**Inter-American Court of Human Rights**

**Case of Salvador Chiriboga v. Ecuador**

**Judgment of March 3, 2011**

**Reparations and Costs**

In the case of Salvador Chiriboga,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), made up by the following judges:

Diego García-Sayán, President[*];
Cecilia Medina Quiroga, Judge;
Sergio García Ramírez, Judge;
Manuel E. Ventura Robles, Judge;
Leonardo A. Franco, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge, and
Diego Rodríguez Pinzón, Judge *ad hoc*

also present,

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

pursuant with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 29, 30, 31, 56, 57, and 58 of the Rules of Procedure of the Court[1] (hereinafter "the Rules of Procedure"), issues the present Judgment, which is structured in the following way:

---

[*] In consideration of this case, the presidency was ceded by Judge Cecilia Medina Quiroga to Judge Diego García-Sayán, vice-president at the time, in terms of Article 4(2) of the Rules of Procedure of the Court

[1] The Rules of Procedure of the Court mentioned in the present Judgment correspond to the instrument approved by the Tribunal in its XLIX Regular Session, held from November 16 through 25, 2000, and partially reformed by the Court in its LXI Regular Session, held from November 20 through December 4, 2003.

**INDEX**

**DISSENTING OPINIONS OF JUDGES:** García-Sayán, Medina Quiroga, García Ramírez; Leonardo A. Franco, May Macaulay, and Rodríguez-Pinzón.

## I

## PROCEEDINGS OF REPARATIONS BEFORE THE COURT

1. On May 6, 2008, the Court[2] issued a Judgment on the Preliminary Objections and the Merits (hereinafter "the Judgment" or "the Judgment on the merits"), in which it decided:

> 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 the […]Judgment.
>
> **AND DECLARE[D]:**
>
> 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 in relation to Article 1(1) therein, to the detriment of María Salvador Chiriboga, in accordance with paragraphs 48 to 118 of the […] 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 proven 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 the […] Judgment.
>
> **AND DECIDE[D]:**
>
> 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

[2] The Court on that occasion was made up by the Judges: Cecilia Medina Quiroga, President; Diego García-Sayán, Vice-President; Sergio García Ramírez, Judge; Manuel E. Ventura Robles, Judge; Leonardo A. Franco, Judge; Margarette May Macaulay, Judge; Rhadys Abreu Blondet, Judge, and Diego Rodríguez - Pinzón, Judge *ad hoc.*

> repair the violations declared in this Judgment, be made by common consent between the State and the representatives, within a term of six months as of notice of this Judgment, pursuant to paragraph 134 of the […] 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 the […] 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 [the] Judgment.

2. The 13th and 18th of June, August 19th, and September 2nd, 2008, the Republic of Ecuador (hereinafter "the State" or "Ecuador"),[3] and the 6th and 13th of June, November 5th and 25th, and December 2nd, 2008, the representatives[4] informed the Court of the different actions carried out in order to reach an agreement, pursuant with that ordered in the Judgment on the Merits. Subsequently, on November 25, 2008 the State requested an "extension of the six-month term stated in paragraphs 134 and 4 of the dispositive part of the [J]udgment." In this regard, on December 9, 2008, the Secretariat of the Court (hereinafter "the Secretariat"), following the instructions of the then President, in consultation with the Full Court, granted the extension requested to the State and the victim's representatives (hereinafter "the representatives") until February 15, 2009, so they could continue with the process of reaching an agreement. Upon the conclusion of this term, through communications of February 15, and 26, 2009, the representatives and the State, respectively, agreed in stating to the Court that, within the term granted in the Judgment and the extension of the term granted to that effect, it was not possible to reach an agreement. Therefore, the representatives and the State awaited a determination from the Court.

3. Given the aforementioned, on March 10, 2009, the Secretariat, following the instructions of the then President of the Court and in consultation with the Judges of the Tribunal, informed the parties that pursuant with paragraph 134 of the Judgment and the fourth operative judgment of the Ruling, it decided to continue with the reparations stage, pursuant with Articles 63(1) of the American Convention and 57(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"). Additionally, it stated that:

> [i]n the processing of the reparations stage, the Court will take into account the previous actions within the proceedings and will examine the evidence included in the body of evidence, considered as a whole within the case's proceedings, which must be considered by the representatives, the […] State, and the Commission when presenting their corresponding briefs before this Tribunal. Therefore, the following steps will be taken:

---

[3] The State appointed Erick Roberts, Assistant Director of Human Rights of the Attorney General of the State, as Main Agent, and Rodrigo Durango Cordero as Deputy Agent.

[4] The representatives of the victim are: Alejandro Ponce Martínez and Alejandro Ponce Villacís.

a) Require that the victims' representatives present, no later than April 13, 2009, a brief in which they refer technically, precisely, and clearly to their claims of reparations, as well as, if it were the case, the evidence they consider appropriate;

b) Require that the State, within a one-month term, computed as of the receipt of the brief of the victims' representatives, present its observations in a technical, precise, and clear manner to the claims made by the representatives, as well as, if it were the case, the evidence considered appropriate; and

c) Require that the Commission forward, within a two-week term, its observations to the briefs presented by the representatives and the Honorable State.

4. On April 13, 2009, the representatives forwarded their brief of claims regarding the reparations (hereinafter "brief on reparations"), pursuant to the communication of March 10, 2009.

5. On May 20, 2009, the State indicated it had not received annex 4 of the brief on reparations titled "Expert report of the assessment prepared by the Architect Jakeline Jaramillo Barcia and its annexes." Based on the aforementioned, it requested that the one-month term granted to present the observations regarding the reparations "be suspend[ed] and only be [r]estarted" when said expert report is receive[d]. On May 22, 2009, the Secretariat, following the instructions of the then President, granted the State an additional non-renewable term until June 11, 2009, for the presentation of its observations.

6. On July 10, 2009, the Commission[5] presented its observations to the representatives' brief on reparations.

7. On August 6, 2009, the then President of the Court summoned a public hearing to learn of the claims on reparations of the representatives and the observations of the State and the Commission.

8. On September 21, 2009, the Secretariat, following instructions of the then President, requested that the representatives and Commission present evidence to facilitate adjudication of the case.

9. The public hearing was held on September 24, 2009, with the objective of hearing the claims on reparations and costs of the representatives and the observations of the State and the Inter-American Commission, during the Court's LXXXIV Regular Sessions, at the Tribunal's headquarters.[6]

---

[5] The Commission appointed the Commissioner Evelio Fernández Arévalos and the Executive Secretary Santiago A. Canton as delegates, and Ariel E. Dulitzky, Elizabeth Abi-Mershed, Mario López-Garelli, and Lilly Ching as legal advisers.

[6] The following appeared at this public hearing: a) for the Inter-American Commission: Lilly Ching Soto and Karla Quintana Osuna; b) for the representatives: Alejandro Ponce Martínez and Alejandro Ponce Villacís; and c) for the State: Erick Roberts Garcés, Rodrigo Durango Cordero, Germán Hidrovo, Diego Guerra, and María Gabriel Gáleas.

10. On September 24, 2009, the representatives forwarded evidence to facilitate adjudication of the case requested on September 21, 2009. Through communication of November 5, 2010, the Commission and the State were granted time until November 19, 2009, to present the observations considered appropriate. On November 20, 2009, the Commission stated it did not have observations to present regarding said evidence and the State did not present observations in this regard.

11. On January 13, 2010, the State forwarded a brief called "observations of the State regarding some concerns stated at the hearing on reparations and costs," in the present case, with which it enclosed several annexes. In this regard, on January 14, 2010, the Secretariat, following instructions of the President of the Court, granted a term to the representatives and the Commission so they could present the observations considered appropriate and indicated that once received the Court [would] value the admissibility of the brief and its annexes. On January 28th and February 12, 2010, the representatives and the Commission forwarded, respectively, their observations, in which they stated that the information presented was not requested by the Court nor was it appropriate with regard to the status of the proceedings, reason for which they requested that it not be accepted by the Tribunal and it be declared inadmissible.

12. On May 14, 2010, the representatives informed the Tribunal of the holding of a hearing on April 7, 2010, before the First Civil Chamber of the Provincial Court of Pichincha, with regard to the expropriation proceedings that are being carried out within the domestic jurisdiction. In this sense, on May 26, 2010, the Secretariat requested observations from the State and the Commission. On June 29, 2010, the Commission informed it had no observations to present in this regard. On July 8, 2010, the State expressed to the Court the need for an international ruling regarding the status in which the local proceedings must remain regarding the purpose of the litigation that, in a subsidiary manner, is being heard by it. Additionally, it reiterated some observations made by the Municipality of the Metropolitan District of Quito and referred to the interests.

*A) Regarding the possibility of an international expert assessment*

13. During the public hearing held on September 24, 2009, the representatives and the State mentioned they had reached certain agreements, among them, that the Court had enough evidentiary elements to set the just compensation that should be granted in compliance with the Judgment issued by the Court on May 6, 2008. However, they expressed that, if considered necessary, they accepted that the Tribunal appoint an international entity to carry out an expert assessment for that purpose. Additionally, they stated their willingness to pay in equal parts the costs that could be generated by this possible expert opinion, being the State who would initially pay the totality and that it would later deduct the corresponding fifty per cent that had to be paid by Mrs. María Salvador Chiriboga (hereinafter "María Salvador Chiriboga" or Mrs. Salvador Chiriboga"), when payment of just compensation was made. For this, they offered to provide to the Court a list of the people or international bodies that could offer the mentioned expert report. On September 25, 2009, the Secretariat, following instructions of the Full Court, referred to said public hearing, and, in consideration of that expressed by the representatives and the State, informed them that the Tribunal considered it useful and appropriate to request to the representatives and the State a list of the names of the possible people or international entities that could carry out the expert opinion.

14. On September 30, 2009, the representatives and the State forwarded, respectively, the names of the possible international institutions that they considered adequate for the execution of the possible expert opinion. On October 2, 2009, the Secretariat, following instructions of the then

President, requested that the parties present, no later than October 9, 2009, as were the case, the observations considered appropriate regarding the mentioned lists.

15. On October 6, 2009, the Commission informed that it did not have observations to present regarding the mentioned list. On October 9th the representatives filed their observations to the list of institutions proposed by the State. Finally, on October 29, 2009, the State filed its observations to the list of the possible people or international entities offered by the representatives.

16. On November 18, 2009, the Secretariat, following instructions of the Court, referred to the lists of expert witnesses presented by the representatives and the State, in which it indicated that after considering said lists it found that there could be coincidences regarding the name of an expert that works for a company proposed by the representatives, whom is, at the same time, an affiliate of an entity suggested by the State. Based on the aforementioned, it asked the representatives and the State that it present, no late than December 3, 2009, its observations regarding the possible coincidence between the entities proposed by them.

17. On November 30, 2009, the representatives ratified that stated in the public hearing held on September 24, 2009, regarding the appointment of an international entity to carry out an assessment of the property. In this sense, they stated that there was a coincidence between the entities proposed, given that the State indicated a company as the potential entity to assess the value of the just compensation, in which its members may offer individual estimates, and the representatives proposed an entity that could carry out the assessment, and one of its members is, at the same time, an executive of the entity proposed by the State. Therefore, they considered that the company proposed b the representatives and its executive and assessor are in full capacity to determine, in an expert manner, the value of a just compensation, pursuant with the Court's Judgment.

18. On December 8, 2009, the State, after the Secretariat reiterated the presentation of its observations requested on November 18, 2009, stated that the entity called upon to carry out the expert assessment must be a multi-person collegiate group, which must be unbiased and international of a strictly technical order, specialized in real estate assessments.[7] The State reiterated that for the execution of the expert opinion, a union company be appointed or any other body tied to it, without presenting individual names, and it stated that it did not agree with the appointment of a private company or a specific person. Finally, the State proposed as an act to facilitate adjudication of the case that the Court send the present case to a virtual discussion at the American Forum of Valuations (FAT) and that the collegiate body appointed and a Court official make a visit *in situ* to the Metropolitan Park of the City of Quito.

19. Based on the aforementioned, the proposal made by the State and the representatives to appoint an international expert to carry out the possible expert opinion was not successful. On the other hand, the State and the representatives, on different opportunities, reiterated that the Court had sufficient evidentiary elements to set the just compensation of the expropriated property.

## II
## JURISDICTION

[7] On June 15, 2010, the State reiterated its position regarding the assignment of a collegiate body to carry out the expert assessment in the case as ordered, and it indicated that an employee be assigned by the Court to carry out an *in situ* visit to the Metropolitan Park in the city of Quito with the mentioned collegiate body.

20. The Court is competent to hear the present case, in the terms of Article 62(3) and 63(1) of the American Convention, given that Ecuador is a State Party to the Convention since December 28, 1977, and acknowledged the Court's contentious jurisdiction on July 24, 1984.

## III
## EVIDENCE

21. Based on that established in Articles 44 and 45 of the Rules of Procedure, as well as on the jurisprudence of the Tribunal with regard to the evidence and its assessment, the Court will proceed to examine and assess the evidentiary elements forwarded by the Commission, the representatives, and the State on different procedural opportunities or as evidence requested to facilitate adjudication of the case; the testimonial and expert statements offered through an affidavit and before the Court during the public hearing held on October 19, 2007, which were already admitted in the Judgment on the Merits.[8]

22. On the other hand, it must be pointed out that, according to the Tribunal's reiterated practice, during the reparations stage, the parties must state the evidence they offer on the first opportunity they have to go on the record in that regard. Without detriment to the aforementioned, according the Court's discretional powers, contemplated in Article 45 of its Rules of Procedure, it may ask the parties for additional evidentiary elements, as evidence to facilitate adjudication of the case, without this granting them a new opportunity to expand or add to their arguments or offer new evidence regarding reparations, unless the Court allows for it.[9] In this regard, it must be stated that the evidence presented during the reparations process will be included in the case's body of evidence, which is considered a whole.[10] Therefore, the Court will proceed to examine the evidence provided by the parties in the present reparations proceedings.

### *1. Assessment of the Documentary Evidence*

---

[8] *Cf. Case of "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 51, and *Case of Cabrera García and Montiel V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 24.

[9] *Cf. Case of Castillo Páez V. Perú. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 43, para. 37; *Case of Almonacid Arellano et al. V. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 154, para. 68, and *Case of Chitay Nech et al. V. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010. Series C No. 212, para. 51.

[10] *Cf. Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para. 78; *Case of Baldeón García V. Perú. Merits, Reparations and Costs.* Judgment of April 6, 2006. Series C No. 147, para. 71, and *Case of Ximenes Lopes V. Brazil. Merits, Reparations and Costs.* Judgment of July 4, 2006. Series C No. 149, para. 58.

23. In this case, as in others,[11] the Tribunal admits the evidentiary value of those documents presented by the parties on the corresponding procedural opportunity in the reparations stage that were not contested or objected, or whose authenticity was not questioned.

24. The Tribunal includes in the body of evidence, pursuant with Article 45 of the Rules of Procedure, the documents forwarded as evidence to facilitate adjudication of the case by the representatives.[12]

25. The representatives presented, along with the brief on reparations, an expert report prepared by Jakeline Jaramillo Barcia, authenticated before a public notary (*supra* para. 4). At the public hearing and in a brief presented during the public hearing, the State presented observations regarding the content of the document and expressed its disagreement with some of its statements and conclusions. Likewise, the representatives forwarded an expert report prepared by Rodrigo Borja Crison on the "Production Estimate," which was not objected by any of the parties. In consideration of the aforementioned, the Court includes said expert reports into the body of evidence as documentary evidence, and it will assess them along with the evidence and according to the rules of sound judgment.

26. Regarding the documents provided by the State at the public hearing of September 24, 2009,[13] concerning its observations on the representatives' reparations, as well as its observations regarding the expert report prepared by Mrs. Jakeline Jaramillo Barcia, wherein the State orally restated some of the arguments included in the observations, the Court observes that the mentioned documents had already been presented at a prior time and their presentation was considered time-barred.[14] Despite the aforementioned, the documents were transmitted to the parties and were not objected by any of them.

---

11 *Cf. Case of Velásquez Rodríguez V. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Gomez Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 54, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 27.

12 Namely: a) expert opinion rendered by Jesús Manuel Silva Vásconez before the Ninth Court on May 20, 2008 and its annexes (case file of Reparations and Costs, tome IV, folios 651 to 655); b) table of legal interests since 1991 until 2009 issued by the competent State entity (case file of Reparations and Costs, tome IV, folios 656 to 683), and c) chart of total breakdown of the taxes argued as paid by the representatives (case file of Reparations and Costs, tome IV, folio 650).

13 Namely: a) Order No. 09430 of September 24, 2009; b) Order No. 09436 of September 24, 2009, and c) document titled "Observations to the document: technical evaluations report of the property of Mrs. María Salvador Chiriboga," drafted by the architect Jakeline Jaramillo B, in April 2009 (case file of reparations, tome III, folio 568).

14 On July 22nd and August 4, 2009, the State submitted its observations regarding the "expert witness report in reference to the valuation prepared by the architect Jakeline Jaramillo Barcia" and its observations regarding the arguments presented by the representatives of the victim on reparations. On August 6, 2009, the Secretariat informed the State that since the time limit conceded for the submission of its observations regarding reparations and evidence had expired on June 11, 2009, the mentioned writs presented on July 22nd and August 4, 2009 were untimely and could not be admitted. (*Cf.* Communication of the Secretariat of the Court on August 6, 2009, case file of Reparations and Costs, tome III, folios 490 and 496) Moreover, it informed the State that at the public hearing regarding Reparations and Costs to be held for this case, the State would have the opportunity to present its observations (*Cf.* Order of the President of the Court of August 6, 2009, case file of Reparations and Costs, tome III, folios 492 to 495).

27. On the other hand, the Court during the public hearing asked that the State and the representatives to forward, if considered appropriate, of regulations related to municipal, general, or regulatory ordinances related to the situation of the expropriated property. On January 13, 2010, three months after the hearing was held, the State presented a brief titled "observations of the State to some concerns presented at the hearing on reparations and costs" in the present case, which included several arguments (*supra* para.11). On January 28th and February 12, 2010 in their forwarded observations, the representatives and the Commission, respectively, stated that said brief was not appropriate with regard to the state of the reparations proceedings, since the procedural stage to present arguments had been closed, and they asked that the Court declare the brief inadmissible. In this sense, the representatives stated, *inter alia*, that the information presented by the State does not respond to an order of the Court in which additional information had been requested, and that in said communication, it seeks to respond to the victim's claims in regard to reparations, included in its brief of April 13, 2009. On its part, the Commission stated the inadmissibility of the brief because the State filed it outside of all terms granted for this purpose; in the brief it goes into matters of the merits of the case, ignoring the Judgment issued by the Court on May 6, 2008, and in some aspects it tends to present arguments on reparations and on the appropriateness of the payment of interests on the amount due with regard to the expropriation. Said brief was transmitted to the parties, who have had the opportunity to exercise their right to defense and in this sense the representatives and the Commission filed the previously mentioned observations. Additionally, the Court points out that said brief contains information on matters regarding the legislation that regulates the situation of the expropriated property, as well as the collection of the taxes and fines on plots without constructions from Mrs. Salvador Chiriboga, which are of relevance for the resolution of the present case.

28. In consideration of the aforementioned, and of the *sui generis* proceeding of the reparations stage in the present case, the Court decides to admit the documents mentioned in the two previous paragraphs since it considers them appropriate and useful for the resolution of the present case, pursuant with Article 45 of the Rules of Procedure. In consideration of the representatives and the Commissions observations and the totality of the body of evidence the Court will evaluate the documentation, according to the rules of sound judgment.

29. In regard to the twenty-one annexes enclosed with the State's brief of January 13, 2010, and to the annexes presented with the representatives' observations on April 7, 2010, this Tribunal points out that several of the documents had already been presented in a timely manner[15] by the

[15] Namely: 1) Constitution of the Republic of Ecuador of 1984, mentioned articles (case file of annexes to the brief of motions and pleadings, annexes 12 to 16, folios 2143 to 2444); 2) Organic Law of the Municipal Regimen No. 331 of October 15, 1971, mentioned articles (case file of annexes to the brief of motions and pleadings, annex 16, folios 2290 to 2677); 3) Code of Civil Procedure of 1987, mentioned articles (case file of evidence to better resolve presented by the State, folios 5125 to 5633); 4) Ordinance No. 2818, limits of the Metropolitan Park Bella Vista de Quito (case file of evidence to better resolve presented by the State -II envio-, folio 7530); 5) Ordinance No. 0181, Expropriation and establishment of staffing in the Municipality of the Metropolitan District of Quito (case file of annexes to the brief of pleadings and arguments, annex 23, folio 3021); 6) Resolution of declaration of public interest of May 13, 1991 (case file of annexes to the brief of motions and pleadings, annex 4 to 5, folio 1617); 7) Modification order of September 25, 1995 (case file of annexes to the application, folios 60 to 62); 8) petition and classification of the petition by the Ninth Court (annexes to the application, folios 63, 72, 221 to 223); 9) first contested expert assessment in the judicial process of Arq. Vicente Domínguez (annexes to the brief of motions and pleadings, annex 6 to 8, folios 2032 to 2043; 10) second contested expert assessment in the judicial process by Ing. Manuel Silva (case file of Reparations and Costs, tome IV, folios 651 to 655); 11) Ordinance No. 2776 of 1990 (case file of evidence to better resolve presented by the State, folio 7547); 12) The Municipal Code for the Metropolitan District of Quito published in the Official Registrar on December 31, 1997 (extracts of the municipal code, case file of annexes to the application, annex 16, folio 151); 13) Judgment of the Ninth Civil Court of Pichincha on April 3, 2009 (case file of Reparations and Costs, tome II, folios

parties, and they are admitted into the body of evidence of the present case. However, regarding the rest of the documents[16] that had not been previously presented, this Court decides to admit it since it considers it useful for the resolution of the present case, pursuant with Article 45 of the Rules of Procedure.

30. Regarding the information filed by the representatives on May 14, 2010, regarding the holding, within the domestic jurisdiction, of a hearing on April 7, 2010, before the First Civil Chamber of the Provincial Court of Pichincha, in the process of expropriation and its annexes, the Court observes that said diligence occurred after the presentation of the main briefs in this proceeding. This Tribunal considers that the mentioned information, as well as the evidence filed, complies with the formal requirements of admissibility and admits them as supervening evidence, pursuant with Article 44(3) of the Rules of Procedure.

31. It must be reiterated that for the examination of the representatives' claims and the observations of the State and the Commission in the present stage of reparations, this Tribunal will analyze the evidence presented and admitted during the process that have been included into a single body of evidence. The Court will refer indistinctly to the evidence presented, among them, to the different expert reports presented throughout the course of the proceedings, as well as those offered in the domestic jurisdiction by Vicente Domínguez Zambrano and Manuel Silva Vasconez (*cf*. para. 21 of the Judgment of May 6, 2008); those offered in the merits part of the present case by Edmundo Gutiérrez del Castillo, Julio Raúl Moscoso, Gonzalo Estupiñán Narváez, and Edgar Neira Orellana (*cf*. paras. 26 and 32 of the Judgment of May 6, 2008), as well as those provided in the present stage of reparations offered by Jakeline Jaramillo Barcia and Rodrigo Borja Crizon (*supra* para. 25). Likewise, it will take into account the judgment issued within the domestic jurisdiction on April 3, 2009, by the Ninth Civil Court of Pichincha, which was appealed by the State and the representatives due to their non-conformity with the compensatory amount set in it, for which it will take into account the parties' observations with regard to it.

## IV
## REPARATIONS
## (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

---

260 to 263); 14) Organic Law of the Municipal Regimen No. 337 of October 15, 1971, mentioned articles (case file of annexes to the brief of motions and pleadings, annex 16, folios 2290 to 2677); 15) Law of Regimen for the Metropolitan District of Quito published in the Official Registrar on December 27, 1993 (case file of evidence to better resolve, folios 5932 to 5937), and 13) Resolution C704 (documents presented by the State in the public hearing on October 19, 2007, folios 4336 a 4338).

[16] Namely: 1) Civil Code of Ecuador, mentioned articles (case file of Reparations and Costs, tome V, folios 1094 to 1097); 2) Metropolitan Guanguiltagua Park Plan (case file of Reparations and Costs, tome V, folio 1208; 3) Explanatory charts Metropolitan Guanguiltagua Park (case file of Reparations and Costs, tome V, folios 1209 to 1215; 4) Metropolitan del Sur Park Plans (case file of Reparations and Costs, tome V, folio 1216); 5) Explanatory chart Metropolitan Park del Sur (case file of Reparations and Costs, tome V, folio 1217); 6) Metropolitan Chilibulo Park Plan (case file of Reparations and Costs, tome V, folio 1218); 7) Explanatory chart of Metropolitan Chilibulo Park (case file of Reparations and Costs, tome V, folio 1219); 8) Order SG 554, refund of taxes for the expropriated properties and Order DMF-T-3230 of October 12, 2009, issued by the Metropolitan Treasurer and addressed to the Metropolitan AG (case file of Reparations and Costs, tome V, folios 1223 and 1073), and 9) General Regulations of the Application of the Forestry Law and Conservation of Natural Areas and Wildlife published in the Official Gazette of February 22, 1983 (case file of Reparations and Costs, tome VI, folios 1258 to 1284).

32. Based on that stated in Article 63(1) of the Convention, the Court has indicated that all violations of an international obligation that has produced a damage entails the duty to repair it adequately[17] and that said stipulation "captures a customary rule that constitutes one of the fundamental principles of contemporary International Law regarding the responsibility of a State."[18]

33. In paragraph 134 of the Judgment issued by the Court on May 6, 2008, the Tribunal considered appropriate that the determination of the amount and the payment of a just compensation for the expropriation of the property, as well as any other measure tending to repair the violations declared in detriment o Mrs. María Salvador Chiriboga in the Judgment, be done by mutual agreement between the State and the representatives, within a six-month term computed as of the notification of said Judgment. If an agreement could not be reached, the Court would determine the corresponding reparations, as well as the costs and expenses. As indicated, the parties were not able to reach an agreement in the term granted (*supra* para. 2).

34. Due to the aforementioned, pursuant to the standard set out and reiterated in the Court's jurisprudence regarding the nature and scope of the obligation to repair,[19] as well as with the considerations stated regarding the merits and violations to the Convention declared in Chapter VI of the Judgment on Merits, this Tribunal will proceed to analyze the claims presented by the parties regarding the reparations, with the purpose of ordering the measures that tend to repair the damages derived from the violations declared.

35. Specifically, the Court considers that the case *sub judice* has specific characteristics since it deals with infringements derived from the lack of payment of a just compensation, pursuant with that established in Article 21(2) of the Convention. The Article itself states that in order to limit the right to private property a just compensation must be paid as part of the requirement of the norm in order to restrict the right. In this sense, the Court will analyze the parameters to set the value of the just compensation in the international jurisdiction, and later, it will determine the pecuniary and non-pecuniary damages, and will order the corresponding compensations, as well as other measures for its comprehensive reparation.

### *A) Injured party*

36. The Court will consider Mrs. María Salvador Chiriboga as the injured party, in her condition as victim of the violations declared to her detriment in Chapter VI of the Judgment of the Court on the Merits issued on May 6, 2008.

### *B) Just compensation demanded by Article 21 of the American Convention*

---

[17] *Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 245, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 208.

[18] *Cf. Case of Castillo Páez V. Perú. supra* note 9, para. 50; *Case of Gomes Lund et al. ("Guerrilha de Araguaia") V. Brazil, supra* note 8, para. 245, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 255.

[19] Cf. *Case of Velásquez Rodríguez, supra* note 17, paras. 25 to 27; *Case of Vélez Loor V. Panamá. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, de 2010. Series C No. 218, para. 257, and *Case of Cabrera García and Montiel V. México, supra* note 8, para. 210.

37. The representatives argued that a just compensation will be the one that allows the victim to maintain the integrity of his or her patrimony, that is, that does not result in a detriment to the patrimony; thus the value of the compensation must be identical to the value of the expropriated property that no longer is within the patrimony of the owner of the property. They added that a way to measure the value of the land is to take into consideration the market value of the property or the value necessary to acquire other properties of characteristics similar to those of the expropriated property. They stated their disagreement with the State regarding the fact that an expropriation encumbers and reduces the value of the property, reason for which they hold the thesis that said act can in no case affect the just compensation.[20] The representatives, in the merits and reparations stage, stated that the value of the property may in no case be less than US$130.60 (one hundred and thirty dollars with sixty cents of the United States of America) per square meter, including the value of the eucalyptus forest, and they stated that the value of the just compensation for the property, including the value of the eucalyptus forest, ascends to a total of US$84,326,787.50[21] (eighty four million three hundred and twenty-six thousand seven hundred and eight seven dollars of the United States of America with fifty cents) plus interests. Additionally, they stated at the public hearing of October 19, 2007, that an adequate mechanism to determine the scope of the reparation could be the delivery of alternative properties of the same size and quality.[22]

38. Subsequently, the representatives, in their brief on reparations, stated that, according to the report of the expert Jakeline Jaramillo Barcia, the market value of the property prior to the public declaration was of US$42,180,504.47 (forty two million one hundred and eighty thousand five hundred and four dollars of the United States of America with forty seven cents), considering only the valuation of the property's soil. They added that the value of the forest plantation should be added to the established amount, and that it had a value of US$1,174,735.00 (one million one hundred and seventy four thousand seven hundred and thirty five dollars of the United States of America). Therefore, the representatives requested a total value of US$43,355,239.47 (forty three million three hundred and fifty five thousand two hundred and thirty nine dollars of the United States with forty seven cents) in just compensation. They added in the brief of reparation claims that the (compound) interests accrued should be added to that amount.[23]

39. The State indicated that it would acknowledge a "compensation […] set within the framework of the national or Inter-American litigation based on an unbiased expert assessment in accordance with the actual value of the property without taking into account the added value [that] adjusts to the country's reality[, …] to the annual municipal budget, and, especially under the criterion stated by the Court [… that] a possible compensation must not imply an enrichment or impoverishment of the victim." It stated that the values demanded by the victim as compensation

---

20 Pursuant to the Centre for Settlement of Investment Disputes in the Case of Santa Elena versus Costa Rica, in conformity with that expressed by the representatives in the public hearing held on October 19, 2007, in the city of Bogota, Colombia.

21 The amount is a multiplication of the total area by the price of $m^2$ (645.687,5 x 130,6).

22 The representatives affirmed that the aforementioned could be possible based on that established in indigenous cases against Paraguay (public hearing held on October 19, 2007 in the city of Bogotá, Colombia).

23 The representatives requested the sum of U.S. $ 56,730,723.69 (fifty-six million, seven hundred and thirty thousand, seven hundred and twenty-three dollars of the United States of American and sixty-nine cents) and compound interest accrued during the time that the State has not paid the just compensation, namely from May 13, 1991 until May 13, 2009. They said that if payment is made after the due date, interest should be calculated under the same formula until the date in which payment is actually carried out.

are excessive, because they correspond to the value per square meter of properties that have increased their value in the urban area throughout the years and may be freely submitted to the laws of offer and demand. It added that the representatives have ignored the fact that the properties in question do not have a future housing development, and therefore, they cannot be assessed as properties in the free market. It argued that neither in the judgment issued in the domestic jurisdiction or in the expert report by Jakeline Jaramillo Barcia, presented by the representatives, was it taken into consideration that the property in question is located within an ecological protected area, pursuant with that stated by this Court in the Judgment on the Merits.[24] The property has minimum occupation coefficients on one per cent of its surface and also has several limitations and prohibitions, which directly influence the price or compensation.

40. In that sense, the State estimated that, based on the criteria presented by the expert Gonzalo Estupiñán Narváez in order to carry out the valuation of the lot, the square meter would be equal to the amount of US$9.36 per square meter (nine dollars thirty six cents of the United States of America), which would mean a total of US$6,043,635.25[25] (six million forty three thousand six hundred and thirty five dollars with twenty-five cents of the United States of America).

41. The Commission stated that it must be kept in consideration that the victim has been deprived of the possession of her property, and she has fought for years to obtain justice in her case. In that sense, through a brief of July 10, 2009, and at the public hearing on reparations of September 24, 2009, it stated that the Court must use paragraphs 96, 97, and 98 of its Judgment on the Merits as grounds for the just compensation for the expropriation of the property in question, in the sense that it must be adequate, prompt, and effective. It added that for the just compensation to be adequate, the market value of the property prior to the public declaration must be used as reference pointing out that said compensation "must be paid in a short term [since] for more than a decade, the victim has not been able to effectively exercise the right to property and is in a state of juridical uncertainty."

42. Below, the Court will proceed to analyze the evidence provided through the diligences, expert assessments, and regulations in the domestic and international proceedings. Later, for the determination of the just compensation, it will establish the applicable standard and it will set the amount and forms of payment.

**1. Procedures, expert assessments, and regulations in the domestic and international proceedings**

43. In light of the body of evidence presented both in the merits and reparations stage (first stage) as well as in the stage on reparations (second stage), the Court considers it convenient to refer to the following expert assessments, procedures, regulations, and international practices.

*a) Relevant procedures in expropriation trial No. 1300-96.*

---

[24] *Cf. Case of Salvador Chiriboga V. Ecuador. Preliminary Objection and Merits*. Judgment of May 6, 2008. Series C No. 179, para. 71

[25] *Cf.* Final arguments of the State November 28, 2007 (case file of Merits, tome V, folio 814); Brief of the State of September 24, 2009 (presented in the public hearing of September 24, 2009, and case file of reparations, tome III, folio 581).

44. On February 15, 2007, the expert Vicente Domínguez Zambrano offered a report in the domestic jurisdiction before the Ninth Civil Court,[26] through which he determined that the property in question "could not be urbanized due to the hindrance and municipal resolution"[27] and that the current value on the date of the expert assessment, would be of US$78.09 per $m^2$[28], thus the totality of the property, which corresponds to 645,687.5 $m^2$, would have a value of US$50,421,736.00. In the expansion of the report dated May 31, 2007[29] on the value of the eucalyptus forest, he concluded that it corresponds to US$5,145,319.00.[30] Therefore, the total valuation of the property including said forest would be of US$55,567,055.00.

45. On June 19, 2007, the Municipality of the Metropolitan District of Quito (hereinafter, the Municipality) contested the expert report of the valuation arguing an essential error. In this sense, on January 11, 2008, the Ninth Civil Court concluded that the Municipality "had in no legal way proven its allegation," reason why it threw it out and mentioned that both the prosecutor and the

---

[26] *Cf.* Expansion of expert assessment to the expert opinion rendered by Vicente Domínguez Zambrano on February 15, 2007 and May 31, 2007, respectively (case file of annexes presented by the State, folios 3960 to 4000).

[27] The expert noted that it considered the property in question as part of the largest ecological zone on the property being valuated, and that this property does is not to be urbanized, implying a lower valuation compared to buildings in the same area (keeping U.S. prices $ 340 per m2), which is the high trade surplus, due to the municipal order and the feasibility conditions, soil consolidation and the physical characteristics and topography, among others. He added that with the limitation and municipal resolution, consistent with established zoning for the park, the land shall be used solely to improve the environment of the city and the quality of life of citizens. *Cf.* Expansion of the expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folios 3961 to 3965).

[28] To get the actual value, the expert stated that he took into account criteria such as the parameters considered by the Municipality of Quito, such as the cadastral referential and official values, set by the municipality and the segmentation provided by it of the city of Quito in various sectors and economic categories considered to be of environmental protection, providing a parameter for calculating the value of adjacent land without infrastructure, as well as those provided by the unions and professional associations that are directly related to construction and land value, references of companies dedicated to real estate and the marketing of real estate, generated by supply and demand in relation to the availability of legal, technical and economic, and other factors involved because of the extension of the property, the municipal regulations and other constraints, and deducting the value of infrastructure. *cf.* Expert assessment of Vicente Domínguez Zambrano, supra note 26, folio 3962). Said he considers as the basis in determining the value of the property that stated by the Municipality of Quito in the process of expropriation, and that it specifically relates to the technical data (location, area of land and boundaries) as stated in the expropriation petition. See Expanision of the expert assessment of Vicente Domínguez Zambrano, supra note 26, folio 3962).

[29] *Cf.* Expanision of the expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folios 3960 to 4000.

[30] This estimation was performed using six samples of plots of 5,000 m2. Of the sample analyzed, it determined a total of 2,917 trees with a total of 3,853 cubic meters of timber. Then, this number was extrapolated to the total area, resulting in 54,672 trees with a total of 72,215 m3 of timber, and added a value of $ 106 per m2. At the end, it deducted the cost of production process and loss of U.S. $ 35 per m3 *Cf.* Expanision of the expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folios 3966 to 3969).

defendant[31] had made observations to the expert report, which proves that it lacks enough clarity and therefore appointed Manuel Si lva Vásconez to offer a new expert assessment.[32]

46. On May 20, 2008, Manuel Silva Vásconez issued an expert report,[33] through which he established that the current value per square meter up to the date of the expert assessment was of US$63.83[34] per $m^2$, which multiplied by the size of the property would result in a total of US$41,214,233.12.[35] Likewise, he determined the value of the eucalyptus forest, corresponding to US$699,146.[36] The Court also concluded that for the soil the expert made an assessment in the year 1996, year in which it started the expropriation process within the domestic jurisdiction, for the amount of US$28.19 per $m^2$,[37] which represents a total of US$18,201,930.62.

47. On April 3, 2009, the Ninth Civil Judge issued a lower court judgment and based on the expert assessment of Manuel Silva Vásconez ordered the payment of the compensation in favor of the victim for the total amount of US$41,214,2333.12, and granted the Municipality the peremptory term of eight days to deposit the money in this judgeship. The parties contested said ruling. Mrs. María Salvador Chiriboga argued that the judgment did not consider the report presented by the expert Vicente Domínguez Zambrano, and that when deciding the value of the property as a just

---

31 By way of the brief of April 12, 2007, the representatives requested that the Judge of the cause of action ask the expert Vicente Domínguez Zambrano to expand his expert report, taking into account the value of the eucalyptus forest. Subsequent to said expansion, they made the observation that the expert had based himself of documents and technical studies carried out by the Municipality of Quito, and that, as such, the Ninth Civil Judge set the date for the summons before the Court to explain the parameters. (case file of annexes presented by the State, folios 3935 and 3950, and case file of evidence to better resolve presented by the State, tome I, folios 4415 to 4417).

32 *Cf.* Communication of the Ninth Court of January 11, 2008 (case file of evidence to better resolve presented by the State, tome I, folio 4438).

33 *Cf.* Expert assessment of Manuel Silva Vásconez, *supra* note 12, folios 651 to 655.

34 For the determination of the actual appraisal, as of the date of the expert report (May 20, 2008), the expert considered the commercial prices of the area, to which the expert obtained information "of classified advertisements" of the newspaper "El Comercio" (end of 2007 and beginning of 2008). Starting off from these commercial prices of urbanized plots, the expert witness "punishes" the price to assimilate it with the lot in question considering that the average cost of each square meter for infrastructure work is US$60 per square meter, a cost of the size of the lot of 60% and a factor of 70% for topography. The result of this methodology gives the price of US$63,83 by $m^2$ between 2007 and 2008 *Cf.* Expert assessment of Manuel Silva Vásconez, *supra* note 12, folio 652).

35 Moreover, the expert determined the price of the property in conjunction with the construction on it (US$7.440) and the eucalyptus forest (US$669.146), which corresponds to a total of US$41.890.819,12. *Cf.* Expert assessment of Manuel Silva Vásconez, *supra* note 12, folio 654.

36 For the appraisal of the forest, the expert estimated the planted area to be 56.22 hectares, according to a photograph of the Military Geography Institute. The expert separated the property in three areas and took a density of the harvest in each area of 1,111 plants by hectares. The expert established morbidity rates and percentages of the forest in each area, evaluating each tree at $ 10, $ 20 or $ 40 pursuant to the estimated development of the stem. The expert estimated a total of 62,460 trees, which were assigned a value of U.S. $ 669,146. *Cf.* Expert assessment of Manuel Silva Vásconez, *supra* note 12, folios 653 and 654).

37 To which, he took the information of "classified ads" of the newspaper "El Comercio" in 1996 and conducted the assessment using the same methodology (with the difference that he applied $ 50 per m2 for infrastructure costs). It should be noted that the amounts in Sucres have been dollarized according to the current value of the dollar to date. For which the expert took data from the Central Bank Statistical Bulletin published on December 31, 1998. Expert cf. Vásconez assessment of Manuel Silva, supra note 12, folio 655.

compensation, it did not consider the provision included in Article 244 of the Law of the Municipal Regimen, according to which it should acknowledge an additional five per cent as the expropriation price. On its part, the Municipality considered that "the judgment […] does not fall strictly on the legislation or the case's factual grounds [since] the Judge in its ruling did not consider that the proceedings started in 1993, after the declaration of public interest for the creation of the Metropolitan Park," and that the property is within an ecological protection area, declared as such in 1981 and named "Quito Plan" and the ordinance of 1990 that determined the boundaries of the Metropolitan Park.

48. Currently, the case is in consultation and appeals before the Provincial Court of Pichincha.

*b) Expert assessments offered during the processing before the Court*

49. On October 1, 2007, Edmundo Gutiérrez del Castillo,[38] proposed by the Commission and the representatives, offered his expert opinion before a public notary, and stated that the properties located In the occidental part of the Metropolitan Park, wherein the Salvador Chiriboga brothers are found, have the characteristics to estimate that their value is US$90 per $m^2$[39] without being urbanized, which implies a total value of the property corresponding to US$58,111,875.00.[40]

50. On October 1, 2007 Julio Raúl Moscoso Álvarez,[41] proposed by the Commission and the representatives, offered his expert opinion before a notary public, which regards Ecuadorian law and not the value of the lot;[42] however, he indicated that the value of the property is set based on the value of the expropriated property when the case file on the occupation is opened, without taking into consideration the added value that results as a direct consequence of the project that led to the expropriation and its future expansions.[43]

---

38 *Cf.* Expert assessment of Edmundo Gutiérrez del Castillo rendered on October 1, 2007 (case file of Preliminary Objection and Merits, tome IV, folios 502 to 511), and *Case of Salvador Chiriboga V. Ecuador, supra* note 24, para. 19. e). Mr. Gutiérrez del Castillo is a technical expert of the Public Prosecutor's Office and in the Mediation Centers of the Chamber of Commerce and of Construction.

39 To make an appraisal of the land in question, the expert took into account criteria such as: a) location (land is more valuable if it is far removed from possible natural disasters); b) the environment of the area (there is a higher cost of land when it is close to shopping centers, etc.) c) basic infrastructure services; d) community services (there is a higher value of land when it is close to green spaces, parks etc.) e) surface and shape of the lot; f ) similar plots for sale in the sector; g) demand in the area, h) marketability (also set by supply and demand), and i) zoning (the land where building construction permits height greater than 9 m are desirable). *Cf.* Expert assessment of Edmundo Gutiérrez del Castillo, *supra* note 38, folios 502 to 505.

40 The expert assessment does not state the specific date of the valuation. *Cf.* Expert assessment of Edmundo Gutiérrez del Castillo, *supra* note 38.

41 *Cf. Case of Salvador Chiriboga V. Ecuador, supra* note 24, para. 19.f), *and* Expert assessment of Julio Raúl Moscoso Álvarez rendered on October 1, on October 1, 2007 (case file of Merits, tome IV, folios 512 to 548).

42 Mr. Moscoso Alvarez gave his expert opinion on the nature of the declaration of public interest, the process of appeal to the Ministry of the Interior in the Case of expropriation, the formation and revocation of administrative acts, among others. In addition, the expert explained that a tax is in effect for landowners with no edifications within the city limits, who have not raised any constructions on the lands. He also stated that it is not unusual that properties that have been declared for public interest continue to pay property taxes, because given the very lengthy expropriation proceedings, the owners of the properties continue to appear as the land owners in the municipal cadastre, even when they are not occupying the land and even when it is occupied by the State agency that is expropriating it. *Cf.* Expert assessment of Julio Raúl Moscoso Álvarez, *supra* note 41, folio 548.

43 *Cf.* Expert assessment of Julio Raúl Moscoso Álvarez, *supra* note 41, folio 545.

51. The expert opinion offered by the expert Jakeline Jaramillo Barcia,[44] presented by the representatives in their brief on reparations on April 13, 2009, before this Court, through which the expert establishes the "urban purpose"[45] of the property. To carry out the valuation of the property, the expert used a comparative market approach, which results in an estimate of the property's value, comparing it with offer prices of similar near by properties,[46] which constituted urbanized properties in this case. According to said expert report, the representatives considered that the value of the property's soil in the year 1991, prior to the declaration of public interest,[47] was of US$65.33 per $m^2$,[48] corresponding to US$42,180,504.47 as the value of the property, to which the value of the eucalyptus forest plantation must be added, which according to the expert report of Rodrigo Borja

---

[44] *Cf.* Expert assessment of Jakeline Jaramillo Barcia rendered in April 2009 (case file of Reparations and Costs, tome II, folios 281 to 297).

[45] The expert verified the "urban vocation" of the property in question, due to the specific conditions of its location inside the city of Quito, the existence of infrastructure and services in the area adjacent to the physical conditions of gentle terrain and landscape that could be subject to other urban uses, and also due to the own decision of the municipal authority that assigned the use of equipment since 1980, essential for the construction of the city and the improvement of the quality of life of its inhabitants. In that regard it mentioned that since 1980 the Municipality of Quito, through which "Plan Quito" defined that the plot in question be used as an urban public park, and that that use of the grounds was ratified by the Urban Rules of Procedure of 1989 in its proposal of the Use of Land and of the Environmental and Recreational System. The expert witness added that the ordinance No. 2818 of October 1990 established the boundaries of the Metropolitan Park and that therefore, the Municipality had assigned an important amount of equipment for the City of Quito to these plots. *Cf.* Expert assessment of Jakeline Jaramillo Barcia, *supra* note 44, folios 288 a 289).

[46] *Cf.* Expert assessment of Jakeline Jaramillo Barcia, *supra* note 44, folio 294.

[47] The expert noted that the expropriation of municipal governments have historically governed based on the Municipal System Act, and the Code of Civil Procedure as a compliment to it. Therefore, for the expropriation of property declared for public interest, the price of the property would be determined on the basis of the value it has as of the date of commencement of the brief of occupation, regardless of goodwill arising as a direct result of the project motivating the expropriation. *Cf.* Expert assessment of Jakeline Jaramillo Barcia, *supra* note 44, folio 293.

[48] To evaluate the commercial value of the land, the expert identified five key variables selected to "standardize" the information of the offers on the land, which have been gathered from the newspaper "El Comercio " in the periods of October 1990 and May 1991. From an urban value, it was adjusted considering the key variables, which gave the final value to the property: a) the location (the expert gave a value of factor 1), b) socioeconomic status of the sector where the land is located (the expert gave a value of factor 1), c) the purpose for use (the expert gave a value of factor 1), d) the size of the land (the land in question would be appropriate for housing developments or for recreational purposes which require large tracts of land, the expert gave the value of the factor 0.9), and d) the existence of infrastructure (the expert considers the cost of introducing works of basic services to the property, the expert gave the value of the factor 0.75). In this way, the expert obtained a "coefficient of standardization" of the 0.675 factor, since the factors that are equal to 1 have similar attributes of the land used by the expert to obtain a comparative price. From a commercial reference value of print ads which corresponds to U.S. $ 96.78, the expert arrived at a price of U.S. $ 65.33 for the land in question using the following multiplication: market value U.S. $ / m2 (96.78) x standardizing coefficient (0.675) = final value U.S. $ / m2 (65.33) (case file of Reparations, tome II, folios 295 to 296). According to the representatives, Sucres values of m2 of land in 1990 and 1991 have been converted to dollars by the expert based on the price of the Central Bank, using the averages for those years. *Cf.* Expert assessment of Jakeline Jaramillo Barcia, *supra* note 44, folios 300 and 301.

Crizón,[49] also presented by the representatives, has a value of US$35m$^3$ corresponding to US$1,174,735.00 for a volume of wood of 33,563.86 m$^3$.[50]

52. The expert opinion of Gonzalo Estupiñan Narváez,[51] presented by the State, given both at the public hearing of October 19, 2007, as well as in the State's briefs,[52] which pointed out that the expropriated property "was never considered by Municipal Planning as an urban property or a property with the possibility of urbanization"[53] and that the only possibility was an agricultural use. In this sense, the State referred, in its final arguments of November 28, 2007, the assessment process of said expert when valuating "the expropriation properties located in spaces declared of ecological protection." Thus, the State argued that, since buildings cannot be erected on the property in question, the property of Mrs. Salvador Chiriboga should be compared with rural plots and, therefore, assessment standards for rural properties should be applied, considering their agricultural profitability, location, and quality of the soil. However, it must be taken into consideration that municipal ordinances establish an almost complete limitation on the profitable crops on land adjacent to the urban area; therefore the planting of trees is only permitted for protection and a passive recreation use. Based on these determining factors of the expert's assessment process, the State mentioned that, given the property's location in the city's outskirts, it is not adequate to establish an exclusively rural value; therefore, an estimation method that also

---

[49] *Cf.* Expert assessment of Rodrigo Borja Crizón rendered in 2007 regarding the value of the forest (case file of reparations, tome II, folios 349 to 355).

[50] According to the report "Estimation of Production," the first objective was to determine the volume in cubic meters of eucalyptus forest. The expert estimated the area planted in 577,000 m2 once the areas of power lines and water pipes found on the property are deducted. To determine the number of trees and their development, trees were randomly sampled at six sites (plots of 5000 m2). On this basis, the expert estimated the volume of wood for the property, using the general cubic formula. In this manner, a result was gained of 33,569.86 m3. To estimate after revenue obtained from exploitation of the stand of eucalyptus, the expert presented two options: first, the sale of wood for pulping at a price of U.S. $ 35 m3, giving a total income U.S. $ 1,174,735 (price U.S. $ / m3 (35) x m3 of timber on the property (33,563.86), and on the other hand, the sale of timber processed at a price of $150, giving a total income U.S. $ 2,166,585. The expert quoted prices from SICA (case file of Reparations and Costs, tome II, folios 350 to 353). In this regard, representatives, made an application to the Court, taking into account the first alternative, which resulted in less income than the second alternative. *Cf.* Expert assessment of Rodrigo Borja Crizón, *supra* note 49, folio 245.

[51] At the same time, the expert was, as of then, President of the "Ecuadorian Association of Experts," as stated in the public hearing held on October 19, 2007 in the city of Bogotá, Colombia.

[52] *Cf.* Expert statement rendered in the public hearing on October 19, 2007; final arguments of the State (case file of Merits, tome V, folios 809 to 814); Brief of the State related to the reparations claims (case file of Reparations and Costs, tome III, folios 574 to 581), and observations of the technical report of Jakeline Jaramilllo Barcia (case file of Reparations and Costs, tome III, folios 585 to 591).

[53] The comments of Mr. Estupiñán Narváez regarding the expert report of Jake Jaramillo Barcia include other criticisms: a) he argued that the expert does not know the method based on homogenization APPRAISAL because, on the one hand, he did not compare the different characteristics of each property that is of comparable land for the purpose of assessment, and on the other hand, because "he made use of the arbitrary scale of values that is like a game of chance having reached the 0,675 coefficient," b) he disagreed with the determination of market value, for which the expert took an average of ten offers of the developed land and multiplied it by the corresponding coefficient. He criticized the fact that the expert compared urban lands with nonurban lands, and thus considered it urbanizable for the purpose of a higher valuation and that, therefore, this calculation was "full of assumptions [...], inventions [...] and voidness," and c) recommended that the Court seek the UPAV (Panamerican Federation of Valuation) analysis of the appraisals performed on the expropriated land "for its approach and its specialized technical comments to guide the decision [of the Court]" (case file of Reparations, tome II, folios 585 to 588).

considers its urban location must be used.[54] Therefore, using the estimation mode[55] of the expert Estupiñán Narváez, the State argued that the total valuation of the property corresponds to US$6,043,635.25, being US$9.36 per $m^2$, on the date between July 7th and 10, 1997, which reflects the moment when the property was occupied by the Municipality.

53. Besides the expert reports previously analyzed, the Court considers it useful to take into consideration other complementary sources that were not objected and that contribute to assess the just price. First of all, it takes note of the tables[56] that show the values that have been set in transactional agreements, exchanges, and judicial rulings,[57] regarding several properties that have been expropriated in the same area, which have an area greater than 30,000 square meters. Among them, there is a great difference in their cost, depending on the method used to reach the final amount, being the exchanges the lowest, with an average price of US$1.52 per $m^2$, and the most expensive derived from judicial rulings, with an average of US$8.19 per sq $m^2$.[58] In second place, this Court takes into consideration the assessments made by other experts in the domestic trials, as well as the judicial decisions regarding cases of expropriations of the properties in the area in question, including urbanized properties.[59] In this sense, from the data provided at the Courts of Pichincha an average payment of US$ 47.52[60] per $m^2$ can be concluded.

*c) Domestic regulations applicable in the expropriation proceedings*

54. The Court observes that in the period for the expropriation process before the domestic jurisdiction of the property in question (since the year 1991 up to this date) the following articles of the various modifications to the Political Constitution of Ecuador are relevant.

> Political Constitution of 1984, Art. 50. To make effective the right to housing and to the conservation of the environment, the municipalities may expropriate, reserve, and control areas for future developments pursuant with the law.

---

54 To fix the price of the "land located in the area of environmental protection," the following should be taken into account: a) Given that this regards real estate that is not "marketable," it is not feasible to establish a market value, and b) that the legal classification of property as "environmentally protected" generates public benefits of social and environmental means (flood control, landscape, passive recreation etc.), which should be evaluated by the methods used for public goods without a market which usually leads to a higher value (case file of Preliminary Objection and Merits, tome V, folios 809 and 810).

55 To make an appraisal of the land in question, the following criteria were taken into account: a) the unit value of the rural land closest to the land being expropriated (R), b) the premises shall be taken of the unit values of both the nearest urban land the expropriated land (Vx) and the rural land (Vp), and c) the average unit value of the expropriated property (E) is equal to the unit value of rural land multiplied by the ratio formed by (Vx / Vp). → E = R x (Vx / Vp). Applying the actual values in the formula, the expert scored U.S. $ 9.36 per m2 (case file of Merits, take V, folios 810 to 814).

56 *Cf.* Tables presented by the State (case file of Reparations and Costs, tome V, folios 1209 to 1215).

57 The table lists cases from 1986 to 2008.

58 Agreements (in $m^2$ by dollar): Average 4,72,/ min. 1.8/máx. 19,84; exchanges (in $m^2$ by dollar): min. 1.47 / máx. 3.6; judgments (in $m^2$ by dollar): Min. 1.5 / máx. 19,39 (Tables presented by the State, *supra* note 56

59 *Cf.* Case file of reparations, tome IV, folios 706 to 792

60 The minimum price by $m^2$ corresponds to US$ 0,32 and the maximum price is US$ 200 by $m^2$.

> Political Constitution of 1978, codified in 1997, Art. 62: For the purposes of social order, determined by Law, the public sector, through the procedure and in the terms stated in procedural regulations, may expropriate, prior fair assessment, payment, and compensation, the properties that belong to other sectors. All confiscations are forbidden.
>
> Political Constitution of 2008, Art. 323: With the purpose of executing plans of social development, sustainable environmental management, and of collective wellbeing, the State's institutions, for reasons of public interest or social and national interest, may declare the expropriation of properties, prior fair assessment, compensation, and payment pursuant with the law. All forms of confiscation are forbidden.

55. Pursuant with the applicable legislation in the judgment of the Ninth Civil Judge in expropriation trial No. 1996-1300, the Tribunal points out that the expropriation proceedings in the case to set the just price is governed by the following relevant stipulations, *inter alia*, Articles 321[61] and 323 of the Political Constitution, approved on July 19, 2008; Articles 786,[62] 788,[63] 790,[64] 791,[65] 792,[66] and 797[67] of the Code of Civil Procedures, approved on July 12, 2005, and Articles

---

[61] Art. 321 (Political Constitution of 2008): The State recognizes and guarantees the right to property in public, private, communitarian, state, associative, cooperative, and joint manners, and that it must comply with its social and environmental roles.

[62] Art. 786 (Code of Civil Procedure of 2005): With the petition for expropriation, the following shall accompany it: [...] 3. The value of the estate to which it relates, in whole or in part, the petition for expropriation, which is fixed according to the value of assets or rights which have been expropriated at the time of commencement of the brief of occupation, regardless of goodwill incurred as a direct result of the project that encourages the expropriation and its future expansion. If the estate does not appear or in the cadastre, the Attorney General or the ombudsmen of public sector institutions, will ask the appropriate office to carry out the appraisal to accompany the petition [...]. In this regard, the Court observes that this provision is reproduced in Art. 242 of the Organic Law of the Municipal Regime of 2005 (*infra* note 68).

[63] Art. 788 (Code of Civil Procedure of 2005): Once the petition is presented and once the requisites in the prior Articles are complied with, the judge shall name an expert, pursuant to that established in this Code, for the appraisal of the land. At the same time, the judge shall order all persons cited in the prior Article be summoned, [(art. 787: "the owners of the property and those persons that, according the registrars certification of the property, had real rights or tenant rights on the land")], so they can make use of their rights within fifteen days, which will run simultaneously for all. In the same order, the period will be fixed for the expert or experts to present their report, a period which shall not exceed fifteen days, counted as of the end of the prior.

[64] Art. 790 (Code of Civil Procedure of 2005): To fix the price set for compensation, the documents will be taken into account that accompany the petition. If it entails the expropriation of a portion of the appraised property, the price shall be fixed by setting the corresponding proportional relationship. However, when what is desired to be expropriated consists of a main part of the land, of the highest value in relation to the rest; when it involves the highest quality, with respect to the rest, or in similar cases; a fair price may be established pursuant to the opinion of the expert or experts.

[65] Art. 791 (Code of Civil Procedure of 2005): The judge will issue a judgment within eight days of the presentation of the expert report, and in it, there shall be resolution only regarding the price that should be paid and the claims of the interested parties. In order to fix the price, the judge is not obligated to carry out the valuation established by the National Valuation and Cadastres Office, nor by the municipalities.

[66] Art. 792 (Code of Civil Procedure of 2005): With the Judgment ordered, there will be means to appeal regarding devolution effects. The orders are heightened, it will fail on the merit of the process and without other processing.

[67] Art. 797 (Code of Civil Procedure of 2005): When dealing with urgent expropriation, considered as such by the entity demanding it, the property will be immediately occupied. This occupation will be ordered by a judge in the in

242,[68] 243,[69] and 244[70] of the Organic Law of the Municipal Regimen, approved on December 5, 2005.

56. In view of the aforementioned, the proceedings to determine the just price consist of: a) the State may declare the expropriation of properties due to reasons of public interest, prior fair assessment, compensation, and payment pursuant to law;[71] b) dealing with an urgent expropriation, the immediate occupation may be ordered by the judge in the first ruling of the trial, provided that the claim is accompanied by the price that must be paid for that which was expropriated, and the trial will continue in order to determine the final value of said price;[72] c) the expropriation claim must be accompanied with the value of the estate, which will be determined according to the value at the time when the case file on occupation is opened, without taking into consideration the added value that may result as a direct consequence of the project that motivates the expropriation;[73] d) having presented the claim and fulfilled the requirements determined in the Code of Civil Procedures, the judge will appoint an expert or experts to assess the estate;[74] e) to set the compensation the price that appears in the documents that accompany the claim will be taken into consideration and, when what is being expropriated includes a main part of the estate, a just price may be established according to the expert assessments;[75] f) in all the cases of expropriation the owner must be paid, besides the established price, an expropriation price,[76] and g) the judge, upon determining the price, will not be compelled to abide by the valuation established by the National Office of Valuations and Cadastres or the municipalities, and will issue a judgment within the eight days following the presentation of the expert report.[77]

*d) International practice in cases of expropriation*

57. This Tribunal points out that in international law, through the practice of different international courts, there isn't a uniform standards to establish a just compensation, but instead each case is analyzed taking into account the relationship produced between the interests and rights of the expropriated person and those of the community, represented in the social interest. On its part, it can be observed that the European Court of Human Rights (hereinafter, "European Court" or "European Tribunal") applies different calculation methods as grounds for its decisions on

---

the first ruling of the trial, so long as, the petition comes with a price that, in the opinion of the petitioner, should be paid for the expropriation. The trial will continue for the procedures outlined in previous articles, in order to fix the price. The urgent occupation order is final and shall be without delay.

[68] Art. 242 (Organic Law of the Municipal Regimen of 2005): The appraisals are carried out according to the value of assets or rights which have been expropriated at the time of commencement of the brief of occupation, regardless of goodwill arising as a direct result of the project to encourage the expropriation and its future expansion. Improvements made after the commencement of the case file of expropriation, shall not be compensated.

[69] Art. 243 (Organic Law of the Municipal Regimen of 2005): To determine the prices that corresponds to the assets that will be expropriated, the following will be used: aside from that established in the Code of civil procedure, the law of public contracts and other laws.

[70] Art. 244 (Organic Law of the Municipal Regimen of 2005): In all cases of expropriation the owner shall be paid, in addition to the conventional or legally established price, a five percent as the price for the compulsory order.

[71] Pursuant to Art. 323 of the Political Constitution of 2008.

[72] Art. 797 of the Code of Civil Procedure of 2005, *supra* note 67.

[73] Art. 786 of the Code of Civil Procedure of 2005, *supra* note 62.

[74] Art. 788 of the Code of Civil Procedure of 2005, *supra* note 63, and Art. 242 of the Organic Law of the Municipal Regimen, *supra* note 68.

[75] Art. 790 of the Code of Civil Procedure of 2005, *supra* note 64.

[76] Art. 244 of the Organic Law of the Municipal Regimen of 2005, *supra* note 70.

[77] Art. 791 of the Code of Civil Procedure of 2005, *supra* note 65.

reparations. Among these, it highlights that to choose the estimation method that will serve as grounds in the evaluation of the property's value, it takes into account the prices in the real estate market of similar properties and examines the justification of the valuations proposed by the parties.[78] If there is an important difference between the evaluations of the expert reports, the European Court has thrown out one of these as an element of reference.[79] Likewise, the European Court distinguishes between legal[80] and illegal[81] expropriations, using different estimation methods, depending on each case, to determine the amount of the just compensation. In its recent jurisprudence it has established new standards in cases of illegal expropriations,[82] which has been taken up again in the most recent cases applying it also to expropriations considered legal.[83]

58. On the other hand, the European Court has pointed out that the limitations to the right to property by the State in those cases that follow a purpose of environmental protection are within the framework of public interest. Likewise, it stated that the preservation of nature and forests constitutes a value whose defense entails a constant and sustained interest within the public opinion and public powers. In this regard, the European Court established that "economic demands and even certain fundamental rights, including the right to property, must not be put before considerations regarding the protection of the environment."[84] Additionally, in the analysis of the "just balance" between the protection of the right to property and the demands of the public interest, the European Tribunal notes the specific circumstances of each case, such as the modalities foreseen in the domestic legislation,[85] the existence of an effective domestic recourse, the granting of a compensation of the expropriating party, the time that has passed, or situations of uncertainty of the owner's rights, in order to determine if the measure employed by the State, namely the limitation of the petitioners' right to property, was proportional to its established objective. In view of this deliberation, if the load that must be assumed by the beneficiary has been burdensome,[86] and taking into consideration the other requirements, it may determine a violation to the right to property, which will influence when setting the just compensation.

59. On its part, the International Permanent Court of Justice, establishing that in cases of expropriation, payment of a compensation constitutes a general principle in international law, establishing that an equitable reparation is one that corresponds "to the value the company had at the time of the loss of possession."[87] In the practice of the international arbitration courts, it points

---

78 *Cf.* Eur. Court H.R., *Case of Brumarescu v. Rumania*. Judgment of January 23, 2001, para. 24, Eur. Court H.R. *Case Dacia S.r.l. v. Moldavia*. Judgment of February 24, 2009, para. 44.

79 *Cf.* Eur. Court H.R., *Case Yiltas YIDIZ Turistik Tesisleri A.S. v. Tu*key Judgment of April 27, 2006, para. 33 and 34.

80 *Cf.* Eur. Court H.R., *Case James and others v.. United Kingdom.* Judgment of February 21, 1986, para. 54..

81 *Cf.* Eur. Court H.R., *Case Belvedere Alberghiera S.r.l. v. Italy.* Judgment of October 30, 2003, and Eur. Court H.R., *Case Carbonara Ventura v. Italy*. Judgment of December 11, 2003

82 *Cf.* Eur. Court H.R., *Case Guiso-Gallisay v. Italy.* Judgment of December 22, 2009, para. 105.

83 *Cf.* Eur. Court H.R., *Case Schembri and others v. Malta.* Judgment of September 28, 2010, para. 13.

84 *Cf.* Eur Court H.R., *Hamer v. Belgium.* Judgment of November 27 de 2007, para. 79, and Eur. Court H.R., *Köktepe v. Turkey.* Judgment of July 22, 2008, para. 87.

85 *Cf. Köktepe v. Turkey*, *supra* note 84, para. 92.

86 *Cf.* Eur. Court H.R., *Case James and others v. United Kingdom, supra* note 80, para. 50; Eur. Court H.R., *Case Hutten-Czapska v. Poland.* Judgment of February 22, 2005, para. 150; Eur. Court H.R., *Case Matos e Silva, Lda. And others v. Portugal*. Judgment of September 16, 1996, para. 86; Eur. Court H.R., *Case Sporrong and Lönnroth v. Sweden*. Judgment of September 23, 1982, para. 69, and Eur. Court H.R., *Case Schembri and others v. Malta.* Judgment of November 10, 2009, para. 35.

87 Permanent Court of International Justice (PCIJ), *Matter regarding the Chorzów factory (Germany V. Poland) Petition for Compensation.* Judgment of September 13, 1928. Series A. No. 17, p. 126.

out that the determination of the amount of the compensation is made on the basis of the "fair market value,"[88] which is equal to a comprehensive and effective reparation for the damage suffered.[89] To determine said amount, these courts normally use expert reports as grounds for their decision. On occasions, said courts have determined the value of the property based on an approximation in attention to the valuations proposed by the parties.[90] Likewise, the courts have taken into consideration other relevant circumstances, including the "equitable considerations."[91] Likewise, different standards are observed with regard to the date as of which the amount of the compensation must be estimated.[92] Similarly, the international practice has acknowledged the principles that the compensation must be adequate, prompt, and effective.[93]

### 2. Determination of the just compensation by this Court

60. This Tribunal reiterates that in cases of expropriation, the payment of a compensation constitutes a general principle of international law,[94] which derives from the need to find a balance between the public interest and that of the owner. Said principle has been acknowledged in the American Convention in its Article 21, which states that in order to deprive someone of their property a "just compensation" must be granted, thus said payment constitutes, in itself, a requirement to be able to restrict the right to property.[95]

61. The Court points out that, in the present case, the expropriation process through which the price of the property in question is determined is pending within the domestic jurisdiction (*supra* para. 48). However, the case was submitted and solved with regard to the merits in this international jurisdiction on May 6, 2008, and both the State and the representatives have insisted that this Tribunal has sufficient evidence to determine the value of the just compensation (*supra* para. 19). In this sense, even though the Court acknowledges that it corresponds to the States to establish the standards to determine payment of a compensation in domestic law for an expropriation, pursuant

---

88 *Cf.* Iran-US Claims Tribunal, *INA Corporation and. The Government of the Islamic Republic of Iran.* 8 Iran-U.S.C.T.R. 373 (August 13, 1984), para. 380.

89 *Cf.* International Centre for Settlement of Investment Disputes (ICSID), *Amco Asia Corporation and Others V. Republic of Indonesia.* First Arbitral Award of 1984. Case No. ARB/81/1.

90 *Cf.* Iran-US Claims Tribunal, *American International Group Inc. v Islamic Republic of Iran.* Award No. 93- 2-3. 4 Iran-U.S.C.T.R 96 (December 19, 1983).

91 *Cf.* Iran-US Claims Tribunal, *Philips Petroleum Co. V. The Islamic Republic of Iran.* Award No 425-39-2. 21 Iran-U.S.C.T.R. 79 (1989).

92 *Cf. Lauder V. Czech Republic*, 2001 (UNCITRAL - United Nations Commission on International Trade Law), and ICSID, *Compañía del Desarrollo Santa Elena S.A. V. Costa Rica.* Judgment of February 17, 2000. ARB/96/1.

93 *Cf.* Iran-US Claims Tribunal, *INA Corporation V. The Islamic Republic of Iran, supra* note 88, 75 ILR, p. 595; *Texaco V. Libya (1978).* 17 ILM, pp. 3, 29; 53 ILR, pp. 389, 489, and *Aminoil V.* Kuwait (1982). 21 ILM, p. 1032; 66 ILR, p. 601.

94 *Cf.* Article 1 of Protocol No. 1 of the European Court, the Permanent Court of International Justice (PCIJ), *Matter regarding the Chorzów factory (PCIJ), supra* note 87, para. 68.

95 Article 21(2) of the American Convention: No one shall be deprived of his property except upon payment of just compensation, for reasons of public interest or social interest, and in the cases and according to the forms established by law.

with its regulations and practices,[96] provided these are reasonable and pursuant with the rights acknowledged in the Convention. In the present case, it granted the parties a six-month term, computed as of the notification of the Judgment on the Merits, to reach an agreement, without achieving it. As such, the victim has waited more than 19 years for the determination of a final amount as fair payment for the expropriation of her properties. In this sense, it would be unreasonable to continue waiting for a final judgment from the domestic jurisdiction when the Judgment on the Merits makes evident the violation of the reasonable time period by the State to solve the matter.[97] Therefore, pursuant with the objective and purpose of the American Convention for the effective protection of the right to private property, and tending to that stated in paragraph 134 of the Judgment on the Merits, the Court will determine the value of the just compensation in the international process.

a) *Standards for the just compensation in international processes*

62. Pursuant to that stated in paragraph 98 of the Judgment on the Merits, in cases of expropriation, in order for the compensation to be fair and pursuant to the demands of Article 21 of the American Convention, "the market value of the property object of the expropriation prior to its declaration of public interest must be used, seeking a just balance between the public interest and the individual interest."[98] According to paragraph 96 of the Judgment on the Merits, said compensation must be made in an adequate, prompt, and effective manner.

63. First of all, the Court observes the different considerations of valuations of the expropriated property (supra paras. 44, 46, 47, 49, 51, and 52) consisting in: a) recording of the Municipality at the time of the presentation of the expropriation claim-according to the cadastral value - for 225,990,625.00 Sucres in favor of the victim;[99] b) the expert Vicente Domínguez Zambrano, within the domestic realm, set the valuation of US$55,567,055.00 –including the eucalyptus forest -; c) the expert Manuel Silva Vásconez, within the domestic realm, set the valuation at US$41,883,379.12 – including the eucalyptus forest-, and estimated a calculation up to the year 1996 at US$18,201,930.62; e) the Ninth Civil Judge determined in its ruling of April 3, 2009, the amount of US$41,214,233.12 as the value of the expropriated property; f) the expert Gutiérrez Castillo set the valuation for US$58,111,875.00; g) the expert Jakeline Jaramillo Barcia determined the price at US$42,180,504.47; h) the expert Rodrigo Borja determined the valuation of the eucalyptus forest at US$1,174,735.00, and i) the expert Gonzalo Estupiñán Naváez determined the valuation at US$6,043,635.25.

64. Of the expert opinions previously stated it can be concluded that these are based in their majority on a comparison of the market prices of urbanized properties close to the area and then they make adjustments considering the different factors of the plot. On the other hand, it can be pointed out that the expert Estupiñán Narváez bases his assessment on a rural value of agricultural

---

96 Eur. Court H.R., Case *Yiltas YILDIZ Turistik Tesisleri A.S. v. Turkey*. Judgment of April 24, 2003, para. 38, and Eur. Court H.R., Case *Dacia S.r.l. v. Moldova, supra* note 78, para. 45.

97 *Cf. Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, paras. 109 and 110.

98 *Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 98.

99 Said amount was deposited by the State on July 16, 1996, at the time the expropriation petition was presented, in the checking account No. 00100508-1 of Banco del Pichincha C.A. with check No. CY794572. *Cf*. Expropriation petition presented by the Municipality against María and Julio Guillermo Salvador Chiriboga (proceeding No. 1300-96, case file of annexes to the brief of motions and pleadings, annexes 6 to 8, folios 1802 to 1804). *Cf.* Case of Salvador Chiriboga V. Ecuador, *supra* note 24, para. 103 and note 97.

dedication in a close by rural area and adjusts it to try to locate it in an area of Quito, based on the market prices of one area and another.

65. In this sense, the Tribunal observes that the relevant differences between the valuations proposed for the determination of the just compensation have their origin in a disagreement between the parties in what refers to the juridical nature of the property and specifically to that regarding the juridical limitations of the use of the property imposed by the regulations of the Municipality of Quito, a disagreement that influences the calculation methods used for the evaluation of the property.

66. The parties adduce two different evaluation methods of the property object of the expropriation. To determine its market value, the representatives argued the "urban purpose" of the property, justifying its demands for expert opinions that use as reference values the value of urbanized properties adjacent to the expropriated property, with the location of the property prevailing as the evaluation standards.[100] On its part, the State considered that it is illogical to compare the value of the expropriated property and the market value of the neighboring properties.[101] It added that since it is a "rustic property"[102] without the possibility of erecting buildings,[103] the assessment standards of rural properties could be applied as well as agricultural profitability, the location, and quality of the expropriated land.[104] Additionally, the land is within an area of ecological protection and recreation, whose use and occupation is limited and totally restricted to the needs of the Metropolitan Park.[105] Therefore, even though the State takes into account the location of the expropriated property as a criterion to determine the just compensation,[106] it makes prevalent the juridical limitations to the use of the property imposed by the regulations of the Municipality of Quito.

67. This Court points out that the determination of the valuation of a property object of expropriation for environmental reasons may depend on several elements, and it is not always adequate to evaluate it in comparison with properties on the market that do not present the same characteristics. Therefore, this Court considers that, in the present case, to determine the value of

---

100 According to the representatives "[t]he fair valuation of the property must be done independently and adjusted to actual parameters wherein the commercial value of the property is taken into consideration, depending on its location and comparatively considering the value other properties in the area have in the market."

101 Brief of the State of September 22, 2009, (presented in the public hearing of September 24, 2009, and case file of reparations, tome III, folio, 576).

102 The State argued that the just price of the expropriated land must be established based on the values of the rustic properties given that "it was never included in a sector classified as an area for urban expansion."

103 The State also argued that "the areas delimited within the Metropolitan Park were considered areas of ecological protection thirteen years prior to the order of the Declaration of Public interest."

104 *Cf.* Case file of Preliminary Objection and Merits, tome V, folio 809.

105 *Cf.* Answer to the application, case file of Merits, tome II, folio 226.

106 The State acknowledges that "because of its location on the outskirts of the city or within urban areas, it is not appropriate to set a value that is distinctly rural, which is why it is necessary to determine a method that takes into consideration its urban location."

the property object of the expropriation all its essential characteristics[107] must be taken into consideration, that is, natural (such as their location or their topographic and environmental characteristics) and legal (such as the limitations or possibilities of the use of the terrain and its purpose).

68. With regard to the natural characteristics of the property, the Court observes that Vicente Domínguez Zambrano in his report, as well as in its amplification,[108] also stated that "the property could not be used for urbanization due to the municipal hindrance and resolution, but not because of the feasibility conditions, consolidation of the land, and many other physical, topographic, and landscaping characteristics, as well as many other conditions that grant it a privileged attraction and requirement."[109] Likewise, he indicated that the property "cannot be urbanized, it is rustic, and two high-tension electricity transmission lines go through it […], which if destined for urbanization would affect it for the erection of buildings, but not if used as green areas and gardening."[110] The expert Manuel Silva Vasconez made reference to the fact that according to the cadastral sheet "it is of an irregular form, with a variable topography and a moderate slope in an East-West direction, it does not have infrastructure works or services, it is located in front of the [u]rbanizations that have been developed in the sector."[111] The expert Gonzalo Estupiñan Narváez expressed that "due to its location in the outskirts of the city or within the urban areas it is not adequate to establish a purely rural value, thus it is necessary to determine a method that will also consider its urban location."[112] The expert report offered by Jakeline Jaramillo mentioned that this property has excellent characteristics and made emphasis on its urban vocation due to the specific conditions of location, infrastructure, and services in the area, its soft relief and landscaping physical conditions that could be the object of other urban uses. Likewise, she described that 2 high-tension lines go through it, thus determining an area of affectation and obligatory withdrawal.[113] The Court also points out that the expert Edgar Neira Orellana stated that "the surcharge of property without edifications [imposed on the victim makes no sense in the case of properties located in rural areas destined for agricultural exploitation; it makes sense when the property is located within urban perimeters, and it punishes the lack of buildings or encourages edification processes within a specific Municipality."[114]

---

107 *Cf.* Eur. Court. H.R., *Case Kozacioglu v. Turkey.* Judgment of February 19, paras. 71 and 72.

108 *Cf.* Expert assessment and Expansion of the expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folios 3960 to 4000.

109 According to the expert, the value of a property is determined by its location, the provision of infrastructure and equipment, the density of land use, the socioeconomic status of the area (which is of high value in this case) and the demand for builders (Expansion of the expert assessment of Vicente Zambrano, supra note 26, folios 3964 and 3965).

110 Moreover, it was noted that "the property is also partially affected by an underground matrix line that transmits potable water [...] that crosses the property [...] which affects buildings and high forestation, but not gardening and green spaces (Expansion of the expert assessment of Vicente Zambrano, supra note 26, page 3965).

111 *Cf.* Expert assessment of Manuel Silva Vásconez, *supra* note 33, folio 651, based on folio 12 of the cadastral.

112 *Cf.* Expert assessment of Gonzalo Estupiñán Narváez (final arguments of the State, case file of Merits, tome V, folio 809).

113 *Cf.* Expert assessment of Jakeline Jaramillo, *supra* note 44, folios 287 and 291.

114 *Cf. Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, and Expert assessment of Edgar Neira Orellana rendered during the public hearing on October 19, 2007, held in the city of Bogota, Colombia.

69. With regard to the property's legal characteristics, the Court considers that one of the factors that gives a property value is its possible use, vocation, and the possibility to erect constructions on it; thus, for the effects of the assessment in the present case, the juridical limitations to the use of the land that were imposed on the expropriated property prior to the declaration of public interest must be established, among other standards.

70. In this sense, this Tribunal observes that different expert opinions coincide on the existence of legal limitations on the use of the property of Mrs. Salvador Chiriboga, prior to the declaration of public interest. In this regard, the expert report presented by Vicente Domínguez Zambrano, and its expansion,[115] points out that "the property in question could not be urbanized due to the municipal hindrance and resolution." Likewise, the expert Gonzalo Estupiñan Narváez states that the expropriated property was never considered by municipal planning as an urban property or a property that could be urbanized.[116] The expert report offered by the expert Jaramillo acknowledges that "since 1980 the Municipality of Quito, through the Quito Plan, defined a use of urban recreational park for the area where the property is included, [and that s]aid use of the land was ratified in the Urban Bylaws of 1990 in its proposal of Use of the Land and for the Environmental and Recreational System."[117]

71. In addition to the expert reports presented, this Tribunal takes into consideration the ordinances that existed prior to the declaration of public interest of the property object of the expropriation, which legally limited the use of the land prior to the said declaration. In attention to the aforementioned, the Court points out that legal limitations were imposed on the mentioned property through the following acts of authority:

> a) Ordinance Nº 2092 of January 27, 1981,[118] through which the "Quito Plan 1980" was approved; the latter controls, regulates, and rationalizes the city's physical spatial development in response to the new socio-economic conditions and the urban dynamics that exceeded the limits foreseen in other technical and juridical instruments (f.7536, evidence to facilitate adjudication of the case). The Metropolitan Park was conceived as a reserve and compensation for the deficit of green areas, being characterized for maintaining a diversity of recreational activities, services, and ecological preservation.[119] The property, object of the expropriation, is located within said area (f.1146, merits);

---

115 *Cf.* Expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folios 3960 to 4000.

116 *Cf.* Brief of the State of September 22, 2009, of the observations of Expert Estupiñán Narváez regarding the Expert assessment of Jakeline Jaramillo (brief presented at the public hearing on September 24, 2009, and case file of Reparations and Costs, tome III, folio 585).

117 *Cf.* Expert assessment of Jakeline Jaramillo Barcia, *supra* note 44, folio 289.

118 *Cf.* Ordinance No. 2092 of the Municipal Council of Quito, by which it approved the "Plan Quito" (case file of evidence to better resolve the case submitted by the representatives, folios 7536 and 7537). This ordinance was subsequently repealed by Ordinance No. 2816 of the Municipal Council of Quito, by which it approved the "Urban Structure Project for Quito" (evidence to better resolve submitted by the State, folio 7570). However, the first repeal of the ordinance does not affect the validity of the creation of the Metropolitan Park, as this has been contemplated within the recent legislation. It is noted that in the document, the number of the ordinances are not shown clearly.

119 Because the city of Quito it has been shown that there exists an imbalance between urban and recreational areas.

b) the Report regarding the individual properties to be expropriated of April 12, 1998, through which the Office of Valuations and Cadastres specified the properties to be expropriated in order to consolidate the Metropolitan Park, including the property of the heirs of Guillermo Salvador Chiriboga, "taking into consideration that the Planning Commission and the Council will immediately study the delimitation of the mentioned park."

c) Official Letters No. 0911, 912, and 213 of July 5, 1988, through which the Municipality informed the "Recorder of the Properties" of the approval of Report No. IC-88-134 of June 16, 1988, "of the Commission of Expropriations and Auctions, declaring of public interest, decid[ing] upon the expropriation, and authoriz[ing] to issue the agreement of urgent occupation of the totality of the property of, [among others,] the [heirs] of Guillermo Salvador Tobar […] affected with the works stated in the mentioned report," which are related to the expropriation of the expropriated lands, necessary for the implantation of the Treatment Plant named "Bellavista," contemplated in the Papallacta Project, Parish Church of Caupicruz, El Batán, Quito. Likewise, the mentioned official letter No. 0912 of the Municipality of Quito was recorded in the Registry of Prohibitions to Transfer of July 6, 1988, ordering the prohibition to transfer the totality of the property belonging to Mrs. Salvador Chirboga.

d) Ordinance No. 2776 of June 2, 1990, through which the Municipality of Quito defined the city's boundaries and "considered the Metropolitan Park to be an area of ecological protection," which is supposed to maintain the ecological balance, preserve the natural landscape, and avoid urban development in areas with a high risk of natural disasters. Said regulations acknowledge two management areas, an urban area and an area of ecological protection, wherein agricultural, forest, and plant vegetation conservation uses are permitted, and

e) Ordinance Nº 2818 of October 19, 1990, through which the new boundaries of the Metropolitan Park in Bellavista de Quito were established and which defines the metropolitan nature of the park, whose fundamental objective is to be a reserve and provide for the clearing of the deficit in the consolidated urban areas, with a diversity of recreational activities, services, and ecological conservation.

72. This Tribunal notes that, pursuant with the mentioned acts of authority, prior to the declaration of public interest, the piece of land belonging to Mrs. María Salvador Chiriboga was limited in its use and enjoyment and restricted in regard to the possibility of construction of buildings and alienation.[120] As a consequence, the value of the property was affected in what regards its commercial potential.[121]

73. The Court concludes that, according to the essential characteristics of the property, as well as the body of evidence, it can be concluded that it is a rustic piece of land, regarding the absence of

---

[120] Pursuant to the Expert assessment of Vicente Domínguez Zambrano rendered on February 15, 2007, based on the registrar of transfer prohibititions, folios 154, no. 409, tome 119, of June 28, 1988 and folios 158, no. 423, tome 119, of July 6, 1988.(case file of annexes to the brief of motions and pleadings, folios 2034 and 2035).

[121] *Cf.* Brief of the Mayor of Quito of June 28, 1991 addressed to the Government Minister (case file of annexes to the brief of motions and pleadings, annexes 4 al 5, folios 1530 and 1531).

construction of buildings and certain alterations on the land, with specific characteristics due to its urban location, wherein limitations were imposed regarding its use and enjoyment in order to obtain environmental, ecological, and recreational benefits, which contribute to the preservation of the resources that serve to benefit society, all of which is considered to determine the just price. Notwithstanding the aforementioned, the Court notes that the State continued to collect taxes on the property being expropriated based on the lack of constructions, despite the fact that it had already imposed limitations in this sense, all of which will be covered in the corresponding section.

74. Regarding the eucalyptus forest, the Court notes the expert opinions presented in that sense (*supra* paras. 46 and 51). Particularly, it will assess the expert opinion offered by Rodrigo Borja, which the representatives used as grounds to establish their claims and which was not contested by the State. In consideration of the aforementioned and of the body of evidence, the Court finds that on one side, the date the forest was cultivated or its purpose cannot be concluded. However, it is clear that said forest plantation had a particular commercial potential, since it implied an important investment that consisted in the planting of 47,314 trees with an extension of 577,000 $m^2$, which is evident since the species found on the property of María Salvador Chiriboga are not native to the area. In this regard, the Master Plan of the Municipality of Quito of December 1994, states that the Municipality had established a "eucalyptus substitution program for native species, in order to turn them into true wild botanical gardens."[122] On the other hand, the Court understands that the restrictions imposed on the property, upon declaring it an ecological area, limited the commercial exploitation of said forest. Therefore, the Tribunal will consider this plantation as an improvement to the property, [123] which will be carefully assessed along with the body of evidence and included in the total amount of the compensation.

b) *Assessment of the just balance between public and private interests*

75. In those cases where there is a collision between rights, the Tribunal has applied proportionality standards to consider the restrictions and the consequences they could entail.[124] The

---

122 Master plan of December 1994 of the Directorate of Planning of the Metropolitan Municipality of Quito, wherein the concepts were formulated regarding how the Metropolitan Park of Quito should be (case file of annexes to the Answer to the application, folio 3552).

123 *Cf.* Civil Code of Ecuador of June 24, 2005: Art. 952. "The holder who lost has the right to be paid the necessary expenses invested in its preservation, according to the following rules: If these expenses are invested in permanent fixtures [...] they holder shall be paid for such expense, in as much as they were necessary; but reduced to their worth at the time of restitution." […]
Art. 953. "the holder in good faith, defeated, also has the right to be paid for utility improvements, made before the petition was filed. Utilities improvements are understood as those that improve its market value."

124 *Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 65: "[T]he 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 in accordance with the purpose and end of the American Convention. Therefore, it is necessary to analyze the legitimacy of the public interest and the process or proceedings used to pursue such end." *Cf.* also: *Case of Herrera Ulloa V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 120; *Case of Ricardo Canese V. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111, para. 96; *Case of Yakye Axa Indigenous Community V. Paraguay. Merits Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 144; *Case of López Álvarez V. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, paras. 67 to 69; *Case of Sawhoyamaxa Indigenous Community V. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146,

Tribunal established that in "the case of an expropriation, said restriction demands the compliance and accurate exercise of requirements or demands that are already enshrined in Article 21(2) of the Convention," namely: "payment of a just compensation, for reasons of public interest or social interest and in the cases and according to the terms established by law," which were analyzed in the Judgment on the Merits.

76. Regarding the just compensation, the Court established in its Judgment of May 6, 2008, that, in cases of expropriation, besides considering the market value of the property object of the expropriation prior to the declaration of public interest as an element of reference, "it must seek to achieve a just balance between the public interest and the private interest."[125] Thus, the Court referred that "in order for the State to be able to legitimately satisfy a social interest and find [said] just balance […,] it must use proportional means in order to reduce the violation to the right to property of the person object of the restriction as much as possible."[126] In order to achieve this, it is necessary to note the "just demands" of a "democratic society," assess the different interests at play, and the need to preserve the object and purpose of the Convention."[127] All this will be factored when determining the value of the property as just compensation, especially regarding properties that have an environmental nature.

77. In this regard, the Tribunal recalls that in its Judgment on the Merits, it mentioned that the deprivation of the right to property by the State was based on reasons of public interest and social interest, and it highlighted that "a legitimate or public interest based on the protection of the environment, as observed in the present case, represents a legitimate claim regarding public interest."[128] However, the State "did not respect the requirements necessary to restrict the right to property gathered in the general principles of international law and explicitly stated in the American Convention."[129] Likewise, "the State failed to comply with the forms established in the law upon violating judicial protection and guarantees, since the remedies sought have exceeded the reasonable time provided for their resolution and have not been effective. The aforementioned has indefinitely deprived the victim of her property, as well as of the payment of a just compensation, which has caused both great legal and factual uncertainty, thereby causing excessive burdens, turning said expropriation into an arbitrary one."[130] Therefore, the Court declared the State responsible of the violation of Articles 21(2) of the Convention, in relation with the rights established in Articles 8(1) and 25(1) of said treaty, to the detriment of the victim.

---

para. 212; *Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 93; *Case of Kimel V. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 54; *Case of Castañeda Gutman V. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 175, 176 and 180, and *Case of Escher et al. V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 129.

125 *Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 98

126 Case of *Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 63.

127 *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights),* Advisory Opinion OC-5/85 of November 13, 1985**.** Series A No. 5, para. 67; *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. 31, and *Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, para.75.

128 Case of *Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 76..

129 Case of *Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 116.

130 Case of *Salvador Chiriboga V. Ecuador*, *supra* note 24, para. .117.

78. Additionally, the Court observes that according to the evidence presented, the property has belonged to the family of María Salvador Chiriboga since 1935 and to her, as owner, as of 1967.[131] Additionally, Mrs. Salvador Chiriboga in her statement rendered before this Court, stated that the property had been acquired by her father Guillermo Salvador Chiriboga with "much sacrifice and much debt," with the objective of "inheriting it to his grandchildren." Her father also "gave [the Municipality] the Bernal Casa Plaza" and sold other plots at "very insignificant prices" to people with limited resources. Additionally, it has been proven that, after 19 years of the declaration of public interest and up to this date, the victim has not received any compensation whatsoever for the expropriation of her property, but to the contrary, the State continues to collect taxes and fines for the lack of building constructions on said property (*ínfra* para. 114).

79. On the other hand, the Court points out that the Metropolitan Park of Quito is a recreational and ecological protected area of importance for the city, with a high population density,[132] representing more than 55% of the city's green areas.[133] It is considered the "main lung of the city," since it maintains the balance of the ecosystem, adding great value given the wild flora and fauna.[134] Likewise, it is currently the "country's greatest forest" reserve "managed as an urban park."[135] At the same time, it is important to point out that the property object of the expropriation represents 11%[136] of the park's total surface. All this must be duly assessed.

c) *Determination and payment of the just compensation*

---

131 The property was acquired by Guillermo Salvador Chiriboga Tobar and Elvira Chiriboga on December 6, 1935. On September 6, 1977, effective possession was granted to the property left by Elvira Chiriboga, widow of Salvador, Maria Salvador Chiriboga without prejudice to the rights of third parties, and other references in the interdiction of Mr. Guillermo Salvador Chiriboga. *Cf.* Expert assessment of Vicente Domínguez Zambrano, *supra* note 26, folio 3960).

132 The urban population of Quito corresponds, pursuant to the last census in 2001, to 1.399.378 persons. *Source: National Statistics and Census Institute [Instituto Nacional de Estadísticas and Censo] INEC*, http://www.inec.gov.ec (last visited on March 3, 2011).

133 Comparing the statistics regarding public green spaces in Quito from 1990 and 1993, it is evident that the presence of the Metropolitan Park of Bellavista more than doubled (55.4%) the total area of green spaces in the city. (Total in 1990: 460 hectares; total in 1993: 1031 hectares). *Source: Food and Agriculture Association of the United Nations*, http://www.fao.org/docrep/w7445s/w7445s04.htm (last visited on November 4, 2010).

134 *Cf.* Indications by Expert Edmundo Gutiérrez del Castillo, supra para. 39, folio 1730. Moreover, pursuant to that note din the Ordinance No. 2776: "the Park […] is an area destined to be maintained in harmony with the environment, to preserve the natural landscape, and to avoid urban development in areas of high volcanic, seismic, topographic, and morphodynamic risk," (case file of annexes to the application, folio 1147).

135 Site "Metropolitan Park Guangüiltagua," General Information, http://www.parqueMetropolitan.ec/home/contenidos.php?id=21&identificaArticulo=169 (last visited on November 4, 2010).

136 From Ordinance No. 2818 (Art. 2) it is evident that "surface area of the Metropolitan Park in Bellavista is approximately 571,16 has"" (case file of annexes to the brief of motions and pleadings, folio 1720). As such, the property of María Salvador Chiriboga of 64,6 has corresponds to approximately 11% of the total surface area of the Park.

80. Based on the aforementioned, and pursuant to paragraph 98 of the Judgment on Merits, the Court will determine "the market value of the expropriated property prior to the declaration of public interest[,] seeking to achieve the just balance between the public interest and the private interest."

81. In attention to the claims of reparations, the Court assessed in its totality the evidence presented by the parties, and the work and conclusions of the different expert opinions, those of which vary and are even dissenting. All of them provide useful elements, but none of which is decisive in a comprehensive manner. Therefore, the Tribunal considers these opinions as elements that help establish the standards set in the present Judgment.

82. Regarding the property's essential nature, the Court determined that the property is rural with specific characteristics due to its urban location (*supra* para. 73), which had a series of juridical limitations in place prior to the declaration of public interest. In this sense, Ordinances No. 2092 of 1981, and No. 2676 and No. 2818 of 1990 defined, as of said dates, certain areas as part of the Metropolitan Park of Quito, as well as other areas of ecological protection, where only agricultural and forest uses, as well as the conservation of the natural vegetation, would be permitted. Due to said regulations as well as other administrative acts, the property could not be urbanized, nor could edifications be erected nor could it be transferred for that purpose (*supra* para. 71*)*, since the established limitations made it a property destined to the protection of the environment. Based on the aforementioned, when the declaration of public interest of May 13, 1991, was issued, the property already had legal limitations on its use, and therefore, its market value had decreased.

83. Additionally, in the Judgment on the Merits, the Court established the existence of the legitimate interest for expropriation due to reasons of public interest based on the protection of the environment, which results in the social benefit generated by the Metropolitan Park that is of vital importance for the city of Quito, and the expropriated property represents an important contribution, not only for the park itself, but for the entire society and the environment in general (*supra* para. 73). However, the State failed to comply with the payment required in Article 21(2) of the Convention and the standard of reasonable time periods to the detriment of the victim.

84. Therefore, according to the claims of the parties, the legal restrictions that fall upon the property, which affected its value since the property object of the expropriation has been destined to be an area for environmental protection and recreation of great relevance and a public interest for the city of Quito (*supra* para. 79), and in attention to the just balance between public interests and private interests, the Court, pursuant to the standard of reasonableness, proportionality, and equity, set the amount of US$18,705,000.00 (eighteen million, seven hundred and five thousand dollars of the United States of America) for just compensation in an international venue, which includes the value of the expropriated property and its accessories.

85. The Court will determine the legitimacy of the interests in the section of this Judgment regarding pecuniary damages (*infra* para. 91 to 101). Likewise, in order to achieve a prompt and effective payment, the State must pay the amounts owed pursuant to that established in the section *Modalities of payment* regarding pecuniary damages of this Judgment (*infra* para. 102 and 103).

### *C) Compensation*

1. Pecuniary damage

86. The Court has developed the standard of pecuniary damage and the situations in which it must be compensated.[137] However, in the present case the Tribunal will not analyze the pecuniary damage from the traditional perspective of consequential damages or loss of income, but derived from the non-compliance with the payment of a just compensation, which has resulted in an infringement of the victim's material condition and has led to the State's international responsibility.

87. The representatives requested that as reparation "for the appropriation of the property […] belonging [to María Salvador Chiriboga] the State be ordered to pay the interests accrued during the time in which it has not paid the just compensation." Based on the aforementioned, in its brief on reparations, the representatives demanded the payment of an annual compound interest computed as of the declaration of public interest dated May 13, 1991. Thus, they indicated that the State owed, up to May 13, 2009, the total amount of US$56,730,723.69 (fifty six million seven hundred and thirty thousand seven hundred and twenty three dollars of the United States of America with sixty nine cents) for that purpose. They added that if payment of the just compensation is made after that date, an estimate of the interests must be calculated under the same formula until payment is actually made, and that the interest rate will be the Libor rate in force in the month of May of each year.

88. Later, in the public hearing the representatives stated that there were several agreements between them and the State, being one of these that an amount should be set in regard to interests, but that there was still a discrepancy regarding the interest rate and the date as of which they should be computed. They requested that the Court establish said standards. In this sense, they reiterated to the Tribunal that "it should define a formula for compound interests as has been done by several arbitration courts in matters of investments."[138] They added that "this is the same principle that should be applied, since even though the matter in dispute is not directly about investments, we cannot deny that it refers to an identical right, namely the right to property."

89. On its part, at the public hearing the State expressed that on July 16, 1996, the Municipality of the Metropolitan District of Quito filed the complaint before the "Court of Justice"[139] in order to obtain the occupation order, and that the Ecuadorian legislation states in these cases, that in order to be able to occupy the property, the just price must be recorded. According to the State, in this case, along with the filing of the complaint for expropriation it recorded the amount of the just price in the Municipality's opinion at that time at 225,990,625.00 Sucres.[140] This means that the

---

137 *Cf. Case of Bámaca Velásquez V. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 298, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 248.

138 In this regard, they cited the example of the Judgment rendered by the Centre for Settlement of Investment Disputes (ICSID) in the *Compañía del Desarrollo Santa Elena S.A. V. Costa Rica*, *supra* note 92.

139 It is worth mention that in the Judgment of Merits it was established that the expropriation filed by the Metropolitan Municipality of Quito against María and Julio Guillermo Salvador Chiriboga was presented on July 16, 1996. The expropriation trial was listed under No. 1300-96, which was initiated that same day before the Ninth Court. *Cf. Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, paras. 4 and 103.

140 In the main documents, the representatives as well as the State, made statements regarding the amount of the payment consigned with the lawsuit of expropriation in the process No. 1300-96. The representatives indicated that the amount of Sucres assigned with the writ of the lawsuit of expropriation corresponded to the date of the presentation of

municipality has never failed to comply with its obligations, and that regarding the representatives' current expectation to receive interests, the legal actions set out by the municipality are not being recognized, and they are trying to collect payment of an interest charge that does not correspond. Payment of interests is an additional payment, which results from not honoring an obligation. In this sense, the State provided evidence on the record of that indicated and expressed that it has never wanted to diminish the agreement reached with the opposing party regarding the payment of interests, and it stated its willingness to respect it.

90. Without detriment of the aforementioned, the State mentioned that any estimate of the interests made by the Court should be made as of the year 1997, between the 6th and 10th days of July 1997. Said date was determined by the Court in the Judgment on the Merits as the one on which the Municipality of Quito occupied the property, and not as of May 13, 1991, date of the declaration of public interest, as was requested by the representatives. Additionally, it reiterated that "acknowledging the differential initial amount sought by the victim is alien to the standard of justice."

91. From that indicated by the representatives and the State at the public hearing, the Court observes that they agree that this Tribunal determine an interest as a consequence of the lack of payment of a just compensation for the expropriated property.[141] Therefore, the Tribunal will establish if the determination of the interests proceeds or not, and if it does, it will define the type of interests and the date as of which they shall be calculated.

92. The Judgment on the Merits established that the subjective recourses or those of full jurisdiction filed by the Salvador Chiriboga brothers and the expropriation claim filed by the State were not resolved within a reasonable time period nor were they effective and that the expropriation proceedings had been arbitrary.[142] Additionally, the Court already ruled in said Judgment that the State has not paid the just compensation; thus it is not correct to reopen the discussion on this matter at this stage.

93. The Court reiterates that, up to this date, the expropriation proceedings are still in process before the domestic jurisdiction, more than twelve years after they were started, and the payment of the just compensation is still pending, despite the fact that María Salvador Chiriboga has lost possession of her property. In this sense the European Court of Human Rights has stated that the measures employed in combination with the excessive duration of the judicial action places the petitioners in a long situation of uncertainty, which worsens the damaging effects of these measures, to which they have had to carry a special burden that breaks the just balance between the demands

---

that writ, and the amount of $9.032.00 (nine thousand and thirty two dollars of the United States of America) (written brief containing pleadings, motions, and evidence, file on preliminary objections and merits, Volume II, pp. 145) On the other hand, the State indicated that the value of the amount consigned at the moment of payment, when the lawsuit of expropriation was presented, represented almost US$ 300.000,00 (three hundred thousand dollars of the United States of American) (the States plea, file on preliminary objections and merits, Volume II, page 219)

141 It is important to note that the State in its note of January 13, 2009, stated yet again that there is no liquidation obligation nor is there a default by the Municipality, to which the payment of interest does not follow. It recalled that stated in the hearing on the appropriation of an amount since the declaration of public interest (case file of Reparations and Costs, tome V, folio 1069). Both the Commission and the representatives noted that the State could not change its opinion, given that it had acknowledged in the public hearing the payment of interests. In this regard, the Commission requested *estoppel* be applied (case file of Reparations and Costs, tome VI, folios 1242 and 1248).

142 *Cf. Case of Salvador Chiriboga V. Ecuador, supra* note 24, para. 113

of the public interest and the protection of the right to have property respected,[143] and in cases such as the present, the European Court has ordered the payment of interests calculated on the basis of a lawful rate.[144]

94. This Court observes that other international courts have determined, in cases of expropriation, the payment of simple[145] or compound[146] interests to repair the damage caused. For example the European Court, in matters of expropriation, has decided upon a simple interest,[147] while the arbitration courts in investment matters, from a commercial point of view, acknowledge that the granting of a compound interest[148] is justified under certain circumstances, in order to compensate in a comprehensive manner the losses suffered and grant additional protection to foreign investors within a global context.

95. Additionally, the Court observes that the Organic Law of the Municipal Regimen in force, approved on December 5, 2005, in its Article 244[149] states that in cases of expropriation, besides the price determined either conventionally or judicially, the owner will be paid a five per cent as the affectation price.

96. On the other hand, it is also important to mention that the Ecuadorian Civil Code in force, approved on July 12, 2005, in Articles 1573 and 1575[150] establishes rules on the compensation for damages due to default and, if the obligation consists in paying an amount of money, it provides

---

143 *Cf.* Eur. Court H.R., *Tsirikakis v. Greece.* Judgment of January 17, 2002, para. 60 and 61.

144 *Cf.* Eur. Court H.R., *Tsirikakis v. Greece*. Judgment of January 23, 2003, para. 11.

145 The following is meant by simple interest: in any period, interest rate multiplied by the invariable amount of the principal.

146 The following is meant by compound interest: in any period, the interest rate is multiplied by a varying amount of the principal. Unpaid interest is added to principal outstanding and converted to principal in the new period

147 *Cf.* Eur. Court H.R., *Case of Stran Greek Refineries and Stratis Andreadis v. Greece*. Judgment of December 9, 1994, para. 83; Eur. Court H.R., *Case Guiso-Gallisay v. Italy, supra* note 82, para. 105, and Eur. Court H.R., *Case Schembri and others s v. Malta, supra* note 83, para. 18.

148 At the International Centre for Settlement of Investment Disputes (ICSID) cases are filed that have a distinct legal relevance, where the matters involve commercial motives and investment. *Cf.* ICSID, *Compañía del Desarrollo Santa Elena S.A. V. Costa Rica, supra* note 92, paras. 96 -107; *Metalclad Corporation V. México*. Judgment of August 30, 2000, ARB (AF)/97/1, para. 128, and *Middle East Cement Shipping and Handling Co. S.A. V. República Árabe de Egipto*. Judgment of April 12, 2002. ARB/99/6, paras. 173-175.

149 It corresponds to Article 256 of the prior Organic Law of the Municipal Regimen, approved on October 15, 1971, which states "in all cases of expropriation the owner shall be paid, in addition to the conventional or judicially established price, five percent as for the price of the damage. The ultimate value shall be delivered to the owner in cash in the amounts and within the time limits set by the municipality, in agreement with the expropriated, and such intervals shall not exceed five years. The fees payable in installments compound legal interest. The price paid will be exempt from all duties, taxes or other tax levies, municipal or any other."

150 Corresponds to Articles 1600 and 1602 of the prior Civil Code, which was codified on November 20, 1970. Article 1600 literally notes that "damages should be compensated since the debtor defaulted, or, if the obligation is to not, from the time of the contravention." Article 1602 states that "if the obligation is to pay an amount of money, the compensation for damages for default is subject to the following norms: 1) the conventional interests are still owed, if an interest superior to the legal interest is operational, or the legal interests are owed, in the contrary; keeping, nevertheless, in force the special provisions that authorize the cost of current interests, in some cases; 2.) The creditor does not need to justify when only interests are collected. In such cases, the delay suffices, 3.) the interest in arrears do not generate interests, and 4.) This rule applies to all kinds of rents, royalties, and periodic pensions."

guidelines for the charging of interests. The aforementioned indicates that, according to Ecuador's domestic legislation, it is possible to determine interests based on the non-compliance of obligations.

97. In the present case, the State should have, as stated in Article 21 of the Convention, paid the just compensation, and it should have done so promptly, as indicated in the Judgment on the Merits. However, this did not happen, and it resulted in the violation of Articles 21(2), 8(1), and 25(1) of the Convention. It is the State's duty to respect and guarantee the protection of the right to private property, which in the case *sub judice* has been examined by the Court from the perspective of a human right, in light of the object and purpose of the American Convention, and not in consideration of commercial or investment interests which are characteristic of courts of another nature.

98. The representatives argued the Libor rate for the estimation of the interests and the State did not specifically object the use of this rate as a reference. In seeking to satisfy the purpose of complying with a just compensation and the payment of the corresponding interests, it is necessary to determine the latter, in order to avoid having to submit determination to another domestic process that would delay payment. Given the aforementioned and since there is no controversy between the parties in the application of said rate, as well as because of the fact that it is considered reasonable for the specific case, this Court considers it appropriate to apply to the present case the Libor rate for the estimation of the respective interests. Additionally, this Tribunal determines that a compound interest is inapplicable, due to the nature of the present case.

99. As a consequence, the Court establishes that the interest that must be covered due to the lack of a timely payment by the State must be estimated based on a simple interest rate, applying the Libor rate as a reference and on the amount of the just compensation set by this Tribunal (*supra* para. 84).

100. Now, in what refers to the date as of which the interests should be computed, the representatives and the State disagree in this matter (*supra* paras. 87 and 90). In this regard, this Tribunal observes that in the present case, even though the declaration of public interest is dated May 13, 1991, the dispossession of said property did not occur until the year 1997. Likewise, the Court established in its Judgment on Merits that the occupation of Mrs. Salvador Chiriboga's property by the Municipality of Quito occurred between the 7th and 10th days of July 1997.[151] Since it was as of that date that the victim actually lost the right to enjoy possession of the property, this Tribunal considers it adequate to establish that the estimate of the corresponding interests must be done as of July 7, 1997.[152]

101. This Court concludes that the State must pay the victim the simple interests accrued according to the Libor rate on the amount of the just compensation as of July 1997 until February 2011, whose amount ascends to US$ 9,435,757.80 (nine million, four hundred and thirty-five hundred thousand, seven hundred and fifty-seven dollars and eighty cents of United States of America).

---

151 *Cf. Case of Salvador Chiriboga V. Ecuador*, *supra* note 24, para. 72.

152 *Cf.* Eur. Court H.R., *Case Guiso-Gallisay v. Italya, supra* note 82, para. 105, and Eur. Court H.R., *Case Schembri and others v. Malta, supra* note 83, para. 18.

*a) Modalities of Payment of the just compensation and interests*

102. The State shall pay, in cash, the capital owed, which includes the just compensation and the interests (*supra* paras. 84 and 101) in five equal installments throughout a five-year period, establishing March 30th of each year as the date of payment, with specifically: the first payment on March 30, 2012, the second payment on March 30, 2013, the third payment on March 30, 2014, the fourth payment on March 30, 2015, and the fifth payment on March 30, 2016.

103. If the State fails to comply with the payment of the corresponding installment on the date established in the present Judgment, it shall pay an interest on said installment, according to the bank interest on default payments in Ecuador, up to the date on which the payment is actually made.

104. The amount recorded by the State at the moment of presenting the expropriation claim in the domestic jurisdiction (*supra* para. 63) must be returned to the State when the aforementioned first installment of the payment is made.

2. Non-pecuniary damage

105. The Court has developed in its jurisprudence the standard of non-pecuniary damage and has established that it includes "both the suffering and grief caused to the direct victim and her next of kin, the damage to values very important to the people, as well as the alterations, on a non-pecuniary nature, in the living conditions of the victim or their family.[153]

106. The representatives expressed that in the present case the victim "has experimented a lot of concern […] since she found herself in a situation of complete insecurity for several five-year periods with regard to the fate of her assets (and that of her family), due to the lack of resolution of the different judicial proceedings regarding her property." They requested the amount of US$25,000.00 (twenty-five thousand dollars of the United States of America) for the standard of non-pecuniary damages, as well as to repair the violation to the rights acknowledged in Articles 8(1) and 25 of the Convention.

107. On its part, the State expressed that "it is aware that a violation to fundamental rights entails a moral damage; however, not all violations result in the same grave effects." The State considers that, even though human rights are interdependent and hierarchically of an equal value and importance, it cannot be considered that a violation as grave as an extrajudicial execution or torture deserves a monetary reparation of equal value for the standard of non-pecuniary damage as a violation to private property and due process, as this would delegitimize international justice and would seriously damage the credibility of the Inter-American system."

108. The Commission considered that the non-pecuniary damage is evident, since the victim has been appealing to the State for more than "sixteen" years without obtaining a final resolution until now.

---

153 *Cf. Case of the "Street Children"(Villagrán Morales et al.) V. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 305, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 8, para. 255.

109. The Court observes that Mrs. Salvador Chiriboga stated at the public hearing that the facts of the case have had a very strong impact on her, which has affected her health.[154] Likewise, Susana Salvador Chiriboga, in her statement rendered before a public notary, stated that "[her] mother has preferred to continue with the claims, despite her health, so that justice can be served."[155] On her part, the witness Guadalupe Jessica Salvador Chiriboga emphasized the fact that her mother has had to overcome heavy emotional pressure, which has affected her health.[156]

110. Regarding the aforementioned, the State indicated that Mrs. Guadalupe Jessica Salvador Chiriboga "mentioned emotional aspects that deserve respect, but that are not relevant for the effects of this case, and the same thing has occurred with the other family members that have offered their statements as if it were a family of limited resources and whose health has deteriorated as a consequence of the municipal action, which is very far from the truth."

111. The Court reintroduces that stated in the Judgment on the Merits,[157] in the sense that Mrs. Salvador Chiriboga is in a state of juridical uncertainty as a result of the delay in the proceedings, since she has not been able to effectively exercise her right to property, since it has been occupied by the Municipality of Quito for more than a decade, without a decision being reached regarding who is the rightful owner of the property. A denial of justice has occurred since a final judgment determining the amount of the just compensation for the property has not been reached, which has resulted in an ineffective and arbitrary expropriation proceeding. Said situation persists today and has caused a disproportionate burden in detriment of the victim and in detriment of the just balance.[158]

112. This Tribunal's jurisprudence has repeatedly stated that a judgment constitutes *per se* a form of reparation.[159] However, in consideration of that stated, the circumstances of the case *sub judice,* and of the violation declared in the Judgment on the Merits of Articles 21(2), 8(1), and 25(1) of the Convention in detriment of the victim, this Court considers it appropriate to determine the payment of a compensation, in equity,[160] for the amount of US$10,000.00 (ten thousand dollars of the United

---

154 *Cf.* Statement of María Salvador Chiriboga rendered in the public hearing held on October 19, 2007 in the city of Bogota, Colombia.

155 *Cf.* Statement of Susana Salvador Chiriboga rendered before a public notary on October 1, 2007 (case file of Preliminary Objection and Merits, tome IV, f. 494).

156 *Cf.* Statement of Guadalupe Jessica Salvador Chiriboga rendered before a public notary on October 1, 2007 (case file of Merits, tome IV, folio 479).

157 *Cf. Case of Salvador Chiriboga V. Ecuador, supra* note 24, paras. 111 to 113.

158 As was indicated in paragraph 76 of the present Judgment, by limiting the right to private property, the State shall fulfill with the objective of achieving a just equilibrium in between the public interest and the owners interest, so that in the present case the State should have used the least burdensome means to reduce the detriment of the right to private property of the victim.

159 *Cf. Case of Suárez Rosero V. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 72; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 310, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 260.

160 *Cf. Case of Neira Alegría et al. V. Perú. Reparations and Costs.* Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 310, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 260.

States of America) in favor of Mrs. María Salvador Chiriboga for the standard of non-pecuniary damages.

113. The State must make the payment of the compensation for the standard of non-pecuniary damages directly to the beneficiary within a one-year term computed as of the notification of the present Judgment.

### *D) MEASURES OF RESTITUTION, SATISFACTION, AND GUARANTEES OF NON-REPETITION*

#### *1. Restitution*

114. The Court should consider the additional charges that have been presented in detriment of the patrimony of María Salvador Chiriboga. In paragraph 115 of the Judgment on the Merits, the Court indicated that Mrs. Salvador Chiriboga has had to incur in the unjust payment of taxes and fines between the years 1991 and 2007, and that the State acknowledged the error it incurred in regarding the collection of taxes and fines, reason for which it ordered the return of what was improperly paid, through a resolution of the municipal council.

115. During the public hearing the State reiterated that the Metropolitan Council of Quito issued two rulings[161] that order the estimate and return of what was paid by the Salvador Chiriboga family and this procedure is also being used for other owners affected by other public and expropriated works. According to the State said mistakes have been corrected by the municipal financial office and any charge made for taxes on properties declared of public interest will be returned or will no longer be issued. It added that there is no regulation regarding the payment of interests on the amounts paid, since what is being returned is the amount paid for taxes. Subsequently, documents presented on January 13, 2010,[162] indicate that the State with the rulings issued by the Metropolitan Municipality of Quito had complied with the Law on Ordinances in what refers to expropriations, "returning the money paid by the victim with its corresponding interests[, and that] there is a credit note in favor of the owners of the property that has not been picked up by the interested parties." The amount ascends to $23,984.82 (twenty three thousand nine hundred and eighty four dollars of the United States of America with eighty two cents),[163] and is in the custody of the Treasury of the Municipality.

---

161 *Cf.* Order of the Metropolitan Council of Quito No. C 0704 approved on September 27, 2007, that states, "the refund of the cancelled amounts for the concept of property taxes, those and other payments since 1995 to the year 2007 and for the concept of surcharges for properties with no constructions as of 2001 to 2007 of property No. 0210902 in the name of SALVADOR TOBAR GUILLERMO HEREDEROS," and the lack of issuance of more credit titles for the expropriated property (case file of Reparations and Costs, tome V, folio 1221). According to the State, said order was modified by the Metropolitan Council of Quito, in ordinary public sessions held in October 24, 2007, in that the "generated interests" also be returned" (case file of Reparations and Costs, tome V, folio 1223).

162 *Cf.* Order SG 554, refund of taxes for the expropriated properties and Order DMF-T-3230 of October 12, 2009 of the Metropolitan Treasurer (E) addressed to the Metropolitan AG. *Cf.* Order SG 554, *supra* note 16, folios 1073 and 1223.

163 Pursuant to Order DMF-T-3230 of October 12, 2009, the Metropolitan Treasurer (E) reported that the Office of Financial Revenues, on September 11, 2007, issued a "[n]ote of [c]redit No. 8336 in [f]avor of SALVADOR TOBAR GUILLERMO HEREDEROS, for the amount of USD$23,984.82 [(twenty-three thousand, nine hundred and eighty-four dollars of the United States of America with eighty-two cents)], which has not been retrieved and is in the custody of the Treasury. *Cf.* Order DMF-T-3230, *supra* note 16, folio 1073.

116. Regarding the State's argument that is has returned the values collected, the representatives stated that said "devolution is not real since it is merely the issuing of a credit note, an instrument that can only be used to pay tax obligations before the same municipal administration." They added that for the effects of the return of the values, payments made as of the year 1991 should be taken into account, as well as the exchange rate used for the payments made in Sucres, and the corresponding interest should be added to said amount. According to the representatives, the amounts paid in taxes and fines on properties without construction, pursuant with the receipts provided, ascends to US$33,805.84 (thirty three thousand eight hundred and five dollars of the United States of America with eighty four cents).[164]

117. The Commission requested that the Court, as mentioned by the representatives, determine that the State must return all the amounts wrongfully charged to the victim for the taxes and fines between the years 1991 and 2007.

118. The Court observes that Ruling No. C 0704 of the Metropolitan Council of Quito approved on September 27, 2007, in its considering clauses, *inter alia*, established that:

> […]
>
> That on Monday September 25, 1995, in a public session of the Council of the Metropolitan District of Quito upon considering Report IC-95-284 of the Commission of Expropriations, Auctions, and Valuations, it decided to authorize the modification of the Ruling of the Council of February 24, 1992, in what refers to the change of name of the owners of the properties expropriated in the Bellavista Sector, within the boundaries of the Metropolitan Park, correcting the name of the owners of plot no. 108: Messrs. HEIRS OF GUILLERMO SALVADOR CHIRIBOGA
>
> That Art. 312 of the Organic Law of the Municipal Regimen establishes the urban property tax and Art. 318 subparagraph 2 ibid orders the surcharge for properties without constructions that will not affect the park areas;
>
> That Art. 326 of the Organic Law of the Municipal Regimen states that: "The following properties are exempt of the payment of the taxes referred to in chapter […]: f) The properties that have been declared of public interest by the Metropolitan Council and that have been submitted to expropriation trials as of the moment of the summons of the defendant until the judgment has been executed, recorded, and included in the national cadastre […];"
>
> That Art. 8 of Metropolitan Ordinance No. 181, which includes the expropriation procedure and the establishments of easements within the Municipality of the Metropolitan District of Quito, issued by the Metropolitan Council of May 23, 2006, published in Official Registry No. 376 of October 3, 2006, in which it states "as of the

---

[164] The receipts submitted correspond to the years 1991 to 1994, 1997 to 2003 and 2005. *Cf.* Note that it is entitled, "liquidation of amounts paid in taxes and fines for properties without constructions S. María Salvador Chiriboga (pursuant to documents annex 56)" (case file of Reparations and Costs, tome IV, folio 650); table of quotes of types of change of Sucres in dollars between 1980 and March 2000 (case file of annexes to the brief of pleadings and motions of the representatives, annex 40, folios 3123 to 3125), and receipts (case file of annexes to the brie of pleadings, motions, and evidence of the representatives, annex 56, folios 3187 to 3211).

> date of the notification in person or through the press of the Ruling of the Council that includes the declaration of public interest, the Financial Office of Income, ex officio and without the need of any additional ruling, will eliminate the values corresponding to the payment of property tax, additional charges, and fines on properties without constructions;"
>
> [Decided]
>
> Art. 1.- Order the return of the amounts paid in property tax, additional charges and other duties since the year 1995 and up to the year 2007, and for surcharge on properties without constructions, as of 2001 until the year 2007 for plot No. 0210902 under the name of SALVADOR TOBAR GUILLERMO HEIRS, pursuant with the considering clauses presented in [the] Ruling."
>
> […]

119. Therefore, the State indicated that the amount collected from Mrs. Salvador Chiriboga ascends to US$23,984.82 (twenty three thousand nine hundred and eighty four dollars of the United States of America with eighty two cents). In this sense, the Tribunal points out that the State mentioned the amount collected from the victim without detailing the receipts or items considered to that effect, nor did it breakdown the amounts corresponding to taxes, surcharges for plots without constructions, and interests.

120. On their behalf, the representatives requested a refund for US$33,805.84 (thirty three thousand eight hundred and five dollars of the United States of America with eighty four cents) for the payment of taxes and fines on plots without constructions wrongfully collected by the State as of 1991.

121. From all that was stated, this Tribunal concludes that the complete refund of the amounts wrongfully collected from the victim for the taxes and fines, since according to that indicated by the representatives the State issued a credit note; thus, "it is not a real refund." On the other hand, the representatives and the Commission, and the State mentioned a different date as of which the estimate must be made, therefore the amount requested for the improper payment of taxes and fines is different. Additionally, the Tribunal points out that the State did not object the receipts of payment presented by the representatives. Finally, even though the State ordered the payment of interests, it did not specify the type or form of payment.

122. The Tribunal reiterates that the additional charges consisting in the payment of taxes and fines for plots without constructions were wrongfully collected from Mrs. Salvador Chiriboga and in the present case they reveal the imposition of charges that are both excessive and disproportionate for the victim.[165] In that sense, the Court has declared in specific situations the existence of charges that are especially burdensome for a person's patrimony.[166] Even though the State issued Ruling No. C 0704 of the Metropolitan Council of Quito approved on September 27, 2007, which was modified by the Metropolitan Council of Quito in a regular public session held on

---

165 *Cf. Case of Salvador Chiriboga V. Ecuador, supra* note 24, para. 115.

166 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador*, *supra* note 124, paras. 200 to 218.

October 24, 2007 (*supra* note 161), with the purpose of ordering the return of that collected by the Municipality of Quito as well as the interests, as of the date of this Judgment, it has not been done.

123. Ruling No. C 0704 issued by the Metropolitan Council of Quito ordered a refund of the amounts paid for property taxes, additional charges, and other duties as of 1995 and for surcharge on plots without constructions to the victim as of 2001, as well as the refund of the interests accrued, pursuant with the modification made by the Metropolitan Council of Quito, in the regular public session held on October 24, 2007. In attention to the dates set in the mentioned ruling, being the year 1995 the date on which the modification of the declaration of public interest and its notification were issued, and given that the representatives presented different receipts, among which they forwarded those for the taxes corresponding to the years 1995 through 2005 and 2007,[167] as well as for fines corresponding to the years 2000 through 2005 and 2007, this Court considers that the taxes and fines must be refunded as of 1995, according to how the payments for these were made pursuant with the receipts presented.

124. According to the aforementioned, the amount collected for the taxes and fines ascends to US$ 32,799.04 (thirty two thousand seven hundred and ninety nine dollars of the United States of America with four cents). Given that the State acknowledged the payment of interests, without specifying their type, this Tribunal considers that a simple interest be applied on the mentioned amount based on the Libor rate from the year 1995 to the month of February 2011, which results in the amount of US$10,300.06 (ten thousand and three hundred dollars of the United States of America and six cents). Therefore, the Court considers that the State must return to Mrs. María Salvador Chiriboga, in cash, the total amount of US$43,099.10 (forty three thousand, ninety-nine dollars of the United States of America and ten cents) for the taxes and fines wrongfully collected, and the corresponding interests, within a six-month term computed as of the notification of the present Judgment.

*2. Satisfaction*

125. The Tribunal will determine the measures of satisfaction that seek to repair non-pecuniary damages and that had no pecuniary nature, reason for which it will order measures of a public scope or repercussion.[168] The State did not refer to this.

*a) Publication of the Judgment*

---

167 *Cf.* Receipts No. 2725375, 3579189,3786825, 0077424,153966,153967, 1446587, 1446588, 2936421, 2936422, 3511129, 3511130, 3965322, 3965323, 5081948, 5081949, 6939203, and 6939204 (case file of annexes to the brief of motions and pleadings, annex 56, folios 3187 to 3211, and case file of evidence to better resolve presented by the representatives, folio 7166). It is important to note that after the review of the receipts submitted by the representatives, the Court has found that the correct amount of receipt No. 2936421 is of US$874.45 (eight hundred and seventy-four dollars of the United States of America and forty-five cents) (case file of annexes to the brief of motions and pleadings of the representatives, annex 56, folio 3191).

168 *Cf. Case of the "Street Children"(Villagrán Morales et al.) V. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Manuel Cepeda Vargas V. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of May 26, 2010. Series C No. 213, para. 219, and *Case of Vélez Loor V. Panamá, supra* note 19, para. 261.

126. The representatives requested as a reparation measure for the victim the publication "of the text of the judgment issued in each of the newspaper of greatest circulation in the country and in the Official Registry." The State did not refer to this subject.

127. As has been stated by this Court in other cases[169] as a measure of satisfaction, the State must publish in the Official Newspaper, for a single time, paragraphs 1 to 12, 44 to 46, 54, 60, 63, 65, 69 to 91, 95 to 100, 103 to 118, 123, 124, 129, 133 and 134 of the Judgment issued on May 6, 2008 and paragraphs 2, 3, 32 to 36, 44 to 85, 93 to 104, 111, 112, 122 to 124, 127, 129, 131, 141 of the present Judgment, all of them including the names of each chapter and the corresponding section – without the footnotes- as well as the operative paragraphs of both Judgments, and in another newspaper of ample circulation the official summary prepared by the Court, which includes the relevant aspects of the Judgment on the Merits and the present Judgment. A six-month term, computed as of the notification of this Judgment, is granted for these publications.

*b) Request for a public act of acknowledgment of international responsibility*

128. The representatives requested that the Court order that the State offer a public apology to Mrs. María Salvador Chiriboga for the violation of her rights, which must be offered by the Mayor of the Metropolitan District of Quito. The State did not refer to this.

129. The Court has ordered the realization of acts of public acknowledgement of international responsibility as a guarantee of non-repetition of the facts, generally, even though not exclusively, with the purpose of repairing violations to the right to life, and personal integrity and freedom.[170] The Tribunal does not consider that said measure is necessary to repair the violations proven in the present case, since the issuing of the Judgment of May 6, 2008, and the present Judgment and their publication constitute themselves important measures of reparation.

*3. Guarantees of non-repetition*

*a) Request of training measures for administrative and judicial officials*

130. The representatives requested that the Court order that the State adequately train the administrative and judicial officials involved in expropriation processes on human rights. Likewise, the Commission requested that the State be ordered to adopt the measures necessary to "make effective, in reality, the legislation on expropriation, so that it will regulate and execute the guarantees that must be present in the expropriation processes and thus avoid that they generate situations of injustice and even more so that they be prolonged in time." The State did not refer to this matter.

131. In this sense, the Judgment on the Merits stated that the domestic regulations, namely, constitutional, on civil procedures, on contentious administrative procedures, and on administrative procedures applied to the present case, adjusts to the American Convention, and it was not proven that the violations and circumstances proven in the case sub judice constitute a generalized problem

---

169 *Cf. Case of Barrios Altos V. Perú. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5.d); *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 273, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 217.

170 *Cf. Case of Castañeda Gutman V. México, supra* note 124, paras. 236 and 239; *Case of Escher et al., supra* note 124, para. 243, and *Case of Garibaldi V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 161.

in the substantiation of these type of trials in Ecuador. Therefore, the Tribunal decided that "it cannot conclude that the State failed to comply with Article 2 of the American Convention." Thus, for the previously mentioned reasons, this Court considers that it is not necessary to order the training measures requested.

### *E) Costs and expenses*

132. The costs and expenses are included in the standards of reparation enshrined in Article 63(1) of the American Convention.[171]

133. The representatives requested that the Court order the State to pay US$46,083.58 (forty six thousand eighty three dollars of the United States of America with fifty-eight cents)[172] for the fees for the attorneys Alejandro Ponce Martínez and Alejandro Ponce Villacís and for expenses incurred in both in the domestic realm and before the Inter-American system for the protection of human rights, which amounted to said sum at the time the brief of motions and pleadings was filed on March 18, 2007.

134. Subsequently, the representatives stated, in their brief on reparations, that as of that date and up to now the victim has had to pay additional professional fees equal to US$52,270.00 (fifty-two thousand two hundred and seventy dollars of the United States of America with sixty-four cents). In this regard, along with the mentioned brief they forwarded a "breakdown of invoices for professional fees" from […] Alejandro Ponce Martínez and [a] breakdown of expenses [made between] March 23, 2007 and March 8, 2009," that ascend to US$27,269.64 (twenty-seven thousand two hundred and sixty-nine dollars of the United States of America with sixty four cents) and US$7,740.24 (seven thousand seven hundred and forty dollars of the United States of America with twenty-four cents), respectively. (fr. 366 and 367) Likewise, they forwarded a "breakdown of invoices for professional fees" from […] Alejandro Ponce Villacís for the period between March 30, 2007, and November 5, 2009," which amount to US$25,000.58 (twenty-five thousand dollars of the United States of America with fifty-eight cents). The representatives stated that Mrs. Salvador Chiriboga has had to incur in costs and expenses for a total of US$106,093.00 (one hundred and six thousand ninety-three dollars of the United States of America), as a consequence of the State's violations to Articles 8(1) and 25(1) of the Convention.

135. Additionally, the representatives requested that the fees of the attorney Wilson Yupanqui, in the amount of US$20,000.00 (twenty thousand dollars of the United States of America), be considered part of the costs since he intervened in the initial stages of the administrative proceedings.

---

171 *Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs.* Judgment of August 27, 1998, para. 79; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 312, and Case of *Cabrera García and Montiel Flores V. México, supra* note 8, para. 262.

172 The representatives requested US$46,083.58 (forty six thousand, eighty three dollars of the United States of America and fifty eight cents). (case file of Merits, tome II, folio 177, and case file of Reparations and Costs, tome II, folio 254).The tables regarding costs and legal fees presented by the representatives are US$23,622.36 (twenty three thousand, six hundred and twenty two dollars of the United States of America and fifty eight cents) and US$22,461.22 (twenty two thousand four hundred and sixty one dollars of the United States of America and twenty two cents). (case file of annexes to the brief of motions and pleadings, annex 57, folio 3213 and annex 58, folio 3370).

136. At the public hearing on reparations, the State mentioned that the representatives have referred to the expenses originated for professional fees, for which they have enclosed several tables and invoices that have been issued to Mrs. Salvador Chiriboga, without there being any evidence if these amounts were actually paid or if there is a contract for the offering of professional services between the victim and her representatives before the Inter-American System. It added that the amounts requested by the victim, and specifically, the professional fees, are "not in accord with the socioeconomic reality of Ecuador[,…] they exceed the parameters of rationality and necessity." The State expressed that the Court must consider these expenses provided that the representatives adequately justify the relationship between those expenses and their actual payment, taking into account the principle of equity and assessing the expenses proven by the parties provided that their *quantum* is reasonable. There is no evidence whatsoever of other expenses incurred in by the Salvador family during the domestic and international processes, nor have they been argued.

137. On its part, the Commission requested that the Court order, once it has heard the injured party or its representatives, that the State pay the costs and expenses duly proven by the victim.

138. The Tribunal has stated that "the claims made by the victims or their representatives in the matter of costs and expenses, and the evidence that substantiate them, must be presented to the Court in the first procedural moment granted to them, that is, in the brief of pleadings and motions, or in the present case it could also be when filing the brief of reparation claims, without detriment of updating said claims at a later time, pursuant with the new costs and expenses incurred in as a result of the proceedings before this Court."[173] Likewise, the Court reiterates that "the forwarding of evidentiary documents is not enough, instead the parties must present arguments that connect the evidence with the fact that is considered represented, and that when dealing with economic outlays, the items and justification of the same must be clearly established."[174]

139. Regarding the reimbursement of costs and expenses, the Tribunal has indicated that it must carefully assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated throughout the course of the process before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses stated by the parties, provided that their *quantum* is reasonable.[175]

140. The Court observes that the representatives did not present specific arguments to justify the amounts of fees and expenses incurred before the domestic and Inter-American instances; however, they forwarded numerous receipts for the fees for which they included details of the actions or diligences offered within the professional services, as well as those related to the expenses incurred for activities such as messenger services, transportation, photocopies, lodging, food, notary

---

173 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador, supra* note 124, para. 275; *Case of Vélez Loor V. Panamá, supra* note 19, para. 218, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 317.

174 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador, supra* note 124, para. 277; *Case of Rosendo Cantú et al. V. México. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2010, Series C No. 216, para. 285, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 317.

175 *Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs, supra* note 172, para. 82; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 316, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 266.

expenses, official recordings, and legalizations, among others. On its part, even though the State mentioned its disagreement with the amount requested by the representatives, it did not specifically object to the receipts presented. In consideration of the aforementioned, this Tribunal understands that it is logical to assume that in fact the victim has incurred in certain expenses both in the domestic realm and at an international level before the Inter-American Commission and the Court, as a consequence of the processing of the present case.

141. Based on the aforementioned, and making an appropriate assessment of the specific scope of the costs, taking into account not only the proof of the latter and the circumstances of the specific case, but also the nature of the international jurisdiction for the protection of human rights, the Tribunal considers in equity that the State must reimburse the amount of US$ 50,000.00 (fifty thousand dollars of the United States of America) to Mrs. María Salvador Chiriboga, who will pass on the corresponding amounts to her representatives, in order to compensate the costs and expenses incurred before the authorities of the domestic jurisdiction, as well as those generated throughout the proceedings before the Inter-American System. The State must make the payment of costs and expenses within a one-year term, computed as of the notification of the present Judgment. In the procedure of monitoring compliance with the present Judgment, the Tribunal may order the reimbursement by the State to the victims or their representatives of all reasonable expenses duly proven.[176]

### *F) MODALITY OF COMPLIANCE WITH THE PAYMENTS ORDERED*

142. The payment of the just compensation, as well as the compensations for pecuniary damage and non-pecuniary damage, the wrongfully collected amount for taxes and fines for plots without constructions and its correspondent interest, as well as the reimbursement of costs and expenses will be delivered directly to María Salvador Chiriboga. If she were to pass away before the corresponding compensation is rendered, it will be delivered to her successors, pursuant with the applicable domestic legislation.[177] The aforementioned must be done within the terms stated in the corresponding sections of the present Judgment.

143. The State must comply with its obligations through payments in dollars of the United States of America.

144. If for causes attributable to the beneficiary of the compensations, it were not possible for her to receive them within the mentioned time period, the State will deposit said amounts in her favor in an account or deposit certificate in an acknowledged Ecuadorian financial institution, in United States dollars and in the most favorable financial conditions permitted by the legislation and banking practices. If after 10 years, the compensation has not been claimed, the amounts deposited will be returned to the State with the accrued interests.

---

176 *Cf. Case of Xámok Kásek Indigenous Community V. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010 Series C No. 214, para. 331*; Case of Gomes Lund et al. ("Guerilha do Araguaia") V. Brazil, supra note 8,* para. 318, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 267.

177 *Cf. Case of Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 294; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") V. Brazil, supra* note 8, para. 320, and *Case of Cabrera García and Montiel Flores V. México, supra* note 8, para. 269.

145. The amounts allocated in the present Judgment must be delivered to the beneficiary in their totality, pursuant with that established in this Judgment, without deductions derived from possible taxes.

146. If the State incurs in any delay it must pay interests on the amount due for the just compensation, pecuniary and non-pecuniary damages, the unjust payment of taxes and fines on plots without constructions, as well as the costs and expenses which correspond to the bank interest on default payments in Ecuador.

## OPERATIVE PARAGRAPHS

148. Therefore,

**THE COURT**

**ORDERS,**

Unanimously, that,

1. This Judgment constitutes *per se* a form of reparation.

By five votes to three, that,

2. The State must pay to Mrs. María Salvador Chiriboga, for just compensation, the amount stated in paragraph 84 of the present Judgment.

Judge García-Sayán, Judge García Ramírez, and Judge Leonardo Franco, all dissent.

By five votes to three, that,

3. The State must pay for pecuniary damages on the interest incurred, the amount specified in paragraph 101 of the present Judgment.

Judge García-Sayán, Judge García Ramírez, and Judge Leonardo Franco, all dissent.

By five votes to three that,

4. The State must make the payments of just compensation and pecuniary damage set out in this Judgment, in accordance with the modality of compliance set out in paragraphs 102 to 103 of this Judgment..

Judge Medina Quiroga, Judge May Macaulay, and Judge Rodríguez-Pinzón, all dissent.

Unanimously, that

5. The State shall pay the amount established in paragraph 112 of the present Judgment for non-pecuniary damages, in the period and terms mentioned in paragraphs 109 to 111 and 113 of this Judgment.

Unanimously, that,

6. The State shall pay the amounts established in paragraph 141 of the present Judgment for reimbursement of costs and expenses, in the period and terms mentioned in paragraph 140 of this Judgment.

Unanimously, that,

7. The State must refund to Mrs. Mary Salvador Chiriboga, as a measure of restitution, the amount indicated in paragraph 124 for property taxes, additional charges, and other duties as well as surcharges on plots without constructions that were wrongfully collected, as well as the corresponding interests, within a six-month term, pursuant with that stated in the mentioned paragraph of the Judgment.

Unanimously, that,

8. The State must carry out the publications ordered in paragraph 127 of the present judgment, in the period and terms indicated in the mentioned paragraph.

Unanimously, that,

9. Within a one-year term computed as of the notification of this Judgment and to the effects of monitoring its compliance, the State must deliver to the Tribunal a report on the measures adopted in this sense. The Court will consider the present case closed once the State has fully complied with that ordered in this Judgment.

Judge García-Sayán, Judge Medina Quiroga, Judge García Ramírez, Judge L. Franco, Judge May Macaulay, and Judge *ad hoc* Rodríguez Pinzón informed the Court of their Partially Dissenting Opinions. Said Opinions are attached to this Judgment.

Written in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica on March 3, 2011.

Diego García-Sayán
President

Cecilia Medina Quiroga

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,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

**PARTIALLY DISSENTING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN WITH RESPECT TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR MARCH 3, 2011**

1. The Judgment on the Merits issued in this case by the Court on May 6, 2008, is clear regarding the standard for determining the amount of "just compensation," as well as on how to make this determination. Thus, in this Judgment on reparations, the Court is not called to decide on how to reach that determination as it did so in the Judgment on the Merits by establishing that it would be done "by mutual agreement between the State and the representatives within a six month period after the notification of [the] Judgment."

2. As is reported in this Judgment, the parties did not reach an agreement within the time limit which, in turn, had also been extended to February 15, 2009, at the request of the State. Upon reaching this deadline without having come to an agreement, the parties placed the matter in the hands of the Court to determine the reparations established in operative paragraph 5 of the Judgment on the Merits. That is what the Court has done in this Judgment on reparations.

The just compensation

3. The essence of the matter in regard to the determination of reparations lies in setting the amount that must be paid by the State for the expropriation of the property referred to in this case. In reaching that determination, the Court had as it's starting point at least two clear and explicit factors. One is contained in Article 21(2) of the American Convention on Human Rights
4. [1] and the other is a standard established by the Court in its Judgment on the Merits of May 6, 2008.

5. In regard to the determination of "just compensation" in this case, in the Judgment on the Merits,[2] standards are established to guide the assessment:

> XCVIII 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 interest must be taken into account and also, the just balance between the general interest and the individual interest as referred to in this Judgment […].

6. In essence, there are two standards determined by the Court: a) the market value of the property "before the declaration of public interest" and b) "the just balance between the public interest and the private interest." Both standards could have led to the establishment of an amount less than U.S. $18,705,000.00 under paragraph 84 of this Judgment, and as a corollary, also below

[1] Article 21(2) (Right to Private Property):

1.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.
2.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.
[...]

[2] Cf. *Case of Salvador Chiriboga V. Ecuador*, supra note 1, para. 98.

the U.S.9,435,757.80 in what regards interests established in the Judgment[3], wherein the total compensation for these comes to a total of $ 28,140,757.80.

Market value of the property prior to the declaration of public interest

2. The first aspect is the market value of the property "prior to the declaration of public interest." In the Judgment, it is stated that the market value should be the value it was before the declaration of public interest. The Judgment explains and develops quite clearly the factual and legal circumstances prior to that declaration.

3. To accurately determine the market value of a property as of a date prior to the declaration of public interest, namely May 13, 1991, is a complex task not only given the twenty years elapsed, but, essentially, because of the limits and restrictions imposed on the property several years prior.

4. A path to an appraisal is via an expert. As described in this Judgment, in the domestic and international transactions there have been different surveys carried out. Unfortunately, as shown and explained in this Judgment[4], the idea of appointing an international expert for the possible expert assessment was unsuccessful. Therefore, we turn refer to the two opinions given in the domestic forum and the three rendered in the proceedings before this Court.

5. As stated in this Judgment, the case file shows that in the domestic procedures before the Ninth Court of Quito two expert reports were rendered: one of the expert Vicente Domínguez Zambrano and the other of the expert Manuel Silva Vásconez. After hearing the expert opinion of Dominguez by both parties before the Ninth Court, the appointment of expert Vásconez Silva was provided, whose opinion was issued in May 2008 and established the value per square meter "at the time of the survey" was U.S. $ 63.83 m2, which multiplied by the amount of land would give a total value of U.S. $ 41,214, 233.12. This Judgment of the Court states, however, that the same expert had determined in 1996 that in said year the value per square meter was U.S.$28.19 per m2, which meant a total of U.S. $ 18'201, 930.62.

6. It follows that from the two expert assessments carried out in the domestic forum, one was observed by both parties and the second, from the expert Silva Vasconez, determined a statistic of the values of 2008. The valuation made by the same expert in 1996 (five years after the declaration of public interest) determined the amount of U.S. $ 18,201, 930.62. The Court could incorrectly use as a reference the amount set in 2008 as a possible prices. It could be a less distant reference point, of course, the value set by the same expert in 1996.

7. In the Judgment on reparations the essential content of the three valuations given as expert assessments before this Court is described[5]: Edmundo Gutiérrez del Castillo, Jake Jaramillo Gonzalo Barcia and Estupiñán Narváez. The first, proposed by the Commission and representatives, the second by the representatives, and, third, by the State.

8. The expert assessment by Edmundo Gutiérrez del Castillo takes into account a number of standards and indicators to arrive at the amount of reparation, which he determined (U.S. $

[3] Paragraph 101 of the Judgment on reparations.
[4] Paragraphs 13 and on of the Judgment on Reparations.
[5] Paragraphs 49, 51, and 52 of the Judgment on Reparations.

58,111,875.00). Between them, they mentioned that the land would have greater value because it was far removed from potential natural disaster zones, because in the area the properties have greater value (among other things for being close to shopping centers), because the infrastructure services available, because of the similar prices of real estate for sale in the area, because of the market value in the area and zoning (that allows the construction of buildings higher than 9m, which are more desirable).[6] As shown, it does not appear to be a central issue, that of determining the value of this specific site, which is only briefly mentioned in this Judgment, as the succession of legal constraints imposed on the property since 1981.[7] In light of this capital circumstance, many of the characteristics and conditions mentioned by the expert that are applied to other properties are not applicable to this expropriated land.

9. The opinion rendered by the expert Jakeline Jaramillo Barcia, on which the following Lumber is obtained U.S. $ 65.33 per m2, equivalent to U.S. $ 42,180, 504.47 for the entire plot, to which the value of the eucalyptus forest must be added, is based on explicit criteria which is, as noted above, that of the "urban vocation" of the property. In her expert report, the expert took account the prices of similar nearby properties that were for sale. As can be seen, in this case, the expert report does not seem to have taken into account the essential circumstances of the assessment as determined by the limitations imposed on the property since 1981 and which did not make said property comparable to other properties for sale that were able to maintain the "urban vocation" which was legally denied to the expropriated property.

10. The third expert assessment, that of expert Gonzalo Estupiñán Narváez, was presented by the State, as mentioned prior. This expert noted that the expropriated land had not been considered "by the Municipal Planning as urban land or land that could be developed or urbanized," and that, since one could not build on it, criteria for appraisal of rural land should be applied, while considering its urban location. In one of his reports,[8] this expert recalls the basis contained in the study by the Association of Expert Evaluators (APA). Once these fundamentals were outlined, he concluded that the amount determined by the appraisal of the APA was correct:

> Whereas the valuation order explicitly states that it be made taking as reference the market value of the property being expropriated before the declaration of public interest (carried out in May 1991) "the market research investigation was carried out within the period of February to May 1991, wherein the unit value of $ 9.36 USO was reached, multiplied by the total land area of 645,687,50 m' was determined at the fair price of $ USO 6,043 .635.25.

11. Of the expert assessments presented in the domestic forum, two of them applied criteria of reference and conditions that do not highlight the limitations imposed on the property since 1981 for its development and use. The method of calculation used by the third expert appears to be closer in terms to the criteria laid down in the Judgment. Among other things because it combined unit values of rural land close to the nearest urban land. This does not make the property "rural" but it does distinguish it from appraisals that use said condition, use, or "urban vocation" to form the basis of the appraisal. The expert determination of market value at the date of the declaration of public interest does not appear, with particular clarity and sustainability for the purposes of this Judgment in the amounts such as those determined by the experts Gutiérrez del Castillo and Jakeline Jaramillo Barcia. Without necessarily stating that the expert Gonzalo Estupiñán Narvaez is the most

[6] Cf. case file on the merits, tome IV, folios 502 to 505.
[7] Paragraph 71 of the Judgment on Reparations.
[8] Cf. case file on reparations, tome III, folios 569-591.

appropriate assessment, there are elements to validly incorporate it as reference for the determination by the Court given that the objections appear to be less for purposes of this case.

12. In this Judgment on reparations, the Court established the relativism of most of the conclusions of the expert reports. The Court notes, in effect, that these reports "are based largely on a comparison of market prices of urban lots near the area, which are then adjusted considering the various factors of the property. On the other hand, it is evident that the expert Estupiñán Narváez parts from a rural value of agricultural basis in a nearby rural area and adjusts it to an area of Quito, based on market prices of both areas."

13. The logical conclusion of this is that the determination of the commercial value of the property "prior to the declaration of public use" can be derived from two expert assessments that are based and supported by standards and criteria distinct from those that consider the specific legal conditions of the property to be expropriated upon declaration of public interest. Thus, only the expert Estupiñán's assessment remains. Based on the valuation, however, an appraisal could not be reached as has been done in this Judgment, which triples that amount.

The just balance between the public and private interests

14. The second standard determined by the Court to establish a valuation is that of the "just balance between public interests and private interests." This must be in line with the former standard in order to determine "just compensation." Having carried out an organic and systematic incorporation of this standard, valuation estimates could have been drawn that are distinct from those set forth in this Judgment and more appropriate for establishing the "just balance" required by this Court.

15. In order to establish a "just balance," the Court determined in its Judgment on the Merits, in effect, that the competing interests at stake had to be analyzed. On the one hand, there is the finding of the Court that the expropriation was founded on reasons of public and social interest, and that there was "a legitimate or public interest based on environmental protection."[9] And, on the other hand, there is the determination of the Court that the State breached its obligations in respect to "judicial guarantees, given that the proceedings have exceeded the reasonable time and have lacked effectiveness. This has indefinitely deprived the victim of the property, as well as of the payment of just compensation, which has led to both legal and factual uncertainty and led to excessive imposed burdens, making such expropriation arbitrary."[10]

16. The establishment of the "just balance between public interests and private interests" is important because it refers both to the legitimacy that a declaration of public interest may have in the determination of the valuation of the expropriated property. The standard of "just compensation" referred to in Article 21(2) of the Convention can not be understood, therefore, to be synonymous with "market value" but rather as a result of a process that combines several factors and criteria, those of which, incidentally, establish a market value but also the "just balance between public interests and private interests" that needs to be developed and applied to this case as a complementary factor.

17. In a different context, this issue has been addressed by the European Court of Human Rights in several cases. In *James and Others v. The United Kingdom*, the alleged violation of property

[9] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 76.
[10] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 117.

rights established in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms was assessed.[11] The Court referred to the "just balance" between the requirements of public interest and the protection of the fundamental rights of individuals.[12] The European Court has held that the terms for compensation are a fundamental element in the determination of whether a just balance was reached.

18. In this respect, the European Court handles flexible margins, but in any case, it takes away repeatedly, for various reasons, from the conceptual equivalence between "market value" and "just balance," namely, what the Convention states as "just compensation" (and not "market value"). To arrive at the specific terms for a just compensation, it is necessary to analyze the context of the case, as it may determine that sometimes the "market value" of the expropriated property does not involve a proper balance between public interest and private interest. It should be noted, by way of example, that the European Court reached the conclusion that in a very special context such as German reunification, an expropriation is valid even when no compensation is provided.

19. Specifically, in the case *James and Others*, the European Court found that in certain circumstances, a compensation that is less than the "full market value" may be justified:

> The taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Said Article does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value [of the property in question].

20. On its behalf, the Constitutional Court of Colombia established that:

> fixing the value of compensation may be done with difficulty in an abstract and general manner, without taking into account the context of each case; rather, it requires the weighting of specific interests in each situation, so that the appropriate amount of compensation corresponds to what is fair.

21. The Constitutional Court, as a consequence, established that if the circumstances warrant, it would be possible to establish compensation less than the total harm produced by the expropriation:

> This characteristic can provoke the judge to, upon weighing the interests in each case, set an amount for compensation that is less than the total damage caused by the expropriation, but without being able, given that the Legislative Act No. 1 of 1999, excluded the possibility of expropriation without compensation, to reach the conclusion that there is no room for an appropriate compensation, as has been stated.

22. Following this line of reasoning, the Constitutional Court ruled that compensation may take on a reparative function, but that "it does not always have to have a restorative function and, as

[11] "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."
[12] Cf. ECHR,"*Case James and Others v. United Kingdom"*. Judgment of February 21, 1986, para. 50.

such, needs not be comprehensive." It also found that the compensation should take into account the interests at stake and weigh them case by case:

> Compensation must be fair, namely, it should be fixed taking into account the interests of the community and the affected person and, therefore, those interests must be weighed on a case-by-case basis. (...) The role of the compensation is, generally, of a reparative nature. It includes both consequential damages and loss of earnings. However, in some circumstances, when assessing the interests of the community and giving those interests special weight, it may be reduced to satisfy only a compensatory function. Furthermore, in different circumstances, when assessing the interests of affected person and giving these interests special constitutional value, as in the event of the family home and others that are set out in this Judgment, the compensation may, in both its amount and in its form of payment, take on a manner that makes it restorative.

23. The Supreme Court of the United States has analyzed, as well, the issue of "just compensation" using as a reference, Amendment V of the Constitution which establishes that "private property may not be occupied for public use without a just compensation." While it is true that the Supreme Court's jurisprudence tends to establish that it is the "market value" that determines the just compensation required by the abovementioned amendment. This was held, for example, in the case of *U.S. vs. 50 Acres of Land (1984)*, which stated that "just compensation should be measured, usually, by the market value of the property at the time of expropriation [be paid] in a contemporary money." However, the Supreme Court itself has stated that "when the market value is very difficult to determine or where its application may result in a manifest injustice to the owner or to the public interest," it is possible to depart from said standard.[13] In *U.S. v. Commodities Trading,* the Court held that the consideration that is always present in such cases is "what compensation is 'just' for both the owner of the property being expropriated and for the public [State] who should pay the bill."

24. As noted in the jurisprudence of the courts cited in the prior paragraphs, the synonymy between "just compensation" and "payment of the market value" is incorrect. For said synonymy to be correct in the Inter-American System, the American Convention would have used those terms. The "just compensation" mentioned in Article 21(1) provides, therein, a context for greater discretion to determine compensation based on circumstances which are related to the market value of the property but incorporate the circumstances of general interest and public interest who are at the base of the legitimacy of the expropriation and are factors to be assessed in the determination of compensation. This is what the Court has done in the Judgment on the Merits when it determined that the valuation should be the result of a "just balance between the public interest and private interest."

25. With the abovementioned being established, the "just balance between public interests and private interests" as provided by the Court as a criterion, should take into account, of course, the damage caused to those expropriated, whom, as determined by the Court, suffer an infringement to their right to judicial guarantees and to the reasonable time, without to date, a compensation being receiving for the expropriated property. But, on the other hand, there are two crucial aspects that make the general interest and public interest.

---

[13] Cf.. United States of America Supreme Court, "United States v. Commodities Trading Corp", 339 U.S. 121, pg. 123 (1950); United States of America Supreme Court, "Kirby Forest Industries, Inc. v. United States", 467 U.S. 1, 10, pg. 14 (1984).

26. First, there is the public interest that benefits from the result, that is, the Metropolitan Park, which is a benefit to all who can make use of its facilities and, going beyond that, for the entire population of the capital city who, with that Park, is provided a space for environmental protection and clean air.

27. Second is the budget of the State agency that is expropriating and promoting the project and plan of the Metropolitan Park, a municipal entity that has very limited resources and income. Indeed, as reported by the State in the public hearing without it being contested, a large amount of compensation would affect the means of the limited budgetary resources of the Municipality of Quito whose initial budget for the so-called "social hub" was of U.S. $290 million for 2008 and $380 million for 2009. These elements could have been considered in way that balanced the interests at stake so as to better consider the impact of the compensation provided in the context of the proven public interest. Therefore, I consider that the Court should have weighed differently the balance between private interests and public interest in this case.

Conclusion

28. In the expert assessments aimed at determining the "market value prior to the declaration of public interest" to which we have stated have been used, in most of them, not affiliated with or arising from the succession of limitations on this right from 1981. Therefore, of the technical standards that in another context would have been perfectly appropriate are inapplicable or, at least, questionable in this case. It is the expert assessment by Estupiñan in which standards are provided that are more suited to those determined by the Court and in this particular case, the expert report on the "market value" sets an amount of just over U.S. $ 6'000, 000.00 without having even weighed the balance between private interests and the larger public interest determined by the Court in its Judgment on the Merits.

29. In the balancing of conflicting interests the Court's reasoning in this case is centrally called upon. The main review of the different valuations derived from the expert opinions which appear to arise in this Judgment on reparations,[14] is not, in my opinion, the task established by the standards set in the jurisprudence of the Court and in its Judgment on the Merits. The review between appraisal standards and technical approaches that disparate and incomparable among themselves is not the best way to set a number for determining the amount to be paid for the expropriation of the property. Addressed in the Judgment on reparations is the exercise of weighing competing interests,[15] the conclusion reached appears to have been driven by the attempt to set a number by balancing between the highest and lowest valuations as established by the experts as doing otherwise would not allow for the establishment of the number U.S. $ 18,705, 000.00 plus interest.

30. Accordingly, applying and integrating the standards established by the Court in its Judgment on the Merits to determine the compensation that should be paid for the expropriation, the amount of U.S. $ 28,140,757.80 (including interest) is not clearly supported, which the State, i.e. the Municipality of Quito, would have to pay. Other elements should have been required in order to establish that the number set in paragraph 84 of this Judgment adequately reflects the combined market value before the declaration of public interest with the relevant factor of "just balance" determined by the Court.

[14] Paragraph 63 of the Judgment on Reparations.
[15] Paragraph 75 and on of the Judgment on Reparations.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

**JOINT PARTIALLY DISSENTING OPINION OF JUDGE CECILIA MEDINA QUIROGA**
**AND OF JUDGE *AD-HOC* DIEGO RODRIGUEZ PINZON**
**IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR,**
**JUDGMENT OF MARCH 3, 2011**

We agree with the decision of the Court, and in particular with the provisions set by the Court regarding the modality of the payments set for every five years as established in paragraphs 102, 103, and 104, but disagree in regard to the failure to set interests regarding the outstanding amount during those five years in those same paragraphs.

We believe that the Court has had to establish the victim's right to receive annual interest on the amounts outstanding for each of the five years established for the mode of payment (paras. 102-104).[1] The Court has had to recognize those interests, taking into account that the victim has not actually received payment in full because the payments have been divided into five so as to allow the State the means to satisfy this obligation. The victim has had to wait more than 14 years to be compensated for the expropriation, and the decision of the Court postponed the complete fulfillment of this requirement until March 30, 2016. From 2011 until 2016, the victim will not have received the full compensation to which she is entitled, with the additional burden that from the date of the Judgment on Reparations interest stops accruing, interests that were recognized by the Court as of July 1997 until February 2011. Thus, in this sense, the Court has reduced the amount for just compensation and the corresponding interests that it had acknowledged for the victim at first.

The majority decision does not suggest any reason for having made this decision to not award interest for the installment payments of compensation and reparation, as does the constant jurisprudence of this Court. We perceive no reason for a deviation of this nature and believe that the Judgment should provide it intends to innovate based on established jurisprudence.

Cecilia Medina Quiroga
Judge

Diego Rodríguez Pinzón
Judge *ad-hoc*

Pablo Saavedra Alessandri
Secretary

[1] The only interest that the victim shall receive after the Judgment on Reparations is the interest for delay in noncompliance of the annual quotas. (para. 103).

# PARTIALLY DISSENTING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN REGARD TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR, OF MARCH 3, 2011

1. I have concurred with the majority of the members of the Court in the adoption of all the points covered in the Judgment of preliminary objections and the merits in the *Case of Salvador Chiriboga*, of May 6, 2008. Now, I agree with several points of this judgment on reparations, approved March 3, 2011, yet I disagree in some. Other colleagues who participated in this order have also agreed in this same sense.

2. I want to emphasize, as I have done in other cases, that my reservations or disagreements do not imply neglect or rejection of the valid reasons provided by those who hold different views. I leave unmentioned - as I've always done, over many years - the majority decision of the Court and the insights of its members, which I have always valued and respected.

3. I have no doubt (as evinced by my participation in the judgment on preliminary objections and the merits) about the violation to the right to property, enshrined in Article 21 of the Convention, to the detriment of the victim in this case. A violation occurred. This is evident. It is reprehensible. It was therefore brought before this Court and should be grounds for conviction in the judgment on reparations.

4. I also have no doubt about the legitimacy of repairing the violation through a just compensation - among other measures - as is clear from Article 21(2), in relation to Articles 63(1) and 1(1) of the Convention, and as was ordered by the Court in the aforementioned decision of May 6, 2008.

5. A patrimonial reparation, in the form of a just compensation for the victim, without enriching or impoverishing her - as has been established by the jurisprudence of the Inter-American Court -, is the natural and customary manner for responding to the violation the right to private property, regarding the use and enjoyment of assets, which in this case include tangible property, real estate, affected by measures of expropriation for social interest.

6. The amount of compensation for damages comes from an assessment that is usually based on the value of the asset in question, established with support on objective factors that provide reasonable certainty. To this amount, it is necessary to add other charges such as those relating to interest incurred through the passage of time without satisfying the affected right. In this sense, the appreciation of the value of an asset often presents problems of a lesser degree than those inherent to the assessment for indemnification of assets of another nature, such as life, integrity, and freedom.

7. It is highly desirable that a dispute of this nature leads to an agreed solution, in good faith and with equity, between the victim and the State being accused of a violation and has actually committed it. It entails a regular space for a joint solution, both in what regards the very recognition of a violation as well as in regard to the compensation due.

In other cases the agreement between the parties is irrelevant. In these, however, it is the desirable and reasonable option.

8. In the hypothesis of reference, the agreement should have specified the amount of compensation due by the State - who is undoubtedly obligated to provide it - and in favor of the victim - who is unquestionably the creditor of this benefit.

9. The Inter-American Court sought to encourage such an agreement, as seen in operative paragraphs 4 and 5 of the Judgment of May 6, 2008. In this sense, it brought about the valuation of the property by a competent third party designated for this purpose, who deserved that the parties be in conformity and who would take into account the extremes that needed to be considered for this purpose, established in the judgment on the merits of the Court. The search for a joint solution has taken longer than was initially expected.

10. The valuations performed before the proceeding began before the Inter-American Court - including those presented to national authorities - and in the course of this process, show profound differences. These concern both the characterization of the nature and use of the property (which affects its value for purposes of compensation) and the numbers drawn from the examination carried out by the various experts who participated. In this regard, paragraph 63referred judgment is particularly illustrative in regard to this vote.

11. Accordingly, the Court has not been provided with clear, sufficient, or accepted elements of analysis by the litigants. Moreover, the final determination concerns the responsibility and mission of the Tribunal, "the expert of experts," and is not overruled by the opinion of the experts or in the more or less automatic adoption of a sort of "average" between numbers that are distant one from another, with respect to the basis and its amount.

12. The Court, which has already expressed that it has the "power to verify whether (the) agreement (which eventually was reached by the State and the representatives of the victim) is consistent with the American Convention on Human Rights," was finally disagreed upon, requiring it to provide full reparation and to adopt a decision without the support that would have existed with the decision of the parties and the agreement (if it were relevant) of the opinion of experts.

13. As such, the need arose to resolve in equity, pursuant to that mentioned in paragraph 84 of the Judgment of March 3, 2011. However, the consequences of the implementation of equity to a problem that ideally should have been resolved in another manner, qualitatively and quantitatively - which could not be reached, as has already stated - divided the opinion of the judges and now explains the reason for separate considerations and opinions.

14. In my opinion, equity - justice in the case, is threatened by the nature of the case - in the case *sub judice*, there is a sharper consideration of the set of standards that explicitly or implicitly are enshrined in the Articles 21(1), 21(2), 32(2), and 63(1) of the Convention, as there is - always protecting fairness - the need to move between the wide space that exists between numbers that are very different and very distant from each

other. It is necessary to find, in this wide space, a number that is reasonable for the scope of the objective sought by the Court at this time.

15. I must emphasize, to synthesize the reading of this particular opinion, to which I am not discussing, in any way, the terms of the judgment on the merits, or reviewing or rereading its terms. This judgment said what it needed to say about the formal legality of the expropriation, the formal legality of the process, the existence of a cause of action based on public or social interest, and other extremes of its incumbency. What I seek - to my knowledge and belief - is to infer from the Convention and the Judgment on the merits the basis for the identification of a reasonable amount as compensation.

16. The Court has decided, by a majority vote, what that number is. I shall not pose another, but I shall state that in my opinion the amount specified in the judgment of March 3 could have been more reasonable and thus provide a more equitable solution to the obvious problem that arises regarding the tension between the right to a person's private property and the social expectation of the community for whose benefit the expropriation was made. Both objectives are plausible. It is possible to head to them, especially when it entails operating with equity in the absence of conclusive evidence of another nature.

17. I think that the Court itself has considered some implications of the decision, which must be fulfilled by the Ecuadorian State, and perhaps more specifically - in practical terms - by the community of Quito, which now faces two overriding purposes: to carry out the ecological project that will benefit the health of the community and to provide the compensation that is due - with full justification, because it stems from the infringement of an individual right - that of the victim in this case.

18. I say that the Court has considered in some way - by implication - the circumstances in which it operates and the consequences that should be brought about by its judgment, in that it allowed the State to pay the compensation within five years, without accruing new interest charges due to this modality of payment. I do not believe that it would have been resolved in this way had the Court not considered the existing tension between the rights sought to be respected and the difficulty of making a single payment, or covering the payment in a shorter period or with interest accrued over time, of such a large amount (given the circumstances presented here), which perhaps would weigh very heavily on the finances of the community of Quito and in this sense probably weighs on the extent of the objective behind the social interest.

19. I shall not omit to mention -using my memory as opposed to specific information regarding the jurisprudence of the Court- that this declaration of a violation of the right to private property is the highest it has been over a period of thirty years. Never before has a violation been declared that comes close to that amount even in cases of extrajudicial killings (of one or many persons, or massacres which destroy the lives of tens or hundreds of human beings), nor in cases of torture and enforced disappearances.

20. Of course, the consideration mentioned in the previous paragraph - which inspired some of my concerns upon studying the case and meditating over the judgment - does not in any way intend to question the existence or apparent violation of a right no less respectable and protected than any other in the Convention or to put aside objective facts to assess the damage caused (those of which were not enough in this case, as there

are none- nor could there be- at the time of review for purposes of compensation, regarding the loss of life, injury to integrity, the unjust suppression of freedom), nor reconsidering the text of Article 21 and the decision held in the judgment on the merits, which I subscribed.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

**PARTIALLY DISSENTING VOTE OF JUDGE LEONARDO A. FRANCO WITH RESPECT TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR, OF MARCH 3, 2011.**

1. In the Judgment on preliminary objections and merits in the *Case of Salvador Chiriboga* v. *Ecuador*, of May 6, 2008, the Court found a violation of the right to private property enshrined in Article 21 of the American Convention on Human Rights concerning the right to judicial guarantees [fair trial] and judicial protection enshrined in Articles 8(1) and 25(1), all in relation to Article 1(1) of that instrument, to the detriment of María Salvador Chiriboga.[1]

2. In that Judgment, the Court ruled that the determination of the amount and payment of compensation for damages for the expropriation of property, as well as any other measure to remedy the violations found, were to be made by agreement between the State and the representatives of the victims, thereby reserving the right to verify whether the agreement reached by the parties was under the American Convention on Human Rights.[2]

3. The representatives of the victims and the State did not reach an agreement within the period fixed by the Court, to which, pursuant to operative paragraph 5 of the Judgment on the Merits, the Court should resolve the controversy regarding reparations and make a decision without the support which might have been offered through the consensual will of the parties.

4. In the Judgment on the Merits, two standards were established to guide the assessment of the compensatory reparation for damages: a) the market value of the property "prior to the declaration of public interest"; and b) "the just balance between public interests and the private interests."[3]

5. While I concurred with the majority of the members regarding the Court's decision in the Judgment on preliminary objections and the merits, I am of the opinion that the use of the standards laid down for repairs for damages, could have led to the establishment of a lower amount than the one set in paragraph 84 herein. In this sense, I adhere to and share the standards that with greater expertise and experience are developed by Dr. Garcia Sayan and Dr. García Ramírez in the partially dissenting opinions that go with this Judgment.

6. On the one hand, it is important to note that different valuations carried out to determine the "market value" of the expropriated property, rendered both in the domestic forums and before this Court, demonstrate profound differences. The required "just balance" cannot stem more or less from the automatic adoption of a sort of "average" between numbers that are very different one from another.

7. While the so-called "market value" should be a reference when establishing the amount of compensation in cases of expropriation for reasons of public or social interest, in order

---

[1] Cf. *Case of Salvador Chiriboga V. Ecuador*. Preliminary Objection and the Merits. Judgment of May 6, 2008, Series C No. 179, operative paragraph 2.
[2] Cf. *Case of Salvador Chiriboga V. Ecuador, supra* note 1, operative paragraph 4 and 5.
[3] Cf. Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 98.

to establish the purpose of a "just balance," the interests at stake in the case must be considered with special focus on the public interest. The need to harmonize and balance the rights at play, completely prevents the assimilation of the standard of "just compensation" referred to in Article 21(2) of the American Convention with the "market value," due to the influence that the public interest may exercise in a specific case. In that sense, the European Court of Human Rights has stated that legitimate public interest objectives such as those sought by measures for economic reform or those that are intended to further social justice may require less than the reimbursement of a market value.[4]

8. In this case, the Court saw the need to balance, on the one hand, that the State approved "a legitimate or public interest based on environmental protection,"[5] through the establishment of the Metropolitan Park which was to the benefit of all the inhabitants of the Municipality of Quito. On the other hand, the Court held that the State had breached its obligations in respect to judicial guarantees, given that the proceedings had exceeded the time limit for reasonable settlement and, therefore, had no effect, indefinitely depriving the victim of her land, in addition to the payment for just compensation, making such expropriation an arbitrary one.[6]

9. However, I think that the budgetary capacity of the Municipality of Quito has not been duly considered within the factor of public interest, if there was an intention to properly assess the potential impact on the community's fiscal outlay required to make the payment for compensation awarded by the Court. An equity standard to consider the characteristics of the case would have required a special consideration of the public interest that would be potentially affected as a consequence of the payment of the Judgment on reparations ordered by the Court.

Leonardo A. Franco
Judge

Pablo Saavedra Alessandri
Secretary

[4] Cf.. ECHR, "*Case of James and Others vs. The United Kingdom*", Judgment of June 21, 1986, para. 54; ECHR, "*Case of The Holy Monasteries v. Greece*", Judgment of December 9, 1994, para. 71, y ECHR, "*Case of Pappachelas v. Greece*", Judgment March 25, 1999, para. 48.
[5] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 76.
[6] Case of *Salvador Chiriboga V. Ecuador*, *supra*no tae 1, para. 117.

**DISSENTING OPINION OF JUDGE MARGARETTE MAY MACAULAY TO OPERATIVE PARAGRAPH 4 OF THE JUDGMENT**

I find it necessary to state my dissent to Operative paragraph 4 of the Judgment and consequently to the directions in paragraphs 102 and 103 of the Judgment. In my opinion, as they appear, these paragraphs are at the highest in conflict with, or at the lowest fall short of the criteria and the principles of standards propounded in paragraphs 83, 84 and 85 of the Judgment.

In these paragraphs, we the Court make clear reference, firstly, in paragraph 83 to the State's failure to comply with Article 21 of the Convention plus the requirement of making the payment for the expropriated property within a reasonable time; secondly, in paragraph 84 by applying the criteria of reasonableness, proportionality and equity, having balanced pubic interest and individual interest, fixed the sum of US$18,705,000.00 as a reasonable value and as a just compensation in the international arena for the expropriated property; and thirdly, in paragraph 85 on the issue of legitimate interest payable on the pecuniary damages awarded in the Judgment, that in order to ensure prompt and effective payment over of the award, the State must act pursuant to the manner of payments set out in the paragraphs of "Modalities of Payment", (to wit for the purposes of this Dissenting Opinion), paragraphs 102 and 103 of the Judgment.

Consequently, it is quite apparent to me that the State having failed to pay a fair and just compensation within a reasonable time, ought to be directed to pay over the sum determined by the Court as being a just compensation, as promptly as is practicable and just, therefore in the circumstances of the case, a period of 5 years for the said payment directed in paragraph 102, does not meet this criteria of promptness of payment of a just compensation. The period ought therefore to have been appreciably shorter, if not within a reasonably short time after receipt of the Judgment, then perhaps within 2 or at the most 3 years of that date, with simple interest thereon of a fixed rate, to date of payment.

In addition, paragraph 103, in my opinion, fails far short, of ensuring a just compensation, especially to an owner of property who has been deprived of its possession and user and of any just compensation for the same, for so many years, even with the award of the sum of US$ 9,435.757,80 plus for interest covering the years specified in the Judgment. The direction therein in this paragraph, that the payment of interest within the directed 5 year period, will only arise, if an instalment is paid later than directed, will, in my opinion, result in a further deprivation of a just compensation to Mrs. Chiriboga, the owner, because of the fact that as each year for payment passes, the value of the next payment would have depreciated due to inflation, and yet, interest shall only be payable during this period if there is a delay of an instalment payment beyond the 30th of March of any of the 5 stated annual payments, and, only on the delayed instalment. In fact, the first payment, directed to be made on the 30th March 2012, would already be affected by inflation. The sum which the Court fixes in March 2011, will not be the same value a year from now.

In such circumstances, it is just, reasonable, proportional and equitable for interest to run on the balance for payments being made over an extended period of time. As the

majority of the Judges have determined in paragraph 103, I am of the opinion that Mrs. Chiriboga shall in fact not receive the full worth of the value determined by the Court as just compensation because of paragraphs 102 and 103 of the Judgment as they are worded, and that she ought to be awarded interest thereon as I have already stated above. It is my view, that if the payment of interest is not directed to be paid, as is usual, until full payment over is made of the Court's award, the Payer, the State is granted an unfair advantage over the Payee, Mrs. Chiriboga.

For these reasons above stated, I dissent from the majority opinion as stated in paragraphs 102 and 103 of the Judgment and Operative Paragraph 4 of the Judgment.

Margarette May Macaulay
Judge

Pablo Saavedra Alessandri
Secretario

**PARTIALLY DISSENTING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN WITH RESPECT TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR MARCH 3, 2011**

7. The Judgment on the Merits issued in this case by the Court on May 6, 2008, is clear regarding the standard for determining the amount of "just compensation," as well as on how to make this determination. Thus, in this Judgment on reparations, the Court is not called to decide on how to reach that determination as it did so in the Judgment on the Merits by establishing that it would be done "by mutual agreement between the State and the representatives within a six month period after the notification of [the] Judgment."

8. As is reported in this Judgment, the parties did not reach an agreement within the time limit which, in turn, had also been extended to February 15, 2009, at the request of the State. Upon reaching this deadline without having come to an agreement, the parties placed the matter in the hands of the Court to determine the reparations established in operative paragraph 5 of the Judgment on the Merits. That is what the Court has done in this Judgment on reparations.

The just compensation

9. The essence of the matter in regard to the determination of reparations lies in setting the amount that must be paid by the State for the expropriation of the property referred to in this case. In reaching that determination, the Court had as it's starting point at least two clear and explicit factors. One is contained in Article 21(2) of the American Convention on Human Rights[200] and the other is a standard established by the Court in its Judgment on the Merits of May 6, 2008.

10. In regard to the determination of "just compensation" in this case, in the Judgment on the Merits,[201] standards are established to guide the assessment:

> XCIX 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 interest must be taken into account and also, the just balance between the general interest and the individual interest as referred to in this Judgment […].

11. In essence, there are two standards determined by the Court: a) the market value of the property "before the declaration of public interest" and b) "the just balance

[200] Article 21(2) (Right to Private Property):

1.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.
2.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.
[...]

[201] Cf. *Case of Salvador Chiriboga V. Ecuador*, supra note 1, para. 98.

between the public interest and the private interest." Both standards could have led to the establishment of an amount less than U.S. $18,705,000.00 under paragraph 84 of this Judgment, and as a corollary, also below the U.S.9,435,757.80 in what regards interests established in the Judgment[202], wherein the total compensation for these comes to a total of $ 28,140,757.80.

Market value of the property prior to the declaration of public interest

3. The first aspect is the market value of the property "prior to the declaration of public interest." In the Judgment, it is stated that the market value should be the value it was before the declaration of public interest. The Judgment explains and develops quite clearly the factual and legal circumstances prior to that declaration.

4. To accurately determine the market value of a property as of a date prior to the declaration of public interest, namely May 13, 1991, is a complex task not only given the twenty years elapsed, but, essentially, because of the limits and restrictions imposed on the property several years prior.

5. A path to an appraisal is via an expert. As described in this Judgment, in the domestic and international transactions there have been different surveys carried out. Unfortunately, as shown and explained in this Judgment[203], the idea of appointing an international expert for the possible expert assessment was unsuccessful. Therefore, we turn refer to the two opinions given in the domestic forum and the three rendered in the proceedings before this Court.

6. As stated in this Judgment, the case file shows that in the domestic procedures before the Ninth Court of Quito two expert reports were rendered: one of the expert Vicente Domínguez Zambrano and the other of the expert Manuel Silva Vásconez. After hearing the expert opinion of Dominguez by both parties before the Ninth Court, the appointment of expert Vásconez Silva was provided, whose opinion was issued in May 2008 and established the value per square meter "at the time of the survey" was U.S. $ 63.83 m2, which multiplied by the amount of land would give a total value of U.S. $ 41,214, 233.12. This Judgment of the Court states, however, that the same expert had determined in 1996 that in said year the value per square meter was U.S.$28.19 per m2, which meant a total of U.S. $ 18'201, 930.62.

7. It follows that from the two expert assessments carried out in the domestic forum, one was observed by both parties and the second, from the expert Silva Vasconez, determined a statistic of the values of 2008. The valuation made by the same expert in 1996 (five years after the declaration of public interest) determined the amount of U.S. $ 18,201, 930.62. The Court could incorrectly use as a reference the amount set in 2008 as a possible prices. It could be a less distant reference point, of course, the value set by the same expert in 1996.

[202] Paragraph 101 of the Judgment on reparations.
[203] Paragraphs 13 and on of the Judgment on Reparations.

8. In the Judgment on reparations the essential content of the three valuations given as expert assessments before this Court is described[204]: Edmundo Gutiérrez del Castillo, Jake Jaramillo Gonzalo Barcia and Estupiñán Narváez. The first, proposed by the Commission and representatives, the second by the representatives, and, third, by the State.

9. The expert assessment by Edmundo Gutiérrez del Castillo takes into account a number of standards and indicators to arrive at the amount of reparation, which he determined (U.S. $ 58,111,875.00). Between them, they mentioned that the land would have greater value because it was far removed from potential natural disaster zones, because in the area the properties have greater value (among other things for being close to shopping centers), because the infrastructure services available, because of the similar prices of real estate for sale in the area, because of the market value in the area and zoning (that allows the construction of buildings higher than 9m, which are more desirable).[205] As shown, it does not appear to be a central issue, that of determining the value of this specific site, which is only briefly mentioned in this Judgment, as the succession of legal constraints imposed on the property since 1981.[206] In light of this capital circumstance, many of the characteristics and conditions mentioned by the expert that are applied to other properties are not applicable to this expropriated land.

10. The opinion rendered by the expert Jakeline Jaramillo Barcia, on which the following Lumber is obtained U.S. $ 65.33 per m2, equivalent to U.S. $ 42,180, 504.47 for the entire plot, to which the value of the eucalyptus forest must be added, is based on explicit criteria which is, as noted above, that of the "urban vocation" of the property. In her expert report, the expert took account the prices of similar nearby properties that were for sale. As can be seen, in this case, the expert report does not seem to have taken into account the essential circumstances of the assessment as determined by the limitations imposed on the property since 1981 and which did not make said property comparable to other properties for sale that were able to maintain the "urban vocation" which was legally denied to the expropriated property.

11. The third expert assessment, that of expert Gonzalo Estupiñán Narváez, was presented by the State, as mentioned prior. This expert noted that the expropriated land had not been considered "by the Municipal Planning as urban land or land that could be developed or urbanized," and that, since one could not build on it, criteria for appraisal of rural land should be applied, while considering its urban location. In one of his reports,[207] this expert recalls the basis contained in the study by the Association of Expert Evaluators (APA). Once these fundamentals were outlined, he concluded that the amount determined by the appraisal of the APA was correct:

> Whereas the valuation order explicitly states that it be made taking as reference the market value of the property being expropriated before the declaration of public interest (carried out in May 1991) "the market research investigation was carried out within the period of February to May 1991, wherein the unit value of $ 9.36 USO was reached, multiplied by the total land area of 645,687,50 m' was determined at the fair price of $ USO 6,043 .635.25.

[204] Paragraphs 49, 51, and 52 of the Judgment on Reparations.
[205] Cf. case file on the merits, tome IV, folios 502 to 505.
[206] Paragraph 71 of the Judgment on Reparations.
[207] Cf. case file on reparations, tome III, folios 569-591.

12. Of the expert assessments presented in the domestic forum, two of them applied criteria of reference and conditions that do not highlight the limitations imposed on the property since 1981 for its development and use. The method of calculation used by the third expert appears to be closer in terms to the criteria laid down in the Judgment. Among other things because it combined unit values of rural land close to the nearest urban land. This does not make the property "rural" but it does distinguish it from appraisals that use said condition, use, or "urban vocation" to form the basis of the appraisal. The expert determination of market value at the date of the declaration of public interest does not appear, with particular clarity and sustainability for the purposes of this Judgment in the amounts such as those determined by the experts Gutiérrez del Castillo and Jakeline Jaramillo Barcia. Without necessarily stating that the expert Gonzalo Estupiñán Narvaez is the most appropriate assessment, there are elements to validly incorporate it as reference for the determination by the Court given that the objections appear to be less for purposes of this case.

13. In this Judgment on reparations, the Court established the relativism of most of the conclusions of the expert reports. The Court notes, in effect, that these reports "are based largely on a comparison of market prices of urban lots near the area, which are then adjusted considering the various factors of the property. On the other hand, it is evident that the expert Estupiñán Narváez parts from a rural value of agricultural basis in a nearby rural area and adjusts it to an area of Quito, based on market prices of both areas."

14. The logical conclusion of this is that the determination of the commercial value of the property "prior to the declaration of public use" can be derived from two expert assessments that are based and supported by standards and criteria distinct from those that consider the specific legal conditions of the property to be expropriated upon declaration of public interest. Thus, only the expert Estupiñán's assessment remains. Based on the valuation, however, an appraisal could not be reached as has been done in this Judgment, which triples that amount.

The just balance between the public and private interests

15. The second standard determined by the Court to establish a valuation is that of the "just balance between public interests and private interests." This must be in line with the former standard in order to determine "just compensation." Having carried out an organic and systematic incorporation of this standard, valuation estimates could have been drawn that are distinct from those set forth in this Judgment and more appropriate for establishing the "just balance" required by this Court.

16. In order to establish a "just balance," the Court determined in its Judgment on the Merits, in effect, that the competing interests at stake had to be analyzed. On the one hand, there is the finding of the Court that the expropriation was founded on reasons of public and social interest, and that there was "a legitimate or public interest based on environmental protection."[208] And, on the other hand, there is the determination of the Court that the State breached its obligations in respect to "judicial guarantees, given that the proceedings have exceeded the reasonable time and have lacked effectiveness. This

[208] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 76.

has indefinitely deprived the victim of the property, as well as of the payment of just compensation, which has led to both legal and factual uncertainty and led to excessive imposed burdens, making such expropriation arbitrary."[209]

17. The establishment of the "just balance between public interests and private interests" is important because it refers both to the legitimacy that a declaration of public interest may have in the determination of the valuation of the expropriated property. The standard of "just compensation" referred to in Article 21(2) of the Convention can not be understood, therefore, to be synonymous with "market value" but rather as a result of a process that combines several factors and criteria, those of which, incidentally, establish a market value but also the "just balance between public interests and private interests" that needs to be developed and applied to this case as a complementary factor.

18. In a different context, this issue has been addressed by the European Court of Human Rights in several cases. In *James and Others v. The United Kingdom*, the alleged violation of property rights established in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms was assessed.[210] The Court referred to the "just balance" between the requirements of public interest and the protection of the fundamental rights of individuals.[211] The European Court has held that the terms for compensation are a fundamental element in the determination of whether a just balance was reached.

19. In this respect, the European Court handles flexible margins, but in any case, it takes away repeatedly, for various reasons, from the conceptual equivalence between "market value" and "just balance," namely, what the Convention states as "just compensation" (and not "market value"). To arrive at the specific terms for a just compensation, it is necessary to analyze the context of the case, as it may determine that sometimes the "market value" of the expropriated property does not involve a proper balance between public interest and private interest. It should be noted, by way of example, that the European Court reached the conclusion that in a very special context such as German reunification, an expropriation is valid even when no compensation is provided.

20. Specifically, in the case *James and Others*, the European Court found that in certain circumstances, a compensation that is less than the "full market value" may be justified:

> The taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Said Article does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest", such as pursued in measures of economic reform

---

[209] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 117.
[210] "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."
[211] Cf. ECHR,"*Case James and Others v. United Kingdom"*. Judgment of February 21, 1986, para. 50.

> or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value [of the property in question].

21. On its behalf, the Constitutional Court of Colombia established that:

> fixing the value of compensation may be done with difficulty in an abstract and general manner, without taking into account the context of each case; rather, it requires the weighting of specific interests in each situation, so that the appropriate amount of compensation corresponds to what is fair.

22. The Constitutional Court, as a consequence, established that if the circumstances warrant, it would be possible to establish compensation less than the total harm produced by the expropriation:

> This characteristic can provoke the judge to, upon weighing the interests in each case, set an amount for compensation that is less than the total damage caused by the expropriation, but without being able, given that the Legislative Act No. 1 of 1999, excluded the possibility of expropriation without compensation, to reach the conclusion that there is no room for an appropriate compensation, as has been stated.

23. Following this line of reasoning, the Constitutional Court ruled that compensation may take on a reparative function, but that "it does not always have to have a restorative function and, as such, needs not be comprehensive." It also found that the compensation should take into account the interests at stake and weigh them case by case:

> Compensation must be fair, namely, it should be fixed taking into account the interests of the community and the affected person and, therefore, those interests must be weighed on a case-by-case basis. (...) The role of the compensation is, generally, of a reparative nature. It includes both consequential damages and loss of earnings. However, in some circumstances, when assessing the interests of the community and giving those interests special weight, it may be reduced to satisfy only a compensatory function. Furthermore, in different circumstances, when assessing the interests of affected person and giving these interests special constitutional value, as in the event of the family home and others that are set out in this Judgment, the compensation may, in both its amount and in its form of payment, take on a manner that makes it restorative.

24. The Supreme Court of the United States has analyzed, as well, the issue of "just compensation" using as a reference, Amendment V of the Constitution which establishes that "private property may not be occupied for public use without a just compensation." While it is true that the Supreme Court's jurisprudence tends to establish that it is the "market value" that determines the just compensation required by the abovementioned amendment. This was held, for example, in the case of *U.S. vs. 50 Acres of Land (1984)*, which stated that "just compensation should be measured, usually, by the market value of the property at the time of expropriation [be paid] in a contemporary money." However, the Supreme Court itself has stated that "when the market value is very difficult to determine or where its application may result in a manifest injustice to the owner or to the public interest," it is possible to depart from

said standard.[212] In *U.S. v. Commodities Trading,* the Court held that the consideration that is always present in such cases is "what compensation is 'just' for both the owner of the property being expropriated and for the public [State] who should pay the bill."

25. As noted in the jurisprudence of the courts cited in the prior paragraphs, the synonymy between "just compensation" and "payment of the market value" is incorrect. For said synonymy to be correct in the Inter-American System, the American Convention would have used those terms. The "just compensation" mentioned in Article 21(1) provides, therein, a context for greater discretion to determine compensation based on circumstances which are related to the market value of the property but incorporate the circumstances of general interest and public interest who are at the base of the legitimacy of the expropriation and are factors to be assessed in the determination of compensation. This is what the Court has done in the Judgment on the Merits when it determined that the valuation should be the result of a "just balance between the public interest and private interest."

27. With the abovementioned being established, the "just balance between public interests and private interests" as provided by the Court as a criterion, should take into account, of course, the damage caused to those expropriated, whom, as determined by the Court, suffer an infringement to their right to judicial guarantees and to the reasonable time, without to date, a compensation being receiving for the expropriated property. But, on the other hand, there are two crucial aspects that make the general interest and public interest.

28. First, there is the public interest that benefits from the result, that is, the Metropolitan Park, which is a benefit to all who can make use of its facilities and, going beyond that, for the entire population of the capital city who, with that Park, is provided a space for environmental protection and clean air.

28. Second is the budget of the State agency that is expropriating and promoting the project and plan of the Metropolitan Park, a municipal entity that has very limited resources and income. Indeed, as reported by the State in the public hearing without it being contested, a large amount of compensation would affect the means of the limited budgetary resources of the Municipality of Quito whose initial budget for the so-called "social hub" was of U.S. $290 million for 2008 and $380 million for 2009. These elements could have been considered in way that balanced the interests at stake so as to better consider the impact of the compensation provided in the context of the proven public interest. Therefore, I consider that the Court should have weighed differently the balance between private interests and public interest in this case.

Conclusion

29. In the expert assessments aimed at determining the "market value prior to the declaration of public interest" to which we have stated have been used, in most of them, not affiliated with or arising from the succession of limitations on this right from 1981. Therefore, of the technical standards that in another context would have been perfectly appropriate are inapplicable or, at least, questionable in this case. It is the expert assessment by Estupiñan in which standards are provided that are more suited to those

[212] Cf.. United States of America Supreme Court, "United States v. Commodities Trading Corp", 339 U.S. 121, pg. 123 (1950); United States of America Supreme Court, "Kirby Forest Industries, Inc. v. United States", 467 U.S. 1, 10, pg. 14 (1984).

determined by the Court and in this particular case, the expert report on the "market value" sets an amount of just over U.S. $ 6'000, 000.00 without having even weighed the balance between private interests and the larger public interest determined by the Court in its Judgment on the Merits.

30. In the balancing of conflicting interests the Court's reasoning in this case is centrally called upon. The main review of the different valuations derived from the expert opinions which appear to arise in this Judgment on reparations,[213] is not, in my opinion, the task established by the standards set in the jurisprudence of the Court and in its Judgment on the Merits. The review between appraisal standards and technical approaches that disparate and incomparable among themselves is not the best way to set a number for determining the amount to be paid for the expropriation of the property. Addressed in the Judgment on reparations is the exercise of weighing competing interests,[214] the conclusion reached appears to have been driven by the attempt to set a number by balancing between the highest and lowest valuations as established by the experts as doing otherwise would not allow for the establishment of the number U.S. $ 18,705, 000.00 plus interest.

31. Accordingly, applying and integrating the standards established by the Court in its Judgment on the Merits to determine the compensation that should be paid for the expropriation, the amount of U.S. $ 28,140,757.80 (including interest) is not clearly supported, which the State, i.e. the Municipality of Quito, would have to pay. Other elements should have been required in order to establish that the number set in paragraph 84 of this Judgment adequately reflects the combined market value before the declaration of public interest with the relevant factor of "just balance" determined by the Court.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

[213] Paragraph 63 of the Judgment on Reparations.
[214] Paragraph 75 and on of the Judgment on Reparations.

**JOINT PARTIALLY DISSENTING OPINION OF JUDGE CECILIA MEDINA QUIROGA
AND OF JUDGE *AD-HOC* DIEGO RODRIGUEZ PINZON
IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR,
JUDGMENT OF MARCH 3, 2011**

We agree with the decision of the Court, and in particular with the provisions set by the Court regarding the modality of the payments set for every five years as established in paragraphs 102, 103, and 104, but disagree in regard to the failure to set interests regarding the outstanding amount during those five years in those same paragraphs.

We believe that the Court has had to establish the victim's right to receive annual interest on the amounts outstanding for each of the five years established for the mode of payment (paras. 102-104).[215] The Court has had to recognize those interests, taking into account that the victim has not actually received payment in full because the payments have been divided into five so as to allow the State the means to satisfy this obligation. The victim has had to wait more than 14 years to be compensated for the expropriation, and the decision of the Court postponed the complete fulfillment of this requirement until March 30, 2016. From 2011 until 2016, the victim will not have received the full compensation to which she is entitled, with the additional burden that from the date of the Judgment on Reparations interest stops accruing, interests that were recognized by the Court as of July 1997 until February 2011. Thus, in this sense, the Court has reduced the amount for just compensation and the corresponding interests that it had acknowledged for the victim at first.

The majority decision does not suggest any reason for having made this decision to not award interest for the installment payments of compensation and reparation, as does the constant jurisprudence of this Court. We perceive no reason for a deviation of this nature and believe that the Judgment should provide it intends to innovate based on established jurisprudence.

Cecilia Medina Quiroga
Judge

Diego Rodríguez Pinzón
Judge *ad-hoc*

Pablo Saavedra Alessandri
Secretary

[215] The only interest that the victim shall receive after the Judgment on Reparations is the interest for delay in noncompliance of the annual quotas. (para. 103).

# PARTIALLY DISSENTING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN REGARD TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR, OF MARCH 3, 2011

1. I have concurred with the majority of the members of the Court in the adoption of all the points covered in the Judgment of preliminary objections and the merits in the *Case of Salvador Chiriboga*, of May 6, 2008. Now, I agree with several points of this judgment on reparations, approved March 3, 2011, yet I disagree in some. Other colleagues who participated in this order have also agreed in this same sense.

2. I want to emphasize, as I have done in other cases, that my reservations or disagreements do not imply neglect or rejection of the valid reasons provided by those who hold different views. I leave unmentioned - as I've always done, over many years - the majority decision of the Court and the insights of its members, which I have always valued and respected.

3. I have no doubt (as evinced by my participation in the judgment on preliminary objections and the merits) about the violation to the right to property, enshrined in Article 21 of the Convention, to the detriment of the victim in this case. A violation occurred. This is evident. It is reprehensible. It was therefore brought before this Court and should be grounds for conviction in the judgment on reparations.

4. I also have no doubt about the legitimacy of repairing the violation through a just compensation - among other measures - as is clear from Article 21(2), in relation to Articles 63(1) and 1(1) of the Convention, and as was ordered by the Court in the aforementioned decision of May 6, 2008.

5. A patrimonial reparation, in the form of a just compensation for the victim, without enriching or impoverishing her - as has been established by the jurisprudence of the Inter-American Court -, is the natural and customary manner for responding to the violation the right to private property, regarding the use and enjoyment of assets, which in this case include tangible property, real estate, affected by measures of expropriation for social interest.

6. The amount of compensation for damages comes from an assessment that is usually based on the value of the asset in question, established with support on objective factors that provide reasonable certainty. To this amount, it is necessary to add other charges such as those relating to interest incurred through the passage of time without satisfying the affected right. In this sense, the appreciation of the value of an asset often presents problems of a lesser degree than those inherent to the assessment for indemnification of assets of another nature, such as life, integrity, and freedom.

7. It is highly desirable that a dispute of this nature leads to an agreed solution, in good faith and with equity, between the victim and the State being accused of a violation and has actually committed it. It entails a regular space for a joint solution, both in what regards the very recognition of a violation as well as in regard to the compensation due.

In other cases the agreement between the parties is irrelevant. In these, however, it is the desirable and reasonable option.

8. In the hypothesis of reference, the agreement should have specified the amount of compensation due by the State - who is undoubtedly obligated to provide it - and in favor of the victim - who is unquestionably the creditor of this benefit.

9. The Inter-American Court sought to encourage such an agreement, as seen in operative paragraphs 4 and 5 of the Judgment of May 6, 2008. In this sense, it brought about the valuation of the property by a competent third party designated for this purpose, who deserved that the parties be in conformity and who would take into account the extremes that needed to be considered for this purpose, established in the judgment on the merits of the Court. The search for a joint solution has taken longer than was initially expected.

10. The valuations performed before the proceeding began before the Inter-American Court - including those presented to national authorities - and in the course of this process, show profound differences. These concern both the characterization of the nature and use of the property (which affects its value for purposes of compensation) and the numbers drawn from the examination carried out by the various experts who participated. In this regard, paragraph 63referred judgment is particularly illustrative in regard to this vote.

11. Accordingly, the Court has not been provided with clear, sufficient, or accepted elements of analysis by the litigants. Moreover, the final determination concerns the responsibility and mission of the Tribunal, "the expert of experts," and is not overruled by the opinion of the experts or in the more or less automatic adoption of a sort of "average" between numbers that are distant one from another, with respect to the basis and its amount.

12. The Court, which has already expressed that it has the "power to verify whether (the) agreement (which eventually was reached by the State and the representatives of the victim) is consistent with the American Convention on Human Rights," was finally disagreed upon, requiring it to provide full reparation and to adopt a decision without the support that would have existed with the decision of the parties and the agreement (if it were relevant) of the opinion of experts.

13. As such, the need arose to resolve in equity, pursuant to that mentioned in paragraph 84 of the Judgment of March 3, 2011. However, the consequences of the implementation of equity to a problem that ideally should have been resolved in another manner, qualitatively and quantitatively - which could not be reached, as has already stated - divided the opinion of the judges and now explains the reason for separate considerations and opinions.

14. In my opinion, equity - justice in the case, is threatened by the nature of the case - in the case *sub judice*, there is a sharper consideration of the set of standards that explicitly or implicitly are enshrined in the Articles 21(1), 21(2), 32(2), and 63(1) of the Convention, as there is - always protecting fairness - the need to move between the wide space that exists between numbers that are very different and very distant from each

other. It is necessary to find, in this wide space, a number that is reasonable for the scope of the objective sought by the Court at this time.

15. I must emphasize, to synthesize the reading of this particular opinion, to which I am not discussing, in any way, the terms of the judgment on the merits, or reviewing or rereading its terms. This judgment said what it needed to say about the formal legality of the expropriation, the formal legality of the process, the existence of a cause of action based on public or social interest, and other extremes of its incumbency. What I seek - to my knowledge and belief - is to infer from the Convention and the Judgment on the merits the basis for the identification of a reasonable amount as compensation.

16. The Court has decided, by a majority vote, what that number is. I shall not pose another, but I shall state that in my opinion the amount specified in the judgment of March 3 could have been more reasonable and thus provide a more equitable solution to the obvious problem that arises regarding the tension between the right to a person's private property and the social expectation of the community for whose benefit the expropriation was made. Both objectives are plausible. It is possible to head to them, especially when it entails operating with equity in the absence of conclusive evidence of another nature.

17. I think that the Court itself has considered some implications of the decision, which must be fulfilled by the Ecuadorian State, and perhaps more specifically - in practical terms - by the community of Quito, which now faces two overriding purposes: to carry out the ecological project that will benefit the health of the community and to provide the compensation that is due - with full justification, because it stems from the infringement of an individual right - that of the victim in this case.

18. I say that the Court has considered in some way - by implication - the circumstances in which it operates and the consequences that should be brought about by its judgment, in that it allowed the State to pay the compensation within five years, without accruing new interest charges due to this modality of payment. I do not believe that it would have been resolved in this way had the Court not considered the existing tension between the rights sought to be respected and the difficulty of making a single payment, or covering the payment in a shorter period or with interest accrued over time, of such a large amount (given the circumstances presented here), which perhaps would weigh very heavily on the finances of the community of Quito and in this sense probably weighs on the extent of the objective behind the social interest.

19. I shall not omit to mention -using my memory as opposed to specific information regarding the jurisprudence of the Court- that this declaration of a violation of the right to private property is the highest it has been over a period of thirty years. Never before has a violation been declared that comes close to that amount even in cases of extrajudicial killings (of one or many persons, or massacres which destroy the lives of tens or hundreds of human beings), nor in cases of torture and enforced disappearances.

20. Of course, the consideration mentioned in the previous paragraph - which inspired some of my concerns upon studying the case and meditating over the judgment - does not in any way intend to question the existence or apparent violation of a right no less respectable and protected than any other in the Convention or to put aside objective facts to assess the damage caused (those of which were not enough in this case, as there

are none- nor could there be- at the time of review for purposes of compensation, regarding the loss of life, injury to integrity, the unjust suppression of freedom), nor reconsidering the text of Article 21 and the decision held in the judgment on the merits, which I subscribed.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

**PARTIALLY DISSENTING VOTE OF JUDGE LEONARDO A. FRANCO WITH RESPECT TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF SALVADOR CHIRIBOGA V. ECUADOR, OF MARCH 3, 2011.**

1. In the Judgment on preliminary objections and merits in the *Case of Salvador Chiriboga* v. *Ecuador*, of May 6, 2008, the Court found a violation of the right to private property enshrined in Article 21 of the American Convention on Human Rights concerning the right to judicial guarantees [fair trial] and judicial protection enshrined in Articles 8(1) and 25(1), all in relation to Article 1(1) of that instrument, to the detriment of María Salvador Chiriboga.[1]

2. In that Judgment, the Court ruled that the determination of the amount and payment of compensation for damages for the expropriation of property, as well as any other measure to remedy the violations found, were to be made by agreement between the State and the representatives of the victims, thereby reserving the right to verify whether the agreement reached by the parties was under the American Convention on Human Rights.[2]

3. The representatives of the victims and the State did not reach an agreement within the period fixed by the Court, to which, pursuant to operative paragraph 5 of the Judgment on the Merits, the Court should resolve the controversy regarding reparations and make a decision without the support which might have been offered through the consensual will of the parties.

4. In the Judgment on the Merits, two standards were established to guide the assessment of the compensatory reparation for damages: a) the market value of the property "prior to the declaration of public interest"; and b) "the just balance between public interests and the private interests."[3]

5. While I concurred with the majority of the members regarding the Court's decision in the Judgment on preliminary objections and the merits, I am of the opinion that the use of the standards laid down for repairs for damages, could have led to the establishment of a lower amount than the one set in paragraph 84 herein. In this sense, I adhere to and share the standards that with greater expertise and experience are developed by Dr. Garcia Sayan and Dr. García Ramírez in the partially dissenting opinions that go with this Judgment.

6. On the one hand, it is important to note that different valuations carried out to determine the "market value" of the expropriated property, rendered both in the domestic forums and before this Court, demonstrate profound differences. The required "just balance" cannot stem more or less from the automatic adoption of a sort of "average" between numbers that are very different one from another.

7. While the so-called "market value" should be a reference when establishing the amount of compensation in cases of expropriation for reasons of public or social interest, in order to establish the purpose of a "just balance," the interests at stake in the case must be

---

[1] Cf. *Case of Salvador Chiriboga V. Ecuador*. Preliminary Objection and the Merits. Judgment of May 6, 2008, Series C No. 179, operative paragraph 2.
[2] Cf. *Case of Salvador Chiriboga V. Ecuador, supra* note 1, operative paragraph 4 and 5.
[3] Cf. Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 98.

considered with special focus on the public interest. The need to harmonize and balance the rights at play, completely prevents the assimilation of the standard of "just compensation" referred to in Article 21(2) of the American Convention with the "market value," due to the influence that the public interest may exercise in a specific case. In that sense, the European Court of Human Rights has stated that legitimate public interest objectives such as those sought by measures for economic reform or those that are intended to further social justice may require less than the reimbursement of a market value.[4]

8. In this case, the Court saw the need to balance, on the one hand, that the State approved "a legitimate or public interest based on environmental protection,"[5] through the establishment of the Metropolitan Park which was to the benefit of all the inhabitants of the Municipality of Quito. On the other hand, the Court held that the State had breached its obligations in respect to judicial guarantees, given that the proceedings had exceeded the time limit for reasonable settlement and, therefore, had no effect, indefinitely depriving the victim of her land, in addition to the payment for just compensation, making such expropriation an arbitrary one.[6]

9. However, I think that the budgetary capacity of the Municipality of Quito has not been duly considered within the factor of public interest, if there was an intention to properly assess the potential impact on the community's fiscal outlay required to make the payment for compensation awarded by the Court. An equity standard to consider the characteristics of the case would have required a special consideration of the public interest that would be potentially affected as a consequence of the payment of the Judgment on reparations ordered by the Court.

Leonardo A. Franco
Judge

Pablo Saavedra Alessandri
Secretary

[4] Cf.. ECHR, "*Case of James and Others vs. The United Kingdom*", Judgment of June 21, 1986, para. 54; ECHR, "*Case of The Holy Monasteries v. Greece*", Judgment of December 9, 1994, para. 71, y ECHR, "*Case of Pappachelas v. Greece*", Judgment March 25, 1999, para. 48.
[5] Case of *Salvador Chiriboga V. Ecuador*, *supra* note 1, para. 76.
[6] Case of *Salvador Chiriboga V. Ecuador*, *supra*no tae 1, para. 117.

## DISSENTING OPINION OF JUDGE MARGARETTE MAY MACAULAY TO OPERATIVE PARAGRAPH 4 OF THE JUDGMENT

I find it necessary to state my dissent to Operative paragraph 4 of the Judgment and consequently to the directions in paragraphs 102 and 103 of the Judgment. In my opinion, as they appear, these paragraphs are at the highest in conflict with, or at the lowest fall short of the criteria and the principles of standards propounded in paragraphs 83, 84 and 85 of the Judgment.

In these paragraphs, we the Court make clear reference, firstly, in paragraph 83 to the State's failure to comply with Article 21 of the Convention plus the requirement of making the payment for the expropriated property within a reasonable time; secondly, in paragraph 84 by applying the criteria of reasonableness, proportionality and equity, having balanced pubic interest and individual interest, fixed the sum of US$18,705,000.00 as a reasonable value and as a just compensation in the international arena for the expropriated property; and thirdly, in paragraph 85 on the issue of legitimate interest payable on the pecuniary damages awarded in the Judgment, that in order to ensure prompt and effective payment over of the award, the State must act pursuant to the manner of payments set out in the paragraphs of "Modalities of Payment", (to wit for the purposes of this Dissenting Opinion), paragraphs 102 and 103 of the Judgment.

Consequently, it is quite apparent to me that the State having failed to pay a fair and just compensation within a reasonable time, ought to be directed to pay over the sum determined by the Court as being a just compensation, as promptly as is practicable and just, therefore in the circumstances of the case, a period of 5 years for the said payment directed in paragraph 102, does not meet this criteria of promptness of payment of a just compensation. The period ought therefore to have been appreciably shorter, if not within a reasonably short time after receipt of the Judgment, then perhaps within 2 or at the most 3 years of that date, with simple interest thereon of a fixed rate, to date of payment.

In addition, paragraph 103, in my opinion, fails far short, of ensuring a just compensation, especially to an owner of property who has been deprived of its possession and user and of any just compensation for the same, for so many years, even with the award of the sum of US$ 9,435.757,80 plus for interest covering the years specified in the Judgment. The direction therein in this paragraph, that the payment of interest within the directed 5 year period, will only arise, if an instalment is paid later than directed, will, in my opinion, result in a further deprivation of a just compensation to Mrs. Chiriboga, the owner, because of the fact that as each year for payment passes, the value of the next payment would have depreciated due to inflation, and yet, interest shall only be payable during this period if there is a delay of an instalment payment beyond the 30th of March of any of the 5 stated annual payments, and, only on the delayed instalment. In fact, the first payment, directed to be made on the 30th March 2012, would already be affected by inflation. The sum which the Court fixes in March 2011, will not be the same value a year from now.

In such circumstances, it is just, reasonable, proportional and equitable for interest to run on the balance for payments being made over an extended period of time. As the majority of the Judges have determined in paragraph 103, I am of the opinion that Mrs. Chiriboga shall in fact not receive the full worth of the value determined by the Court as just

compensation because of paragraphs 102 and 103 of the Judgment as they are worded, and that she ought to be awarded interest thereon as I have already stated above. It is my view, that if the payment of interest is not directed to be paid, as is usual, until full payment over is made of the Court's award, the Payer, the State is granted an unfair advantage over the Payee, Mrs. Chiriboga.

For these reasons above stated, I dissent from the majority opinion as stated in paragraphs 102 and 103 of the Judgment and Operative Paragraph 4 of the Judgment.

Margarette May Macaulay
Judge

Pablo Saavedra Alessandri
Secretario