Order of the

Inter-American Court of Human Rights

of February 4, 2010

Provisional Measures

Regarding the Republic of Ecuador

Matter of the Kichwa Indigenous People of Sarayaku

Having Seen:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal") of July 6, 2004, by which it was decided, *inter alia* "[t]o call upon the State to adopt […] the measures necessary to protect the life and integrity of person of the members of the Kichwa indigenous community of Sarayaku and of those who represent and defend them […]," "[t]o call upon the State to guarantee the right to freedom of movement of the members of the Kichwa community of Sarayaku," to call upon the State to investigate the facts that necessitated the adoption of these provisional measures so as to identify those responsible and impose the appropriate punishments," "to call upon the State to allow the beneficiaries of these measures to participate in their planning and implementation and, in general, to keep them informed of the progress made with execution of the measures ordered by the […] Court […]."

2. The Order of the then President of the Court of March 18, 2005, by which it was decided to convene the Commission, the representatives and the State to a public hearing, which was held in Asunción, Paraguay, at the seat of the Supreme Court of Justice of that country, on May 11, 2005.

3. The Order issued by the Tribunal on June 17, 2005, by which it was decided to repeat to the State to maintain the measures adopted, in the terms of the Order of July 6, 2004, (*supra* Having Seen clause 1) and to adopt, forthwith, the measures necessary:

a) to comply strictly and immediately with the measures ordered by the Inter-American Court to protect effectively the lives, personal integrity and freedom of movement of all the members of the Sarayaku Indigenous People;

b) To enable the members of the Sarayaku Indigenous People to carry out their activities and make use of the natural resources that exist in the territory where they are settled; specifically, the State must adopt those measures tending to avoid immediate and irreparable damage to their lives and personal integrities as a result of third parties' activities who live near the community or who exploit the natural resources within the community. In particular, the State must remove the explosive material placed in the territory where the Sarayaku Indigenous People is settled, if this has not already been done;

c) To ensure the protection and safety of the beneficiaries of these measures, without any type of coercion or threat;

d) To ensure the freedom of movement of the members of the Sarayaku Indigenous People, especially down the Borbonaza River;

e) To maintain the airstrip located on the land where the Sarayaku Indigenous People is settled to ensure that this means of transport is not suspended;

f) To investigate the facts that gave rise to the adoption and maintenance of these provisional measures, and the threats and acts of intimidation against some of the members of the Sarayaku Indigenous People, especially Marlon Santi, in order to identify those responsible and impose the corresponding sanctions, in keeping with the parameters established in the American Convention;

g) To continue allowing the beneficiaries of the provisional measures or their representatives to take part in planning and implementing these measures, so as to identify those that are most appropriate for the protection and safety of the members of the Sarayaku Indigenous People and, in general, to keep them informed about progress in the adoption of the measures ordered by the Inter-American Court; and

h) To inform the neighboring indigenous communities about the meaning and scope of the provisional measures for both the State and third parties, in order to promote a climate of peaceful coexistence.

4. The different reports presented by the State between June 2005 and October 2009, as well as the different observations submitted by the representatives and the Inter-American Commission in that regard.

5. The Order of the Presidency of the Court issued on December 18, 2009, by which the Inter-American Commission, the State and the representatives were convened to a public hearing, in order to obtain information on the implementation of said provisional measures.

6. The arguments put forward by the parties at the public hearing on the implementation of these provisional measures, held on February 3, 2010, at the seat of the Tribunal.[1]

---

[1] To this hearing, there appeared, on behalf of the State, Ambassador of Ecuador to Costa Rica, Mrs. Daysi Espinel de Alvarado; Mr. Rodrigo Durango Cordero, from the National Department of Human Rights of the Attorney General's Office; Mr. Christian Pérez, from the Ministry of Justice and Human Rights and Major Mayor Rodrigo Braganza, Chief of the "Sarayaku Project" of the Intervention and Rescue Group [Grupo de Intervención y Rescate (GIR)] of the National Police of Ecuador; on behalf of the representatives of the beneficiaries: President and member of the Kichwa People of Sarayaku, Mr. Hólger Cisneros and Mr. Marlon Santi; Attorney of the Sarayaku People, Mario Melo; Francisco Quintana and Alejandra Vicente, from CEJIL; and on behalf of the Inter-American Commission, Advisors Karla I. Quintana Osuna, Silvia Serrano and Lilly Ching Soto.

Considering that:

1. Ecuador has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since December 28, 1977, and that it accepted the binding jurisdiction of the Court on July 24, 1984.

2. According to article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures, namely: i) "extreme gravity;" ii) "urgency" and iii) when necessary to avoid "irreparable damage to people." These three conditions must coexist and must be present in every situation where the intervention of the Tribunal is required[2] and, by the same token the conditions must persist in order for the Court to maintain the protection so ordered.

3. In the scope of provisional measures, the Court must only consider those arguments strictly and directly related to said conditions. Therefore, in order to decide whether it keeps the provisional measures in force, the Tribunal must analyze if the situation of extreme gravity and urgency which led to their adoption still persists, or whether new equally serious and urgent circumstances deserve their maintenance.[3] All other issues may be brought to the Court's attention solely through the procedure for contentious cases.[4]

4. The case that gave rise to these provisional measures has not been brought to the Court's attention as to the merits; instead, the measures have been ordered in the context of a case that is being processed, at the merits stage, before the Inter-American Commission. Therefore, the maintenance of the provisional measures does not imply an eventual decision on the merits of the existing controversy between the petitioners and the State. By keeping the provisional measures in force, the Court is merely ensuring that it can exercise its mandate pursuant to the Convention.[5]

5. In relation to the measures to effectively protect and void irreparable damage to the life, physical integrity and security of the members of the Sarayaku People, in order to form to carry out their activities and make use of the existing natural resources, in the recent public hearing, the State informed that, by the end of August 2009, it was delivered to the people, who the Community itself identified as

---

[2] *See* Case of Carpio Nicolle. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering Clause fourteen. Matter of Guerrero Larez. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights, of November 17, 2009; Considering clause ten. Matter of Natera Balboa. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of December 1, 2009, Considering Clause ten.

[3] *See* Carpio Nicolle, supra note 2; considering clause fifteen; Matter of the Urso Branco Prison. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 25, 2009; considering clause four; Matter of *Monagas Judicial Confinement Center ("La Pica"); Yare I and Yare II Capital Region Penitentiary Center (Yare Prison); Penitentiary Center of the Central Occidental Region (Uribana Prison) and El Rodeo I and El rodeo II Capital Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering Clause five.

[4] *See* Matter of James et al. Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering clause six; Matter of the Urso Branco Prison, *supra* note 3, Considering clause four and matter of Monagas Judicial Confinement Center ""La Pica") et al, *supra* note 3, Considering clause five.

[5] *See Matter of James et al. Provisional Measures regarding Trinidad and Tobago***.** Order of the President of the Inter-American Court of Human Rights of July 13, 1998, Considering clause six; Matter of Guerrero Larez, supra note 2, Considering clause seventeen and Matter of Natera Balboa, *supra* note 2, Considering clause eighteen.

the most vulnerable people, some cards and prior to this event, the State provided training to the beneficiaries and the personnel of the Police Headquarters of Pastaza, in charge of providing protection, on how to use such cards. The State clarified that if the community identifies other vulnerable people, the State shall immediately deliver a card to them. Moreover, the State sustained that it provides protection 24 hours per day at the offices of the Sarayaku community as well as at the community tourism agency located in Puyo. Likewise, it alleged that it is conducting a police operation with permanent patrols in other areas, including the inland port of Latasas. As to the right to freedom of circulation down the Borbonaza River and the maintenance of the airstrip located in the territory of the Sarayaku Indigenous People, the State informed that it is taking steps for the implementation of a permanent police post in the inland port of Latasas and that it has made progress to determine the necessary maintenance measures of the airstrip.

6. Moreover, the representatives pointed out that even though those cards were delivered, the cards “only identify their bearers as beneficiaries of the protective measures but do not guarantee *per se* their security.” In this respect, the Commission alleged that "the State does not inform on the protection provided to all the members" of the community. In relation to the police post in the inland port of Latasas, the representatives sustained that such post has not been implemented and that the security is not provided on a permanent basis. Furthermore, the airstrip has been improved and maintained by the members of the community themselves. The Commission agreed with what was expressed regarding this last aspect.

7. As to the obligation to remove the explosive material placed in the territory where the Sarayaku community is settled, it is necessary to recall that since January 9, 2001, by means of resolution of the Board of directors of “Petroecuador”, the agreement entered into with CGC Petroleum Company has been suspended, due to “force majeure;” therefore, the company is not carrying out any activity. Then, on May 8, 2009, the Ministry of Mines and Petroleum issued a resolution by which CGC Petroleum Company was informed that the force majeure was lifted and that it had to immediately resume the prospecting and exploitation operations and activities. In that respect, the representatives indicated that this resolution was issued without holding any previous consultation with the Sarayaku People and that it could have serious implications for the security and integrity of the beneficiaries. In response to the above mentioned, the State indicated that, in August 2009, the Board of Directors of “Petroecuador” decided to cancel the suspension of the activities in blocks 23 and 24 and ordered to immediately resume the activities stipulated in the contracts for the prospecting and exploitation of the hydrocarbons of said blocks. However, the State informed that it had entered into negotiations with CGC to consider such contracts terminated and that, in the course of said negotiations, it is not contemplated the commencement of the operations of the company. The representatives expressed that said resolution had affected the trust earned. The Commission indicated that the scope of such negotiation is not clear.

8. Specifically, the State informed that the removal of the pentolite is conducted in two phases: the first one regarding the material found in the surface, a phase already completed, and the second one, regarding the material found under the surface of the earth. As to the first phase, the State had previously informed that, in December 2007, an Inter-institutional Cooperation Agreement was entered into between the Ministry of Mines and Petroleum and the Sarayaku People, which was terminated in April 2008 with approximately 40% of those preliminary works. To complete the rest of the preliminary works, a second agreement was entered into between Sarayaku and the Ministry in April 2008. In October and December 2009, a

new cooperation agreement was signed. In the first phase, the State informed that the removal of the explosives from the surface was completed in three sub-phases – visual search by the explosive technicians of the Intervention and Rescue Group (GIR) of the National Police of Ecuador, search with technological equipments and search with the help of explosive detection dogs. Hence, in July 2009, the GIR personnel entered the territory of the Sarayaku People and proceeded to conduct a visual search and manual removal of 14 kilograms of pentolite, explosive material that was burn and detonated in a controlled manner on August 24, 2009, at the Provincial Police Headquarters of Pastaza, in the presence of a representative of the Government Attorney's Office of Pastaza, leaders of the Sarayaku people, representatives of the Ministry of Justice and Human Rights and press media. The State further alleged that the search for explosives was conducted in an area demarcated according to the information provided by the community. The second phase, that is, the removal of the material from the subsurface, is still incomplete due to disagreements with the members of the community regarding the method to be used, but the State sustained that such material placed in the subsurface does not represent a danger for the community, given the depth in which the explosives are buried. Finally, the State indicated that it does not have specific information regarding the amount of explosive buried in the territory in question, given that there is only one report of the CGC company which would account for the explosives admitted at a military base used as operations center, but that there is no information on the entry of said explosives in the territory.

9. The representatives expressed that the removal of the pentolite is urgent and that it must be conducted as soon as possible, given that the territory, in which the Sarayaku Indigenous People is settled, constitutes a legacy of their survival and existence. To this end, the representatives alleged that the removal activities that ended up in the destruction of barely 14 kilograms of explosive, out of the 1400 kilograms there would be buried in there, had negative consequences for the community insofar as such destruction had serious environmental and, as a result, cultural impacts which seem out-of-proportion in relation to the amount of explosives the State would have removed so far. In this respect, they presented an evaluation of the socio-cultural impact of the removal of explosives from the surface. Therefore, they expressed their concern about the impact that the completion of the next phases may have. They sustain that it is the technical responsibility of the State to determine the areas where the explosives were placed and that it is necessary to hold consultations with other experts in order to identify the less intrusive and more respectful manner to the environment and the worldview of the Sarayaku People to proceed with the removal of the explosives. Furthermore, they expressed that it falls upon the State to determine the location of the explosives, given that the inspection of the land and the determination of the level of danger of the explosives was completed five years ago and yet the State indicates it has uncertain information.

10. Prior to the hearing, the Commission had valued, on different occasions, the efforts made by the State and the representatives to remove the explosive material placed in the Sarayaku territory, but it expressed its concern about the declaration of the gradual progress upon considering that this should have been done as soon as practicable, given that the explosives represent a potential danger and a very important environmental liability which hinder the access to an vast area of the territory and entail a permanent risk to the life and integrity of the members of Sarayaku. At the hearing, in response to the doubts expressed by the State regarding the existence and quantity of explosive in the area, the Commission made reference to a document of the National Direction of Environmental Protection [Dirección Nacional de Protección Ambiental], furnished within the framework of the

processing of the merits of the case before it, by which it was informed that explosive charges were distributed in Block 23.

11. As to the obligation to investigate into the facts that gave rise to the adoption of these provisional measures, the State informed that it requested the members of the community to present a report regarding the complaints they filed for a follow-up and, if applicable, to launch the investigations. Furthermore, the State sustained that there are only two complaints before the Government Attorney's Office of Pastaza and that said complaints are filed given that it was impossible to identify the accused people. However, the State argued that it seeks to declare the non-applicability of statutory limitation to the crimes of torture, mistreatment and assault, according to the terms of the Constitution of Ecuador, in order to conduct the investigations that correspond in coordination with the Ombudsman. In that respect, the representatives indicated that the progress is nonexistent and the Commission emphasized what the State expressed as to the fact that "it has no updated information and does not know all the investigations that needed to be launched," but that the State has, in effect, the information related to this measure.

12. Moreover, the Court notes that no acts of violence had been recently reported against the members of the Sarayaku Indigenous People, or acts that hindered the access to the Borbonaza River. Furthermore, it valued the distribution of beneficiaries' cards to certain members of the Community, as well as the disposition shown by the State in order to work together with the beneficiaries in the planning and implementation of the provisional measures adopted and to be adopted. However, it is relevant to require the State to present specific information on the real benefits that those cards provide to the members of the Community; the materialization of the surveillance posts; the security of the access roads to the community; the current situation of the alleged inter-community conflicts in the area and the feasibility of implementing other types of protection.

13. In addition, the Tribunal values that the state authorities and the representatives of the Sarayaku People had entered into agreements for the removal of the explosive material and that the State has completed the first phase of removal of explosives that were over the surface of the territory, of which the Sarayaku community was informed and coordinated efforts were made to that end. However, even though the State has given explanations about the delay in the adoption of this procedure, it does not clearly justify the reasons why the implementation of said procedure began more than four years after the Tribunal expressly ordered it (*supra* Having Seen clause 3). Under the particular circumstances in which these provisional measures were ordered, the protection of the right to life and human treatment of the members of the Sarayaku Indigenous Community required and requires the guarantee that the explosives will be removed from the territory where the community is settled, given that this situation has hindered their freedom of circulation and the use of the natural resources existing in the area. In these circumstances, it is clear that the main concern, at this moment, is focused on the current and potential risk that the existence of high explosives buried in their territory implies for the Sarayaku community. On the one hand, the State has expressed its disposition to continue with the next phase of removal of explosive material buried in the territory, for which it pointed out two alternative procedures, namely, the controlled denotation of the pentolite or its "precipitation". On the other hand, the representatives put forward the need to look for technical alternatives, for which they referred to the relevance of searching the advice of other experts and, if the indigenous community does not have means for that, they trust that the State will support their search. That is to say, it is clear there is no agreement between

the State and the beneficiaries as to the adequate technical procedures to do it, particularly because of the possible environmental, social and cultural impact that the methods suggested so far could represent for the Sarayaku community.

14. The Court emphasizes the spirit of coordination and agreement shown, at the hearing, by the State and the representatives, to determine whether there is a technical solution different to the ones mentioned. The Tribunal highlights the need and importance of finding ways to communicate in order to determine the procedure to remove the explosives that best suits the security needs in technical and personal terms, on the part of the authorities in charge and, at the same time, in acceptable cultural terms for the worldview of the Sarayaku community. Therefore, it is appropriate to maintain the order for the State to adopt the provisional measures necessary to protect the life, physical integrity and personal security of the members of the Kichwa People of Sarayaku. To this end, it is relevant to require the State to define, in particular, the technical procedures, the specific program and schedule to effectively remove all the explosive material buried in the territory, by mutual agreement with the Sarayaku community and to continue submitting updated and specific information on the existing or future plans related to the prospecting and exploitation of oil in Blocks 23 and 24, as well as on the possibility the CGC company has to resume the operations and the amount and precise location of the explosives existing in the area where the Sarayaku community is settled.

15. The Tribunal values the effectiveness of the hearing held to learn about the current status of implementation of these provisional measures.

Therefore:

The Inter-American Court of Human Rights,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights, and in accordance with Articles 24(2) and 25 of the Court's Statutes and Articles 15(2), 27 and 31(2) of the Court's Rules of Procedure of the Court,

Decides:

1. To ratify the provisional measures ordered in its Order of June 17, 2005, particularly as to the obligation for the State to adopt the provisional measures to protect the life, physical integrity and personal security of the members of the Kichwa People of Sarayaku and, therefore, to require the State to adopt the appropriate measures to promptly and effectively remove the explosive material buried in the territory where said community is settled.

2. To repeat the urgent need for the State to establish a clear and permanent system so that the Kichwa People of Sarayaku may participate in the planning, implementation and evaluation of said provisional measures.

3. To require the State to inform to this Inter-American Court, no later than May

1, 2010, on the provisional measures it has adopted in compliance with this Order and to continue informing to this Court, every two months, on the measures adopted to that end. In its report, the State shall present updated information on the compliance with what was ordered and, in particular, on the technical procedures, the specific program and schedule to effectively remove all the explosive material buried in the territory where the Sarayaku community is settled, as well as information on existing or future plans related to the prospecting and exploitation of oil in Blocks 23 and 24, in the terms of Considering clauses twelve to fourteen.

4. To call upon the representatives of the beneficiaries of these provisional measures and the Inter-American Commission on Human Rights to submit their observations to the State reports within a term of four and six weeks, respectively, as of receipt of said reports.

5. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission and the representatives of the beneficiaries of these measures.

Diego García-Sayán
President

Leonardo A. Franco | Manuel E. Ventura Robles

Margarette May Macaulay | Rhadys Abreu Blondet

Alberto Pérez Pérez | Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary