

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE MAYA KAQCHIKEL INDIGENOUS PEOPLES OF SUMPANGO  
ET AL. V. GUATEMALA**

**JUDGMENT OF JULY 27, 2022**

***(Interpretation of the judgment on merits, reparations and costs)***

In the case of *the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court," or "the Court") composed of the following Judges\*:

L. Patricio Pazmiño Freire, Acting President;  
Humberto Antonio Sierra Porto, Judge;  
Eduardo Ferrer Mac-Gregor Poisot, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
Ricardo C. Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Registrar, and  
Romina I. Sijniensky, Deputy Registrar,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Article 68 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), decides on the request for interpretation of the judgment on merits, reparations and costs, issued by the Court in this case on October 6, 2021 (hereinafter also "the judgment" or "the decision"). The request was filed on March 17, 2022, by the Republic of Guatemala (hereinafter "the State" or "Guatemala").

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\* This judgment is deliberated and adopted during the Court's 65th special session, which was held virtually, using technological resources as established in the Court's Rules of Procedure. Judge Elizabeth Odio Benito and Judge Eduardo Vio Grossi did not participate in the deliberation and signing of this judgment of interpretation for reasons of force majeure that were accepted by the full Court.

**I**  
**REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT**

1. On October 6, 2021, the Court issued a judgment on this case, and so notified the parties and the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) on December 17 of the same year.
2. On March 17, 2022, the State submitted a request for interpretation related to the scope of operative paragraphs two, four, six, seven and eight of the judgment.
3. On March 29, 2022, pursuant to Article 68(2) of the Rules of Procedure and following the instructions of the President of the Court, the Court Registrar sent the request for interpretation to the victims’ representatives (hereinafter, the “representatives”)<sup>1</sup> and the Commission and gave them until April 28, 2022, to present in writing any observations they considered relevant. On April 28, 2022, the representatives and the Commission forwarded their respective observations.

**II**  
**JURISDICTION**

4. Article 67 of the American Convention establishes:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

5. Pursuant to this article, the Inter-American Court is competent to interpret its judgment. According to Article 68(3) of the Rules of Procedure, when considering and deciding on a request for interpretation, the Court shall be composed, whenever possible, of the same Judges who delivered the original judgment. On this occasion, the Court majority is made up Judges who delivered the judgment whose interpretation has been requested by the State.

**III**  
**ADMISSIBILITY**

6. It is the Court's task to verify whether the request filed by the State meets the requirements established in the norms applicable to a request for interpretation of judgment, namely, Article 67 of the Convention as cited above, and Article 68 of the Rules of procedure. Likewise, Article 31(3) of the Rules of Procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

7. The Court notes that the parties were notified of the judgment on December 17, 2021, and the State presented its request for interpretation on March 17, 2022, within the 90-day period established in Article 67 of the Convention. Therefore, the request is admissible as regards its timeliness. Regarding the other requirements, the Court will analyze the merits in the following chapter.

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<sup>1</sup> The victims’ representatives are the Human Rights and Indigenous Peoples Clinic of Suffolk University Law School, Nicole Friederichs, attorney and director of the Clinic; Cultural Survival, Inc., *Sobrevivencia Cultural*; the Asociación *Mujb'ab'! Yol*; and attorney Cristian Otzín Poyón, of the *Nim Ajpu* Association of Maya Attorneys and Public Attestors of Guatemala.

## IV ANALYSIS OF THE ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

8. Next, the Court will examine the State's request to determine whether, based on the rules and standards developed in its case law, it is appropriate to clarify the meaning or scope of any provision of the judgment.

9. The Court has indicated that the request or petition for interpretation of a judgment may not be used as a means of challenging it, but must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its consideranda is unclear or imprecise, provided those consideranda affect that operative paragraph. Hence, a request for interpretation may not be used to seek amendment or nullification of the judgment in question.<sup>2</sup>

10. Additionally, the Court has upheld the inadmissibility of using a request for interpretation to submit considerations on matters of fact and law already raised at the proper procedural time and on which the Court has already adopted a decision,<sup>3</sup> nor to seek that the Court again assess matters already decided in the judgment.<sup>4</sup> Similarly, this avenue cannot be used to attempt to broaden the scope of a reparation measure ordered in a timely manner.<sup>5</sup>

11. Therefore, the Court will now examine the issues raised by the State, as well as the observations made by the representatives and the Commission, in the following order: (a) regarding operative paragraph two; (b) regarding operative paragraph four; (c) regarding operative paragraph six; (d) regarding operative paragraph seven, and (e) regarding operative paragraph eight.

### A. Regarding operative paragraph two

#### *A.1 Arguments of the parties and the Commission*

12. The **State** requested the Court to interpret the "scope" of operative paragraph two "as to respecting and protecting the rights of third parties who already held licenses to operate their radio stations, such that the State's actions would not be considered as violations of basic rights." It pointed out that the operative paragraph "allows for the possibility" of situations such as the following: the Superintendency of Telecommunications (hereinafter, "SIT") or the Public Prosecutor's Office must indicate to the usufructuary who files a complaint not being able to transmit in the radio frequency "to which he or she is entitled," due to some interference in the transmission by "an unlicensed (allegedly community) radio station," that "there is no mechanism" to "restore his or her usufruct right," "since it is not possible to bring legal action against [said] radio station." Moreover, the State pointed out that this situation

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<sup>2</sup> Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the judgment on merits*. Judgment of March 08, 1998. Series C No. 47, para. 16, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 433, para. 10.

<sup>3</sup> Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the judgment on reparations and costs, supra*, para. 15, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>4</sup> Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment of August 29, 2011. Series C No. 230, para. 30, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>5</sup> Cf. *Case of Escher et al v. Brazil. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 208, para. 11, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

would amount to “a violation of the rights of the holder” of usufructuary rights and of other people in similar situations. Furthermore, it maintained that “even though the spirit of the judgment is to guarantee the rights of indigenous communities to use community radio stations, those stations that do have legal licenses to operate in the country are left unprotected.”

13. The **representatives** stated that the request for interpretation was presented “to the detriment and exclusion” of indigenous communities and people who were subject to illegal raids and criminal prosecution, and who lived under threat of such actions.” They indicated that the considerations and reasons given by the Court regarding the responsibility of the State for violating Article 13(2) of the American Convention are clear. Moreover, they held that the State was raising questions of fact that have already been discussed at the merits stage and which were previously analyzed in the judgment. Therefore, the representatives asked that the request for interpretation be declared inadmissible.

14. The **Commission** pointed out that paragraphs 158 to 172 of the judgment “clearly” expound the reasons why the Court “declared that the State violated the right to freedom of expression.” Therefore, it indicated that Guatemala could not use a request for interpretation as a means to challenge the judgment. Moreover, it argued that, in relation to the scope of the operative paragraph regarding the protection of “third parties’ rights,” the petition “does not constitute, per se, a request for interpretation.” In addition, it held that, as to these “third parties’ rights”, the Court “was clear when it established that the legislation in force not only violates the right to freedom of expression but it also discriminates against indigenous communities who seek to have access to the radio spectrum.”

#### *A.2 Considerations of the Court*

15. In operative paragraph two, the Court ordered the following:

2. The State is responsible for the violation of the right to freedom of expression, recognized in Article 13(2) of the American Convention on Human Rights, in relation to the obligations to respect and guarantee rights, established in Article 1(1) of the same instrument, to the detriment of the Maya Kaqchikel indigenous peoples of Sumpango and the Maya Achí indigenous peoples of San Miguel Chicaj, in the terms of paragraphs 157 to 172 of this judgment.

16. In paragraphs 166 to 171, the Court held, in this regard:

166. Furthermore, as indicated previously (*supra* para. 160) the imposition of subsequent liability for the exercise of freedom of expression must respond to an objective permitted by the American Convention, such as respect for the rights or reputations of others or the protection of national security, public order, public health or public morals. In the instant case, the criminal prosecution of the people who operated indigenous community radio stations does not fulfill any of the aforementioned purposes; on the contrary, the raids on the radio stations in question and the criminal trials violated the rights of indigenous peoples to freedom of expression and to participate in cultural life.

167. As for the analysis of the suitability, necessity and proportionality of the restriction of freedom of expression, the Court deems it essential to take into account that (i) the right to freedom of expression of indigenous peoples includes their right to establish and operate community radio stations; (ii) the laws that regulate broadcasting in Guatemala prevented, in practice, the Maya Kaqchikel indigenous people of Sumpango and the Achí of San Miguel Chicaj from legally accessing the radio spectrum, and (iii) the State has not made legislative or other efforts to recognize community broadcasters and ensure that the aforementioned indigenous communities could operate their radio stations.

168. With respect to the suitability and necessity of the criminal action to achieve the sought-after purpose, the Court has indicated previously, and reiterates the point in this case, that although a criminal instrument may be suitable to restrict the abusive exercise of certain rights,

provided that it serves the purpose of safeguarding the juridical good to be protected, this does not mean that the use of criminal proceedings to impose subsequent liabilities for the exercise of freedom of expression is necessary or proportional in all cases. In this regard, the Court has indicated that criminal law is the most restrictive and severe means to impose liabilities for unlawful behavior, particularly when the sanctions involve custodial sentences. Therefore, the use of the criminal law must respond to the principle of minimum intervention, due to its nature as an *ultima ratio*. In other words, in a democratic society, punitive power should only be exercised to the extent that it is strictly necessary to protect fundamental legal interests from the most serious attacks that damage or endanger them. Otherwise, it would lead to the abusive exercise of the punitive power of the State.

169. In this context, the criminal prosecution of the persons who operated the indigenous community radio stations, the raids on Radio Ixchel and Radio "La Voz del Pueblo" and the confiscation of their broadcasting equipment, are inappropriate and unnecessary. This is because the State could have used other less injurious means than those provided for in criminal law, such as administrative procedures and sanctions, which would achieve the same objective, but would affect the indigenous communities in a less onerous manner.

170. Finally, taking into account all the above points, this Court finds that the acts carried out by the State to the detriment of the Maya Kaqchikel and Maya Achi communities did not only derive from a situation of illegality indirectly created by the State itself, but also resulted in an absolute sacrifice of the right to freedom of expression of these peoples, for the purpose of ensuring the full enjoyment of the right to freedom of expression of those who allegedly suffered some interference in the transmission of their radio stations. Therefore, the Court considers that the criminal prosecution in question was disproportionate, since it excessively affected the freedom of expression and the right to participate in cultural life of the Maya Kaqchikel indigenous peoples of Sumpango and the Maya Achi of San Miguel Chicaj.

171. Accordingly, this Court considers that the raids and seizure of equipment of the Radio Ixchel and "La Voz del Pueblo" community radio stations, carried out on the basis of Guatemala's domestic laws and through a court order, constituted illegitimate actions and restrictions of the right to freedom of expression, contrary to the Convention.

17. The Court reiterates that it considers it inadmissible to use a request for interpretation to submit considerations on factual and legal matters that have already been submitted at the proper procedural moment and on which the Court has already taken a decision.<sup>6</sup> To this end, the Court notes that, in its judgment, it considered the content of the arguments raised by the State, specifically when it analyzed whether the raids on the radio stations and the criminal prosecution of their workers constituted a legitimate restriction of the victims' right to freedom of expression, or instead, a restriction contrary to the American Convention. This is clear from the text cited above. Accordingly, the Court holds that the request submitted by the State does not meet the requirements for interpretation set forth in article 67 of the Convention, inasmuch as it does not address the meaning or scope of the judgment, but rather reflects the State's disagreement with operative paragraph two and its queries regarding execution thereof. Therefore, the Court finds that the request for interpretation is inadmissible in this respect.

## **B. Regarding operative paragraph four**

### *B.1 Arguments of the parties and the Commission*

18. The **State** deems it "necessary" to request the interpretation of operative paragraph four of the judgment in view of the fact that the Court's decision "did not expressly indicate [...] the location of the frequency segment used [by community radio stations]", namely Amplitude Modulation or Frequency Modulation. It further pointed out that such segment

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<sup>6</sup> Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the judgment on merits, supra*, para. 15, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

"must be taken into account when the legislature makes the necessary legal amendments to comply with the Court's orders."

19. The State put forward four arguments in this regard to substantiate its request. In the first place, it cited the relevant articles of the General Telecommunications Law (hereinafter, "LGT") which establish the different names of the radio spectrum, as well as the classification of its bands. In the second place, it argued that "Guatemala does not recognize community radio stations in its legal system nor the use of radio frequencies designated for the organizations listed at the time the LGT was enacted." In the third place, it mentioned that the SIT had carried out planning activities "that guarantee[d] the exploitation of radio stations without interference." However, because of "those radio stations that operate outside the legal system, it is very difficult for the SIT to guarantee freedom from interference, primarily for usufructuaries who hold legal licenses." In the fourth place, it stated that the Court "order[ed] the State to adopt, within one year, the necessary measures to allow the victims to operate their community radio stations freely, until such time as effective legal mechanisms could be adopted to guarantee the indigenous communities of Guatemala access to the radio spectrum, and to allocate the corresponding frequencies."

20. The State added that, if community radio stations were to be allowed "to operate freely, they need to meet certain minimum conditions to prevent any harm to people living near the area where the broadcasting equipment is placed. It is understood that operation requires special equipment that uses suitable safety measures."

21. The **representatives** noted that the State seeks to present facts that have already been discussed by the Court in its judgment. It is also asking the Court to clarify how the victims are to freely operate their community radio stations and has expressed its concern about the right to usufruct of third parties. They maintained that those issues are inadmissible pursuant to the Court's Rules of Procedure. Finally, they argued that "according to international law, States have the duty to comply in good faith with international treaty obligations and may not invoke the provisions of their domestic law as justification for their failure to perform its treaty obligations."

22. The **Commission** held that the request made for the Court to rule "on the decision as to where the spectrum for the frequency segment is to be located [...] does not constitute, per se, a request for interpretation related to the scope or meaning of the judgment." To this end, it indicated that "it is the State's duty" to comply with the judgment and that the Court could "make any further decisions as may be necessary in the stage of monitoring compliance [with judgment]." Moreover, the Commission noted that, during the development of the process, there had been no dispute over the segment of the authorized frequency.

### *B.2 Considerations of the Court*

23. Operative paragraph four of the judgment establishes that:

4. The State shall adopt the necessary measures to ensure that the Maya Kaqchikel indigenous peoples of Sumpango, the Achí of San Miguel Chicaj, the Mam of Cajolá and the Mam of Todos Santos Cuchumatán can freely operate their community radio stations, within one year, pursuant to paragraph 184 of [the] judgment.

24. In relation to the request made by the State concerning the location of the radio frequency, the Court recalls that the parties must consider the judgment as a whole and each

paragraph in light of the rest rather than interpreting paragraphs in isolation.<sup>7</sup> To this end, the Court cautions that there is no issue that requires interpretation inasmuch as, according to paragraph 195 to 196 of the judgment, the Court indicated that:

195. It is worth recalling that in 2002 Guatemala signed Governmental Agreement 316-2002, whereby the State created a procedure to facilitate access to AM frequencies for some civil society organizations to operate non-profit, non-political and non-religious radio stations. However, in addition to the fact that only a few such frequencies have been allocated under a mechanism that does not appear to offer sufficient legal certainty, one of the declarants at the public hearing stated that “nobody wanted” those frequencies, that “they are not useful”, and that some broadcasting equipment can no longer be connected to those frequencies. He added that few people listen to the frequencies granted, their quality is poor and their operating cost is very high. Thus, the Court considers that Governmental Agreement 316-2002 cannot be considered as a legitimate or adequate instrument to promote a plural, diverse and inclusive regulation of radio broadcasting.

196. Consequently, the Court considers that the State must, within a reasonable period of time, adapt its domestic regulations in order to: (i) recognize community radio stations as differentiated means of communication, particularly indigenous community radio stations; (ii) regulate their operation, establishing a simple procedure for obtaining licenses, and (iii) reserve an adequate and sufficient portion of the radio spectrum for indigenous community radio stations.

25. This Court deems that the transcribed passages are clear and specific as to the location of the radio frequencies. The text even states that amplitude modulation was not considered useful since its quality was poor and the operating cost was very high. The Court therefore dismisses this request for interpretation.

### C. Regarding operative paragraph six

#### *C.1 Arguments of the parties and of the Commission*

26. The **State** requested the Court to interpret the scope of operative paragraph six of the decision in relation to two aspects. First, it asks the Court to allow for the fact that the reasonable period of time referred to in the operative paragraph must take into account: (i) “the time needed to set up a legal or regulatory platform to appropriately and adequately regulate the consultation processes with indigenous communities”; (ii) “the time needed to carry out said consultation processes”, and (iii) “the time it takes to adapt domestic regulations in order to recognize community radio stations as a distinct communications medium”. Second, it asks the Court to state “in specific terms”: (i) the definition of a community radio; (ii) what activities a radio station must carry out in order to be considered a community radio station, and (iii) what activities community radio stations should not carry out since “it would distort their very nature.” To this end, it argued that the features of community radios mentioned by the Court are not enough for the State to determine, in specific terms, what qualifies as a community radio station, what function it serves, and when a radio station should not fall into such a category. It further indicated that “in view of this lack of a definition or its broad characterization, people who operate without a legal license may claim to be community radio stations to escape from legal actions on the part of the State.” Moreover, the State observed that there is no specific regulation in Guatemala governing consultation processes with indigenous communities.

27. The **representatives** noted that the Court’s judgment had set guidelines for defining a community radio station, citing the World Association of Community Radio Broadcasters and the United Nations Organization for Education, Science and Culture, “which emphasize a broad

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<sup>7</sup> Cf. *Case of Pollo Rivera et al v. Perú. Request for interpretation of the judgment on merits, reparations and costs*. Judgment of May 25, 2017. Series C No. 335, para. 26, and *Case of Casa Nina v. Perú. Interpretation of Judgment on preliminary objections, merits, reparations and costs, supra*, para. 33.

and global understanding about the essential features of community radio.” They also recalled the Court’s mention of the “special features of community radio stations” to be taken into account. They commented that “the purpose of the consultation with indigenous peoples is to ensure that their perspectives and voices are not only listened to, but also reflected on the governmental measures to be adopted that may affect them,” “which in this case, means that formulating a definition of community radio must be one of the topics to be discussed in the consultation process between the State of Guatemala and the indigenous communities [...] to reach consensus and modify Guatemalan laws to include a legal recognition of community radio.”

28. The **Commission** pointed out that the content of paragraph 103 of the judgment sheds light on what constitutes a community radio station and the functions it must carry out in order to be considered as such. It found that the judgment had identified the scope and content of a set of factors that define community radios, and sufficient material is therefore available in the judgment for complying with the operative paragraph in question.

### *C.2. Considerations of the Court*

29. Operative paragraph six of the judgment indicates the following:

6. The State shall, within a reasonable time, adapt domestic regulations in order to recognize community radio stations as distinct means of communication, particularly indigenous community radio stations; regulate their operation, establishing a simple procedure for obtaining licenses; and shall reserve part of the radio spectrum for indigenous community radio stations, pursuant to paragraphs 196 to 200 of [the] judgment.

30. In relation to the reasonable time ordered for the operative paragraph in question, it should be recalled that this should be determined according to each specific case. Compliance can be weighed based on each particular report that the State must submit, along with comments by the victims’ representatives and the Commission at the stage of monitoring compliance with judgment. Therefore, this Court considers that the State’s request cannot be subject to an abstract interpretation by the Court,<sup>8</sup> and the Court will deliver any opinions it deems pertinent at the stage of monitoring compliance. Consequently, it concludes that the request for interpretation is inadmissible in this regard.

31. In connection with the definition of a community radio station, the Court notes that it has provided the necessary information in paragraphs 102 to 105 of the judgment, as follows:

102. The Court notes that the present case refers exclusively to community media related to sound broadcasting, that is, to “community radio stations.” Therefore, the Court will henceforth refer only to them.

103. The Court observes that there are different definitions of community radio. However, in general, community radios stations are non-profit, are managed by the community and serve the interests of the community. According to the World Association of Community Radio Broadcasters (hereinafter “AMARC”), the fundamental characteristic of community radio stations “is the participation of the community in ownership as well as programming, management, operation, financing and evaluation.” Moreover, “they are independent and non-governmental media that do not depend on or form part of political parties or private firms”<sup>136</sup>. Their *raison d’être* is to facilitate the exercise of the right to information and freedom of expression of members of their communities<sup>137</sup>. It should be noted that, as indicated previously (*supra* footnote 16), the

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<sup>8</sup> *Mutatis mutandis. Case of the Hacienda Brasil Verde Workers v. Brazil. Interpretation of the judgment on preliminary objections, merits, reparations and costs. Judgment of August 22, 2017. Series C No. 337, para. 44 to 45; and Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil. Interpretation of the judgment on preliminary objections, merits, reparations and costs. Judgment of June 21, 2021. Series C No. 427, para. 36 to 37.*

representatives agreed with this definition provided by AMARC.

104. Similarly, a 2003 study by the United Nations Organization for Education, Science and Culture (hereinafter "UNESCO") stated that the essential features of community radio can be summarized by the phrase "a radio service for the people, close to the people and for the people."<sup>138</sup> According to UNESCO, community radio is "a medium that gives a voice to the voiceless<sup>139</sup>. It "consist[s] of members of the community and its programming is based on community access and participation. It reflects the special interests and needs of its listeners whose first duty it is to serve."

32. Therefore, the Court notes that there is no issue that merits clarification, inasmuch as the above cited paragraphs set the parameters to be taken into account regarding the definition of a community radio station. Consequently, insofar as there is no ambiguous or imprecise matter to clarify, the Court dismisses the State's request for interpretation in this regard.

#### **D. Regarding operative paragraph seven**

##### *D.1. Arguments of the parties and of the Commission*

33. The **State** requested interpretation of "the meaning and scope" of operative paragraph seven, as the functions discharged by the Public Prosecutor's Office and the judges would be biased from the very beginning if they failed to investigate and understand the circumstances surrounding specific cases and any acts that could constitute crimes, which would violate the independence of judicial operators in view of the need to perform judicial review of the Convention. This, it added, is because judicial review of the Convention "is mainly performed by the judiciary in each specific case, depending on the facts, conduct of the individuals involved, duration, level of participation, and other considerations." It further indicated that this would make it impossible to "conduct a criminal prosecution for acts related to the illegal use of radio frequencies, as it would be necessary to analyze the details to determine whether or not criminal prosecution is in order." Moreover, it held that the operative paragraph "would violate the principle of judicial independence and impartiality" and would also entail "interference in the work" of the Public Prosecutor's Office. In order for the State to refrain from prosecuting individuals who operate community radio stations, it is "paramount" to have a "clear definition and the specific activities that these radio stations carry out" to avoid illegal use of the radio spectrum.

34. The **representatives** asked the Court to hold the request for interpretation as inadmissible, as the State was attempting to challenge or modify the judgment. They pointed out that the scope and meaning of the operative paragraph in question are clear and precise. They indicated that it is within the framework of the powers of the Court to order a State to adapt its domestic laws to the provisions of the Convention and that it is not the first time that this Court has ordered Guatemala to refrain from applying a legal provision until such time as the domestic legislation is amended to fit the parameters of the American Convention. As to judicial review of the Convention, they held that all the powers, organs and public authorities of the State must comply with the American Convention and the Court's judgments of interpretation thereof. Consequently, they indicated that "the State's response must be consistent with the judgment" as a whole and that the State may not invoke the provisions of its domestic law as justification for its failure to comply. Finally, they argued that the judiciary's compliance with a judgment is part of the judicial duty to respect and protect the rule of law, and this is consistent with the ability to exercise judicial independence and impartiality.

35. The **Commission** recalled that paragraphs 201 and 202, together with paragraphs 157 to 172 of the judgment explain the basis for the measures established in operative paragraph seven.

*D.2. Considerations of the Court*

36. Operative paragraph seven of the judgment reads:

7. The State shall immediately refrain from criminally prosecuting the individuals who operate indigenous community radio stations, conducting raids on said radio stations or seizing their broadcasting equipment, until it has ensured effective legal mechanisms to allow access by indigenous communities of Guatemala to the radio spectrum and allocated the corresponding frequencies, pursuant to paragraph 202 of [the] judgment.

37. Moreover, the Court notes draws attention to its findings in paragraphs 201 and 202 of the judgment:

201. The Court recalls that in paragraphs 157 to 172 of this judgment, it declared the violation of the right to freedom of expression of the Maya Kaqchikel indigenous peoples of Sumpango and the Maya Achí of San Miguel Chicaj, recognized in Article 13(2) of the American Convention, in relation to Article 1(1) thereof, having concluded that Guatemala unlawfully restricted the freedom of expression of those communities by raiding their community radio stations, seizing their equipment and criminally prosecuting their operators. This is because it was the State itself that, by failing to legally recognize community radio stations and not creating specific mechanisms to guarantee indigenous people effective access to the radio spectrum, indirectly generated the exclusion of these peoples, who were forced to operate their community radio stations without authorization because they could not compete on equal terms for the acquisition of frequencies.

202. By virtue of the foregoing, this Court deems it pertinent to order the State to immediately refrain from prosecuting individuals who operate indigenous community radio stations for the crime of theft, and to suspend measures such as the raids and seizure of the broadcasting equipment of these stations, at least until it has effectively ensured legal mechanisms to allow Guatemala's indigenous communities to have access to the radio spectrum and allocated the corresponding frequencies, under the terms of the reservation of frequencies ordered previously (*supra* para. 196).

38. In addition, the Court recalls that, in paragraphs 169 to 170 of the judgment, it also determined that "the criminal prosecution of the persons who operated the indigenous community radio stations, the raids on Radio Ixchel and Radio "La Voz del Pueblo" and the confiscation of their broadcasting equipment, are inappropriate and unnecessary. This is because the State could have used other less injurious means than those provided for in criminal law [...]." Moreover, the Court considered that "the criminal prosecution in question was disproportionate, since it excessively affected the freedom of expression and the right to participate in cultural life of the Maya Kaqchikel indigenous peoples of Sumpango and the Maya Achí of San Miguel Chicaj."

39. In view of the foregoing, this Court would note that a full reading of the decision reveals that the State must refrain from prosecuting individuals who operate community radio stations.

40. The State has also argued that it cannot discontinue criminal prosecutions already underway against individuals who operate community radio stations. The Court would reiterate its stance against using a request for interpretation to re-argue the same questions of fact and law already raised at the proper point in the proceedings and then adjudicated by

this Court,<sup>9</sup> or to seek for the Court to re-assess matters that have already been decided in the judgment.<sup>10</sup> Therefore, the Court notes that, under the guise of a request for interpretation, the State would have the Court reconsider its analysis regarding the operative paragraph in question. This is inadmissible under Article 67 of the American Convention. Consequently, the Court denies the request presented by the State.

## **E. Regarding operative paragraph eight**

### *E.1. Arguments of the parties and of the Commission*

41. The **State** requested the Court to determine the scope and meaning of operative paragraph eight. It claimed that "the judgment refers to convictions handed down against members of indigenous communities, without defining the scope of the term 'indigenous community.'" It further argued that it is not possible to assume that all individuals who have been convicted for operating a radio station without a license and who are part of an indigenous community are therefore engaged in community radio. It recalled the "need for the Court to provide a definition and to clarify the activities carried out by a community radio, in order to be able to determine to whom the present provision applies." Moreover, it requested that the scope and meaning of operative paragraph eight be interpreted to address whether, "by applying this provision, the principles of independence and impartiality" of the judicial operators and the Public Prosecutor's Office would be violated.

42. The **representatives** reiterated their observations submitted in relation to the request for interpretation of operative paragraph seven; and they particularly indicated that the judgment "is binding on all the public bodies and branches of state, including judges and judicial operators."

43. The **Commission** reiterated its observations regarding operative paragraph seven and emphasized that the basis for said operative paragraph can be understood by making a thorough analysis of paragraphs 201 and 202 and 157 to 172 of the judgment.

### *E.2. Considerations of the Court*

44. Operative paragraph eight of the judgment reads:

8. The State shall annul the convictions handed down against members of indigenous communities for using the radio spectrum, and any related consequences, pursuant to paragraph 203 of [the] judgment.

45. In the first place, the Court considers it is important to clarify that operative paragraph eight of the judgment must be interpreted in accordance with the specificities of the case, characteristic of community radios, as indicated in paragraph 194 of the judgment.<sup>11</sup> To this

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<sup>9</sup> Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the judgment on merits, supra*, para. 15, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>10</sup> Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs, supra*, para. 30, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>11</sup> Paragraph 194 of the judgment establishes:

In addition, as noted in Chapter VII of this judgment, the LGT, in practice, does not make provision for community radio stations and Guatemala does not have any other regulations governing their operation, which the Court considers fundamental to ensure that community radio stations can effectively operate. Furthermore, taking into account that indigenous peoples represent approximately half of the population of Guatemala; that most of them

end, the Court clarifies that, in fact, the State must annul the convictions handed down against members of indigenous communities, and all effects deriving therefrom, related to the use of the radio spectrum, in the context of operation of indigenous community radios, that is, the convictions handed down against the Maya Kaqchikel indigenous peoples of Sumpango and the Maya Achí of San Miguel Chicaj, and any consequences thereof.

46. Hence, as to the argument related to the violation of judicial independence and impartiality due to the annulment of the convictions and the consequences thereof, this Court recalls that a measure of reparations ordered in similar cases has been to “set aside” all judgments issued by domestic courts whenever the Court has found a violation of the American Convention based on judicial findings of civil or criminal liability contrary to the right to freedom of thought and expression.<sup>12</sup> The Court has also held that compliance with orders given in the judgment is not subject to conditions and that the Convention-based obligations assumed by the States Parties, as well as the Court’s interpretation of them, are binding upon all public institutions and branches of government.<sup>13</sup> Thus, all the powers and organs of the State (Executive, Legislative, Judicial branches and any other government bodies) and other public or state authorities, at any level, including the highest courts of justice, have a duty to comply with international law in good faith.<sup>14</sup> Finally, the Court notes that, with this request for interpretation, the State is asking the Court to reconsider its analysis regarding the operative paragraph in question, which is inadmissible under Article 67 of the American Convention. Therefore, the request for interpretation concerning this aspect is partially dismissed.

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live in a situation of poverty, social exclusion and discrimination; and that their community radio stations are essential – and often the only – tools for the enjoyment of their freedom of expression and the survival of their culture, this Court considers that any regulatory changes in this area must, necessarily and specifically, include indigenous community radio stations.

<sup>12</sup> Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, operative paragraph four; *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, operative paragraph twelve; *Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, operative paragraph seven; *Case of Fontevecchia and D’Amico v. Argentina. Merits, reparations and costs.* Judgment of November 29, 2011. Series C No. 238, operative paragraph two and *Case of Álvarez Ramos v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 30, 2019. Series C No. 380, operative paragraph seven.

<sup>13</sup> Cf. *Case of Castillo Petruzzi et al v. Perú.* Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 1, 2016, Considering clause four; and *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Request for Provisional Measures and Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 19, 2020, Considering clause 44.

<sup>14</sup> Cf. *Case of Gelman v. Uruguay. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of March 20, 2013, Considering clause 59; and *Case of Fontevecchia and D’Amico v. Argentina. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of October 18, 2017, Considering clause 13.

**V**  
**OPERATIVE PARAGRAPHS**

47. Therefore,

**THE COURT,**

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Court's Rules of Procedure,

**DECIDES,**

Unanimously,

1. To declare admissible the request for interpretation of the judgment on merits, reparations, and costs issued in the case of the *Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, presented by the State of Guatemala, pursuant to paragraph seven of this judgment of interpretation.

2. To reject as inadmissible the request for interpretation of the judgment on merits, reparations and costs issued in the case of *the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, presented by the State of Guatemala, pursuant to the terms of paragraphs 15 to 17, 23 to 25, 29 to 32, 36 to 40, and 44 to 46 of this judgment of interpretation regarding operative paragraphs two, four, six, and partially, eight.

3. To partially clarify the meaning and scope of the provisions of operative paragraph eight of the judgment on merits, reparations and costs issued in the case of the *Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, pursuant to paragraphs 46 to 48 of this judgment of interpretation.

4. To order the Court Registrar to notify the Republic of Guatemala, the victims' representatives, and the Inter-American Commission on Human Rights, of this judgment of interpretation.

I/A Court HR. *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*. Interpretation of the judgment on merits, reparations and costs. Judgment of July 27, 2022.

I/A Court HR. *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*. Interpretation of the judgment on merits, reparations and costs. Judgment of July 27, 2022. Judgment adopted in San Jose, Costa Rica, in a virtual session.

L. Patricio Pazmiño Freire  
Acting President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Registrar

So ordered

L. Patricio Pazmiño Freire  
Acting President

Pablo Saavedra Alessandri  
Registrar