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**REPORT No. 376/21**  
**PETITION 833-09**  
REPORT ON ADMISSIBILITY

MARTHA CECILIA ESPARZA, ABDÓN NAPOLEÓN ALBÁN ALARCÓN *ET AL.*  
ECUADOR

Approved electronically by the Commission on November 24, 2021.

**Cite as:** IACHR, Report No. 376/21, Petition 833-09. Admissibility. Martha Cecilia Esparza, Abdón Napoleón Albán Alarcón *et al.* Ecuador. November 24, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	INREDH (Regional Advisory Foundation on Human Rights), David Cordero Heredia (JSD)
<b>Alleged victim:</b>	Martha Cecilia Esparza, Abdón Napoleón Albán Alarcón <i>et al.</i> <sup>1</sup>
<b>Respondent State:</b>	Ecuador
<b>Rights invoked:</b>	Articles 4 (life), 24 (equal protection), 25 (judicial protection), 26 (economic, social, and cultural rights) of the American Convention on Human Rights, <sup>2</sup> in relation to Article 1.1 thereof (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	July 8, 2009
<b>Notification of the petition to the State:</b>	December 19, 2014
<b>State's first response:</b>	October 21, 2015
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	December 12, 2018
<b>Precautionary measure granted:</b>	June 26, 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument adopted on December 28, 1977)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (life), 8 (fair trial), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation to Article 1.1 (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	January 7, 2009
<b>Timeliness of the petition:</b>	January 12, 2009

<sup>1</sup> The petition names 33 alleged victims, who are individualized herein.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention."

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioners allege that the State of Ecuador is responsible for violating the right to progressive development and a decent standard of living of the families that lived in a property evicted in the framework of the “modernization” of the capital of Ecuador, in a proceeding where they had no judicial protection. The petitioners explain that in these families there were boys, girls, adolescents, and elderly people. The petitioners claim that since 2005, when the Municipality of Quito began the modernization works, these families (hereinafter “the alleged victims”) were noticed that they had to quit the premises they inhabited on Calle Morales 814 street in that city (“the property”), and that the families were even threatened with forced eviction.

2. According to the petitioners, since 2005, the company QUITOVIVIENDA had intended to build apartments on the property where the alleged victims were living. However, the Municipality of Quito did not have a plan to ensure the alleged victims’ right to decent dwelling in the same way it had done with other families, such as those living in the so-called *Casa de los 7 Patios* or the former *Hospital Militar*. The petitioners allege that the Municipality noticed the eviction and purchase of the property on June 20, 2007—that is, two years after it noticed the alleged victims that the property would be sold. They report that after the sale, the families received written communications through which a purported legal representative of the *Sociedad Administradora de Fondos* of Pichincha summonsed them to appear at his office and told them to quit the property.

3. On June 18, 2007, the Human Rights Center of the Pontifical Catholic University of Ecuador (PUCE) filed on behalf of the alleged victims an amparo seeking to stop the forced eviction. On July 31, 2007, a favorable decision was issued by the Twenty-Third Civil Court of Pichincha. The Municipality of Quito decided to suspend the eviction until its appeal against the amparo was resolved. The amparo was rejected by the First Chamber of the Constitutional Court. The petitioners assert that this ruling was groundless and did not analyze the allegations of human rights violations therein included.

4. The State contends that on June 26, 2009, the Company for Urban Development of Quito (“EMDUQ CEM” by its Spanish acronym) assigned and transferred the trustee rights on the real property to the Fund for Safeguarding Cultural Heritage (“FONSAL”). On February 25, 2010, the deed of trust document of the trust *Fideicomiso Inmuebles Centro Histórico* was reformed, and from that moment, the FONSAL assumed the obligations and commitments established or acquired in favor of EMDUQ CEM, the initial constituting member. Subsequently, the Metropolitan Institute of Heritage (“IMP”) stated that the EMDUQ CEM had not filed an eviction proceeding; therefore, the IMP reported to the Administration of the Downtown Area the risk situation of the property, to have the property cleared. On December 22, 2011, the IMP, the Secretariat for Security and Governance, the alleged victims, the petitioners, and the Human Rights Center of the PUCE signed a Memorandum of Understanding and Commitment to enable the relocation of the alleged victims and to preemptively protect the real property.<sup>4</sup>

5. On June 24, 2012, the administrator of the Downtown Area of the Municipality reported that bank transfers of US\$ 862 had been made to each one of the beneficiary families of the area La Ronda, in compliance with orders 331 and 0077. In July 2012, the IMP brought to the attention of the Metropolitan Secretariat for Security and Governance options in dwelling. On April 8, 2015, the IMP said that the following persons had not been evicted: Abdón Napoleón Albán Alarcón, José Enrique Arguello Paredes, Diego Vicente Chila, Martha Cecilia Esparza, Ana Graciela Iza Cumanicho, Jaime Patricio Jaramillo Pérez, Mariana del Rosario Maldonado Zuquillo, Fanny María Panamá Muenala, and Víctor Manuel Paredes Marcillo.

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<sup>4</sup> Through this document, the State pledged to propose options and alternative solutions so that each one of the families adopt the one that best fits their interests and is suitable to their financial situation and resources; to refrain from using coercive or violent measures to relocate them; and to collect socioeconomic data from the alleged victims to offer them options in relocation.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

6. The State asserts that the petitioners lodged the complaint to the IACHR before a legal action had been filed to have the real property cleared and that, consequently, there was not any resolution. Thus, the IACHR observes that on June 18, 2007, the petitioners lodged a constitutional amparo against the mayor of the Metropolitan District of Quito, the manager of QUITOVIVIENDA, and the executive director of the FONSAL. On July 31, 2007, the Twenty-Third Judge of the Civil Court of Pichincha ruled on this remedy by granting the amparo to the petitioners to prevent that the tenants living on the property be evicted or to enable an alternative for these dwellers to have a decent dwelling. Following this decision, on August 16, 2007, the director of the FONSAL filed an appeal and on January 7, 2009, the First Chamber of the Constitutional Court for the Transition Period revoked the lower court's decision and refused to grant the amparo. Therefore, the Commission considers that a final resolution was passed regarding the alleged violations, which is the amparo resolution of January 7, 2009.

7. The requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body.<sup>5</sup> In this case, there is a final decision issued by the highest instance of jurisdiction in Ecuador, regarding the facts alleged in the amparo; therefore, the IACHR deems that domestic remedies were exhausted under the terms of Article 46.1.a of the American Convention.<sup>6</sup> The alleged victims were noticed on March 24, 2009, and filed their petition to the IACHR on January 12, 2009; therefore, the Inter-American Commission believes that this was filed within the six months established by Article 46.1.b of the said treaty.

## **VII. ANALYSIS OF COLORABLE CLAIM**

8. The IACHR observes that the subject matter of this petition involves attempts at and threats with evicting the alleged victims from the property where they were living in Quito and that this possibly violated their rights to a decent standard of living, to dwelling, and to judicial protection in the framework of the corresponding legal proceeding, the result of which was not the same for all the alleged victims because diverse criteria were used to determine their relocation.

9. Given the foregoing considerations and having carefully examined the factual and legal elements presented by the parties, the Commission deems that the allegations brought by the petitioner are not manifestly groundless and require an analysis of the merits, especially of the conformity of the threat with eviction with the guarantees established in the American Convention. For if the facts alleged are proven to be true, they may tend to establish violations of the rights protected by Articles 4 (life), 8 (fair trial), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof, to the detriment of the alleged victims.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4 (life), 8 (fair trial), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof.

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

<sup>5</sup> IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, par. 12

<sup>6</sup> IACHR, Report 51/18, Petition 1779-12. Admissibility. Maya Kaqchikuel Indigenous Peoples of Sumpango et al. Guatemala. May 5, 2018, pars. 13, 14, and 16.

Approved by the Inter-American Commission on Human Rights on the 24<sup>th</sup> day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

## ANNEX I – ALLEGED VICTIMS

<b>Name</b>	<b>Observations</b>
Abdón Napoleón	Elderly person
Rosa Elvira Alban Mayorga	
Miriam Alban Mayorga	
Martha Cecilia Esparza	
Jonathan Lasso	
Karina Lasso	
Vinicio Lasso	Boy
Mishell Lasso	Boy
William Lasso	Boy
Esteban Esparza	Boy
Víctor Manuel Paredes	
Elsy Lucía	
Roni Paredes	Boy
Alexander Paredes	Boy
Diego Vicente Chila	
Ana María Chila	Elderly person
Teresa de Jesús Chila	
Fanny Panamá Muenala	
Fabian Paca Barbaero	
Jaime Pasto Panamá	Boy
Karina Belén Paca Panamá	Girl
Julio Morán	
Olga Segido	
Ángel Moran	
Patricia Moran	
Martin Ochoa	
Byron Moran	
Mariana Maldonado Zuquillo	
Daughter of Mariana Maldonado Zuquillo	Girl
José Arguello Paredes	Elderly person
Ana Graciela Iza	
Patricia Legña Iza	
Diana Legña Iza	