

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF OCTOBER 24, 2012**

CASE OF SALVADOR CHIRIBOGA v. ECUADOR

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objection and merits delivered by the Inter-American Court of Human Rights (hereinafter the "the Inter-American Court" or "the Court") on May 6, 2008.
2. The Judgment on reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court on March 3, 2011, in which it ordered that:

[...]

2. The State must pay to María Salvador Chiriboga, for fair compensation, the amount indicated in paragraph 84 of the Judgment.

3. The State must pay for the interest incurred on the pecuniary damage, the amount specified in paragraph 101 of th[e] Judgment.

4. The State must make the payments of fair compensation and pecuniary damage established in th[e] Judgment, in accordance with the method of compliance established in paragraphs 102 to 104 of th[e] Judgment.

5. The State must pay, for compensation of non-pecuniary damage, the amount established in paragraph 112 of th[e] Judgment, within the respective time frame and in the terms indicated in paragraphs 109 to 111, and 113 of th[e] Judgment.

6. The State must pay for costs and expenses the amount established in paragraph 141 of the [...] Judgment, within the respective time frame and in the terms indicated in paragraph 140 of th[e] Judgment.

7. The State must reimburse María Salvador Chiriboga, as a measure of restitution, the amount indicated in paragraph 124 for property taxes, additional charges, and other taxes, as well as for a surcharge on a lot without constructions that was collected unduly, together with the corresponding interest, within six months, in keeping with the provisions of the said paragraph of the Judgment.

8. The State must make the publications ordered in paragraph 127 of th[e] Judgment, as and when established in the said paragraph.

[...]

3. The brief of June 19, 2012, in which the Republic of Ecuador (hereinafter the "State" or "Ecuador") presented information on compliance with the Judgment delivered by the Court in this case (*supra* having seen paragraph 2).

4. The communication of August 14, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on the information provided by the State.

5. The communications of August 6, August 16 and September 21, 2012, in which the Secretariat of the Court reiterated to the representatives the request to forward their observations on the State's report, the time frame for which had expired on July 23, 2012. On October 23, 2012, the representatives presented the observations requested.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), States Parties must comply fully and promptly with the judgments delivered by the Court. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Therefore, the States must ensure implementation at the domestic level of the Court's decisions in its judgments.¹

3. The States Parties to the American Convention that have accepted the Court's contentious jurisdiction must comply with the obligations established by the Court. This includes the State's obligation to inform the Court of the measures adopted to comply with the rulings of the Court in its judgments. Prompt compliance with the State's obligation to inform the Court of the way in which it is complying with each aspect ordered by the latter is essential in order to evaluate the status of compliance with the judgment as a whole.²

4. The time frame for the presentation of the first report on compliance with the Judgment expired on March 23, 2012. On June 19, 2012, the State forwarded a document from the Ministry of Justice, Human Rights and Worship dated May 22, 2012, describing the measures of satisfaction that had been complied with pursuant to the Judgment. In view of the fact that some progress has been made in compliance with the measures of reparation ordered, the Court finds it pertinent to issue this Order.

A. Obligation to pay the amounts for fair compensation, the interest incurred on the pecuniary damage, non-pecuniary damage, and for the taxes and fines collected unduly together with the corresponding interest, as well as costs and expenses (*second, third, fourth, fifth, sixth and seventh operative paragraphs of the Judgment on reparations*)

5. In its brief of June 19, 2012, the State advised that it had made the following payments to Mrs. Salvador Chiriboga, "within the time frame established by the Court, [...] through the Ministry of Finance":

¹ Cf. *Case of Baena Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Barrios Altos v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 7, 2012, third considering paragraph.

² Cf. *Case of Barrios Altos v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 22, 2005; seventh considering paragraph, and *Case of Mejía Idrovo v. Ecuador*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 4, 2012, third considering paragraph.

(a) On March 29, 2012, it had paid the sum of US\$5,628,151.60 (five million six hundred and twenty-eight thousand one hundred and fifty one United States dollars and sixty cents)." This amount "includ[ed] [the sum of] US\$3,741,000 (three million seven hundred and forty one thousand United States dollars)" corresponding to the payment of the fair compensation established in the second operative paragraph, as well as the sum of "US\$1,887,151.60 (one million eight hundred and eighty-seven thousand one hundred and fifty one United States dollars and sixty cents)" corresponding to the payment of the interest accrued on the amount of the fair compensation;

(b) On March 23, 2012, it had paid the amount of US\$60,000.00 (sixty thousand United States dollars)." It indicated that this amount "included the US\$10,000.00 (ten thousand United States dollars)" corresponding to the payment of non-pecuniary damage, and the US\$50,000.00 (fifty thousand United States dollars)" for costs and expenses, and

(c) On September 23, 2011, it had paid the sum of US\$43,099.10 (forty-three thousand and ninety-nine United States dollars and ten cents) for taxes and fines collected unduly and the corresponding interest.

6. In their observations of October 23, 2012, the representatives indicated that the State "has complied to date with the payments ordered in the Judgment on reparations and costs of March 3, 2011, as regards the reimbursement of the taxes paid, and even the interests, the payment of costs and for the harm caused to the victim, as well as the first payment corresponding to the compensation for the expropriation of the victim's property, an amount that included the payment of interest."

7. In its communication of August 14, 2012, the Inter-American Commission assessed positively "the information provided by the State regarding the amounts [...] paid." However, it noted "that the date of payment cannot be inferred from the documentation forwarded as attachment[s]; consequently, it awaits more detailed information from the parties in this regard."

8. From the information provided by the parties and the Inter-American Commission, and also from the documents forwarded by the State, the Court notes that, in keeping with paragraphs 84 and 101 to 104 of the Judgment, the State has complied with the payment of the first installment of the following obligations:

- (a) Payment of fair compensation (*second operative paragraph of the Judgment*), and
- (b) Payment of the interest accrued on the pecuniary damage (*third operative paragraph of the Judgment*).

Thus, the following remains pending:

- a) Payment of the sum of US\$14,964,000.00 (fourteen million nine hundred and sixty-four thousand United States dollars), in the corresponding installments, for fair compensation (*second operative paragraph of the Judgment*), and
- b) Payment of the sum of US\$7,548,606.24 (seven million five hundred and forty-eight thousand six hundred and six United States dollars and twenty-four cents) in the corresponding installments for pecuniary damage (*third operative paragraph of the Judgment*).

9. In addition, the Court notes that, according to the provisions of paragraphs 109 to 113, 124, 140 and 141 of the Judgment, the State has complied fully with the following obligations:

- (a) Payment of the compensation for non-pecuniary damage (*fifth operative paragraph of the Judgment*).
- (b) Payment of the taxes collected unduly, as well as the corresponding interest and fines (*seventh operative paragraph of the Judgment*) and,
- (c) Payment of the corresponding costs and expenses (*sixth operative paragraph of the Judgment*).

B. Obligation to publish the pertinent parts of the Judgments on merits and on reparations, as well as the official summary of the Judgments (*eighth operative paragraph of the Judgment on reparations*)

10. The State advised that, on January 20, 2012, it had published the paragraphs indicated in the Judgment, on pages 9 to 25 of the Second Supplement to Official Gazette No. 623. It also advised that, on May 18, 2012, it had published the official summary of the Judgments of May 6, 2010, and March 3, 2011, on page 7 of the newspaper, *El Telégrafo*.

11. The representatives indicated that, despite the fact that it was outside the time frame indicated by the Court, the State had complied with the publications ordered in the Judgment. For its part, the Inter-American Commission noted that both publications "were made outside the time frame of six months [...] and] that the operative paragraphs of both Judgments remain to be published." In addition, it indicated, regarding "the publication of the summary of the Judgment, [...] that the] document provided as an attachment does not reveal the name of the newspaper in which it was published or the date of publication."

12. Based on the information presented, the Court determines that the State has complied, as pertinent, with the publication of the official summary of the Judgments of May 6, 2008, and March 3, 2011, in the newspaper, *El Telégrafo*, as ordered in the eighth operative paragraph of the Judgment.

13. Regarding the publication of certain paragraphs indicated in the Judgment, this Court observes that, on January 20, 2012, the State made the publication in the Second Supplement to Official Gazette No. 623. The Court notes that, regarding the paragraphs mentioned in paragraph 127 of the Judgment, the State erroneously published the following: (a) paragraph 54 of the Judgment of May 6, 2008, under the heading of Chapter V: Competence, when it corresponds to Chapter VI: Articles 21 (Right to Property), 8(1) (Right to Judicial Guarantees) and 25(1) (Right to Judicial Protection) in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention; (b) the title of section "(a) *Publication of Judgment*," was omitted; this should have been cited before paragraph 127 of the Judgment of March 3, 2011. The Court notes that these are errors of form, so that, on this occasion, it considers that the State has complied with this aspect, with the publication of the paragraphs ordered in the eighth operative paragraph of the Judgment.

14. Despite the foregoing, and with regard to the said publication, the Court notes that the State (a) instead of publishing paragraphs 2 and 3 of the Judgment of March 3, 2011, as ordered in the eighth operative paragraph of that Judgment, published declarative paragraphs 2 and 3 of the Judgment of May 6, 2008 (which are transcribed in paragraph 1 of the Judgment of March 3, 2011, and (b) failed to publish the operative paragraphs of each of the said Judgments, which relate to a complete chapter that contains the decisions taken in the

Judgments. This Court considers that the State must publish the said operative paragraphs in the Official Gazette, referring to the publication of January 20, 2012, and clarifying that, on that occasion, it had omitted to publish the said paragraphs. In addition, when making the said publication, it must include a clarification, in the form of a "correction" in relation to the publication of January 20, 2012, indicating that, in the said publication, it should have published paragraphs 2 and of the Judgment of March 3, 2011, rather than the declarative paragraphs 2 and 3 of the Judgment of May 6, 2008, and transcribing the former paragraphs. Consequently, the Court considers that the State has complied partially with the publication, and awaits the corresponding information concerning compliance with this operative paragraph as regards the publication of the paragraphs and the operative paragraphs corresponding to each of the said Judgments.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and pursuant to Articles 33, 62(1), 62(3) and 68(1) of the American Convention on Human Rights, 24(1) and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. As indicated in the pertinent considering paragraphs of this Order, the State has complied fully with its obligations:

- (a) To pay the amounts corresponding to the first tranche of the fair compensation and the interests accrued on the pecuniary damage, in accordance with the second, third and fourth operative paragraphs of the Judgment;
- (b) To pay the amounts ordered for non-pecuniary damage, costs and expenses, and the taxes collected unduly, as well as the respective interest and fines, as stipulated in the fifth, sixth, seventh and eighth operative paragraphs of the Judgment, and
- (c) To publish the official summary of the said Judgments in a national newspaper with widespread circulation, in keeping with the eighth operative paragraph of the Judgment.

2. It will keep open the procedure of monitoring compliance with regard to the second and third operative paragraphs of the Judgment regarding the State's obligation:

- (a) "To pay María Salvador Chiriboga, for fair compensation, the amount indicated in paragraph 84 of th[e] Judgment,"
- (b) "To pay, for the interest accrued on pecuniary damage, the amount indicated in paragraph 101 of th[e] Judgment" in consecutive tranches, as ordered in the Judgment on reparations and costs, and
- (c) To publish in the Official Gazette the operative paragraphs of the Judgments on merits, and on reparations and costs, and also paragraphs 2 and 3 of the Judgment on reparations and costs of March 3, 2011, making the clarification indicated in the fourteenth considering paragraph of his Order.

AND DECIDES:

1. That it will rule on the measures of reparation ordered in the second, third and eighth operative paragraphs of the Judgment of March 3, 2011, when the State of Ecuador has provided information on the payment of the consecutive tranches that it must make on March 30, 2013, 2014, 2015 and 2016, in keeping with paragraphs 84, 101 and 102 to 104 of the Judgment, as well as on the publication of the operative paragraphs of both Judgments, as ordered in paragraphs 127 of the Judgment.
2. That the representatives of the victim and the Inter-American Commission on Human Rights must present any observations they deem pertinent on the report of the Republic of Ecuador within four and six weeks, respectively, of receiving it.
3. That it will continue monitoring compliance with the Judgment on reparations, costs and expenses of March 3, 2011.
4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the Republic of Ecuador, the Inter-American Commission on Human Rights and the victim or her representatives.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary