

Order of the
Inter-American Court of Human Rights*
of January 22, 2009
Case of Maritza Urrutia v. Guatemala
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on Merits, Reparations and Costs, on the instant case, delivered by the Inter-American Court of Human Rights (hereinafter “the Court”, “the Inter-American Court”, or “the Tribunal”) on November 27, 2003, through which it decided to order to the Republic of Guatemala (hereinafter “the State”):

5. [...] to effectively investigate the facts in the instant case, that caused the violations to the American Convention on Human Rights and the failure to comply the obligations of the Inter-American Convention to Prevent and Punish Torture; to identify, judge, and punish the responsible parties, as well as to publish the results of the respective investigation [...]

6. [...] to pay the exact amount of US\$10,000.00 (ten thousand US Dollars), or its equivalence to the Guatemalan currency, for the concept of compensation of pecuniary damage [...]

7. [...] to pay the exact amount of US\$44,000.00 (forty four thousand US Dollars), or its equivalence to the Guatemalan currency, for the concept of compensation of non pecuniary damage [...]

8. [...] to pay the exact amount of US\$6,000.00 (six thousand US Dollars), or its equivalence to the Guatemalan currency, for the concept of expenses and costs [...]

2. The order emitted by the Inter-American Court on September 21, 2005, through which it declared:

1. That [...] the State has fully complied with what was indicated in the sixth, seventh, and eighth operative paragraphs of the Judgment on Merits, Reparations, and Costs of November 27, 2003 emitted in the instant case, namely:

a) payment of the corresponding amounts for the compensation on pecuniary damage ruled in favor of Maritza Urrutia, Edmundo Urrutia Castellanos, María Pilar García de Urrutia, Edmundo Urrutia García, and Carolina Urrutia García;

b) payment of the corresponding amounts for the compensation on non-pecuniary damage ruled in favor of Maritza Urrutia, Fernando Sebastián Barrientos Urrutia, Edmundo Urrutia Castellanos, María Pilar García de Urrutia, Edmundo Urrutia García, and Carolina Urrutia García; and

* The Judge Cecilia Medina Quiroga informed the Court that, due to reasons of *force majeure*, she will not be attending the deliberation and signing of the present order.

c) payment of the corresponding amounts for the reimbursement of the incurred expenses and costs in the instant case.

2. That it shall continue to monitor the compliance of the operative paragraph still pending in the instant case, to wit:

“the State must effectively investigate the facts in the instant case, that caused the violations to the American Convention on Human Rights and the failure to comply the obligations of the Inter-American Convention to Prevent and Punish Torture; to identify, judge, and punish the responsible parties, as well as to publish the results of the respective investigation (fifth operative paragraph of the Judgment on Merits and Reparation emitted in the instant case).

3. The Order emitted by the Inter-American Court on November 21, 2007, through which it decided:

1. To call upon the State of Guatemala to comply as soon as possible with the pending operative paragraph of the Judgment [...] in accordance with Article 68(1) of the American Convention on Human Rights.

4. The briefs of April 29 and October 14, 2008, through which the State informed about the status of fulfillment of the Sentence emitted in this case.

5. The briefs of June 12 and December 2, 2008, through which the legal representatives of the victim (hereinafter “the representatives”) presented their observations towards the State reports (*supra* Having Seen 4).

6. The brief of June 20, 2008, through which the Inter-American Commission of Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) presented its observations towards the State reports (*supra* Having Seen 4).

CONSIDERING:

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

2. That Guatemala is State Party to the American Convention since May 25, 1978 and it recognized the compulsory jurisdiction of the Court on March 9, 1987.

3. That in accordance with what is established in Article 67 of the American Convention, the judgments of the Court must be complied forthwith by the State entirely.¹ Moreover, Article 68(1) of the American Convention provides that “[t]he States Party in the Convention compromise to the compliance of the judgment in such event where they are parties”.

¹ Cf. *Case of Baena Ricardo et al. v. Panamá*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Claude Reyes et al. v. Chile*. Monitoring Compliance with Judgement. Order of November 24, 2008, Considering clause 4; and, *Case of Bulacio v. Argentina*. Monitoring Compliance with Judgment. Order of November 26, 2008. Considering clause 4.

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4. That in its Order of November 21, 2007 (*supra* Having Seen 3), the Court required the State detailed information on the compliance of the only remaining operative paragraph related to the duty of effectively investigate the facts in the instant case; to identify, judge, and if so, punish the guilty, and to publicly circulate the results of said investigation (*fifth operative paragraph of the Judgment on Merits, Reparations, and Costs*).

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5. That the State informed that the respective file on the facts of the instant case is located in the Human Rights Prosecutor's Office, *Fiscalía de Sección de Derechos Humanos, Unidad de Casos Especiales* (Special Cases Unit), which works on the investigation of events related to the internal armed conflict. Likewise, the State informed that the proceeding is still on investigation, and that the said office elaborated a plan that gathers the investigation and "shows the practice of a number of procedures that include the requirement of information to public and private offices [...]". The State made reference to some actions taken by the Public Ministry on August 2008, "to identify the persons who had positions in State offices that could have a relation with this event, [and] to find the whereabouts of persons responsible for it." Lastly, it informed that, "the case is being studied by the Impulse Committee, which is integrated by the State offices related to justice and judicial matters [...]".

6. That the representatives pointed out that they acknowledge the efforts of the State as a first advance to comply with the pending obligation. However, they indicated that "it does not appear that the State is adopting the necessary measures for fulfill its responsibility in the matter of legal prosecution[, ...] considering that after the information given by the victim and the next of kin, this is one of the cases that will allow to demonstrate more concrete advances as for the impunity that has prevailed in this type of cases." Likewise, they reaffirmed "the importance of the access to the information related to the advances of the investigation, for the victim, next of kin and representatives, [since] the adequate and opportune information [...] will allow the victim to provide and direct the investigations[, ...] and mainly that the necessary security measures are taken", taking into account that "several persons part of the State have been identified to probably be linked in some manner [...]". They also referred to the necessity for the representatives of the next of kin to participate in the *Comité de Impulso* [Impulse Committee]. The representatives insisted that, "they consider important that the State, through COPREDEH, creates a discussion space between the victim, next of kin and representatives with the persons in charge of the investigation, making possible the transfer of information that allows the adequate impulse to the investigation".

7. That the Commission “valued the updated information sent by the State, and it does not show any significant advances after almost five years from the ordering of the Judgment of the Inter-American Court.” Due this, the Commission urged Guatemala to perform “concrete measures” to comply with the identification, process and punishment of the guilty, and also with the publishing of the results of said investigation.

8. That even though the State has presented information about some proceedings and measures taken in 2008 to comply with the pending paragraph, the Court observes that more than five years have passed since the ordering of the Judgment (*supra* Having Seen paragraph 1) and more than sixteen years since the perpetration of the facts object of the present case, and that the said continues to be in the investigation case internally, without any precise results.

9. That in its jurisprudence, the Inter-American Court has highlighted that the delay in the process of legal causes might generate, among others, the denial of justice for the victims or the next of kin, and it can also frustrate the continuity of the proceedings.² In consequence, the State must intensify its efforts for the facts that originated the present case to be investigated properly. The Court reiterates that this obligation must be complied by the State as soon as possible, and taking into account that in the Judgment (*supra* Having Seen paragraph 1, Considering paragraph 58(4) to 58(6)) it is determined that the guilty might be State agents.

10. That in conformity with paragraph 177 of the Judgment, “the victim must have access and capacity to act in all the stages of the respective investigation and judgment, according to the internal law and rules of the American Convention.” In this regard, the Court deems relevant that the State and the representatives determine the pertinent and adequate mechanisms of dialogue and information for the investigation of the facts of the present case, in conformity with the internal law, that allow the verifying of the due compliance of the still pending paragraph.

11. That the Court will consider the general state of the compliance with said Judgment and the present order once it receives the pertinent information about the only paragraph pending of compliance. Also, it might eventually summon the State, the representatives and the Commission to a private hearing to evaluate the compliance with the Judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its inherent power to monitor the compliance of its decisions, and in conformity to Articles 33, 62(1), 62(3), 65, 67 y 68(1) of the American Convention

² Cf. *Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2007. Series C No. 168, para. 158; *Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 115; and *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 82.

on Human Rights, and Articles 25(1) and 30 of the Statute of the Court, and Article 29(2) of the Rules of Procedure,

DECLARES:

1. That it shall maintain open the proceeding of monitoring until the compliance of the only pending operative paragraph, to wit, "to investigate effectively the facts of the present case, that generated the violations of the American Convention on Human Rights, and punish torture; to identify, judge and punish the guilty, and also to publish publicly the results of said investigation" (*fifth operative paragraph of the Judgment on Merits, Reparations, and Costs*).

AND DECIDES:

1. To reiterate the State of Guatemala to promptly comply with the only pending operative paragraph of the Judgment on Merits, Reparations, and Costs of November 27, 2003 ordered by the Inter-American Court of Human Rights in the instant case, in conformity with Article 68(1) of the American Convention on Human Rights.

2. To require the State of Guatemala to present to the Inter-American Court of Human Rights, no later than August 14, 2009, a detailed report, in which it indicates the adopted measures to comply with the fifth operative paragraph of the Judgment on Merits, Reparations, and Costs emitted on the instant case, in the Considering Clauses 8 to 10 of the present Order.

3. To require the State to continue reporting, every six months, to the Inter-American Court of Human Rights about the measures adopted to comply with the pending operative paragraph of the Judgment on Merits, Reparations, and Costs dictated in the instant case.

4. To require the representatives of the victim and the Inter-American Commission of Human Rights to present their observations to the briefs of the State of Guatemala in the term of four and six weeks, respectively, counting from the reception of the brief.

5. To continue supervising the compliance of the pending operative paragraph of the Judgment on Merits, Reparations, and Costs of November 27, 2003.

6. To require the Secretary of the Inter-American Court of Human Rights to notify the present Order to the State of Guatemala, to the Inter-American Commission of Human Rights, and the victims' representatives.

Diego García-Sayán
President

Sergio García Ramírez

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary