



**CORTE INTERAMERICANA DE DERECHOS HUMANOS  
COUR INTERAMERICAINE DES DROITS DE L'HOMME  
CORTE INTERAMERICANA DE DIREITOS HUMANOS  
INTER-AMERICAN COURT OF HUMAN RIGHTS**



**Summary of the Judgments delivered by the Court during its 95<sup>th</sup> Regular Session<sup>1</sup>**

During the period covered by this summary,<sup>2</sup> the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) has issued three Judgments related to the following issues, among other: request for interpretation of judgment on the meaning or scope of the merits, reparations and costs; right to free, prior and informed consent, in conformity with the international standards that protect the right to property and cultural identity of an indigenous community, as well as the access to effective judicial protection and the right to life and personal integrity of its members; conditions for detention, lack of medical attention and effects on health.

Below is a summary of each of these Judgments:

**1. Case Barbani Duarte v. Uruguay. Judgment of June 26, 2012.**

In this judgment, the Inter-American Court rejected the request for interpretation of the judgment on merits, reparations and costs issued by the Court on October 13, 2011. The request for interpretation was filed by Alicia Barbani Duarte and Maria del Huerto Breccia, victims and representatives of some of the victims in the case. Through the Judgment of June 26, 2012, the Court turned down this request, considering inadmissible the claim to exclude as victims three persons declared as such in the Judgment of October 13, 2011. In paragraphs 13 to 26 of the Judgment of June 26, 2012, the Court explains the arguments whereby it considers this claim inadmissible in the instant case.

**2. Case of Kichwa People of Sarayaku v. Ecuador. Judgment of June 27, 2012. Articles 1(1), 2, 4(1), 5(1), 8(1), 21 and 25 of the American Convention on Human Rights**

In this judgment the Inter-American Court declared the international responsibility of the State of Ecuador for the violation of the right to consultation and right to indigenous communal property and cultural identity of the Kichwa People of Sarayaku; for having gravely endangered the rights to life and personal integrity of its members, and for the violation of the rights to judicial guarantees and to judicial protection of the people of Sarayaku.

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<sup>2</sup> This Summary covers the Judgments issued by the Inter-American Court in June and July 2012. The texts of the decisions in this Summary may be downloaded from the web at: [www.corteidh.or.cr](http://www.corteidh.or.cr)

## **Facts**

### The Kichwa People of Sarayaku

The Sarayaku territory is located in the Amazonian area of Ecuador, in the tropical forest, in the province of Pastaza, in different points and on the shores of the Bobonaza river, at 400 meters above sea level, 65 kilometers from the city of El Puyo. It is one of the most densely populated and extensive Kichwa settlements of the Amazon and it is comprised of approximately 1200 inhabitants, according to the census of the indigenous community.

The territory where the people of Sarayaku are located is not easily accessible. The trip from Puyo to Sarayaku takes about 2 to 3 days on the Bobonaza river; by land it takes approximately eight days. The Sarayakus' means of subsistence is based on communal agriculture, hunting, fishing, and gathering in their land, according to their ancestral traditions and customs. Decisions on important matters for the Sarayaku people are made at the community assembly, called Tayjasaruta. It is organized under a Governing Council comprised of traditional leaders from each community (kukrakas or varayuks), community leaders, former major leaders, elders, shamans (yachaks) and groups of advisors and technicians in the community. According to the Sarayakus' worldview, the land is associated with a set of meanings: the jungle is alive and the elements of nature have spirits (supay), that are connected with each other and whose presence makes these places sacred.

On May 12, 1992, the State granted, through the Institute of Colonization and Agrarian Reform (Instituto de Reforma Agraria y Colonización, IERAC), in the province of Pastaza, a defined indivisible area in the deed denominated Block 9, corresponding to a surface of 222,094 Ha or 264,625 Ha, in favor of the communities of the Bobonaza river, of which approximately and traditionally 135,000 Ha correspond to Sarayaku.

Partnership contract with CGC for the exploration of hydrocarbons and the exploitation of crude oil in Block 23 of the Amazonian Region

After the invitation of the eighth international call for proposals for exploration and exploitation of hydrocarbons in Ecuadorian national territory, which included the so-called "Block 23" of the Amazonian region of the Pastaza province, on July 26, 1996, a partnership contract for exploration of hydrocarbons and the exploitation of crude oil at "Block 23" was signed by Empresa Estatal de Petróleos del Ecuador (PETROECUADOR) and the consortium comprised of Compañía General de Combustibles S.A. (CGC) (hereinafter "CGC" or "CGC company" or "the CGC firm") and Petrolera Argentina San Jorge S.A. The territory granted in the contract comprised a surface of 200,000 Ha, where several indigenous associations, communities and settlements live, among them Sarayaku, who ancestrally and legally own 65% of the lands included in Block 23.

According to the provisions of the contract signed in 1996 between PETROECUADOR and CGC, the seismic exploration phase would last for four years –with possibilities of extending to a maximum of two additional years– from the time the Ministry of Energy and Mining approved the environmental impact assessment. The CGC company engaged another company to perform an environmental impact plan for the seismic prospecting, which was conducted in May 1997, and was approved the following August 26 by the Ministry of Energy and Mining. This study did not include the Sarayaku.

From April 1999 to September 2002 the activities at Block 23 were suspended.

Facts prior to the seismic prospecting phase and incursions into Sarayaku territory

On numerous occasions the oil company tried to negotiate the entry into Sarayaku territory and achieve consent for oil exploration, among other, through actions such as the following: a) direct relations with the members of the communities, bypassing the indigenous organization

structure; b) bringing a medical caravan to provide medical care to various communities in Sarayaku, whereby, in order to be treated, the person had to sign a list that would later be used as a letter sent to CGC supposedly asking for the works to continue; c) payment of money to individuals in the communities to recruit others in order to give their approval to the seismic prospecting activity; d) offering of gifts and personal benefits; e) formation of groups to support the oil activity, and f) offering of money, both to individuals and to the group.

In May 2000, the legal representative of CGC visited Sarayaku and offered USD\$60,000.00 for development works and 500 jobs for the men of the Community. On June 25, 2000, the General Assembly of Sarayaku rejected their offer, in the presence of the company's representative. Other neighboring communities signed agreements with the company. In light of Sarayaku's refusal to accept CGC's oil activity, in 2001 the company hired Daymi Service S.A., a team of sociologists and anthropologists dedicated to community relations programs. According to members of Sarayaku, their strategy consisted of dividing the communities, manipulating the leaders and conducting campaigns that slandered and discredited the leaders and organizations, even the creation of a so-called "Community of Independents of Sarayaku" to reach an agreement.

On July 2, 2002, the Ministry approved the updating of the Environmental Management Plan and the Monitoring Plan presented by CGC for the 2D seismic prospecting activities in Block 23. In September 2002 the company requested the resuming of activities.

On November 22, 2002, the Rural Parochial Board of Sarayaku filed a complaint with the Ombudsman's Office. They requested, among other, that the company respect the land, and that the Armed Forces that were protecting the company leave immediately. On November 27, 2002, the Ombudsman of Ecuador declared that the members of Sarayaku were under his protection, and stated that "[n]o person or authority could impede the free transit, circulation, navigation and communication" of its members throughout the lands and rivers.

On November 28, 2002, the President of OPIP, representative of 11 associations in the Kichwa town of Pastaza, filed a constitutional motion for the protection of civil rights before the First Civil Judge of Pastaza against CGC and Daymi Services, the entity contracted by the former. The appeal argued that CGC had been conducting several actions since 1999 to negotiate with the communities in an isolated, separate manner. On November 29, 2002, said Judge admitted the appeal and ordered, as a precautionary measure, "to suspend any current or imminent action that would affect or threaten the rights referred to in the claim," as well as a public hearing, which was not conducted. On December 12, 2002, the Superior Court of Justice of the District of Pastaza observed "irregularities" in the process [and expressed] its concern over the total lack of promptness [of the] appeal, considering the social repercussions that this implies."

#### Facts related to the seismic prospecting or oil exploration activities of CGC after December 2002

Because of the reactivation of the seismic exploration phase in November 2002, and in light of CGC's entry into Sarayaku, the Association of the Kichwa Town of Sarayaku declared an "emergency", at which time the community paralyzed its regular economic, administrative and school activities for 4 to 6 months. Members of Sarayaku organized six "peace and life camps" on the edges of their territory, comprised each of 60 to 100 persons. During this time, they lived in the jungle and their food supplies ran out.

Between October 2002 and February 2003, the oil company's works moved about 29% inside Sarayaku territory. During this time, CGC loaded 467 wells with approximately 1433 kilograms of an explosive called "pentolite," both above ground and deeper. At the time the Judgment was issued, the explosives remained in Sarayaku territory.

On February 6, 2003, the Association of the Hydrocarbon Industry of Ecuador reported that the CGC declared a state of "force majeure" and suspended the seismic prospecting works.

Regarding the effects on Sarayaku's territory, the company destroyed at least one especially important site in the spiritual lives of the members of Sarayaku, on the land of Yachak Cesar Vargas. The company also cleared seismic paths, enabled seven heliports, destroyed caves, water sources, and underground rivers that are necessary for the community's water

consumption; it felled trees and plants of great environmental, cultural and nutritional subsistence value for Sarayaku. The oil works affected and at times even led to the suspension of ancestral cultural acts and ceremonies in the town of Sarayaku.

**Alleged acts of threats and aggression against the members of Sarayaku**

Between February 2003 and December 2004, a series of alleged threats and harassing acts against leaders, members and one attorney in Sarayaku were reported.

On December 4, 2003, about 120 members of Sarayaku were allegedly assaulted by members of another indigenous town, in the presence of police agents, which they were on their way to a "march for peace and life" that was to take place two days later in Puyo. Several members of Sarayaku were injured. The events were reported and insufficiently investigated.

**Events following the suspension of CGC's activities**

Since August 2007, the State conducted various proceedings to withdraw the pentolite from Sarayaku territory, in compliance with the provisional measures ordered by the Court. By the time the Judgment was issued, the State had removed 14 kg of the pentolite that had been buried on the surface.

On November 19, 2010, PETROECUADOR signed an Act of Termination with CGC by mutual agreement of the partnership contract for exploration and exploitation of crude oil in Block 23.

## **Merits**

- A. Obligation to guarantee the right to consultation in relation to the rights to indigenous communal property and cultural identity of the Sarayaku people

The Court reiterated that Article 21 of the American Convention protects the close ties that indigenous peoples have with their land, as well as with the natural resources of their ancestral territories and the incorporeal elements deriving therefrom. Therefore, the protection of their right to property is necessary to guarantee their physical and cultural survival, and also guarantee that their cultural identity, social structure, economic system, customs, beliefs and distinctive traditions are respected, guaranteed and protected by the States. While the communal ownership of the Sarayaku territory, whose possession they have exercised ancestrally and from time immemorial, was not being questioned, the Court deemed it pertinent to emphasize the profound cultural, immaterial and spiritual connection that they maintain with their territory, in particular the specific characteristics of their "living jungle" (Kawsak Sacha) and its intimate relationship with the members, which is not limited just to their subsistence, but integrates their own worldview, and cultural and spiritual identity.

The Court established that the recognition of the right to free, prior and informed consent of the indigenous and tribal communities and towns, is based on, among other, the respect of their rights to their proprietary culture or cultural identity, which should be guaranteed, particularly in a pluralist, multicultural and democratic society.

The Court establishes that one of the fundamental guarantees to ensure the participation of the indigenous people and communities in the decisions relating to measures that affect their rights, and in particular their right to communal property, is the recognition of their right to consultation, which is particularly recognized in ILO Convention N° 169, among other complementary international instruments.

Various States members of the Organization of American States, through their internal regulations and their highest courts of justice, have included rules on the importance of consultation or communal property. Additionally, several domestic courts of the States in the region that have ratified ILO Convention N° 169, have referred to the right to prior consultation in conformity with its provisions. Other courts of countries that did not ratify such Agreement have referred to the need to conduct prior consultations. In the case of Ecuador, the internal

regulations in effect today have fully recognized the right to prior consultation. The obligation of consultation, in addition to constituting a conventional rule, is also a general principle of International Law.

The States' obligation to conduct special and distinct consultation processes when specific interests of indigenous communities and peoples will be affected is clearly established, then. Such processes should respect the particular consultation system of each town or community, so that it can be understood as an adequate and effective relation with other state authorities, social or political actors and interested third parties.

The Court established that the obligation to consult with the Indigenous and Tribal Communities and Towns over any administrative or legislative measure that affects their rights, recognized in domestic and international regulations, implies the duty to adequately organize the entire governmental apparatus and the structures through which the exercise of public power is manifested, in particular its rules and institutions, in such a way that the consultation can be conducted effectively in accordance with the international standards in question.

In this way, the States should include those regulations into the prior consultation processes, from the first stages of preparation or planning of the proposed measure, in order to generate channels of dialogue that are sustained, effective and reliable with the indigenous peoples in the proceedings of consultation and participation through their representation institutions. Following this line, the State should ensure that the rights of the indigenous peoples are not obviated in any other activity or agreements it enters into with private third parties or as part of decisions of the public power that would affect their rights and interests. Therefore, it is also the State's responsibility to conduct the tasks of supervision and control in its application and to deploy, when pertinent, effective protection measures of said right through the corresponding judicial bodies.

CGC initiated activities of seismic prospecting on July 2002, after the State entered into the international commitment of guaranteeing the right to consultation with the ratification in 1998 of ILO Convention N° 169, and after the collective rights of the Indigenous peoples were constitutionally consecrated, with the entrance into effect of the Political Constitution of Ecuador in 1998. Given that ILO Convention N° 169 applies in relation to subsequent impacts and decisions resulting from oil projects, even when these have been engaged prior to its entrance into effect, it is unquestionable that at least since May 1999, the State had the obligation to guarantee the right to prior consultation for the people of Sarayaku, in relation to their right to communal property and cultural identity, to ensure that the acts to execute the mentioned concession did not compromise their ancestral land or survival and subsistence as an indigenous people.

#### Application of the right to consultation of the people of Sarayaku in the instant case

The Court observed the manner and sense in which the State had the obligation to guarantee the right to consultation of the people of Sarayaku, and whether the acts of the concession-awarding company, which the State qualified as forms of "socialization" or search for "understanding," satisfy the minimum criteria and essential requirements of a valid process of consultation with communities and indigenous people in relation to their rights to communal property and to cultural identity. It is the State's duty – and not the duty of the indigenous people – to successfully demonstrate, in this case, that all of the dimensions of the right to prior consultation were indeed guaranteed.

##### a) The consultation must be performed beforehand

With regard to when the consultation must be made, Article 15(2) of Convention N° 169 of the ILO indicates that "governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands." In this regard, the Court has observed that the consultation shall be performed in conformity with the traditions of the indigenous

community and during the first stages of the development or investment plan, not only when the need to obtain the community's approval arises, if this were the case. The foregoing may include legislative measures and, under this assumption, indigenous communities shall be consulted beforehand in all stages of the legislative process.

The State did not perform any consultation with the Sarayaku during any of the phases of execution of the oil extraction or through its own institutions and representation bodies. Specifically, the Indigenous Community was not consulted prior to the construction of heliports, digging of paths, implanting explosives or destroying areas that were highly valuable for their culture and worldview.

b) In good faith and with the objective of achieving agreement

Consultations shall be performed in good faith and in a manner that is adequate under the circumstances, with the objective of achieving agreement or consent to the proposed measures. In addition, consultation shall not be exhausted as a mere formality but shall be understood as a true instrument of participation which must respond to the goal of establishing dialogue between the parties, based on the principles of trust and mutual respect, and with the goal of reaching consensus between the parties. Good faith requires the absence of any type of coercion by the State or agents or third parties, and is incompatible with practices such as attempts at disintegrating the social cohesion of the communities affected, whether through corruption of the community leaders or establishing parallel leadership, or through negotiations with individual members of the communities that are contrary to international standards.

The obligation to consult is a responsibility of the State, therefore planning and performing the consultation process is not a duty that can be eluded by delegating it to a private company or to third parties, even more so if it is the same company interested in the exploitation of resources in the territory of the community subject of the consultation.

During the proceedings the State argued that the oil company CGC sought, after signing the contract, an "understanding" or way of "socializing" with the communities to achieve the performance of their contractual activities, and that it also performed an environmental impact assessment. Under these terms, it is inferred from the position initially expressed by the State before this Court that the state authorities intended to validate these actions of the oil company as types of consultation.

In this case the State not only recognized that it did not perform the consultation but also that even if the possibility for the consultation process to be delegated to private third parties was accepted, it did not indicate the types of measures that it adopted to observe, supervise, monitor or participate in the process and thus guarantee the protection of the rights of the Sarayaku Indigenous Community. In addition, it observed that the State supported the oil exploration activity of CGC company by providing them with security by its armed forces at specific times, which did not favor a climate of trust and mutual respect.

On the other hand, the actions of the company, by intending to legitimate their oil exploration activities and justify their interventions in the Sarayaku territory, stopped respecting the authority and representation structures within the communities and externally.

The lack of consultation by the State, in moments of high tension in relations between communities and with the State authorities, favored due to omission a climate of unrest, division and confrontation between the indigenous communities in the area, specifically with the Sarayaku People.

c) Adequate and accessible consultation

The consultation of indigenous communities shall be performed through culturally adequate procedures, meaning, in conformity with their own traditions. Even though there is no single adequate model of procedure, national circumstances and those of the indigenous communities must be taken into account, as well as the context of the nature of the measures under consultation.

In the instant case, the oil company intended to create a relationship directly with some members of the Sarayaku Community, without respecting the community's political organization. Consequently, it can be inferred from the position indicated by the State before this Court that it intended to delegate *de facto* its obligation to perform the process of prior consultation to the same private company that was interested in exploiting the oil existing in the subsoil of the Sarayaku territory; these actions cannot be understood as an adequate and accessible consultation.

d) Environmental Impact Assessment

In relation to the obligation to perform environmental impact assessments, article 7(3) of ILO Convention N° 169 establishes that “[g]overnments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.”

The State had to guarantee that no concession would be issued within the territory of an indigenous community unless and until independent and technically able entities, under the State's supervision, performed a prior social and environmental impact study to assess the potential damage or impact that the project could have, and to ensure that the members of the indigenous community have knowledge of the possible risks, including environmental and health risks, to be able to weigh whether to accept the proposed development or investment plan, in an informed and voluntary manner. The Environmental Impact Assessments must be performed in conformity with international standards and good practices on this subject; respect the traditions and culture of the indigenous communities; and be concluded prior to the awarding of the concession.

In the instant case the Court observed that the environmental impact plan: a) was created without the participation of the Sarayaku indigenous community; b) was created by a private entity subcontracted by the oil company, without undergoing subsequent strict control by the State's supervisory bodies, and c) did not take into account the social, spiritual and cultural effect that the contemplated activities could have of the Sarayaku people.

e) The consultation must be informed

As indicated, the consultation must be informed, in the sense that the indigenous communities must have knowledge of the possible risks of the proposed development or investment plan, which requires for the State to accept and provide information, and implies constant communication.

In the instant case it was not demonstrated that the alleged “understanding” carried out by the oil company included the presentation of information included in the environmental risk assessment, or that it allowed the Sarayaku people to actively participate in an adequate dialogue process. It was not demonstrated either that the alleged “socialization” of the study is related to consultation activity to the Sarayaku Indigenous Community, or that served as basis to inform them of the advantages and disadvantages of the project in relation to their culture, way of life, and framework of a dialog process aimed at reaching an agreement.

In this regard, there are elements to conclude that the verified weaknesses of the consultation process by the State, along with numerous actions by the company to divide the communities, fostered the confrontations between the Bobonaza communities and affected the relations between communities.

In conclusion, the Court verified that no adequate or effective process was performed to guarantee the right to consultation of the Sarayaku Indigenous Community before starting or authorizing the program of prospection or exploitation of resources existing in their territory. The Sarayaku People were definitely not consulted by the State before oil exploration activities were performed, explosives were implanted, or sites of special cultural value were affected.

## The right to cultural identity

The Court reiterated that by disregarding the ancestral right of the indigenous communities over their territories other basic rights could be infringed, such as the right to cultural identity and to survival of the indigenous communities and their members. Considering that the effective enjoyment and exercise of the rights to communal property over the land guarantees that members of indigenous communities preserve their heritage, States must respect this special relationship to guarantee their social, cultural, and economic survival. In addition, it has been recognized that there is a close relationship between the land and the traditions, customs, languages, rituals, knowledge and other aspects of the identity of indigenous communities, indicating that based on their environment, their integration with nature and their history, members of indigenous communities transmit from generation to generation this intangible cultural heritage, which is constantly recreated by members of the indigenous communities and groups.

Under the principle of non-discrimination, recognition of the right to cultural identity (or to culture) is an ingredient and way of cross-interpretation to understand, respect and guarantee the enjoyment and exercise of the human rights of the indigenous communities and peoples protected by the Convention and by the domestic body of law. The Court deems that the right to cultural identity is a basic right and of a collective nature for indigenous communities, which must be respected in a multicultural, pluralist and democratic society.

In the instant case it was not challenged that the company destroyed or affected areas of high environmental and cultural value and for food sustenance of the Sarayaku, or that it caused the suspension of certain acts and ancestral cultural ceremonies, which altogether meant an infringement of their worldview and cultural beliefs. The Court considers that the lack of consultation of the Sarayaku People affected their cultural identity, insofar as it is undeniable that the intervention and destruction of their cultural heritage entails a grave disrespect for their social and cultural identity, their customs, traditions and worldview, as well as conservation of the characteristics of their culture and way of life, naturally causing grave concern, sadness and suffering among them.

The State, by not consulting the Sarayaku indigenous community on the execution of a project that would directly affect their territory, failed to comply with its obligations in conformity with the principles of international law and its own domestic body of law, to adopt all measures necessary to guarantee that the Sarayaku people participated through their own institutions and mechanisms, and in conformity with the values, uses, customs, and ways of organization, in decision-making regarding matters and policies that affect or could affect their cultural and social life, affecting their rights to communal property and to cultural identity.

Consequently, the Court considers that the State is responsible for the violation of the right to communal property of the Sarayaku People, recognized in Article 21 of the Convention, in relation to the right to cultural identity, under the terms of Articles 1(1) and 2 thereof.

### B. Right to life and right to personal integrity

Since provisional measures were ordered in the instant case in June 2005, the Court has noted with particular attention the placement of over 1400 kg. of highly potent explosives (pentolite) on Sarayaku territory, as it considers that this constitutes a factor of grave risk for the life and integrity of its members. Based on the above, the Court ordered the State to remove this explosive material, order which has been maintained in effect to date and which the State has partially complied with. To date the State has extracted between 14 and 17 kgs of the 150 kgs that are above-ground. Consequently, this has been a clear and proven risk, which the State was responsible for deactivating, therefore non-compliance with its obligation to guarantee the right to communal property of the Sarayaku People, permitting the implanting of explosives on their territory, has meant that the State is responsible for having gravely endangered the rights to life and to personal integrity of the members of the Sarayaku Indigenous Community,



recognized in Articles 4(1) and 5(1) of the Convention, in relation to the obligation to guarantee the right to communal property, pursuant to Articles 1(1) and 21 thereof.

#### Rights to a fair trial and to judicial protection

In addition to reiterating its jurisprudence regarding the obligation of States to provide remedies, the Court noted that several complaints were filed in relation to alleged assaults or threats to members of the Sarayaku Indigenous Community. The Court noted that no investigations were initiated in five of the six complaints, and that regarding the investigation initiated, there is evidence of procedural inactivity after several steps were performed. Therefore, the Court found that in this case State authorities did not act with due diligence, therefore the investigations do not constitute an effective means to guarantee the right to personal integrity enshrined in Article 5(1) of the Convention, in conjunction with the State's obligation to guarantee the rights established in Article 1(1) thereof, to the detriment of the members of the Sarayaku Indigenous Community affected by specific facts.

On the other hand, in relation to the constitutional motion for legal protection filed by OPIP on November 28, 2002, the Court notes that the court of appeals found irregularities in the processing of the motion and ordered their remediation. However, there is no evidence that the orders of said court were fully complied with by the corresponding judge or, consequently, that this order was effective, hence the remedy was unfinished and lacked effectiveness. There is also no evidence that the precautionary measure ordered was implemented.

Based on the foregoing, the Court finds that the State failed to guarantee an effective remedy for the infringed legal situation. It also failed to guarantee that the competent authorities issued a decision on the rights of the persons who filed the appeal, and that these decisions were implemented through an effective judicial protection, in violation of Articles 8(1), 25(1), 25(2)(a) and 25(2)(c) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the Sarayaku Indigenous Community.

#### ***Reparations***

Finally, in addition to considering that the Judgment constitutes in and of itself a form of reparation, the Court ordered various measures of restitution, satisfaction, guarantees of non-repetition, and compensation.

The State must: a) neutralize, deactivate and, where appropriate, remove the surface and buried pentolite in the territory of the Sarayaku Indigenous Community, based on a process of consultation with the Indigenous Community, under the terms and in conformity with the measures and modalities outlined in paragraphs 293-295 of the Judgment; b) consult the Sarayaku Indigenous Community in a prior, adequate, and effective manner, fully in accordance with applicable international standards on the subject, in the event that it intends to perform an activity or project for the extraction of natural resources in their territory, or investment or any other type of development plan that entails potential effects on their territory; c) adopt legislative, administrative or other measures as necessary to fully implement and enforce, within a reasonable term, the right to prior consultation of indigenous people and tribes and modify those that prevent their full and free exercise, for which it must ensure the participation of the communities; d) implement, within a reasonable term and with the corresponding budget provision, mandatory programs or courses that include modules on national and international standards on the human rights of indigenous peoples and communities, intended for military officers, police, judicial agents and others whose duties involve interacting with indigenous people; e) perform a public act of acknowledgment of international responsibility for the facts of the instant case; f) perform several publications of the Judgment; and g) pay the amounts established as compensation for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses. In addition, the State must submit to the Court a report on the measures adopted to comply with the Judgment, within one year of its notification, without detriment to the terms established for the removal of the pentolite.

**3. Case of Díaz Peña v. Venezuela. Judgment of June 26, 2012. Articles 5(1) and 5(2) of the American Convention on Human Rights in relation to Article 1(1) thereof.**

The Inter-American Court declared the international responsibility of the State of Venezuela, given that the detention conditions of Mr. Díaz Peña did not meet the minimum physical requirements of humane treatment and, consequently, constituted as a whole inhumane and degrading treatment to the detriment of Mr. Raúl José Díaz Peña.

The Court accepted the preliminary objection of non-exhaustion of domestic remedies regarding preventive detention and the duration of the proceedings. It also assessed the merits of the matter in relation to the detention conditions, and it declared that the State of Venezuela is internationally responsible for the violation of the right to humane treatment due to the inhumane and degrading treatment of Mr. Raúl José Díaz Peña.

On November 12, 2010 the Inter-American Commission on Human Rights submitted to the jurisdiction of the Inter-American Court the case of Díaz Peña v. Venezuela. The facts presented by the Inter-American Commission occurred within the framework of the protests that took place in Venezuela, particularly in the Plaza Francia de Altamira in Caracas, which began in October 2002 and extended through part of 2003. It is related to the facts occurred on February 25, 2003 when two bombs exploded at the Consulado General de la República de Colombia (General Consulate of the Republic of Colombia) and at the Oficina de Comercio Internacional del Reino de España (Spanish Office for International Commerce), located in Caracas, and specifically with the arrest of Mr. Raúl José Díaz Peña by his alleged role in these events. The Commission claimed his arrest was illegal and arbitrary, and that he was subject to a preventive detention regime that exceeded the limits established by criminal law, invoking a presumption of the risk that he would flee. During the time that he remained in custody at the headquarters of the then Dirección General de los Servicios de Inteligencia y Prevención, hereinafter "DISIP", (General Department of Intelligence and Prevention Services), there was no effective judicial review of Mr. Díaz Peña's situation. While he remained in custody of the State he was subjected to detention conditions that had serious effects on his health, and he did not receive prompt or appropriate medical attention.

In the proceedings before the Inter-American Court, the State filed a preliminary objection of non-exhaustion of domestic remedies. The Court admitted this exception in relation to the events surrounding the preventive detention of Mr. Díaz Peña and the duration of the proceedings, considering that the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention had not been met. The Court indicated that when the initial petition was forwarded by the Commission to the State on February 23, 2007 the decision of May 11, 2007 that had allegedly exhausted the domestic remedies had not been issued yet. The Court also found that it was not possible to consider that the exhaustion of domestic remedies was fulfilled through the requests filed by the defense counsel of Mr. Díaz Peña in criminal proceedings underway at that time. The appropriate remedy was to appeal the judgment that would be issued at the end of the proceedings; however, Mr. Díaz Peña expressly waived the filing of that remedy.

On the other hand, the Court rejected the preliminary objection filed by the State regarding the conditions of imprisonment and deterioration of the health of Mr. Díaz Peña, and considered the merits on this aspect. Consequently, the Court did review the alleged violation of the right to humane treatment in relation to the obligations to respect and ensure the rights. The Court verified that Mr. Raúl José Díaz Peña was held from February 25, 2004 until May 13, 2010 at the Control de Aprehendidos (Detained Persons Control), located in El Helicoide, Caracas, DISIP headquarters at the time. In this regard, it deemed proven that the detention conditions were extremely poor, specifically due to the lack of access to natural light and ventilation, and the restricted time outdoors, for over six years, as well as the confinement at night and thus the restriction to access the only bathroom available for ten individual cells, for more than three years. Similarly, it considered proven that Mr. Díaz Peña suffered a serious progressive deterioration of his health, and that health care services were not provided promptly, or in an adequate and complete manner regarding issues that Mr. Díaz Peña had with his left ear,

specifically, for which an ENT specialist indicated that he required a test and examination at an external center specialized in this type of ear problems, that had the adequate equipment to treat it, and to the delay of several months to perform CT scans of the middle ear and mastoids, as well an audiometry.

In view of the aforementioned facts, the Court concluded that the detention conditions of Mr. Díaz Peña did not meet the minimum physical requirements of humane treatment and, consequently, constituted inhumane and degrading treatment in violation of that established in Articles 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Díaz Peña.

The Inter-American Court of Human Rights decided that its Judgment constitutes a form of reparation, and it also ordered as further remedies for the State to: a) publish the official summary of the Judgment, once, in the Official Gazette and in a newspaper of wide national circulation, as well as the Judgment in its entirety available for a period of one year on an official website; b) adopt the necessary measures to ensure that detention conditions at Control de Aprehendidos of the former Dirección General de los Servicios de Inteligencia y Prevención (DISIP), now called Servicio Bolivariano de Inteligencia (SEBIN), located at El Helicoide in the city of Caracas, Venezuela, comply with international standards on this matter, *inter alia*: i) ventilated cells and with access to natural light; ii) access to clean toilets and showers with sufficient privacy; iii) good quality food, with adequate nutritional value for the health and strength of the detainee; and iv) necessary, appropriate, decent and timely health care; and c) to pay certain sums as compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses.

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The full text of the Judgments can be found at the following link:  
<http://www.corteidh.or.cr/casos.cfm>

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For more information please go to the Inter-American Court's webpage  
<http://corteidh.or.cr/index.cfm> or email the Secretary Pablo Saavedra Alessandri to the address  
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