

Order of the Inter-American Court of Human Rights
of July 10, 2007
Case of Bámaca Velásquez v. Guatemala
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on merits issued in the present case by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") on November 25, 2000.

2. The Judgment on reparations issued in the present case by the Inter-American Court on February 22, 2002.

3. The Order of compliance with the Judgment issued by the Court on November 27, 2003, in which it declared, *inter alia*, that:

[...] the State ha[d] fully complied with operative paragraphs 5, 6, and 7 of the Judgment on reparations delivered by this Tribunal on February 22, 2002 regarding compensations.

4. The Order of compliance with the Judgment issued by the Court on March 3, 2005.

5. The Order of compliance with the Judgment issued by the Court on July 4, 2006, through which it stated that:

1. [...] it will continue the procedure on monitoring compliance with the pending aspects in this case, which are:

a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and their return to them;

b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification and punishment of those responsible, and the public divulgation of the results of this investigation;

c) The publication, only once, in the official gazette and in another newspaper with national circulation, of the chapter on proven facts and the operative paragraphs of the judgment on merits issued on November 25, 2000, and the organization of a public act to acknowledge its responsibility for the facts of the case and to make amends to the victims; and

- d) The adoption of the legislative and any other measures necessary to adapt Guatemalan domestic laws to the international norms of human rights and humanitarian law, and to make these norms fully effective in the domestic sphere.

6. The communication of the State of Guatemala (hereinafter "the State") of September 13, 2006 and its annexes in which it described a series of steps taken during the years 1995, 1996, 1997, 1999, and 2006 to determine the whereabouts of Efraín Bámaca Velásquez. Specifically, it mentioned that on August 9, 2006 it "requested that the Public Prosecutors' Office reactivate the investigation in order to establish the whereabouts of Mr. Bámaca Velásquez's body and those responsible for the fact, and thus continue with the proceedings and issue a judgment according to the law." On the other hand it stated that "the corresponding publications [of the Judgment] were made in the *Diario de Centroamérica* on June 14, 2005 and in *El Periódico* on June 5, 2006." Finally, it indicated that "[w]ith the purpose of adapting the Guatemalan legislation to international human rights norms, a High Level Commission was [created] in which officials of the three State Bodies and of the Office of the United Nations High Commissioner for Human Rights, as well as the Ombudsman's Office, the office of Attorney General of the Nation, and the Ministry of Foreign Affairs participated."

7. The observations made by the representatives of the victim and his next of kin (hereinafter "the representatives") on October 13, 2006, in which they acknowledged that the State complied with the publication of the Judgment in the terms stated in the Judgment on Reparations (*supra* Having Seen paragraph number 2). However, regarding the location of the remains and the investigation of the facts, they stated that "no effective action tending to clarify the facts occurred and establish the whereabouts of the remains of Mr. Efraín Bámaca Velásquez has been carried out [and that] the State has not carried out an investigation leading to know, at least, what happened to the victim's remains." At the same time, they pointed out that "since the year 1999 up to [...] August 9, 2006 there was no State initiative to continue with the investigation, thus continuing the impunity of the case." Regarding the High Level Commission allegedly appointed for the effects of adapting the Guatemalan legislation to international norms, they expressed that the State "did not provide any information to prove said appointment, [nor] did it explain the specific duties of said [C]ommission, the mandate granted to it, and more specifically, it did not mention its advances."

8. The State's communication of October 25, 2006, in which it informed of the celebration of a public act of acknowledgment of international responsibility on October 16, 2006 at the "Patio de la Paz of the Palacio Nacional de la Cultura, presided by Mr. Frank Rafael La Rue Lewy, who was appointed by the President of the Republic, Oscar Berger Perdomo, and by the Vice-President of the Republic, Eduardo Stein Barrillas." Pursuant to that expressed by the State, in said "act Mrs. Jennifer Harbury, the victim's widow, a representative of the family, and two friends of Mr. Bámaca Velásquez were present."

9. The observations made by the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on October 31, 2006, in which it stated that it regretted the lack of advances regarding the location of the remains of Mr. Bámaca Velásquez; that the obligation to adopt legislative measures of adaptation to international norms is still pending; that "it considered" the publications

of the Judgment “adequate”; and that it valued the realization of the State’s act of acknowledgment.

10. The observations made by the representatives on November 28, 2006, in which, after an extension granted, they stated that the State contacted them a few days prior to holding the public act of acknowledgment of responsibility. Mrs. Jennifer Harbury traveled from Germany in order to be present. However, “[d]ue to the proximity of the date, Mrs. Harbury did not participate [...] in the preparation of the act, except in the definition of the text for the invitations [...]. However, she was not informed of the guest list, despite the fact that she was the one who had to guarantee the presence of other relatives of Bámaca in the act.” Besides, they expressed that “[f]or Mrs. Jennifer Harbury and for the next of kin [present at the] event it was a surprise that the only public official present was Mr. Frank La Rue. There was no other high-ranking official present and even less so an official representation of the army [...]. This meant for the next of kin of Efraín Bámaca that the act was marred and did not comply with the intention of the [...] Court, of being an act of pardon, of reparation, and of satisfaction.” Likewise, regarding the location of the remains of the victim, the representatives asked the Court that it “require that the State of Guatemala, without further delay, proceed to exhume the remains of Mr. Bámaca Velásquez according to the information included in the judicial case file and discussed within the international proceedings.”

11. The note of the Secretariat of the Court (hereinafter “the Secretariat”) of December 1, 2006, in which, following the instructions of the President of the Court, it requested that in its next report the State address the arguments of the representatives with regard to the public act (*supra* Having Seen paragraph number 10), and that it give a detailed report to the Court of the advances made to comply with the operative paragraphs still pending of the Judgments on Merits and Reparations. The deadline for submission of this report was set for January 31, 2007. Said term expired without the State presenting the information requested, despite that the Secretariat reiterated this request to the State through a note dated April 27, 2007.

12. The Commission’s communication dated December 12, 2006, through which it indicated that it referred to that stated in its communication of October 31, 2006 (*supra* Having Seen paragraph number 9)

CONSIDERING:

1. That it is an inherent power of the jurisdictional functions of the Court to monitor compliance with its decisions.

2. That Guatemala has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention”) since May 25, 1978, and accepted the compulsory jurisdiction of the Court on March 9, 1987.

3. That the obligation to comply with the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a

party may not invoke the provisions of its internal law as justification for its failure to assume a previously established international responsibility.¹ The treaty obligations of the States Parties are binding for all the powers and organs of the State.

4. That the States Parties to the American Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable with regard not only to the substantive norms of human rights treaties (that is, those that include stipulations regarding all protected rights), but also to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.²

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5. That upon supervising the comprehensive compliance of the Judgment on Reparations and after analyzing the information provided by the State, the Inter-American Commission and the representatives in their corresponding briefs (*supra* Having Seen paragraphs number 6, 7, and 9), the Court has verified that the State has complied with the duty to publish the Judgment in the Official Newspaper and in another newspaper of national circulation (*Third Operative Paragraph of the Judgment on Reparations*).

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6. That the State informed of the realization of a public act of acknowledgment of international responsibility. That the Commission “took note of that informed by the State” and did not make any additional observation in this sense. That the representatives characterized the act as “marred” and, in their opinion, it did not comply with the Court’s intent. The State did not present observations to the criticism made by the representatives to the public act in question.

7. That the Judgment on Reparations in this case (*supra* Having Seen paragraph number 2) did not specify that in the public act of acknowledgment of responsibility an “official representation of the army” should be present, as argued by the representatives.

¹ Cfr. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2005, Considering clause number 3 and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 5.

² Cfr. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2005, Considering clause number 4, and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 6.

Likewise, the Tribunal points out that the public act of acknowledgment of responsibility was presided over by Mr. Frank La Rue, President of the Presidential Coordinating Commission for the Executive Policy on Human Rights, who also acted by appointment of the President and Vice-President of the Republic. Finally, the Tribunal observes that the State suggested October 16, 2006 as the date on which the public act could be held in its communication of September 13, 2006, that is one month in advance. There is no evidence in the information sent by the representatives that the next of kin of Mr. Bámaca Velásquez requested any type of extension or reconsideration of the date proposed by the State, in order to be able to better coordinate the mentioned act. Therefore, the Court considers that the State fulfilled its duty to hold a public act of acknowledgment of its responsibility in relation to the facts of this case (*Third Operative Paragraph of the Judgment on Reparations*).

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8. That from the information forwarded by the parties, the Court observes that it has insufficient information on some aspects that are pending compliance, therefore it considers it appropriate to request that the State inform on all the measures adopted to comply with:

- a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and their return to them (*first operative paragraph of the Judgment on reparations*);
- b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification and punishment of those responsible, as well as the public divulgation of the results of the respective investigation (*eighth operative paragraph of the Judgment on merits and second operative paragraph of the judgment on reparations*), and
- c) The adoption of the legislative and any other measures necessary to adapt Guatemalan domestic laws to the international norms of human rights and humanitarian law, and to make these norms fully effective in the domestic sphere (*fourth operative paragraph of the Judgment on reparations*).

9. That the Court notes that more than five years have elapsed since the Judgment on reparations in this case was delivered (*supra* Having seen paragraph 2), and it has not yet been fully complied with.

10. That the Court will consider the overall situation of compliance with its Judgments on merits and reparations, and also its Orders in this case (*supra* Having seen paragraphs 3, 4, and 5), once it receives the pertinent information on the measures pending compliance.

THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise of its authority to monitor compliance with its decisions, pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has fully complied with that stated in the third Operative Paragraph of the Judgment on Reparations issued by this Tribunal on February 22, 2002 (*supra* Having Seen paragraph 2).
2. That it will continue the procedure on monitoring compliance with the pending aspects in this case, which are:
 - a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and their return to them (*first operative paragraph of the Judgment on reparations*);
 - b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification and punishment of those responsible, and the public divulgation of the results of this investigation (*eighth operative paragraph of the Judgment on merits and second operative paragraph of the Judgment on reparations*), and
 - c) The adoption of the legislative and any other measures necessary to adapt Guatemalan domestic laws to the international norms of human rights and humanitarian law, and to make these norms fully effective in the domestic sphere (*fourth operative paragraph of the Judgment on reparations*).

AND DECIDES:

1. To require the State to adopt all necessary measures to fulfill effectively and promptly the aspects pending compliance that were ordered by the Court in the judgments on merits and reparations (*supra* Having Seen paragraphs number 1 and 2), as well as that stated in the Orders issued in this case (*supra* Having seen paragraphs number 3, 4, and 5), pursuant to the provisions of Article 68(1) of the American Convention.
2. To request the State to submit to the Inter-American Court, by September 28, 2007, at the latest, a detailed report indicating all the measures adopted to comply with the reparations ordered by the Court that are still pending compliance (*supra* second operative paragraph), and to present the corresponding supporting documentation.

3. To request the representatives and the Inter-American Commission to submit their observations to the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, as of its receipt.
4. To continue monitoring the aspects pending compliance of the judgments on merits and reparations.
5. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission, and the representatives.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary