

Inter-American Court of Human Rights

Case of Durand and Ugarte v. Peru

Judgment of December 3, 2001 (Reparations and Costs)

In the Durand and Ugarte case,

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

Antônio A. Cançado Trindade, President;
Máximo Pacheco Gómez, Vice President;
Hernán Salgado Pesantes, Judge;
Alirio Abreu Burelli, Judge;
Sergio García Ramírez, Judge;
Carlos Vicente de Roux Rengifo, Judge; and
Fernando Vidal Ramírez, Judge *ad hoc*;

also present:

Manuel E. Ventura Robles, Secretary, and
Pablo Saavedra Alessandri, Deputy Secretary;

pursuant to articles 29, 55, 56 and 57 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure")**, in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in consideration of operative paragraphs eight and nine of the Judgment of August 16, 2000, delivers the following Judgment.

I COMPETENCE

1. Under articles 62 and 63(1) of the Convention, the Court is competent to hear the petition seeking reparations in the instant case. The State of Peru (hereinafter "the State" or "Peru") has been a State Party to the Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

II BACKGROUND

* Judge Oliver Jackman advised the Court that for reasons beyond his control, he would not be able to be present for the Court's LIII regular session. Hence, he neither participated in the deliberations on this case and nor signed the present Judgment.

** By an Order of the Court of March 13, 2001, on Transitory Provisions of the Rules of Procedure of the Court that took effect on June 1, 2001, this Judgment on reparations is delivered under the terms of the Rules of Procedure that the Court adopted on September 16, 1996.

2. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted the instant case by application dated August 8, 1996. On September 20, 1996, the State filed seven preliminary objections. The Court delivered its judgment on those preliminary objections on May 28, 1999¹ and its judgment on the merits of the case on August 16, 2000. There, the Court:

unanimously,

1. declare[d] that the State violated, to the detriment of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, Article 4(1) of the American Convention on Human Rights.

by six votes against one,

2. declare[d] it ha[d] not been proven that the State violated, to the detriment of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, Article 5(2) of the American Convention on Human Rights.

Judge Carlos Vicente de Roux Rengifo disagrees.

unanimously,

3. declare[d] that the State violated, to the detriment of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, Article 7(1) and 7(5) of the American Convention on Human Rights.

unanimously,

4. declare[d] that the State violated, to the detriment of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, Articles 7(6) and 25(1) of the American Convention on Human Rights.

unanimously,

5. declare[d] that the State violated, to the detriment of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, as well as their relatives, Articles 8(1) and 25(1) of the American Convention on Human Rights.

unanimously,

6. declare[d] that the State has failed to comply with the general obligations of Articles 1(1) and 2 of the American Convention on Human Rights regarding the violations of the substantive rights included in the above decisions in th[at] judgment.

unanimously,

7. decide[d] that the State [was] compelled to make every possible effort to locate and identify the victims' mortal remains and deliver them to their relatives, as well as to investigate the facts and process and sanction the liable parties.

unanimously,

8. decide[d] that the State must compensate damages caused by the violations.

unanimously,

9. decide[d] to open the stage of reparations; therefore, it entrust[ed] its President with adopting timely necessary measures.

¹ Cf. *Durand and Ugarte Case, Preliminary Objections*, Judgment of May 28, 1999. Series C No. 50.

III PROCEEDINGS IN THE REPARATIONS PHASE

3. On September 13, 2000, in furtherance of the Court's decision in operative paragraph nine of its judgment on the merits, the President of the Court (hereinafter "the President") decided as follows:

1. To grant the representatives of the victims or, if appropriate, their next of kin, a period until November 13, 2000 to present their arguments and available evidences for the purpose of determining reparations and costs.

2. To instruct the Secretariat of the Court to transmit all the received briefs and evidences to the Inter-American Commission on Human Rights, once the period referred to in the above paragraph has expired.

3. To grant the Inter-American Commission on Human Rights a one-month period, starting on the date it receives the aforementioned briefs and evidences, to submit the comments it deems relevant to the subject of reparations and costs.

4. To instruct the Secretariat of the Court to forward all the submitted briefs and evidences to the State of Peru, once the period referred to in the above operative paragraph has expired.

5. To grant the State of Peru a two-month period, starting on the date it receives the briefs and evidences referred to in the above operative paragraph, to present its comments and available evidences with a view to determine reparations and costs in the instant case.

6. To summon the representatives of the victims or, if applicable, their next of kin, the Inter-American Commission on Human Rights and the State of Peru, once the written procedural stage has concluded, to a public hearing, at a date that shall be informed in due time.

4. On November 9, 2000, the victims' next of kin petitioned the Court seeking a 40-day extension on the time period the Court set for submission of the reparations brief.

5. Following the President's instructions, on November 13, 2000, the Secretariat extended the time period given to the representatives of the victims' next of kin to January 5, 2001.

6. The representatives of the victims' next of kin filed their reparations brief on January 5, 2001. With it they provided a power of attorney wherein the victims' next of kin named María Claudia Pulido and Viviana Krsticevic, from the Center for Justice and International Law (hereinafter "CEJIL"), and Ronald Gamarra Herrera, from the Instituto de Defensa Legal [Legal Defense Institute] (hereinafter "IDL"), granting them general powers to represent them in proceedings before the Inter-American Court.

7. On February 9, 2001, the State informed the Court that Mr. Patricio Marcial Rubio Correa had been designated as agent for this case.

8. The Inter-American Commission submitted its brief on reparations in the present case on February 10, 2001.

9. On April 17, 2001, the State petitioned the Court seeking an extension for presentation of its observations on the reparations briefs. On instructions from the

President, that very day the Secretariat extended the time period given to the State, making the new deadline April 25, 2001.

10. On April 25, 2001, the State presented its observations on the briefs filed by the Inter-American Commission and the representatives of the victims' next of kin.

11. On April 26, 2001, the President of the Court summoned the representatives of the victims' next of kin, the Inter-American Commission and the State to a public hearing to be held at the seat of the Court on May 25, 2001, to hear the conclusions regarding reparations in the present case.

12. On May 9, 2001, the victims' next of kin filed a new brief wherein they informed the Court that they were appointing CEJIL's Viviana Krsticevic and the IDL's Degrnis Robert Meza Rivera to represent them.

13. On May 25, 2001, the Court held a public hearing on reparations.

There appeared:

For the State of Peru:

Patricio Marcial Rubio Correa, agent;
Fernando Rojas, Ambassador of Peru in Costa Rica, and
Jorge Lázaro, Minister with the Embassy of Peru in San José, Costa Rica.

For the Inter-American Commission on Human Rights:

Domingo E. Acevedo, Delegate.

For the victims' next of kin:

Viviana Krsticevic; and
Degrnis Robert Meza Rivera.

14. At the public hearing, the State informed the Court that it was in the process of preparing a "reparations proposal" for the victims' next of kin, one befitting their circumstances and the events for which the State incurred responsibility. It went on to say that it did not yet have that proposal ready, but would complete it in the coming weeks, whereupon it would submit it to the representatives of the victims' next of kin and to the Court.

15. On May 25, 2001, the representatives of the victims' next of kin filed a brief wherein they stated their position on the request the State made during the public hearing seeking an extension on the period for submitting a reparations proposal. They reasoned that "inasmuch as the State would not be able to comply [with the commitment] to come up with a proposal within the time frame specified by the victims' representatives, and given the serious differences still separating the parties on the question of monetary reparations and measures of satisfaction, any postponement of the reparations decision would be ill-advised." They therefore asked the Court for a swift finding on the matter of reparations.

16. On August 22 and November 5, 2001, the State furnished information concerning the progress made toward fulfillment of the judgment on the merits delivered in the instant case and on the measures taken to fulfill the commitment the State had made at the public hearing to submit a reparations proposal.

17. On November 26, 2001, the State forwarded to the Court the "Agreement for full reparations to the next of kin of the victims in the Durand and Ugarte case" (hereinafter "the agreement" or "the reparations agreement"), which the State, the victims' next of kin and their representatives had signed in Lima, Peru that very day.

18. Following instructions from the Court, on November 28, 2001, the Secretariat informed the Inter-American Commission that from the document sent to the Court, it appeared that the Commission had neither signed the agreement nor participated in its transmission to the Court. Given the terms of clause eleven of the agreement, the Court requested the Commission's view on the agreement. The Court also indicated that if no response were forthcoming within 48 hours, it would assume that the Commission was in agreement with the reparations settlement.

19. On November 30, 2001, the Commission filed a brief wherein it informed the Court that it concurred with the reparations agreement concluded between the State, the victims' next of kin and their representatives.

IV OBLIGATION TO MAKE REPARATIONS REPARATIONS AGREEMENT

20. The applicable norm in the matter of reparations is Article 63(1) of the American Convention, which reads as follows:

If the Court finds that there has been a violation of a right or freedom protected by the Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measures or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. (emphasis added).

21. Article 56 of the Rules of Procedure reads as follows:

1. When no specific ruling on reparations has been made in the judgment on the merits, the Court shall set the time and determine the procedure for the deferred decision thereon.

2. If the Court is informed that the parties to the case have reached an agreement in regard to the execution of the judgment on the merits, it shall verify the fairness of the agreement and rule accordingly.

22. The agreement reached among the State, the victims' next of kin and their representatives was submitted to the Court at that point in the reparations phase when all the formalities and procedures prior to pronouncement of judgment had been completed. Because the issue of reparations is not in dispute, the Court has decided to examine the reparations agreement concluded.

23. It is the Court's function to evaluate whether the reparations agreement is in keeping with the pertinent provisions of the American Convention and verify whether

payment of a just compensation to the victims' next of kin is guaranteed and whether the various consequences of the human rights violations committed in the instant case are redressed.

24. This Court has repeatedly cited the principle of international law that applies to this subject, which is that any violation of an international obligation carries with it the obligation to make adequate reparation.²

25. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to reinstate the situation that existed prior to commission of the violation. If full restitution is not feasible, an international court can order the adoption of measures to guarantee the violated rights and redress the effects that the violations have had, including payment of compensation for the damages caused.³

V BENEFICIARIES OF THE REPARATIONS

26. Clause three of the agreement stipulates that the beneficiaries of the reparations shall be Virginia Bonifacia Ugarte Rivera de Durand and Nolberto Durand Vargas, parents of Nolberto Durand Ugarte and sister and brother-in-law, respectively, of Gabriel Pablo Ugarte Rivera. The agreement also stipulates that no other natural or juridical person may claim direct or indirect benefits under the agreement.

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27. The Court notes that the identity of the persons named as beneficiaries is not in contention. The designation of these persons as beneficiaries is consistent with the Court's case law.⁴ The Court, therefore, endorses the agreement in this regard. These persons are the designated beneficiaries on two counts: as legal heirs of their deceased next of kin, and as the victims of the violation of articles 8(1) and 25(1) of the Convention, as declared in the judgment on the merits. The Court believes that on both these counts, Virginia Bonifacia Ugarte Rivera de Durand and Nolberto Durand Vargas must be regarded as the beneficiaries of the reparations in the instant case.

² Cf. *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, paragraph 163; *Cesti Hurtado Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, paragraph 32, and *The "Street Children" Case (Villagrán Morales et al. v. Guatemala). Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, paragraph 59. See also *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 184; *Factory at Chorzow, Claim for Indemnity*, Merits, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, p. 29; y *Factory at Chorzow, Claim for Indemnity*, Jurisdiction, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 8, p. 21.

³ Cf. *Cesti Hurtado Case. Reparations*, *supra* note 2, paragraph 33; *The "Street Children" Case (Villagrán Morales et al. v. Guatemala). Reparations*, *supra* note 2, paragraph 60; and *The "White Van" Case (Paniagua Morales et al. v. Guatemala). Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, paragraph 76.

⁴ Cf. *The "Street Children" Case (Villagrán Morales et al. v. Guatemala). Reparations*, *supra* note 2, paragraph 67; *The "White Van" Case (Paniagua Morales et al. v. Guatemala). Reparations*, *supra* note 3, paragraph 84, and *Castillo Páez Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series D No. 43, paragraph 86.

VI PECUNIARY REPARATIONS

28. In the reparations agreement, under the heading of "Economic compensation," the State pledges to pay the sum of US\$125,000.00 (one hundred twenty-five thousand United States dollars) to Virginia Bonifacia Ugarte Rivera de Durand and Nolberto Durand Vargas. The agreement also stipulates that the amount shall "constitute the single payment that the State will make, either directly or indirectly, to the beneficiaries of the compensation owed as a result of the judgment of August 16, 2000," delivered by the Inter-American Court. It also states that with the signing of the agreement, "the victims' legal heirs and their representatives expressly waive any right to bring judicial or extrajudicial action against the State seeking an additional sum." Moreover, under the agreement Peru reserves the right to bring its own action against those convicted of the material facts in the instant case, in order to recover the monies it has paid in damages, all in accordance with the applicable law.

29. As to the manner of payment, under clause seven of the agreement the parties thereto agree that the State will begin the steps necessary to effect partial payment within the current fiscal year; should no payment be possible in this fiscal year, it will incorporate the amount specified in the pecuniary damages clause, into the General Budget of the Republic for Fiscal Year 2002. Payment shall be effected during the second quarter of that fiscal year, in accordance with the corresponding budgetary appropriation, and shall be made directly and jointly to both beneficiaries of the reparations.

30. That very same clause of the agreement stipulates that the specified sum (*supra* paragraph 29) shall not be subject to any existing or future tax.

31. Finally, clause seven of the agreement also stipulates that "[o]nce the period for payment [...] has expired, the State shall be in default and shall be required to pay the interest set by the Banco Central de Reserva to compensate for obligations in default."

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32. The Court is endorsing the terms of the agreement as regards the pecuniary compensation agreed upon as one form of compensation for the damages caused, and considers that they constitute a positive step on Peru's part toward good faith compliance with its obligations under international conventions. The appropriate course of action is for the State to take the necessary steps to effect payment of a portion of the compensation during the present fiscal period or, failing that, to pay the full compensation owed in the second quarter of fiscal year 2002, as the parties agreed.

33. The Court also endorses the terms agreed upon with regard to the method to be used to pay the pecuniary damages specified in the agreement, which terms are consistent with the Court's case law.⁵

⁵ Cf. *Cesti Hurtado Case. Reparations*, *supra* note 2, paragraphs 76, 77 and 78; "The Street Children" Case (*Villagrán Morales et al. v. Guatemala*). *Reparations*, *supra* note 2, paragraphs 119, 120

34. The Court would add the following stipulation: if, for any reason, the beneficiaries of the compensation are unable to claim it in person, the State shall, within six months, place the required amounts in United States dollars, in a certificate of deposit or account in the name of the beneficiaries or their legal heirs, with a solvent and secure financial institution, under the most favorable financial terms that banking law and practice allow.

VII OTHER FORMS OF REPARATION

35. In addition to pecuniary compensation, the State pledged to make reparations of other kinds to the victims' next of kin.

36. Under clause eight, titled "Health Benefits," the State undertook to cover, through the Ministry of Health, the costs associated with the health services that the corresponding health care centers provide to the beneficiaries, including the cost of medications. This obligation will endure for the life of the beneficiaries and take effect as of the date the agreement is signed.

37. Clause nine of the agreement –titled "Services for psychological support and interpersonal growth and development"- provides that "the State will enroll the beneficiaries in any programs currently being offered under the Emergency Zones' Resettlement and Development Assistance Plan -run by the Ministry for the Advancement of Women and Human Development (PROMUDEH)- whose services the beneficiaries may require."

38. Under clause ten –titled "Assistance with residential construction"-, the State, through the Social Assistance Fund [Fondo de Apoyo Social (FONAS)] of the Materials Stockpile of the Ministry of the Presidency and in accordance with the provisions of Law 27205 and the rules and procedures established for that purpose, undertakes to pay a portion of the construction cost of the residence of the beneficiaries of the reparations, located at Jirón Hanancusco N. 942, Tahuantinsuyo Sector, Zone Four, Independencia District, Lima.

39. In its second, fourth and fifth clauses, the agreement spells out other forms of reparations that the State undertakes, involving measures of satisfaction and guarantees of non-repetition. They are:

- a) publish the Court's August 16, 2000 Judgment in the Official Gazette *El Peruano* and circulate its contents via such other media as deemed appropriate for that purpose, within the 30 days following the signing of the agreement;
- b) include in the executive decree ordering publication of the agreement "a public apology to the victims for the grievous injuries caused" and confirmation of the State's resolve that events of this nature shall never recur;

- c) investigate and punish those responsible for the events, pursuant to operative paragraph seven of the Court's August 16, 2000 Judgment on the merits, and prosecute the investigation instituted through Lima's 41st Criminal Prosecutor's Office into the murder of 30 persons, among them Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera; and
- d) take concrete measures to locate and identify the mortal remains of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera and deliver them to their next of kin, pursuant to operative paragraph seven of the Court's August 16, 2000 judgment on the merits.

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40. The Court is endorsing those clauses of the agreement that concern these other forms of reparation as a form of compensation for the damages caused. With these reparations, the State is making a positive contribution toward fulfillment of the obligation to make reparation for the damages caused, pursuant to Article 63(1) of the American Convention. Consequently, the State will honor the services and other benefits it pledged to provide to the beneficiaries of the reparations in the form of non-pecuniary damages, and do so within and for the time periods stipulated in the agreement.

VIII HOMOLOGATION AND MONITORING OF COMPLIANCE

41. Based on the foregoing considerations, the Court is approving the "Agreement for full reparations to the next of kin of the victims in the Durand and Ugarte case," concluded among the State, the victims' next of kin and their representatives and viewed favorably by the Inter-American Commission and inasmuch as it conforms to the American Convention and serves to accomplish the object and purpose of the case *sub judice*

42. To comply with that agreement, the State is to take the aforesaid reparations measures within the time periods and under the terms agreed upon, and in accordance with the Court's ruling in the present judgment.

43. The Court reserves the authority to supervise for full compliance of the present Judgment. The case will be closed once the State has fully complied with the Judgment.

44. Inasmuch as the Court has endorsed the agreement in this Judgment, it will settle any problem as to its interpretation, or controversy or difference of opinion that may arise.

IX OPERATIVE PARAGRAPHS

45. Now therefore,

THE COURT**DECIDES:**

unanimously,

1. That it endorses, in the terms spelled out in this Judgment, the reparations agreement that the State and the victims' next of kin and their legal representatives concluded on November 26, 2001.

2. That the State shall pay the sum of US\$125,000.00 (one hundred twenty-five thousand United States dollars) to Virginia Bonifacia Ugarte Rivera de Durand and Nolberto Durand Vargas, parents of Nolberto Durand Ugarte and sister and brother-in-law, respectively, of Gabriel Pablo Ugarte Rivera. To that end, it shall adopt the measures necessary to pay a portion of the compensation during the course of this fiscal year or, failing that, make full payment of the pecuniary damages during the second quarter of fiscal year 2002, pursuant to paragraphs 32, 33 and 34 of the present Judgment. The sum will be divided and disbursed in equal shares to the beneficiaries.

3. That the State shall provide to the beneficiaries of the reparations with health services, psychological support, interpersonal development services and assistance with construction of a residence, as detailed in paragraphs 36, 37, 38 and 40 of this Judgment.

4. That pursuant to paragraphs 39 and 40 of the present Judgment, the State shall make the following non-pecuniary reparations:

- a) publish the Court's August 16, 2000 Judgment in the Official Gazette *El Peruano* and circulate its contents via such other media as deemed appropriate for that purpose, within the 30 days following the signing of the agreement;
- b) include in the executive decree ordering publication of the agreement, "a public apology to the victims for the grievous injuries caused" and confirmation of the State's resolve that events of this nature shall never recur;
- c) investigate and punish those responsible for the events, pursuant to operative paragraph seven of the Court's August 16, 2000 Judgment on the merits, and prosecute the investigation instituted through Lima's 41st Criminal Prosecutor's Office for the murder of 30 persons, among them Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera; and
- d) take concrete measures to locate and identify the mortal remains of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera and deliver them to their next of kin, pursuant to operative paragraph seven of the Court's August 16, 2000 Judgment on the merits.

5. That within six months of the date of notification of the present Judgment, the State shall submit to the Inter-American Court of Human Rights a report on performance of its reparations obligations.

6. That the Court will monitor compliance with the obligations established in the present Judgment and will close this case once the State has fully complied with the Judgment.

Done at San José, Costa Rica, on December 3, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Alirio Abreu-Burelli
Ramírez

Sergio García-

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

