of the State resulted in the deprivation of her property for more than a decade. During such period of time, no compensation has been paid. Furthermore, the representatives stated that there is no disputed fact regarding the authority of the State to condemn, but regarding the consequences of the limitation of the deprivation of the right to property and the lack of a fair compensation.

51. The Commission pointed out in the complaint that in order for the deprivation of a person's property to be in keeping with the right to property as enshrined in Article 21 of the American Convention, it must be carried out according to the guidelines established by law. As to Article 8 of the Convention, the Commission alleged that there is evidence in the proceedings instituted by María Salvador Chiriboga that suggests that State authorities delayed such proceedings and therefore, there is no final decision on the merits for that a reasonable term has not been complied with and the State has not proved otherwise. As to the alleged violation of Article 25 of the Convention, the Commission stated that imaginary remedy cannot be considered effective, whenever justice has been denied or there has been an unwarranted delay in the decision.

52. The representatives agreed on the majority of the arguments presented by the Commission regarding the alleged violation of Articles 8 and 25 of the Convention. In turn, the representatives alleged that the lack of a prior compensation, as well as the procedural errors, vitiated the legitimacy of the declaration of public utility and turned the condemnation into a seizure, imposing an excessive burden on Mrs. Salvador Chiriboga.

53. According to the State, the Municipality of Quito complied with the legal and constitutional rules during the expropriation 's process. Specifically, it pointed out that the declaration of public utility and the occupation of the property were carried out without violating any of the guarantees enshrined in laws, the Constitution of Ecuador nor even in the American Convention. Moreover, the State argued that it had not failed to comply with the reasonable time, since "the factor that prevented an agreement or determination of a reasonable appraisal of the condemned property in the case of Mrs. Salvador Chiriboga was the ambitious and out of proportion demand of her lawyers". Finally, the State indicated that the Ecuadorian legal system does provide with prompt and simple remedies in order to protect the alleged violated rights of Mrs. Salvador Chiriboga.

54. In relation to the arguments exposed, this Tribunal shall have to decide whether the limit to the right to property of Mrs. María Salvador Chiriboga in order to build the Metropolitan Park in the City of Quito was carried out in accordance with the requirements established in Article 21 of the Convention. To that end, the Court shall refer to the content of the right to property and shall analyze the facts of the instant case according to the possible limits to said right and it also shall appraise whether the State, upon applying said limits, complied with the requirements established in the Convention.

55. The first paragraph of Article 21 of the American Convention establishes the right to property and points out as attributes to the land, the use and enjoyment of the property. It also includes a limit to such property's attributes, which is the social interest. The Court's case law has developed a broad concept of property [FN47] that includes, among other matters, the use and enjoyment of property, defined as material goods that can be possessed, as well as any right that may form part of a person's patrimony. Such concept includes all movables and immovables, and all tangible and intangible assets, as well as any other property susceptible of having value. [FN48] Furthermore, the Court has protected, through Article 21 of the Convention, the vested rights, in other words, those rights that have been incorporated into the patrimony of the people. [FN49]

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[FN47] Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C N°. 170, para. 174.
[FN48] Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and costs. Judgment of August 31, 2001. Series C No. 79, para. 144; Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C N°135, para. 102; Case of the Indigenous Community of Yakye Axa v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 137; and

Case of the Moiwana Community v. Suriname. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 129.
[FN49] Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs. . Judgment of February 28, 2003. Series C No. 98, para. 102.
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56. Moreover, Article 8(1) of the Convention establishes the guidelines of the so-called "due process of law", which consists in the right of every person to be heard with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, for the determination of his rights. [FN50] The reasonable time referred to in Article 8(1) of the Convention must be analyzed in relation to the total duration of the proceeding until a final judgment is rendered. [FN51]

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[FN50] Cf. Case of Genie Lacayo. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 74.
[FN51] Cf. Case of Suárez Rosero v. Ecuador, Merits. Judgment of November 12, 1997; Series C, N° 35, para. 70; and Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 129; and Case of Acosta Calderónl v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C N° 129, para. 104.
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57. Article 25(1) of the Convention has established, in broad terms, the obligation of every State to provide, to all persons subjected to its jurisdiction, an effective legal recourse against acts that violate the fundamental rights. It also sets forth that the guarantee therein enshrined is applicable not only with regard to the rights contained in the Convention, but also to those rights recognized by the Constitution or the laws of the State concerned. [FN52]

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[FN52] Cf. 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 N.9, par. 23; Case of the Constitutional Tribunal v. Peru. Merits, Reparations and Costs. . Judgment of January 31, 2001. Series C Nº. 71, para. 89; Case of Yatama V. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C Nº 127, para. 167; Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C Nº. 151, para.128.
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58. Furthermore, this Tribunal notes that in light of the protection provided for by Articles 8 and 25 of the Convention, the States are obliged to provide effective legal recourses to the victims of violations of human rights, in accordance with the judicial guarantees, all this pursuant to the general duty of the States Parties to guarantee the free and full exercise of the rights enshrined in the Convention to every person subjected to its jurisdiction (Article 1(1).) [FN53]

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[FN53] Cf. Case of Velásquez Rodríguez, supra note 32, para. 91; Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs. . Judgment of November 25, 2006. Series C Nº. 160, para. 381 and Case of Zambrano Vélez. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C Nº. 166, para. 114.

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59. Lastly, the Court has pointed out that the right to access to justice implies that the controversy be solved within a reasonable time; [FN54] an extended delay may constitute, in itself, a violation of the judicial guarantees. [FN55]

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[FN54] Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C N°. 94, para. 142 to 145; Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. . Judgment of September 25, 2003. Series C N° 101, para. 209 and Case of López Álvarez, supra note 51, para. 128.
[FN55] Cf. Case of Hilaire, Constantine and Benjamín et al.; supra note 54; para. 142 to 145; Case of the Moiwana Community, supra note 48, para. 160 and Case of López Álvarez, supra note 51, para. 128.

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Restrictions to the right to property in a democratic society

60. The right to property must be understood within the context of a democratic society where in order for the public welfare and the collective rights to prevail there must be proportional measures that guarantee individual rights. The social role of the property is a fundamental element for its functioning and for this reason, the State, in order to guarantee other fundamental rights of vital relevance in a specific society, can limit or restrict the right to property, always respecting the cases contained in Article 21 of the Convention and the general principles of international law.

61. The right to property is not an absolute right, since Article 21(2) of the Convention states that for the deprivation of a person's property to be in keeping with the right to property, such deprivation must be based on reasons of public utility or social interest, subject to the payment of a fair compensation and restricted to the cases and forms established by law and must be carried out according to the Convention. [FN56]

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[FN56] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 47, para. 174.

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62. Hence, the Court has pointed out that "the restriction must be proportionate to the legitimate interest that justifies it and must be limited to what is strictly necessary to achieve that objective. It should interfere as little as possible with effective exercise of the right […]." [FN57]

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[FN57] Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs; Judgment of July 2, 2004; para. 123.

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63. The Court notes that, in order for the State to legally satisfy a social interest and find a fair balance of an individual's interest, it must use the less costly means to damage, the least, the right to property of the person, subject-matter of the restriction. In this sense, the Tribunal considers that within the framework of an abridgement of the right to property, in particular, in the case of a condemnation, said restriction calls for the compliance with the requirements already contained in Article 21(2) of the Convention and the full exercise of them.

64. Moreover, this Tribunal notes that the domestic legislation of Ecuador provided for in the then Article 62 of the [FN58] Political Constitution, at the moment, article 33 [FN59] of the Constitution, the requirements to exercise the condemnatory function of the State. Among such requirements, the law emphasizes the need to follow a procedure within the term established in the procedural rules, by means of a prior appraisal, payment and compensation". In this sense, the European Court of Human Rights (hereinafter, the "European Court") in the expropriation cases, has pointed out that the nullum crimen nulla poena sine lege praevia principle [principle of lawfulness] is a decisive condition in order to verify the combination of a violation of the right to property and has insisted on the fact that this principle implies that the legislation that regulates the deprivation of the right to property must be clear, specific and foreseeable. [FN60]

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[FN58] Article 62 of the Political Constitution of 1978 established that "[f]or the social purposes determined in the lay, the institutions of the State, by means of a procedure and within the terms established in the procedural rules, may condemn the property belonging to the private sector by means of a prior appraisal, payment and compensation. Seizure is prohibited".

[FN59] Article 33 states that "[F]or the social purposes determined by the law, the institutions of the State, by means of a procedure and within the term established in the procedural rules, may condemn the property belonging to the private section by means of a prior fair appraisal, payment and compensation. Seizure is prohibited".

[FN60] Cf. ECHR, Case Beyeler v. Italy, Judgment of 5 January 2000, Application no. 33202/96, para.. 108 and 109; ECHR, Case Carbonara and Ventura v. Italy, Judgment of 30 May 2000, Application no. 24638/94, para. 65; ECHR, Case Belvedere Alberghiera Sr.l. v. Italy, Judgment of 30 May 2000, Application no. 31524/96, para. 58; and ECHR, Case Velikovi and Others v. Bulgaria, Judgment of 15 March 2007, Applications n°. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02, para. 166.

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65. To such end, the Court considers that it is not necessary that every cause for deprivation or restriction to the right to property be embodied in the law; but that it is essential that such law and its application respect the essential content of the right to property. This right entails that every limitation to such right must be exceptional. As a consequence, all restrictive measure must be necessary for the attainment of a legal goal in a democratic society [FN61] in accordance with the purpose and end of the American Convention. Therefore, it is necessary to

analyze the legitimacy of the public utility and the process or proceedings used to pursue such end.

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[FN61] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 47, para. 93. See also The Word “Laws” in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº 6, para. 28.

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66. Based on the foregoing, the Tribunal shall analyze whether said limit to the right to property, consisting in the deprivation of the use and enjoyment of the land of Mrs. Salvador Chiriboga, adjusted to the following criteria: A) Public utility or social interest; and B) payment of a just compensation.

A) Public utility or social interest

67. The Inter-American Commission has not disputed the causes of public utility on which the State based to condemn the property of Mrs. Salvador Chiriboga. At the public hearing, the representatives stated that they have expressly recognized that the existence of the Metropolitan Park of Quito is a social need; thus, the declaration of public utility as to whether to assign this park to the public use of the Nation is not a disputed fact in the instant case.

68. Furthermore, the State pointed out that the deprivation of the property of the alleged victim was carried out according to Article 21 of the Convention, since it was based on reasons of public utility and social interest.

69. The Court notes that in the instant case, Julio Guillermo Chiriboga and María Salvador Chiriboga (siblings) inherited from their father, Guillermo Salvador Tobar, a piece of property of 60 hectares designated with the number 108 of the plot known as "Batán de Merizalde" or simply, "El Batán", located in the north-west area of the present Metropolitan District of Quito. [FN62] Mrs. María Salvador Chiriboga is the owner of such property. [FN63]

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[FN62] Cf. Real Estate Registry for the Canton of Quito Nº C4020204.001, which grants the effective possession of the property left by Mr. Guillermo Salvador Tobar (record of the appendixes to the brief of requests and arguments, Appendix 6, p. 1787 to 1791).
[FN63] Cf. Deed executed by a notary regarding the rightful possession of the assets left by Mr. Julio Guillermo Salvador Chiriboga in favor of his heir, María Salvador Chiriboga, supra note 3.

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70. Afterwards, on May 13, 1991, the Municipal Council of Quito “decided to declare of public utility [and] authorized the urgent occupation for full condemnation purposes" of several plots of land, among them it was the property of [FN64] Salvador Chiriboga siblings. [FN65] At first, such declaration of public utility was made in the name of Mr. Guillermo Salvador Tobar, [FN66] for being the owner of the land, and was later on modified, on October 5, 1995 and made in the name of Julio Guillermo and María Salvador Chiriboga, in their capacity of heirs. [FN67]

On June 17, 1991, Salvador Chiriboga siblings appealed the declaration of public utility to the Ministry of Government and requested it to set aside the entire process followed regarding the declaration of public utility. [FN68] In response to such request, on September 16, 1997, the Ministry of Government issued the Ministerial Agreement N° 408, that annulled the declaration of public utility. [FN69] On September 18, that same year, Ministerial Agreement N° 417 was issued rendering the Ministerial Agreement N° 408 without effect; therefore, the declaration of public utility was reinforced. [FN70]

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[FN64] Mr. Vicente Domínguez Zambrano, expert witness appointed by the Ninth Civil Trial Court in the condemnation proceedings, stipulates in its report of February 21, 2007, that the total area of the property has 645.687,50 square meters. Expert Report submitted by Vicente Domínguez Zambrano in the Condemnation Proceeding in process before the Ninth Court (case file N° 1300-96, record of appendixes to the brief of requests and arguments, Appendix 6, p. 2032 to 2042).

[FN65] Cf. Declaration of public utility of May 13, 1991 and notices of such declaration (record of appendixes to the complaint, appendix 1 and 2, p. 46 to 55).

[FN66] Cf. Declaration of public utility of May 13, 1991 and notices of such declaration; supra note 65.

[FN67] Cf. modification of the order issued by the Council of the Metropolitan District of Quito of September 25, 1995 (record of appendixes to the complaint, Appendix 1 and 2, p. 61 and 62).

[FN68] Instance in which they argued that: i) the act of the declaration of public utility was not duly notified to the parties, since the father of Salvador Chiriboga siblings was summoned but was already dead at that time, and therefore, “his heirs should have been summoned in accordance with the provisions of Section 86 of the Civil Procedural Code”; ii) in accordance with Article 252 of the Municipal System Act [Ley de Régimen Municipal] it is necessary that the Municipal Council is certain about the use that it is going to be assigned to the condemned property and the Council, up to that moment, had no idea whether the piece of property was going to be used as an ecological sanctuary or a metropolitan park; iii) in case the land is used as an ecological sanctuary, the competent authority to administer it would not be the Mayor of the city of Quito but the Forest and Renewable Natural Resources Under-Secretary and iv) "The Municipal Council of Quito has no funds to pay the just price of [...] [the] lands of such an extension and even worse, to carry out the building works in the size necessary for a metropolitan park", Cf. brief of appeal submitted by Mrs. Salvador Chiriboga before the Ministry of Government on July17, 1991 (record of documents submitted by the State during the public hearing, p. 4248 to 4254); and brief of the Undersecretary of Government addressed to the Mayor of Quito of June 24, 1991, which notifies the Mayor of the appeal lodged by Salvador Chiriboga siblings regarding the declaration of public utility (record of documents submitted by the State during the public hearing , p 4247).

[FN69] Cf. Ministerial agreement N° 408 of September 16, 1997, supra note 7.

[FN70] Cf. Ministerial agreement N° 417 of September 18, 1997, supra note 8.

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71. The Court verified that the declaration of public utility was intended to assign such land to the so-called "Metropolitan Park". [FN71] Moreover, since before that, the property was encumbered by ordinances Nº 2092 of January 26, 1981, called “Plan Quito” and Nº 2818 of

October 19, 1990 that established the limits of the Metropolitan Park of the city of Quito. Both ordinances establish the limits and the use of the whole are of the Metropolitan Park as a recreational and ecological protected area of the city of Quito. [FN72]

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[FN71] Cf. Document “Metropolitan Park”, Master Plan: Execution strategies” (record of appendixes to the brief of requests and arguments, Appendixes 4 and 5, p. 1647 to 1703).
[FN72] Cf. Ordinance N° 2092 of the Municipal Council of Quito, by means of which “Plan Quito” was approved (record of evidence to facilitate adjudication of the case, Volume III, p. 7536 and 7537). This ordinance was later on repealed by ordinance N° 2816 issued by the Municipal Council of Quito, by means of which the "Urban Structure Project for Quito" [Proyecto de Estructura Urbana para Quito] was approved. Nevertheless, the revocation of the first ordinance does not affect the period during which the creation of the Metropolitan Park was in force, since such park has been contemplated by recent laws. To such end, communication from the Mayor of the Metropolitan District of Quito where he made observations to the Inter-American Commission regarding the instant case (record of appendixes to the complaint, Appendix 3, Volume II, p. 816 to 820).

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72. This Tribunal notes the parties do not agree on the exact date on which the Municipality of Quito occupied the property of Mrs. Salvador Chiriboga. The Inter-American Commission pointed out that, according to the complaint, the property was occupied on July 10, 1997; whereas, in the final argument submitted by the representatives, they stated that the State was in possession of the property subjected to expropriation since 1991. Nevertheless, that the same representatives, in the facts of the writ of the constitutional amparo filed with the domestic courts, expressed that “on July 7, 1997, the Municipality of the Metropolitan District of Quito abruptly entered into the western area of the property.” Moreover, it is worth mentioning that María Salvador Chiriboga, in the statement rendered before the Court, stated that she lost the possession of her property near 1991. In turn, the daughters of Mrs. Salvador Chiriboga expressed that the property was occupied in 1994, when the park was officially opened (supra para. 19(a) and 19(b)). To such regard, in the evidence to facilitate the adjudication of the case requested by the Court, the State furnished a certificate from the Secretary General of the Metropolitan Council of Quito, which evidences that the land was occupied after the Ninth Trial Court granted authorization to occupy the property, by means of court order of September 24, 1996. Based on the foregoing, in consideration of the arguments of the parties and the court order issued by the Ninth Trial Court on September 24, 1996, this Tribunal consider that the Municipality of Quito occupied the property between July 7 and 10, 1997.

73. The reasons of public utility and social interest to which the Convention refers comprise all those legally protected interests that, for the use assigned to them, allow a better development of the democratic society. To such end, the States must consider all the means possible to affect as little as possible other rights and therefore, undertake the underlying obligations in accordance with the Convention.

74. Similar to the social interest, this Court has interpreted the scope of the reasons of general interest established in Article 30 of the American Convention (scope of the restrictions), by

pointing out that “[T]he requirement that the laws be enacted for reasons of general interest means they must have been adopted for the "general welfare" (Art. 32(2)), a concept that must be interpreted as an integral element of public order (order public) in democratic states, the main purpose of which is "the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness" (American Declaration of the Rights and Duties of Man, Introductory clause 1.)” [FN73]

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[FN73] Cf. The Word “Laws” in Article 30 of the American Convention on Human Rights, supra note 61, para. 29.

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75. Furthermore, this Tribunal has pointed out that "the concepts of 'public order' or 'general welfare', as derived from the general interest, when they are invoked as a ground for limiting human rights, must be subjected to an interpretation that is strictly limited to the "just demands" of "a democratic society," which takes account of the need to balance the competing interests involved and the need to preserve the object and purpose of the Convention […].” [FN74]

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[FN74] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 of the American Convention on Human Rights); Advisory Opinion OC-5/85 of November 13, 1985. Series A Nº 5, para. 66 and 67 and The Word “Laws” in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 , supra 61, para. 31.

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76. In the instant case, there is no controversy among the parties regarding the object and purpose of the expropriation of the property belonging to Mrs. Salvador Chiriboga. Moreover, this Tribunal emphasizes, in relation to the deprivation of the right to property, that a legitimate or general interest based on the protection of the environment as the one seen in this case, represents a cause of legitimate public use. The Metropolitan Park of Quito is a recreational and ecological protected area for such city.

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77. Besides, this Tribunal notes that even though in the proceedings before the Inter-American system, there is no controversy regarding the declaration of public utility with regard to the use of the property, within the domestic jurisdiction, Mrs. Salvador Chiriboga did lodge two subjective or full jurisdiction remedies, objecting to the lawfulness of said declaration. Due to the fact that these remedies are still pending resolution, the Court shall examine whether the State has complied with the reasonable time and whether the remedies were effective in order to protect the rights of the alleged victim.

78. For the sake of analyzing the reasonable time, the Court shall examine whether the proceedings adjusted to the following criteria: a) complexity of the case, b) procedural activities carried out by the interested party, and c) behavior of judicial authorities. [FN75]

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[FN75] Cf. Case of García Asto and Ramírez Rojas v. Perú. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C N°. 137, para. 166; Case of Acosta Calderón, supra note 51, para. 105; Case of the Serrano-Cruz Sisters. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C N°. 120, para. 67 and Case of López Álvarez, supra note 51, para. 132.

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79. To such regard, the representatives stated that there is complexity in the proceedings initiated as a consequence of the subjective or full jurisdiction remedies, since such remedies deal with essentially legal issues and have a minimum evidentiary burden.

80. On May 11, 1994, Salvador Chiriboga siblings filed a claim for a subjective remedy, which is in process before the First Chamber of the Court on Administrative matters in and for the city of Quito, case file nº 1016. Such remedy was lodged in order to annul the declaration of public utility, [FN76] based on procedural errors, such as lack of service of notice of the declaration of public utility and discrimination. On December 4, 1995 the First Chamber of the Court defined the complaint. [FN77] As from July 5, 2002, María Salvador Chiriboga has been submitting several briefs requesting a final judgment, [FN78] which has still not happened.

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[FN76] Cf. Claim for a Subjective Remedy Nº 1016 (case file Nº 1016, record of appendixes to the brief of requests and arguments, Appendix 4 and 5, p. 1468 to 1477).
[FN77] Cf. Court order defining the complaint of December 4, 1995 (case file N° 1016, record of appendixes to the brief of requests and arguments, Appendixes 4 and 5, p. 1502).
[FN78] Cf. Brief of July 22, 2002; brief of October 13, 2003; brief of January 11, 2005; brief of February 4, 2005 and brief of May 5, 2006 (case file Nº 1016, record of appendixes to the brief of requests and arguments, Appendixes 4 and 5, p. 1769 and 1778 to 1784).

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81. On December 17, 1997, Salvador Chiriboga siblings also filed a claim for a subjective remedy, which is in process before the Second Chamber of the Court on Administrative matters in and for the city of Quito, case file Nº 4431. Said remedy was lodged in order to declare the Ministerial Agreement Nº 417, [FN79] issued on December 18, 1997, to be illegal (supra para. 3). On January 14, 1999, after the claim was defined and answered, [FN80] the Second Chamber of the Court ordered discovery. [FN81] Once discovery was over, on May 13, 1999, María Salvador Chiriboga requested the proceedings to be set for trial, [FN82] which was admitted by the Second Chamber of the Court on June 1, 1999. [FN83] However, since then, Mrs. Salvador Chiriboga has submitted several briefs requesting the delivery of a final judgment, [FN84] without obtaining any answer whatsoever.

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[FN79] Cf. Subjective remedy filed with Second Chamber of the Court on Administrative matters in and for the city of Quito of December 17, 1997 (case file Nº 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1314 to 1319).
[FN80] Cf. answer to the complaint filed by the Ministry of Government on February 26, 1998 (case file Nº 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1338 to 1339).
[FN81] Cf. court order issued by the Second Chamber of the Court on Administrative matters in and for the city of Quito on January 14, 1999 (case file Nº 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1364).
[FN82] Cf. brief of May 13, 1999 of the representatives of Mrs. Salvador Chiriboga (case file Nº 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1431).
[FN83] Cf. court order of June 1, 1999 issued by the Second Chamber of the Court on Administrative matters in and for the city of Quito (case file Nº 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1431 and 1432).
[FN84] Cf. briefs submitted by Mrs. Salvador Chiriboga requesting delivery of judgment of : July 20, 2001; July 5, 2002; October 13, 2003 and January 11, 2005 (case file N° 4431, record of appendixes to the brief of requests and arguments, Appendixes 1 to 3, p. 1447 to 1450).
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82. The Court notes that Section 3 [FN85] of the Administrative- Contentious Jurisdiction Act [Ley de la Jurisdicción Contenciosa Administrativa] determines that the subjective or full jurisdiction remedy aims at protecting the subjective right of a person who has been allegedly affected by an administrative act. In this sense, this Tribunal notices that, in light of such act, the processing of a subjective remedy should last between 27 and 37 working days, [FN86] depending on whether the case file deals exclusively with questions of law and whether there is no need to take evidence. Furthermore, this Act provides that no interlocutory proceeding is allowed. [FN87]

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[FN85] Article 3 of the Administrative-Contentious Jurisdiction Act provides that: "[..t]he full jurisdiction or subjective remedy protects the subjective right of the plaintiff, allegedly rejected, unknown or not partially or totally recognized by the respective administrative act. […]".
[FN86] Article 34 of the Administrative-Contentious Jurisdiction Act establishes that "[t]he defendant's answer to the complaint shall be filed within fifteen days[…]". In the same sense, Article 38 of such Act provides that "[w]ith the answer of the complaint, notice will be served on the plaintiff and on the same court order; in case there are facts that must need justification, discovery will be ordered for the period of ten days […]. When the controversy exclusively deals with questions of law […] the Tribunal shall deliver judgment within the term of twelve days". And Article 41 establishes that "[u]pon conclusion of the discovery, the Tribunal shall deliver judgment within the term of twelve days". To such regard, the Court notes that the general period established for all civil trials by the Civil Procedural Code should be added to the term of 27 and 37 days.
[FN87] Article 42 of the Administrative-Contentious Jurisdiction Act establishes that "[I]n general, all the interlocutory proceedings initiated during the trial shall not be decided beforehand and shall be decided in the judgment […]".
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83. With regard to the complexity of the subjective or full jurisdiction remedies filed by Mrs. Salvador Chiriboga, the Court notes that, in accordance with the legislation of Ecuador, the purpose of such remedies as well as their processes are designed to be simple and prompt recourses. Moreover, as is evidenced from the analysis of the evidence alleged by the parties, the procedural legal acts of Mrs. Salvador Chiriboga were in accordance with the domestic legislation and that, on the contrary, she has insisted, on several occasions, on the resolution of the remedies filed with the courts. Furthermore, this Tribunal deems it is relevant to point out that the State, in its exercise of judicial function, holds a public duty, thus the behavior of the judicial authorities do not exclusively depend on the procedural effort of the plaintiff to the proceedings.

84. Based on the foregoing, the Court deems that the State exceeded the reasonable time in processing the subjective or full jurisdiction remedies Nº 1016 and Nº 4431 filed by María Salvador Chiriboga, since, up to the moment, fourteen and eleven years have passed, respectively, since the filing of the complaints, which were lodged on May 11, 1994 and December 17, 1997, and there has been no judgment on the merits regarding the issues raised so far.

85. Moreover, the Commission and the representatives argued that there has been a violation of Article 25 of the Convention in the instant case, since up to the moment, the different remedies lodged have no final decision, thus, Mrs. Salvador Chiriboga had had not access to a simple, prompt and effective recourse. Finally, the State indicated that its domestic legal system does provide with prompt and simple remedies in order to protect alleged violated rights as the ones of Mrs. Salvador Chiriboga.

86. The Tribunal has already pointed out the domestic legislation which embodies the subjective remedies [FN88] by which Mrs. Salvador Chiriboga could have solved the legal situation of the expropriated property, and which are characterized by being prompt recourses. Notwithstanding, as has been mentioned on several occasions by this Court, the effectiveness of the remedies do not exclusively depend on whether these are embodied in a law, but on the fact that in practice, they are prompt and simple and above all, they comply with the purpose of solving an allegedly violated right (supra. Para. 57).

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[FN88] To such effect, the subjective or full jurisdiction remedy is embodied in the Administrative-Contentious Jurisdiction Act.

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87. As has been proven by the Court, the passage of time exceeded the term that should be regarded as reasonable in order for the State to deliver a final judgment in the proceedings. This delay has generated other consequences, apart from the non-compliance of the reasonable time, such as the evident denial of justice, since more than a decade has passed since the filing of the recourses and there is no final judgment over the lawfulness of the declaration of public utility of the property being condemned.

88. The denial of the access to justice is related to the effectiveness of the remedies, since it is not possible to say that an existing recourse within the legal system of a State, which does not solve the merits of the issue raised due to an unjustified delay in the proceedings, can be considered an effective remedy.

89. The Court considers that, due to the lack of a final resolution of the subjective remedies filed by the alleged victim, the social interest alleged by the State to justify the deprivation of the property is uncertain, and this puts not only the public interest existing on the Metropolitan Park at risk, but also the real benefit to which the community as a whole is being subjected before the possibility of an unfavorable resolution in this sense.

90. This Tribunal deems that, in the instant case, the reasons of public utility or social interest regarding the deprivation of the right to property of María Salvador Chiriboga were legal and entailed a necessary justification to determine such restriction. As a consequence, the reasons of public utility or social interest are well grounded in light of the American Convention. Notwithstanding, this Court will mention the fact that the subjective or full jurisdiction remedies filed by Salvador Chiriboga siblings have still not been resolved within a reasonable time nor have been effective.

B) Payment of a just compensation

91. Upon determination of the lawfulness of the reasons of public utility or social interest regarding the deprivation of the right to property, the Court shall now proceed to decide on whether such deprivation was conducted together with the payment of a just compensation as required in the Convention.

92. The Commission alleged that the compensation prescribed in Article 21 of the Convention has not been complied with since the Municipality has deposited, at the time of the filing of the condemnation complaint, the value that unilaterally assigned to the condemned property and paid in favor of the referred Trial Court.

93. The representatives stated that the legislation of Ecuador establishes that, upon an expropriation proceeding, the payment of a compensation for the value of the property must come before it, and it is clear that this has not been the case.

94. Moreover, the State established that the true reason why the alleged victim had not received a just compensation was due to the innumerable recourses filed by her representatives, which were intended to impede the expropriatory authority exercised by the Municipality of Quito, and that prevented a judgment from being delivered. Furthermore, the State pointed out that the alleged victim, even though she was able to withdraw 225.990.625 sucres that were deposited in the Central Bank of Ecuador, did not want to do it and that regardless of the different approaches, no agreement has been reached due to the excessive ambition of her representatives.

95. Article 21(2) of the American Convention expressly establishes as a requirement to be able to carry out a deprivation of property, the payment of a just compensation.

96. To such regard, the Tribunal deems that in cases of expropriation, the payment of a compensation constitutes a general principle of the international law, [FN89] which derives from the need to look for a balance between the general interest and the owner's interest. Said principle has been sustained by the American Convention in its Article 21 when referring to the payment of a "just compensation". This Court considers that in order to obtain a just compensation, this must be prompt, adequate and effective. [FN90]

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[FN89] Cf. Article 1 of the Protocol N°1 of the European Court, and PCIJ, The Factory At Chorzow (Claim for Indemnity) (Merits), Judgment N° 13, p. 40 and 41.
[FN90] Cf. INA Corporation v. The Islamic Republic of Iran, 8 Iran US CTR, p.373; 75 ILR, p. 595; and Principles 15 and 18 of the "Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of international Humanitarian Law", Order of the G.A., Res. 60/147; Preamble, UN Doc. A/RES/60/147 (Dec. 16, 2006). Cf. See also: the WB, Guidelines of the Treatment of Foreign Direct Investment; 1962. Texaco case 17 ILM, 1978, pp. 3, 29; 53 ILR, pp. 389, 489; Aminoil case 21 ILM, 1982, p. 1032; 66 ILR, p. 601; and Permanent Sovereignty Resolution; 1974 Charter of Economic Rights Direct and Duties of States.

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97. In this sense, the European Court of Human Rights has construed the rule contained in Article 1 of the Protocol I, considering that it is an essential right to receive compensation for the deprivation of property. [FN91] Furthermore, the General Assembly of United Nations Organization, by means of Resolution Nº 1803, pointed out that in the exercise of the State's sovereignty to expropriate for reasons of public utility, the owner shall be paid the appropriate compensation. [FN92] Even more, the principle according to which the compensation, in the case of expropriation, is enforceable has been reaffirmed by international case-law. [FN93]

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[FN91] Cf. ECHR, James v UK, Judgment of February 1985, Application no. 8793/79, para. 54; and ECHR, Lithgow and Others v. the United Kingdom, Judgment of July 1986, Application no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/8, paras. 114 and 120.
[FN92] Cf. General Assembly Resolution 1803 (XVII), of December 14, 1962, entitled "Permanent Sovereignty over Natural Resources" (1962)
[FN93] Cf. International Centre for Settlement of Investment Disputes, Arbitration between Compañía del Desarrollo de Santa Elena, S.A. and The Republic Of Costa Rica Case No. ARB/96/1; Matter of BP (British Petroleum Exploration Co. v. Libyan Arab Republic, October 10, 1973 and August 1, 1974; Matter of Liamco; and P.C.I.J The Factory At Chorzów, Judgment No. 7 (May 25th, 1926).

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98. The Court considers that, in expropriation cases, in order for the just compensation to be adequate, the trade value of the property prior to the declaration of public utility must be taken into account and also, the fair balance between the general interest and the individual interest as referred to in this Judgment (supra para. 63).

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99. In the instant case, the State initiated a condemnation proceeding in order to establish the trade value of the condemned property and order the payment in favor of Mrs. Salvador Chiriboga, in accordance with Section 793 [FN94] of the Civil Procedural Code.

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[FN94] Section 793 states that "[t]he purpose of the process of an expropriation proceeding is establishing the amount to be paid as price for the condemned thing, provided the condemnation proceeding is for reasons of public utility".

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100. The Court, as with the analysis of the subjective recourses (supra para. 77 to 90) shall examine whether, in the condemnation proceedings instituted by the State, the reasonable time was fulfilled and whether such was an effective recourse.

101. Regarding the condemnation proceeding, the Commission stated that this proceeding is limited to the determination of the value of the property in question, which could be solved by means of expert assessment, and therefore, it does not constitute a complex issue. The representatives alleged that they are not responsible for the procedural delays, since that responsibility falls on the State "for being the plaintiff [of a] proceeding, as well as for the deficiency of the court system by not preventing the incidents caused by the Municipality of Quito from happening".

102. The State pointed out that it was the representatives' responsibility the delay in the proceeding since they filed several legal acts that postponed the proceeding, such as the filing of remedies or interlocutory motions that were patently inadmissible. In such regard, the State asserted that the condemnation proceeding is evidently complex.

103. The Court notes, in accordance with the facts of the instant case, that on July 16, 1996, the Municipality of Quito filed a claim to condemn the property of Salvador Chiriboga siblings, [FN95] five years after the declaration of public utility of such property was issued. On September 24, 1996, the Ninth Trial Court issued a court order defining the complaint, in which such Court admitted the complaint and authorized the immediate occupation of the property, inasmuch as the Municipality has deposited the amount of 225.990.625,00 sucres for the property, [FN96] this sum of money was fixed by such Municipality. [FN97] Said sum of money was deposited in the current account Nº 00100508-1 of Banco del Pichincha C.A., by means of check Nº CY794572. [FN98] In the same court order, the Ninth Trial Court also appointed Mr. Vicente Domínguez Zambrano as expert witness in order to render an expert assessment on the property subjected to expropriation. Afterwards, on July 4, 1997, Salvador Chiriboga siblings objected to the condemnation claim and on September 4, 1997, the Ninth Trial Court decided to set aside the court order that defined the claim, inasmuch as it considered that the Municipality has not complied with all the requirements established in the Constitution, the Public Procurement Act and its Rules of Procedure. Later on, several procedural legal acts were filed in the proceeding, [FN99] among them, the objections and the request for clarification filed by the

Municipality against the court order of September 4, 1997; the decision made by the Judge in charge of the Ninth Trial Court, of February 18, 1998 regarding the disqualification from keep hearing the condemnation case, [FN100] as well as the decision of January 25, 2006, by means of which the Ninth Trial Court declared the nullification of all the records of the case as from September 4, 1997 as a result of a request made by the Municipality.

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[FN95] Cf. Condemnation claim filed by the Municipality against María and Julio Guillermo Salvador Chiriboga, supra note 9.

[FN96] Cf. Condemnation claim filed by the Municipality against María and Julio Guillermo Salvador Chiriboga, supra note 9; and court order defining the complaint (case file N°1300-96, record of appendixes to the complaint, Appendix 1 and 2, p.68).

[FN97] The main briefs, the ones submitted by the representatives as well as those submitted by the State, described the amount of money deposited together with the condemnation claim in the case file N°1300-96. The representatives pointed out that the sucres deposited with the condemnation claim corresponded, at the date of the filing of such brief, to US $9.032.00 (nine thousand thirty two United States dollars) (brief of requests and arguments, record of preliminary objection, merits, reparations and costs, Volume II, p. 145). Whereas, the State expressed that the value of the sum of money deposited at the time of the payment, when the condemnation claim was filed, represented almost US$ 300.000, 00 (three hundred thousand United States dollars) (answer to the complaint, record of preliminary objection, merits, reparations and costs, Volume II, p. 219).

[FN98] Cf. Condemnation claim filed by the Municipality against María and Julio Guillermo Salvador Chiriboga, supra note 9.

[FN99] Among them: a) On December 22, 2006, the architect, Mr. Vicente Domínguez Zambrano, was ratified as expert witness. On February 21, 2007, the expert witness, Mr. Dominguez Zambrano submitted his report, in which, after carrying out an examination of the land and of the rules in force to appraise the land, he concluded that the price per square meter is $78.09 (seventy eight United States dollars), thus, the total value of the property is $50.421.736 (fifty millions four hundred and twenty-one thousand seven hundred and thirty-six United States dollars) , supra note 64. Afterwards, on February 23, 2007, Mrs. Salvador Chiriboga requested an extension of the report and the Municipality challenged the expert's report on March 13, 2007. On June 14, 2007, the expert witness, Mr. Vicente Domínguez Zambrano, submitted the extension of the report regarding the value of the land subjected to expropriation. On June 19, 2007, the Municipality challenged the expert's report and the corresponding extension based on material defect, after considering that the expert witness has incurred in technical errors and legal defects, such as exceeding when carrying out the appraisal of the value of the eucalyptus wood or the appraisal of the value of the land taking into account the current prices and not the existing prices at the moment the occupation was effective. On September 20, 2007, the Ninth Trial Court ordered discovery for four days in order to prove the material defect so alleged and b) on January 11, 2008, the Ninth Trial Court issued a court order in which it decided: i) that the Municipality has not sufficiently proved the material defect it alleged, and therefore, it denied the cause of action; and ii) due to the fact that both parties have submitted observations to the expert assessment, it was evident that the report was not clear and therefore, it decided, on its own motion, to appoint a new expert witness, Mr. Manuel Silva Vásconez, Ing., in order to submit a new expert assessment.

[FN100] The Judge in charge of the Ninth Trial Court based his decision on Section 15 of the Organic Law of the Judiciary and on the order of the Supreme Court of Ecuador of December 5, 1997, according to which "any civil or administrative court case derived from acts, agreements and administrative facts, must be heard by the corresponding District Court on Administrative matters", so that, he considered he was not competent to hear the case and decided to refer the proceeding to the District Court on Administrative matters (case file N°1300-96, record of appendixes to the complaint, Appendix 1 and 2, p. 82). Nevertheless, in the evidence forwarded by the parties to the Court there is no evidence that the case has been heard, at any moment, by the District Court on Administrative matters.

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104. It was on February 21 and June 14, 2007, more than 10 years after the expropriation proceedings were initiated, that the expert witness, Mr. Vicente Dominguez Zambrano, submitted before the Ninth Trial Court a report and later on, an extension of such report, in which he concluded that the total value of the property, including the value of the eucalyptus woods, is: US$ 55.567.055,oo (fifty-five millions five hundred sixty-seven thousand and fifty-five dollars of the United States of America)" [FN101]. Afterwards, on June 19, 2007, the Municipality challenged the expert assessment regarding the appraisal, alleging material defect; such report was rejected By the Ninth Trial Court on January 11, 2008. Nevertheless, the Ninth Trial Court appointed, in its own motion, Mr. Manuel Silva Vásconez, in order to render a new expert opinion [FN102] , and up to the moment of this Judgment, the parties have not forwarded to the Court any information regarding the expert's report at the domestic jurisdiction.

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[FN101] Cf. Report of the expert witness, Mr. Vicente Domínguez Zambrano, supra note 64 and extension of the report of expert witness, Vicente Domínguez Zambrano (case file N°1300-96, record of appendixes submitted by the State, p. 3960 to 4000).

[FN102] Cf. Court order issued by the Ninth Trial Court on January 11, 2008 (case file N°1300-96, record of evidence to facilitate adjudication of the case forwarded by the State, Volume I, p. 4438).

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105. The procedural rules in force in Ecuador clearly establish that, in case of disagreement over the appraisal fixed, a condemnation proceeding shall be initiated, [FN103] which "only purpose shall be the determination of the amount to be paid as price for the condemned thing, […]," [FN104] and " the judge shall deliver a judgment within eight days as of the submission of the expert report […]" [FN105] and the filing of interlocutory motions is not allowed within such proceeding. [FN106] In accordance with the domestic legislation, the term established for this kind of proceeding is 38 days, [FN107] to which the terms derived from other circumstances of the case shall have to be added. Furthermore, section 312 of the Civil Procedural Code [FN108] establishes the possibility for a judge to grant an extraordinary term, which shall never be greater than three times the ordinary term. In such sense, the expert witness, Neira Orellana, in the opinion rendered before the Court, agreed on stating that one of the criterion regarding the reasonable time is that the resolution of a condemnation proceeding shall last no longer than three times the term established by law (supra para. 20(b)).

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[FN103] Cf. Public Procurement Act, coding N° 501 of August 16, 1990; section 36; para. Four.
[FN104] Cf. Civil Procedural Code, coding N° 000. R. O. sup. 687 of May 18, 1987, section 793.
[FN105] Cf. Civil Procedural Code, coding N° 000. R. O. sup. 687 of May 18, 1987, section 799.
[FN106] Section 800 of the Civil Procedural Code establishes that: "[i]n the proceedings, no interlocutory motions are allowed and all the observations of the interested parties shall be considered and decided in the judgment".
[FN107] Section 799 of the Civil Procedural Code establishes that "[u]pon the filing of the complaint […] the judge shall appoint an expert witness […] to ascertain the value of the property. At the same time, it shall summon all the people […] in order to appear in court to make use of their rights within fifteen days. Said term shall start running simultaneously for every party involved. In the same court order, the judge shall fix a term within which the expert or experts witnesses must submit their report; said term shall not exceed fifteen days, as of the expiration of the previous term". Moreover, Section 802 of the Civil Procedural Code provides that "[t]he judge shall deliver a judgment within eight days as of the submission of the expert report". To such regard, the Court notes that the general terms that the Civil Procedural Code establishes for all civil trials should be added to the term of 38 days.
[FN108] Section 312 establishes that: "[w]hen a judge grants an extraordinary term, it shall determine, in the same court order , in detail, the number of days that such term shall last, according to the time used for the forwarding of the documents and judicial proceedings; such term shall never be greater than three times the ordinary term and shall run as from the issuance date of the pleading, official letter or other document. The secretary of the tribunal shall certify this taking into account the issuance date".

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106. The Court notes that, in consideration of the domestic legislation, the condemnation proceeding is not a complex process but a prompt one. The purpose of the proceeding is simple; mainly to ascertain the value of the condemned property where the domestic judge is the person that must determine the price of the property. As to the procedural records of the victim's pleadings, in the instant case, Mrs. Salvador Chiriboga is the only person affected by the expropriation of her property and as is evident from the analysis of the case, there is no proof that her actions may have obstructed or delayed the proceeding.

107. Moreover, this Tribunal notes that in the instant case, the State is a party [FN109] to the proceeding, given the fact that it had initiated an expropriation proceeding and, at the same time, is exercising its judicial function, which is being reflected on the procedural activity administered by the Ecuadorian judicial system. Regarding the behavior of the judicial authorities in charge of conducting the proceeding, the Court considers that they have not acted with due diligence, and this is evidenced, for example, as from the disqualification of the Judge in charge of the Ninth Trial Court dated February 17, 1997, since at that moment, supposedly, the proceedings were to be referred to an Administrative-Contentious Tribunal. However, in the case file of the expropriation proceedings, between February 17, 1997 and January 25, 2006, there are only a few judicial orders carried out by the judge, but none of them leads to a final decision of the case, thus, this proceeding has been in a halt during such period. The proceeding

was resumed when the Ninth Trial Court decided to declare the nullification of all the records of the case as from court order of September 4, 1997. Without prejudice to the foregoing, up to the present moment, there is no final decision.

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[FN109] Section 796 of the Civil Procedural Code establishes that :"[f]or the condemnations determined by other institutions of the Public Sector [different from the national sector], the complaint shall be filed by their respective official representatives".

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108. Moreover, as is evidenced from the analysis of the case file, contrary to what the State argued before this Tribunal, the Municipality of Quito was the one who filed the majority of the remedies that were, procedurally speaking, declared inadmissible by the Ninth Trial Court. [FN110]

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[FN110] Cf. For example, the State filed the following remedies against the court order dated September 4, 1997: a) on September 23, 1997, the Municipality appealed such court order, and the judge denied such appeal on that same day after considering that the appeal was inadmissible (case file N°1300-96, record of appendixes to the complaint, Appendix 1 and 2, p. 77 and case file N°1300-96, record of appendixes to the brief of requests and arguments, Appendix 6 to 8, p. 1846); b) On September 26, 1997, the Municipality filed an appeal for review of the facts as well as law, alleging that the appeal already filed was admissible (case file N° 1300-96, record of appendixes to the brief of requests and arguments, Appendix 6 to 8, p. 1850 to 1851), and c) On November 28, 1997, the State filed a motion requesting the clarification of the court order that denied the appeal for review of the facts as well as law and the legal provision on which the judge based his decision to deny it (case file Nº 1300-96, records of the appendixes to the brief of requests and arguments, Appendix 6 to 8, p. 1857 and 1858).

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109. Article 62 (supra note 58) of the Political Constitution of Ecuador, now Article 33 (supra note 59) established that the State might condemn a property by means of a prior fair appraisal, payment and compensation, following a proceeding and within the terms determined by procedural rules. Accordingly, the Court considers that the terms established by law to such purpose are adequate (supra para. 105). However, in the instant case, those terms have not been fulfilled, and therefore one of the essential requirements established for the deprivation of property as enshrined in Article 21(2) of the Convention, consisting in the payment of a fair compensation, has not been complied with. Therefore, the State has not respected the procedural conditions established by law and neither has fixed a price nor made the corresponding payment within a reasonable time.

110. The Court notes that the State alleged, in order to justify the payment of the compensation, that it made a "provisional payment" of the value of the property subjected to condemnation. Nevertheless, this Tribunal considers that such payment does not comply with the standards required by the American Convention nor with the international standards and

principles, and therefore, in more than 15 years, the State has neither fixed the final value of the property nor made the payment of a fair compensation to Mrs. Salvador Chiriboga.

111. Furthermore, the Court emphasizes that Mrs. Salvador Chiriboga is in an uncertainty legal condition [FN111] as a consequence of the delay in the proceedings, inasmuch as she cannot effectively exercise her right to property, which has been occupied by the Municipality of Quito for more than a decade and the question regarding who the owner of such property is remains undefined.

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[FN111] Cf. ECHR, Case Broniowski v. Poland, Judgment of 22 June 2004, Application no. 31443/96, paras. 134 and 151.

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112. Moreover, in accordance with what the Court has already stated in relation to the effectiveness of the subjective procedures (supra para. 86 to 88), it is noted that the same criteria can be applied to the expropriation proceedings. The foregoing, due to the denial of justice as a result of the lack of a final decision determining the sum of money of the just compensation for the property of Mrs. Salvador Chiriboga, has made that the remedy is not effective.

113. Based on the foregoing, it is evident that, even though the purpose of the condemnation has been legitimate, the State has not fulfilled the requirements established in the American Convention by not complying with the procedural terms contemplated in the domestic legislation and established as necessary procedural conditions within the domestic venue, violating the nullum crimen nulla poena sine lege praevia principle [principle of legality] and therefore, the condemnation proceeding has been arbitrary.

114. The Court confirms that the lack of payment of a just compensation, in accordance with the standards already established (supra para. 95 to 110) is evident in the instant case and therefore, considers that the deprivation of the property without the payment of a just compensation constitutes a violation of the right to property embodied in Article 21(2) of the Convention.

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115. Furthermore, the Court notes that Mrs. Salvador Chiriboga had incorrectly paid taxes and penalties, during the years 1991 and 2007. [FN112] To such regard, the State recognized it made a mistake when collecting the taxes and penalties from Mrs. Salvador Chiriboga and so, by means of an order from the Municipal Council, decreed the repayment of all the moneys improperly paid. However, the alleged victim reasserted that the total repayment of all the moneys improperly paid has still not been carried out. At the discretion of the Court, in the instant case, the payment of taxes and penalties evidence the imposition of additional charges, which are considered excessive and out of proportion for Mrs. Salvador Chiriboga, and which represents an aggravating circumstance in relation to the violation of the right to property. [FN113]

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[FN112] At the public hearing, Mrs. Salvador Chiriboga stated that she paid all the taxes up to the date of her statement and has been doing it "for fear of a seizure if she did not pay". Spite of the payment of taxes, she has not been able to use the property. Other witnesses, such as José Luis Paredes Sánchez, who rendered an affidavit before the Court, stated that despite the fact that the State condemned his property, he is obliged to pay the taxes. Even further, the expert witness Edgar Neira Orellana stated that the surcharge on non-serviced building areas is pointless to collect over those properties located in rural areas, for agriculture use; it has sense when the real estate is located within the urban parameters and punishes the lack of building or fosters the building within certain Municipality.

[FN113] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 47, para. 200 a 218.

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116. Finally, the Court holds that the State deprived Mrs. María Salvador Chiriboga of the right to property for legal and well-grounded reasons of public utility, which consisted in the protection of the environment through the building of the Metropolitan Park. Notwithstanding, the State did not comply with the requirements necessary to restrict the right to property provided for in the general principles of international law and explicitly established in the American Convention.

117. Specially, the State failed to comply with the stipulations of the law, by violating the judicial protection and guarantees, given the fact that the remedies filed exceeded the reasonable term and were ineffective. The foregoing has indefinitely deprived the victim of her property, as well as of the payment of a just compensation, which has caused an uncertainty of fact and of law that has resulted in excessive charges imposed on the victim, turning such condemnation in an arbitrary procedure.

118. Therefore, this Tribunal considers the State is responsible of the violation of the right enshrined in Article 21(2) of the American Convention in relation to articles 8(1) and 25(1) therein, all of that in conjunction with Article 1(1) of the Convention, to the detriment of María Salvador Chiriboga.

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119. As to the alleged failure to comply with Article 2 of the Convention, the Commission pointed out that Ecuador, as State Party to the Convention, must ensure that the rights enshrined therein are faithfully adopted by the domestic legislation. According to the Commission, in this case, those rights have been violated in relation to the effectiveness of the remedy. Moreover, the Commission requested the Court to determine the connection between the alleged violations of Articles 8 and 25 of the Convention and Articles 1(1) and 2 therein.

120. The representatives agreed with the arguments raised by the Commission. They further alleged that, in the case at hand, there has been an application of certain rules that are incompatible with the Convention. Lastly, they pointed out that the State should introduce a

legislative reform that allow the discussion of all the rights that the current legislation does not allow the people subjected to an expropriation proceedings having. [FN114]

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[FN114] Among the set of legal rules they suggested, the following are included: a) the declaration of public utility and the condemnation in only one proceeding and to be granted the possibility of filing an appeal to the decision of the judge; b) to grant the right to the person subjected to an expropriation proceedings of being heard before the decision of immediate occupation is made; and c) to deposit the price of the property in accordance with the real market value (record of preliminary objection, merits, reparations and costs; Volume V, p. 757).

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121. Moreover, the State alleged that it has never obstructed the access of Salvador Chiriboga siblings to file the recourses provided for in the Act of Administrative Contentious Jurisdiction in order to object to the administrative acts that the alleged victim considered necessary. It also pointed out that the Constitution provides for guarantees in order to protect the rights established in international treaties, which were used by the representatives.

122. The Court has interpreted that the adjustment of the domestic legislation to the parameters established in the Convention implies the adoption of two different measures, namely: i) the elimination of any norms and practices that in any way violate the guarantees provided under the Convention or disregard the rights therein enshrined or obstruct its exercise; y ii) the promulgation of norms and the development of practices conducive to the effective observance of those guarantees. [FN115] The first kind of measures is satisfied with the amendment, [FN116] the repealing or annulment, [FN117] of the norms or practices that are within such scope, if applicable. [FN118] The second one imposes an obligation on the States to prevent further violations of human rights and therefore, to adopt all legal, administrative and other measures necessary to prevent further occurrence of similar facts. [FN119]

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[FN115] Cf. Case of Castillo Petruzzi et al. V. Perú. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 118; and Case of Zambrano Vélez, supra note 53, para. 57.

[FN116] Cf. Case of Raxcacó Reyes. Judgment of September 15, 2005. Series C No. 133, para. 87 and 125; Case of Hilaire, Constantine and Benjamín et al. ; supra note 54; para.. 113 and 212. Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 97 and 130; and Case of Zambrano Vélez, supra note 53, para. 57.

[FN117] Cf. Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of March 11, 2005. Series C No. 123, para. 94 and 132. Case of Yatama, supra note 52, para. 254; and Case of Zambrano Vélez, supra note 53, para. 57.

[FN118] Cf. Case of La Cantuta v. Perú. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C N°. 162, para. 172; and Case of Zambrano Vélez et al., supra note 53, para. 57.

[FN119] Cf. Case of Zambrano Vélez et al., supra note 53, para. 153.

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123. In regard to the domestic legislation, as to the constitutional, civil-procedural, administrative-contentious procedural and administrative procedural aspects applied to the instant case, the Court considers that, after having analyzed it, said legislation adjusts to the provisions established in the American Convention. Moreover, this Tribunal notes that, as established in this Judgment, the delay in the proceedings and the ineffectiveness of the remedies are not the direct result of the existence of rules incompatible with the Convention or of the lack of rules that prevent this situation. Likewise, the Court considers that there is no proof of the fact that the alleged violations and circumstances of the case at hand constitute a generalized problem in the processing of this type of proceedings in Ecuador.

124. Consequently, this Tribunal cannot conclude that the State has failed to comply with Article 2 of the American Convention.

VII. ARTICLES 24 (RIGHT TO EQUAL PROTECTION) [FN120] IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT THE RIGHTS) [FN121] OF THE AMERICAN CONVENTION

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[FN120] In its pertinent part, Article 24 (Right to Equal Protection) provides for: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.
[FN121] Cf. supra note 45.

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125. The Inter-American Commission did not submit any arguments related to Article 24 of the American Convention.

126. In the brief of requests and arguments, the representatives alleged that the violation of the right to property led to the violation of the right to equal protection before the law. To such end, they argued that: a) since the Municipality denied the authorization to Salvador Chiriboga siblings to develop a piece of property, they turned to the administrative courts where they claimed "[...] equal treatment before the law[...]", since in an adjacent property, the Municipality did grant the authorization to develop. Neverthless, said claim was declared inadmissible. By virtue of the foregoing, according to the representatives, said decision constituted a discriminatory act inasmuch as Salvador Chiriboga siblings could not exercise their right to property, in conditions identical to the ones exercised by the owners of the adjacent piece of lands; and b) unlike the other people whose properties were also declared to be public utility, the State restricted the right of Salvador Chiriboga sibling to access to a judicial procedure within a reasonable time, in order to determine their rights, which placed them in a position inferior to the other people who are in similar conditions.

127. Moreover, the State rejected the arguments of the representatives and pointed out that in condemnation proceedings, it is inevitable to include or exclude pieces of land from the chosen area, due to technical reasons. It further argued that the Metropolitan Park had marked the territory out " prior to the alleged discriminatory act […] alleged by the representatives [...]",

therefore there is no well-grounded reasons "[…] to believe that Mrs. Salvador Chiriboga was adversely affected or differently treated."

128. The Court has determined that the alleged victims, his next-of-kin or his representatives may invoke rights other than those asserted in the petition filed before the Commission, on the basis of the facts described therein. [FN122] In relation to this last aspect, the Court has established that it is not admissible to allege new matters of facts different from those asserted in the application, which does not preclude the fact of stating those facts that allow explaining, clarifying or dismissing those that have been stated in the application or, else, filing the answer to the cause of action of the plaintiff. [FN123]. Furthermore, the Court has already stated that the exception to this rule applies in the case of supervening facts, that is to say, facts that arise once the briefs to the proceedings have been submitted (complaint; brief of requests, arguments and evidence; answer to the complaint.) [FN124]

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[FN122] Cf. Case of Acevedo Jaramillo et al. Judgment of February 7, 2006. Series C No. 144, para. 280 and Case of López Álvarez, supra note 51, para. 145; and Case of Gómez Palomino V. Perú. Merits, Reparations and Costs.. Judgment of November 22, 2005. Series C N°. 136, para. 59.

[FN123] Cf. Case of the "Five Pensioners", supra note 49, para. 153; Case of Bueno Alves V. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 121; and Case of the Saramaka People, supra note 21, para. 13.

[FN124] Cf. Case of Miguel Castro-Castro Prison, supra note 53, para. 162; and Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C Nº. 148, para. 89, and Case of the Sawhoyamaxa Indigenous Community. Judgment of March 29, 2006. Series C No. 146, para. 68.

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129. Taking into account the above paragraph and that the representatives raised an issue of law and not of fact, the Tribunal, when analyzing the alleged violation of article 24 of the American Convention, finds that there is no enough evidentiary elements to determine whether the State, by not granting the authorization to develop a land of property to the alleged victim, has violated such provision. As to the arguments submitted by the representatives related to the fact that the State did not allow the alleged victim access to a judicial procedure within a reasonable time, this issue was analyzed in relation to the right to judicial guarantees and protection enshrined in Articles 8(1) and 25(1) of the Convention (supra para. 48 to 118). Therefore, this Court considers that, in the instant case, the violation of Article 24 of the American Convention by the State has not been proved.

VIII. ARTICLE 29 (RESTRICTIONS REGARDING INTERPRETATION ), [FN125] IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT THE RIGHTS) [FN126] OF THE AMERICAN CONVENTION

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[FN125] In its pertinent part, Article 29 (Restriction regarding Interpretation) provides for:
No provision of this Convention shall be interpreted as:

a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;;
b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.
[FN126] Cf. supra note 45.
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130. The Inter-American Commission did not submit any arguments related to Article 29 of the American Convention.

131. The representatives, in the brief of requests and arguments, alleged the violation of Article 29 of the American Convention in relation to Articles 1(1) and 2 therein, [FN127] based on the fact that they system of protection enshrined in the Convention includes general obligations that are directly related to other rights that must be specially respected by States. According to the representatives, the violations of other rights to the detriment of the alleged victim constitute a non-compliance with the general obligations, among them, the rules of interpretation contained in Article 29 of the Convention.

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[FN127] The representatives alleged the violation of this article in the brief of requests and arguments. As a consequence, the Commission, in the reports on admissibility and merits, made no express reference to the alleged violation of Article 29 of the Convention.
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132. The State, in the brief of final arguments, without mentioning the arguments related to the alleged violation of Article 29 of the Convention, requested the Court to declare that the State did not violate such article.

133. To such end, the Court finds there is no evidence regarding a violation of any of these rules that are used to construe the provisions of the American Convention.

IX. ARTICLE 63(1) OF THE AMERICAN CONVENTION [FN128]

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[FN128] Article 63(1) of the Convention provides 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.

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134. This Court considers appropriate that the determination of the amount and payment of the just compensation for the expropriation of the legally protected interests, as well as any other measure intended to repair the violations declared in this Judgment, be made by common consent between the State and the representatives, within the term of six months as from notice of this Judgment. If an agreement is reached, the State and the representatives shall have to inform it to this Tribunal in order to confirm that said agreement was made according to the American Convention and proceed accordingly. In case of disagreement, the Court shall determine the corresponding reparations, as well as the costs and expenses.

X. OPERATIVE PARAGRAPHS

135. Therefore:

THE COURT,

DECIDES:

Unanimously,

1. To dismiss the preliminary objection of non-exhaustion of domestic remedies raised by the State, in accordance with paragraphs 40 to 46 of this Judgment.

AND DECLARES:

Six votes against two, that:

2. The State violated the right to property in relation to Article 21(2) of the American Convention on Human Rights, in relation to the rights to judicial guarantees and protection enshrined in Articles 8(1) and 25(1) of the American Convention, all of that in relation to Article 1(1) therein, to the detriment of María Salvador Chiriboga, in accordance with paragraphs 48 to 118 of this Judgment.

Judge Quiroga Medina and Judge ad hoc Rodríguez Pinzón partially disagree with regard to the violation of Article 25(1) of the American Convention on Human Rights.

Unanimously that:

3. It has not been proved that the State violated Articles 24 and 29 of the American Convention on Human Rights, nor that the State has failed to comply with Article 2 therein, to the detriment of María Salvador Chiriboga, under the terms of paragraphs 123, 124, 129, 132 and 133 of this Judgment.

AND DECIDES:

Unanimously that:

4. The determination of the amount and payment of the just compensation for the expropriation of the legally protected interests, as well as any other measure intended to repair the violations declared in this Judgment, be made by common consent between the State and the representatives, within the term of six months as from notice of this Judgment, pursuant to paragraph 134 of this Judgment.

Unanimously that:

5. The Court reserves the authority to verify whether such agreement is made in accordance with the American Convention on Human Rights and proceed accordingly. In case no agreement is reached, the Court shall determine the corresponding reparations and the costs and expenses, continuing with the corresponding procedure, pursuant to paragraph 134 of this Judgment.

Judge Quiroga Medina and Judge ad hoc Rodríguez Pinzón advised the Court of their Partially Dissenting Opinions and Judge Ventura Robles advised the Court of his Concurring Opinion, which accompany this Judgment.

Cecilia Medina Quiroga
President

Diego García-Sayán
Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Diego Rodríguez Pinzón
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE CECILIA MEDINA QUIROGA

1. I agree with the dissenting opinion of Judge Diego Rodríguez- Pinzón. This is not the first time I dissent from the Court in relation to the possible joint violation of Articles 8 and 25 [FN1] and on those occasions, I have given similar reasons to the ones expressed in the Opinion of Judge Rodríguez.

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[FN1] Dissenting Opinion of Judge Cecilia Medina Quiroga, Case of López Álvarez v. Honduras; Merits, Reparations and Costs. Judgment of February 1, 2006; Series C N° 141; Concurring Opinion of Judge Cecilia Medina Quiroga, Case of Gómez Palomino v. Perú. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C N°136; Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, Series C N°110; Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Case of the 19 Tradesmen . Judgment of July 5, 2004. Series C Nº. 109.

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2. However, on this occasion, I would like to clarify my position in relation to Article 25. By giving a dissenting opinion in a private case, I would like to refer only to the problem of the case at hand and not make a detailed analysis of every provision. So far, in my opinions, I have departed from the foundation- in an attempt to prevent the modification of the constant case-law of the Court- that Article 25 established the right to have a simple, prompt and effective recourse to protect the human rights of the people. This understanding came from the fact that the Court has permanently united these three characteristics implying that these three characteristics are applied to a right to a remedy and my arguments were intended to struggle in order for the Court not to forget the existence of a writ of amparo enshrined in Article 25.

3. Actually, from the reading of the preparatory documents of the Convention it is evidenced that this provision does not only establish the recourse of a writ -simple and prompt- but also, a second type of recourse that, though not simple or prompt, is effective.
The original definition of the rule was “[e]very person has the right to an effective, simple and prompt recourse [...].” [FN2] When the Government of the Dominican Republic submitted its observations and comments to this Project, it pointed out that there could be cases where the protection would be “effective”, though not “simple and prompt” and also mentioned that the only necessary criterion to legitimate a recourse was that such would be “effective”. Immediately afterwards, the State proposed a new text that is, in this part, identical to the text approved as final version. [FN3] During the discussion about the article, the Mexican delegate requested the amendment of the text and repeated the original formula of "a simple, prompt and effective recourse." The American delegate had another proposal that referred to the text of the Dominican Republic, without mentioning it, but the delegate noted, upon its presentation, that he "did not believe [words] would change the meaning."

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[FN2] See Specialized Inter-American Conference on Human Rights, Proceedings and Documents, San José, Costa Rica, November 7/22, 1969, (OEA/Ser.K/XVI/1.2), p. 22
[FN3] Ibid., p. 66.

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4. As it frequently occurs with these preparatory documents, the discussion was not, in fact, ended with a clear opinion; otherwise, it was left like that, maybe without noticing the consequences that could have. Hence, there are two ways of interpreting article 25. In both interpretations, however, it must be read that, regardless of its type, the recourse must be effective, that is, must be "capable of producing the result for which it was designed." [FN4]

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[FN4] Case of Velásquez Rodríguez., para. 66

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5. Even with that interpretation of the provision, my petitions are still valid regarding the fact that the creation of a simple and prompt recourse cannot be put aside in the development of the case -law of the Convention, which is, without any doubt, a description of the classic Latin-American writ of amparo, extremely useful for countless situations. I repeat what I have said on several occasions: the Court has used the idea of a simple and prompt recourse to examine the development of a criminal procedure, which is never simple nor prompt and has used the notion of a reasonable time as enshrined in Article 8 to evaluate the promptness of the recourse. I cannot agree with this idea. I neither agree with the idea of that, by unifying rights, the system is strengthened. The development of each right grants a greater range of possibilities to the individuals.

6. With regard to this case in particular, I believe that there were recourses, not the amparo, that were effective according to the definition of effectiveness provided by the Court. On the contrary, the proceeding that was initiated as a result of some of these resources had a delay that, in no way, can be considered reasonable and therefore, I agree with the opinion that there has been a violation of Article 8.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE MANUEL E. VENTURA ROBLES

I have concurred with my vote to the adoption of the Judgment on the Preliminary Objection and Merits in the case of Salvador Chiriboga v. Ecuador, but I would prefer that the concept of "fair balance between the general interest and the interest of the individual" to have been conceptually developed.

When considering the issue of the restrictions to the right to property in a democratic society, the Court should have analyzed not only the criteria of public use or social interest, as well as the payment of a fair compensation, but also the criteria of "fair balance between a general interest and the interest of the individual" at the time of determining the validity of a condemnation, such as in this case, in light of Article 21(2) of the American Convention on Human Rights. The Judgment makes a briefly reference to said subject in paragraphs 63, 96 and 98.

The need to broadly develop the concept of "fair balance between the general interest and the individual interest", is useful for the determination of a violation of the right to property, resulting from the lack of proportionality of the means used by the state to restrict such rights, as well as for the appraisal of a fair compensation in the specific case, taking into account the particular circumstances of the case and, to such end, the concept of "fair balance" is essential. In my opinion, the following development of said concept of fair balance should have been included in the text of the Judgment delivered by the Court in the instant case:

Fair balance between the general interest and the individual interest

The Commission as well as the representatives agree on pointing out that the deprivation to which Salvador Chiriboga siblings were subjected was totally out of proportion regarding the intended purpose, considering that they even had to bear and are still bearing an excessive burden, as a result of all the taxes incorrectly paid by Mrs. Salvador Chiriboga.

Moreover, the State established that the procedures conducted in order to expropriate the property of Mrs. Salvador Chiriboga, were carried out in good faith. Furthermore, it pointed out the respect for the right to property is guaranteed in a democratic society as long as in such society, the right is exercised according to the limits established by law; and this situation, the State understands, is proven in this case given the fact that the condemnation of the property of the alleged victim is framed within the consideration of certain areas of ecological protection, in order to compensate the shortage of green areas in the City of Quito. This reason, at the discretion of the State, can be considered as a justification even bigger than the limit to the right to property. Furthermore, the State acknowledged the mistake committed in the incorrect collection of taxes from and the penalties imposed on Mrs. Salvador Chiriboga.

The Court wishes to repeat that when an State invokes reasons of general interest or public welfare to limit the human rights, those reasons will be subjected to an interpretation strictly limited to “just demands” of a “democratic society" that takes into account the balance between the different interests at stake and the needs of preserving the purpose and end of the Convention. The Court considers that the authority of the State to limit the right to property requires balancing between the general interest and the interest of the individual. Therefore, the State should use all the less costly means to damage the least the right of a person.

Accordingly, Article 21 of the Convention refers to the payment of a just compensation, which, according to this Tribunal, must be adequate, prompt and effective, since the compensation is one of the measures through which the State can comply with the goal of achieving a fair balance between the general interest and the individual interest. In such sense, the Court considers that in order to analyze the combination of a fair balance in the instant case, it is necessary to note whether there has been a just compensation, as well as other relevant factors such as the passage of excessive terms, out of proportions burdens or situations of uncertainty regarding the rights of the owner, that infringe the fair balance that Article 21 tries to protect, as well as the purpose and end of the Convention.

The European Court has also pointed out that the principle of fair balance implies that no all deprivation is, in principle, legal due to social or public interest. [FN1] All limitation, necessarily, must entail a reasonable relation of proportionality between the means employed and the aim sought to be realized by any measures applied by the State, including measures designed to control the use of the individual's property. [FN2] Said principle consists in the balance that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. [FN3]

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[FN1] Cf. ECHR, James v UK, Judgment of February 1985, Application no. 8793/79, para. 46.
[FN2] Cf. ECHR, Case Hutten-Czapska v. Poland, Judgment of 22 February 2005, Application no. 35014/97, para. 93.
[FN3] Cf. ECHR, Case Hutten-Czapska, supra nota **, para. 93; ECHR, Case Matos e Silva, Ltda.,and others v. Portugal, Judgment of 27 August 1996, Application no. 15777/89, para. 86; y ECHR, Case Sporrong and Lönnroth V. Sweden, Judgment of 22 September 1982, Applications nos. 7151/75; 7152/75, para. 69.

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Moreover, the Court has pointed out in previous cases, that there is a need of looking behind the mere appearances, in order to ascertain the real situation behind the reported situation. [FN4] In this sense, the European Corut, in relation to the scopes and effects that the limit to the right to property may have in a certain situation, has pointed out "[w]henever there is no formal expropriation, that is to say, no ownership of the land in question has been transferred, the Court considers that it has to look behind the appearances and investigate the realities of the situation, […]. [FN5]

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[FN4] Cf. Case of Ivcher Bronstein V. Perú. Judgment of February 6, 2001. Series C No. 74, para. 124. See also: ECHR, Case Belvedere Alberghiera S.R.L., supra note **, para. 53. ECHR, Case Papamichalopoulos and others V. Greece, Judgment of 24 January 1993, Application no. 14556/89, para. 42; and ECHR, Case Sporrong and Lönnroth, supra nota **, para. 63.
[FN5] Cf. ECHR, Case Sporrong and Lönnroth, supra note **, para. 63; ECHR, Case of Papamichalopoulos and others, supra note **, para. 42.

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Furthermore, upon application of the principle of fair balance, the European Court has recognized that long periods of uncertainty to which people in condemnation proceedings have been subjected aggravate the effects of the adopted measures, imposing an excessive burden that breaks the fair balance [FN6].

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[FN6] Cf. ECHR, Case Matos e Silva, Ltda., and others, supra note **, para. 92; ECHR, Case of Beyeler, (application no. 33202/96), January 5, 2000. Para.122, Case of Sporrong and Lönnroth Vs. Sweden, supra note **, para. 72 and 73; and ECHR, Case of Jahn and Others v. Germany, Judgment of 30 June 2005, Applications nos. 46720/99, 72203/01 and 72552/01, para. 93. For example, in the Case of Jahn et al v. Germany, the European Court determined that the total lack

of compensation when the State acquires the property, violates the fair balance and imposes an unjust burden.

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In the case at hand, the Inter-American Court notes that the State initiated several lawsuits that deprived Mrs. Salvador Chiriboga of her property and did not comply with the terms prescribed by law during their processing. In this sense, as article 8(1) of the Convention has already been analyzed with regard to the condemnation proceedings, this Tribunal considered that the State has not acted with due diligence, since the process has been delayed for more than a decade, and the fore, up to the moment, the State has not defined whether the expropriation is legal and the fair price as compensation.

Moreover, this Tribunal considers that the State did not use the reasonable and necessary means to find a fair balance between the general interest and the interest of the individual. Besides, as a result of the excessive time passed to conduct the expropriation, the State deprived Mrs. María Salvador Chiriboga of the right to enjoy the property for an indefinite time, situation which has been disproportionate and has subjected her to be in a legal uncertainty and violated her rights in an unreasonable manner.

Furthermore, the Court notes that Mrs. Salvador Chiriboga had incorrectly paid taxes and penalties, during the years 1991 and 2007. [FN7] In this sense, this Tribunal has determined, in specific situations, the existence of charges that are especially costly to the wealth of a person, [FN8] which violated the legal content of Article 21 of the Convention. At the discretion of the Court, in the instant case, the payment of taxes and penalties evidence the imposition of additional charges and punishments, which are considered excessive and disproportionate for Mrs. Salvador Chiriboga. The Court understand that such charges must be fully and effectively reimbursed to the victim and that the State shall guarantee that such abuses will not happen again.

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[FN7] At the public hearing, Mrs. Salvador Chiriboga stated that she paid all the taxes up to the date of her statement and has been doing it “for fear of a seizure if she did not pay”. Spite of the payment of taxes, she has not been able to use the property. Even further, the expert witness Edgar Neira Orellana stated that the surcharge on non-serviced building areas is pointless to collect over those properties located in rural areas, for agriculture use; it has sense when the real estate is located within the urban parameters and punishes the lack of building or fosters the building within certain Municipality.
[FN8] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note **, para. 200 a 218.

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As to the argument raised by the State regarding that, in the instant case, certain greater limits to the right of property can be justified, this Tribunal considers that the standard required by the Convention to limit the right to property is clear and therefore, it is not a justifiable situation to let the victims, as in the case at hand, Mrs. Salvador Chiriboga in a state of uncertainty due to non-compliance with the reasonable term in the already mentioned procedures and the denial of justice, combined with the fact of establishing additional and excessive burdens.

In this sense, the Court concludes that the State did not use the necessary means to obtain a fair balance between the interest at stake.

Manuel E. Ventura Robles
Judge

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE AD HOC DIEGO RODRÍGUEZ PINZON IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR, JUDGMENT OF MAY 6, 2008

1. I agree with the decision delivered by the Court in this case, except for the violation of Article 25 of the Convention. I must say that my partially dissenting opinion is the result of a debate that, in my opinion, is of great importance as to the protection of human rights in América and to which several well-known jurists of this part of the world has referred by adopting different positions regarding the scope of Article 8 and Article 25.

2. I consider that the proven facts in the instant case do not evidence that the right to judicial protection as embodied in such provision has been violated. In this sense, I must point out that the victim of the violations of Article 8 and 21 in relation to Article 1(1) had access to broad judicial recourses that, I consider, comply with the terms provided for in Article 25(1), based on the following arguments:

3. The victim could filed two (2) subjective remedies with the civil courts in order to object to the declaration of public use of the property. Said remedies, in accordance with the evidence furnished, can be solved within a term of 27 to 37 days [FN1] pursuant to the corresponding legislation. Furthermore, said proceedings have the necessary legal virtuality that would allow the corresponding court delivering binding judicial decisions. Moreover, there is the presumption that such are competent courts, in accordance with the alleged and proven facts of the proceedings.

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[FN1] See para. 82.
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4. Besides, the victim had access to the writ of constitutional amparo which the Court on Constitutional matters solved against her (in a month a half, approximately) after the decision delivered by the District Court was appealed (proceeding that lasted 5 months, approximately, including the objection filed by the plaintiff on the ground of the initial declination of jurisdiction of the District Court which was admitted by the Court on Constitutional matters) without any questioning the competence of the courts. I consider that said recourse has also the necessary legal virtuality so that the court on duty can deliver judicial decisions protecting the corresponding right, even though such court had found against the victim in this case.

5. Likewise, the victim had the opportunity to actively participate in the proceeding for condemnation, which, in turn, has also been brought before courts that are presumed to be competent in accordance with the arguments and proven facts. This procedure can be solved in approximately 38 days (and some more days when "adding the terms derived from other circumstances of the proceeding") [FN2] pursuant to the Ecuadorian legislation and it has the sufficient legal virtuality to protect the right in question.

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[FN2] See para. 105.

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6. Moreover, I must say that the Court established that the relevant rules in this case are in keeping with the American Convention and therefore, there is no violation of Article 2 of such treaty. This includes the procedural rules related to the legal remedies filed by the victim and the State.

7. It has neither been proven in the instant case that there are judicial practices in Ecuador that may affect the efficacy of the existing legal recourses in order to protect the right to property.

8. Based on the foregoing, I consider that there has been judicial access to simple and prompt recourses that have the sufficient legal virtuality to be effective, in accordance with Article 25(1) of the Convention.

9. I came to the foregoing conclusion after considering that Article 8(1) and 25(1) are complementary provisions that protect the crucial judicial scaffolding over which the protection of human rights recognized in the Convention, the constitutions and other domestic rules rest. The proven facts in relation to the judicial problems in the instant case specifically refer to the unwarranted delay in the processing of the subjective remedies and the condemnation proceeding. This situation, in my opinion, does only affect the right to due process established in Article 8(1) that the Court correctly considered violated. But this delay is not automatically translated into a violation of Article 25(1) that, as I briefly described, refers to other aspects of the judicial protection of the rights.

10. The people in charge of drafting the Convention established the guarantees of access to judicial protection and the guarantees of due process in two different provisions of the Convention. An harmonic reading of these rules lead us, necessarily, to distinguish them, since, otherwise, they would have been included in only one provision. On the one hand, Article 25(1) embodies the access to simple and prompt recourses or other ordinary and effective remedies, that could be described as the writ of amparo that exists in order to protect certain rights, or the ordinary judicial remedies, with the possibility of fling appeals, provisional measures of protection, among others, also designed to protect certain rights. Article 8(1), on the other hand, provides for guarantees of due process that should be present once the person have had access to judicial remedies under Article 25(1). The concept of "prompt" recourses of Article 25(1) differs from the concept of "reasonable time" of Article 8(1) in that the first notion refers to the existence of procedural rules that establish reasonable prompt terms in the manner described in

paragraphs 3, 4 and 5 of this opinion and the second notion refers to the way the proceedings of the instant case were conducted by the courts, before which the Court analyzes the complexity of the case, the procedural activities carried out by the parties and the behavior of judicial authorities. And the notion of "effective recourse" of Article 25(1) refers to the necessary legal virtuality so that said remedies can result in binding judicial decisions that finally will protect the right to property. This includes the fact there is no, for example, very damaging judicial practice in the State in question that may disprove the legal virtuality of protection (for example, the generalized fear of the legal profession to represent the type of cause of action subjected to the case, among others).

11. But, apart from the semantic analysis, there is the need to read the Convention in a systematic manner, taking into account its purpose and end, which make us adopt the interpretation that gives a greater scope to the rules that foster a better protection of the rights established in the Convention. This better protection can be achieved, in my opinion, by focusing the attention of States at the different moments of State action channeled to structure an adequate domestic judicial protection. In that way, Article 2 refers to the duty to adopt all domestic legal provisions, be it legislative or of other nature, in order to make effective the rights and liberties embodied in the Convention; Article 25, establishes the need for the existence of the access to the judicial protection of rights, and not by limiting the mere existence of the rules but by adopting the judicial remedies adequately designed to protect specific rights and by implementing appropriate legal practices; and Article 8(1) establishes the manner in which those judicial remedies must be filed in any case. States may then adjust their conducts to each one of these three moments of domestic protection, clearly analyzing whether the rules, remedies, practices and specific judicial procedures adjusted to the terms provided for in such rules. Otherwise, States will simple focus on one general problem (in this case, the unwarranted delay) that would violate, without making any difference, Article 8(1) and 25(1), when it is possible that multiple problems may exist and affect one provision or the other without necessarily having to be simultaneously applied to.

12. Moreover, the application of these two provisions, without making any difference, does not increase nor does it strengthen the protection of the Convention, that is the purpose and end of this instrument; otherwise, it makes it less effective and more confusing. The permanent combining application of these provisions reduces the importance for the State to take precise measures that will eventually solve, in an effective manner, some of the problems specified in Article 8(1) or Article 25(1). The State is then discouraged from adopting measures that, though partial, may help improve the situation of the victim in a case. In other words, the State shall only be able to comply with the obligations of Article 8(1) and 25(1) of the Convention once it has solved all and each one of the problems of both articles since, in many situations, solving those problems related to Article 8(1), would not be sufficient in order to exclude its international responsibility for the violation of Article 25(1) and vice-versa.

13. Lastly, I must add that this does not imply that, under certain circumstances, both provisions cannot be simultaneously violated. But this is not the case.

Diego Rodríguez Pinzón
Judge ad hoc

Pablo Saavedra Alessandri
Secretary