

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 3, 2011
CASE OF THE KICHWA INDIGENOUS PEOPLE OF SARAYAKU v. ECUADOR**

HAVING SEEN:

1. The brief of May 17, 2010, and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application against the Republic of Ecuador (hereinafter "the State" or "Ecuador"), in the case of the *Kichwa Indigenous People of Sarayaku*.
2. The brief of September 27, 2010, and its attachments, in which the representatives of the presumed victims (hereinafter "the representatives") presented their pleadings, motions and evidence (hereinafter "pleadings and motions brief") together with a "request for legal assistance from the *Kichwa Indigenous People of Sarayaku* to cover some specific costs related to the production of evidence during the processing of this case," which they identified.
3. The note of October 15, 2010, in which, in keeping with Article 3 of the Court's Rules of Procedure for the Operation of the Victims' Legal Assistance Fund (hereinafter the "Rules of Procedure for the Assistance Fund"),¹ and in order to submit their request to the consideration of the President of the Court, the Secretariat of the Court (hereinafter "the Secretariat") asked the representatives to forward information on the specific evidence that would give rise to the said expenses and an estimate of the approximate amount involved.
4. The note of the Secretariat of October 28, 2010, in which, on the instructions of the President of the Court (hereinafter "the President"), the representatives were asked to provide additional information in relation to their request. In particular, the representatives were asked to forward, *inter alia*: (a) the evidence required by Article 2 of the Rules of Procedure of the Assistance Fund concerning the presumed victims' alleged lack of sufficient financial resources to cover the costs of the litigation before the Court, and (b) an estimate of the approximate cost of producing the evidence for which they had requested use of the Court's Victims' Legal Assistance Fund. In addition, they were asked to "specify why the costs indicated in their brief with pleadings, motions and evidence could not be covered by the representatives in this case."

¹ Cf. Rules of Procedure of the Inter-American Court of Human Rights for the Operation of the Victims' Legal Assistance Fund approved by the Court on February 4, 2010, Article 1.

5. The brief of November 23, 2010, and its attachments, in which the representatives of the presumed victims forwarded additional information in response to the request of the President of the Court (*supra* having seen paragraph 4).

6. The note of December 3, 2006, in which the Secretariat informed the representatives that the request, together with the additional information provided, would be submitted to the consideration of the President of the Court.

CONSIDERING THAT:

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

2. In 2008, the General Assembly of the Organization of American States (hereinafter the "OAS") created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter "the Inter-American System's Assistance Fund) and commissioned the OAS Permanent Council to draft the Fund's rules of procedure;² the latter adopted the corresponding rules of procedure in November 2009.³ The Assistance Fund was created "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."⁴ According to the Rules of Procedure adopted by the Permanent Council, the Inter-American System's Assistance Fund has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court. As regards the financing of the Inter-American System's Assistance Fund, currently this depends on "voluntary capital contributions from the Members States of the OAS, the Permanent Observer States, and other States and donors that may wish to collaborate with the Fund."⁵ In addition, according to article 4 of the Rules of Procedure approved by the Permanent Council, it corresponded to the Court to establish the formal requirements for eligibility to request assistance, and also the approval procedure.

3. Consequently, on February 4, 2010, the Court adopted its Rules of Procedure for the Assistance Fund, which came into force on June 1, 2010, "whose purpose is to regulate the operation of, and access to, the [...] Assistance Fund for the litigation of cases before it."⁶ As established therein, in order to use this Fund a presumed victim must fulfill three requirements: (1) request this in the brief with pleadings, motions and evidence; (2) prove, by means of a sworn affidavit and other appropriate evidence that satisfies the Court, that they lack sufficient financial resources to cover the costs of litigation before the Inter-American Court, and (3) indicate precisely which aspects of their defense in the proceedings require the use of the resources of the Assistance Fund.

2 AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the thirty-eighth OAS General Assembly, at the fourth plenary session, held on June 3, 2008, "*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*," operative paragraph 2(b).

3 CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*."

4 AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, operative paragraph 2(a), and Resolution CP/RES. 963 (1728/09), *supra* note 2, article 1(1).

5 Article 2(1) of the Rules of Procedure of the Inter-American System's Assistance Fund, *supra* note 3.

6 Rules of Procedure of the Inter-American Court of Human Rights for the Operation of the Victims' Legal Assistance Fund approved by the Court on February 4, 2010, Article 1.

4. Article 3 of the Rules of Procedure of the Assistance Fund stipulates that, on receiving a request to use the said Fund, the Court's Secretariat must conduct a preliminary review and will require the applicant to forward any additional background information required for the request to be submitted to the consideration of the President of the Court. Then, the Secretariat will submit the request to the consideration of the President, who will assess the petition and take the pertinent decision within three months of receiving all the necessary information.

5. In their response to the request for additional information (*supra* having seen paragraph 4), the representatives indicated that the *Kichwa Indigenous People of Sarayaku* have a subsistence economy and, therefore, do not carry out any remunerated activities. Previously, they had indicated that "the only activity for which the *Kichwa People of Sarayaku* [...] receive any type of financial income is the community tourism project," which brings in less than three thousand dollars a year. In this regard, they attached a notarized statement by the Sarayaku President concerning the People's lack of resources to pay the expenses arising from these proceedings, together with an income tax return and the 2009 account statements, indicating that the financial situation of Sarayaku was negative and, consequently, that the amount of tax to be paid by the Indigenous People was zero dollars.

6. Furthermore, the representatives indicated that they, as a non-governmental organization, "did not have a specific budgetary item for paying expenses such as those that the victims – through [them] – requested be covered by the Assistance Fund." They underlined that "it is the victims who must cover the expenses and costs of the proceedings," so that they should benefit from the Legal Assistance Fund if they prove a lack of resources. Nevertheless, they added that, at this stage of the proceedings, they would be willing to cover certain costs that, in consequence, the presumed victims had not included in the request for assistance, such as the travel expenses and professional honoraria of the lawyers, and the logistic expenses during the preparation and holding of the hearing, in the understanding that these expenses should be taken into account by the Court when determining the expenses and costs to be reimbursed by the State, if appropriate.

7. The representatives indicated that the presumed victims requested help from the Assistance Fund to cover: (i) travel expenses for the victims, witnesses and experts that the Court summons to testify, pursuant to Article 50 of the Court's Rules of Procedure; (ii) notary expenses arising from preparing the affidavits that the Court finds it pertinent to receive, and (iii) travel expenses in order to conduct the expert appraisals included in the pleadings and motions brief in those cases in which the experts need to travel to Ecuador to make their appraisals." They emphasized that, at this stage of the proceedings, they were unable to determine whether the Court would admit all the witnesses and experts proposed in their pleadings and motions brief; likewise, they did not know whether the Court would decide to convene a hearing in this case, so that "the travel expenses could vary considerably." In view of the foregoing, they asked the Court to consider their request "based on the testimonies and expert opinions that it decides to admit in its order under Article 50 of the Rules of Procedure" and that, if the request was partially accepted, the Court indicate the number of expert opinions and testimonies that would be covered by the Fund. Lastly, the representatives forwarded the estimated expenses to present the evidence at a hearing, if this was held at the seat of the Court, clarifying that, if it was held elsewhere, the expenses could increase significantly. In addition, they forwarded the average cost to "notarize" the testimony of a witness or an expert opinion in Ecuador, indicating that, in this case, the members of the Sarayaku would have to travel to a city by plane.

8. First, the President confirms that the request to use the Assistance Fund was made opportunely in the pleadings and motions brief (*supra* having seen paragraph 2), on behalf of the *Kichwa People of Sarayaku*. The President appreciates that the said request should be understood to have been made on behalf of the presumed victims, exclusively, because as the representatives have already indicated in their brief of November 23, 2010, it is they who should benefit from the Fund (*supra* considering paragraph 6). In addition, the President takes note of the lack of financial resources alleged by the presumed victims and admits the sworn statement of the representative of the *Kichwa People of Sarayaku* and the Community's income tax return as evidence of this (*supra* considering paragraph 5).

9. Furthermore, the President observes that the presumed victims have requested assistance from the said Fund to pay expenses related to the production of evidence before the Court, specifically for the presentation of witness statements and expert opinions, whether at a hearing or by affidavit. In addition, he takes note of the representatives' observations that, at this procedural stage before the Court, they were unable to determine exactly the expenses that this would represent.

10. The President recalls that the Assistance Fund is made up of voluntary contributions from cooperating sources (*supra* second considering paragraph), and that these limited resources are insufficient to cover all the expenses relating to the appearance and eventual presentation of evidence before the Court by the presumed victims. Consequently, in each specific case, the President must assess the request for assistance in relation to the available funds, taking into account the needs for assistance that could arise in other cases before the Court, in order to ensure the proper administration and fair distribution of the Fund's limited resource.

11. The President takes note that, at the current stage of the proceedings, it is not possible to determine which of the testimonies offered by the representatives will be received by the Court, or in what form they will be received. In accordance with Article 50(1) of the Court's Rules of Procedure, this determination corresponds to the Court or its President, when the parties have forwarded the final lists of their proposed deponents and the right to defense has been ensured, in the terms of Articles 45 to 49 of the Court's Rules of Procedure.

12. Based on the foregoing considerations, the President finds admissible the presumed victims' request to use the Legal Assistance Fund, in the understanding that this will be to cover the expenses relating to an adequate appearance of deponents and presentation of testimony before the Court. In this regard, based on the resources currently available in the Assistance Fund, the presumed victims will be awarded the necessary financial assistance for the presentation, charged to the Fund, of a maximum of four testimonies, either by affidavit or at the public hearing. In addition, he finds it appropriate to postpone the determination of the specific amount, purpose and object of the financial assistance that will be provided to the presumed victims until such time as this President, or the Court, rules on the admissibility and relevance of the testimonial and expert evidence offered and, as appropriate, on the opening of the oral proceedings, in accordance with Article 50(1) of the Court's Rules of Procedure, in order to be certain which testimonies will be received by the Court, and also the way in which they will be presented (*supra* eleventh considering paragraph).

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT DE DERECHOS HUMANOS,

in exercise of his authority in relation to the Victims' Legal Assistance Fund and in accordance with Article 31 of the Court's Rules of Procedure and Article 3 of the Rules of Procedure of the Legal Assistance Fund,

DECIDES:

1. To declare admissible the request submitted by the presumed victims, through their representatives, to use the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, so that the necessary financial assistance will be granted for the presentation of a maximum of four testimonies, and that the specific amount, purpose and object of this assistance will be defined when deciding on the presentation of testimonial and expert evidence and, as appropriate, on the opening of the oral proceedings, in accordance with Article 50 of the Court's Rules of Procedure, as established in the twelfth considering paragraph of this order.

2. To require the Secretariat of the Court to notify this order to the representatives of the presumed victims, the State of Ecuador, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary