

**Order of the
Inter-American Court of Human Rights
of November 26, 2007
Case of Myrna Mack-Chang v. Guatemala
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") on November 25, 2003.

2. The Order of the Court of September 12, 2005 which set forth, in its relevant parts, that:

[...]

3. [...] it will keep open the proceeding to monitor compliance with the issues still pending [...], namely:

a) the duty to investigate the facts of the instant case, with the aim to identify, prosecute, and punish all of the authors and instigators, and all others responsible for the extrajudicial execution of Myrna Mack-Chang and the cover-up of the extrajudicial execution and other acts in the instant case, regardless of the person who has already been punished for those acts. The results of the investigations must be made known to the public;

b) the obligation to remove all material and legal mechanisms and obstacles that prevent those responsible for the acts in the instant case from being punished; to adequately provide adequate security for the judicial authorities, prosecutors, witnesses, legal operators, and next of kin of Myrna Mack-Chang, and to employ all other means available to the State so as to expedite the proceedings;

c) the duty to include, in the training courses for members of the armed forces and the police, as well as the security agencies, education in human rights and International Humanitarian Law;

d) the duty to establish a scholarship named after Myrna Mack-Chang; and

e) the obligation to place a plaque in her memory where she died, or nearby, mentioning the activities she carried out.

And [decided]:

1. To require the State to adopt all such measures as are necessary to bring into effect and to promptly satisfy the issues pending compliance that were ordered by the Court in the Judgment on merits, reparations and costs of November 25, 2003 and in the [...] Order, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit to the Inter-American Court no later than 30 January 2006, a detailed report that describes the measures adopted to comply with the reparations ordered by this Court and still pending compliance,

in accordance with the fifteenth "Considering" paragraph and the second declaratory paragraph of the [...] Order.

3. To request the victim's representatives and next of kin and the Inter-American Commission that they submit their observations to the State's report mentioned in the aforementioned paragraph within four and six weeks, respectively, as of the date the report is received.

4. To continue monitoring the paragraphs pending compliance in the Judgment on merits, reparations and costs delivered by this Court.

[...]

3. The report from the State of Guatemala (hereinafter "Guatemala" or "the State") submitted on November 8, 2005, which provided information on the state of compliance with the judgment and pointed out that "as ordered, it named the street and unveiled the plaque" in memory of Myrna Mack-Chang. These acts took place on September 11 and 12, 2005. In addition, the State reported that these events were attended by representatives of the Mack-Chang family, the Catholic church, the Association for the Advancement of Social Sciences (hereinafter "AVANCSO") and the State.

4. The December 15, 2005 brief of the representatives of the victim and her next of kin (hereinafter "the representatives"), which contained their observations to the State's report, in which they stated that: "in effect, on September 11, [2005] the 12th Street between the 12th and 13th avenues in zone one of the capital was named Myrna Mack. On September 12, a commemorative plaque was placed at AVANCSO's new headquarters. These activities were carried out in coordination with the Mack-Chang family."

5. The brief of the State submitted on September 26, 2006, in which it reported, *inter alia*, that:

a) the Coordinator of the Presidential Human Rights Commission (hereinafter, "COPREDH") asked the Ministry of the Interior for information on the actions taken both at the domestic and international levels by the competent authorities in order to establish the whereabouts of Juan Valencia Osorio, and enforce the arrest warrant issued against him;

b) a draft bill was prepared to amend ten articles of the Law of Amparo proceedings, Habeas Corpus, and Constitutionality, introduced by the Supreme Court of Justice in the Congress of the Republic of Guatemala in August of 2005 (Decree 1-86 of the National Constitutional Assembly). The reforms seek to prevent these remedies from being abused so as to hinder the advancement of a judicial proceeding. On August 9, 2006 the Congress of the Republic conducted its second review of the proposed amendment to this law;

c) regarding the training courses for members of the armed forces and the police, it submitted information about the basic training manuals of the National Police Academy; and

d) the entity responsible for securing the funds for the scholarship submitted the draft "Myrna Mack Scholarship Rules," based on criteria agreed upon by the representatives of the School of History of San Carlos University of Guatemala, AVANCSO, the Myrna Mack Foundation, the representative of the Planning and Programming Secretariat (SEGEPLAN), and staff from COPREDH's Legal Affairs Department. The draft "Myrna Mack Scholarship

Eulwa" are under review for approval by the Funding Committee of the National Fellowships and Credit Trust and the Myrna Mack Foundation.

6. The observations of the Inter-American Commission included in its brief of November 10, 2006, in which it stated, *inter alia*, that:

- a) with regard to the obligation to investigate the facts and identify, prosecute and eventually punish those responsible for the murder of Myrna Mack, the State report failed to provide specific information on the steps being taken to establish the whereabouts of Mr. Juan Valencia Osorio and make him serve his sentence;
- b) it is essential that the State submit to the Court comprehensive information on the actions taken to ensure that all the causes of impunity, which were verified by the Commission and the Court in the prosecution of the case, are definitively eradicated;
- c) it is necessary that the State provide up-to-date information on the security measures established to protect those responsible for advancing the case at the domestic level;
- d) with regard to the establishment of the scholarship, it is important that the obligations be fulfilled within the timeframe ordered by the Court;
- e) the Commission values the State's efforts to comply with its obligation to place a memorial plaque honoring the work of Myrna Mack-Chang; and
- f) the Commission appreciates the State's complying with its obligation to give human rights training courses.

7. The Secretariat's note of August 9, 2007, under which, following the President's instructions, the State was requested to submit the compliance report required by the Court with regard to the third operative paragraph of the Order of September 12, 2005 (*supra* Having Seen clause No. 2).

8. The State's report of August 29, 2007, stating, *inter alia*, that:

- a) With regard to the steps taken towards apprehending Mr. Juan Valencia Osorio, the State has called a meeting of the "Expediting Committee, composed of the Supreme Court of Justice, the Ministry of Government, the Office of the Attorney General and the Attorney for Human Rights, and it has requested information from them. Specifically, the Ministry of Government and the Office of the Attorney General were required to report on the progress of the investigations into the whereabouts of Juan Valencia-Osorio [...]", and has stated that once such information is received, it will be forwarded to the Court;
- b) As regards the steps taken towards creating a scholarship named after Myrna Mack-Chang, the Planning and Programming Department (SEGEPLAN) stated that, through the National Scholarship and Student Loan Trust, it committed itself to fulfill the deadlines set for opening the scholarship in September 2007. Moreover, it stated that it will inform the Court of the date set by the SEGEPLAN to make the scholarship official; and
- c) With regard to human rights courses for members of the Army, it forwarded information on the syllabuses of the courses given to the Guatemalan Army and the National Police Academy.

9. The representatives' submission of comments of September 25, 2007, in which they stated, *inter alia*, that:

- a) With regard to the steps taken towards apprehending Mr. Juan Valencia-Osorio, they requested that the State provide information about the above-mentioned "Expediting Committee" as soon as possible. Specifically, they requested that the State provide information on "the creation and the functions of such Committee, what it has done, and the results yielded [...]";
- b) In regards to the scholarship, they have expressed concern, as "the deadline set in the Rules for opening the application process and selecting the successful candidate has expired." In addition, they pointed out that the State has tried to "hasten the process for granting the scholarship but in such a way that it would damage the standards of quality and excellence that the scholarship must have [...]";
- c) They are satisfied with the documents furnished by the State in relation to the human rights courses given to the National Police, the Army and the Security Forces; and
- d) As regards to the sixth operative paragraph of the Judgment, progress has been made such as the proposal for amending the Amparo Proceedings Law. They pointed out that such proceeding has become an obstacle as it is being "used [...] to hamper the prosecutions and delay the search for justice." In addition, the Guatemalan Congress has recently approved the Commission against Impunity in Guatemala (hereinafter, the "CICIG"). They requested that the Court observe the performance of such Commission, as its role could strengthen "the institutions responsible for investigating and administering justice."
10. The Commission's observations of October 17, 2007 stating, *inter alia*, that:
- a) In regards to the duty to investigate those responsible for the murder, the arrest warrant against former Colonel Juan Valencia Osorio has not been acted upon, and they expect the State to provide information about the steps taken to comply with such duty. The fact that the convict is fugitive "also poses an obstacle to eliminating impunity, which is rooted in certain practices that are not solely connected with the change in legislation";
- b) In regards to the duty to remove the obstacles that maintained the case unpunished, the State's report provides no information on the subject. The Commission requested that the State provide information on the status of discussions over the Amparo proceedings, Habeas Corpus and Constitutionality Law, and on other bills aimed at complying with this obligation. In addition, the Commission pointed out that the State's report provides no information on the security measures implemented to protect justice operators, so it considered such disclosure of information necessary.
- c) It values the information provided by the State on the human rights courses, and the fact that the representatives have expressed their satisfaction. However, according to it, it would be useful for the State to disclose information "on the outcome of the educative measures", such as the number of officers trained and their ranks, the qualitative impact of the educative measures, etc; and
- d) It values the progress made in establishing the scholarship and it hopes for the process to be completed shortly;
11. The Court's Secretary's note of October 29, 2007 requesting the State to provide up-to-date information on the steps taken to create the Myrna Mack-Chang scholarship, pursuant to the President's instructions.

12. The State's report of November 13, 2007 stating that "in September 2007, the SEGEPLAN invited the parties involved in creating the Myrna Mack scholarship to a work meeting." At that meeting, the Myrna Mack Foundation, AVANCSO and representatives from COPREDEH were informed of the impossibility of naming the project a "scholarship", since under the National Scholarship and Student Loans Trust's (FINABECE) rules in force, it would be possible to receive applications and select a candidate for financial aid, but under a "non-reimbursable financial aid program", which was accepted by the Myrna Mack Foundation and AVANCSO. Based on the foregoing, SEGEPLAN promoted the scheme and started to receive applications from Anthropology graduates from the Universidad de San Carlos and the Universidad del Valle in Guatemala.

13. The representatives' submission of comments of November 19, 2007, wherein they stated that in October 2007 the "Myrna Mack" non-reimbursable financial aid programme was opened and closed. Ten applications for the programme were received from anthropology students. Furthermore, they stated that it was agreed with the Exchange Academic Council that on November 21, 2007, the beneficiary of such programme would be determined. Finally, they stated that the official scholarship granting ceremony would be pending compliance.

14. The Commission's submission of comments of November 22, 2007, wherein it stated that it appreciated the progress made towards establishing the Myrna Mack scholarship, and that it looked forward to receiving information about the outcome of the application process and the launch of the programme.

CONSIDERING:

1. That Guatemala has been a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") since May 25, 1978, and that it accepted the contentious jurisdiction of the Court on March 9, 1987.

2. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

3. That, pursuant to Article 67 of the American Convention, the Court's Judgments must be fully complied with as soon as possible. In addition, Article 68(1) of the American Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For such purpose, States are required to guarantee implementation of the Court's rulings at the domestic level.¹

¹ *Cfr. Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, Considering paragraph 2; *Case of Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering paragraph 7; and *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering paragraph 6; and *Case of Bámaca-Velásquez v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering paragraph 3.

4. That, as previously held by this Court, the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, according to which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke their internal law to avoid established international responsibility.²

5. That the States Party to the Convention are required to guarantee compliance with its provisions and their effects (*effet utile*) at the level of their domestic law. This principle applies not only to the substantive provisions of human rights treaties (i.e., those dealing with the rights thereby protected), but also to procedural rules, such as those concerning compliance with the judgments of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.³

*
* *
*

6. That, after assessing compliance with the Judgment, the Court in the instant case has noticed that, in relation with the removal of obstacles which have prevented those responsible for Myrna Mack-Chang's extra-legal execution from being punished, the State authorities have made headway towards imposing criminal liability upon the two authors of Myrna Mack-Chang's extra-legal execution.

7. In this regard, the Court is aware that on February 12, 1993, the Third Trial Court in Criminal Matters sentenced Mr. Noel de Jesús-Beteta to 25 years in prison for the murder of Myrna Mack. In addition, the Criminal Division of the Guatemalan Supreme Court of Justice by Judgment of January 14, 2004 issued by the Fourth Appellate Division, found Mr. Juan Valencia Osorio guilty of the murder of Myrna Mack-Chang and was consequently sentenced to thirty years in prison and the suspension of his political rights for the length of the sentence (*Cf. para. 134.22 of the Judgment of November 25, 2003 and Considering clause No. 7 in the Court's Order of September 12, 2005, respectively*).

8. After analyzing the investigations carried out at the domestic level, the convictions imposed and the proven facts in the Judgment, as well as the comments submitted by the representatives and the Commission, which demand merely that

² *Cfr. International Responsibility for the Promulgation and Application of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Consultative Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Baena-Ricardo et al v. Panama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, Considering paragraph 3; *Case of García-Asto and Ramírez-Rojas*, *supra* Note 1, Considering 6; and *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering paragraph 3.

³ *Cfr. Case of Ivcher-Bronstein v. Peru*. Compliance. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment. Order of October 18, 2007, Considering paragraph 4; and *Case of García-Asto and Ramírez-Rojas*, *supra* Note 1, Considering paragraph 7.

Mr. Juan Valencia-Osorio be arrested by the State authorities, this Court considers that the truth of the events in this case has been known.

9. That, notwithstanding the foregoing, the Court notes that Mr. Juan Valencia Osorio is on the run as reported by the State (*supra* Having Seen clauses 5(a) and 8(a)). That the Court warns that three years have elapsed since he has been fugitive and that the State has reported the creation of an "Expediting Committee" to arrest him (*supra* Having Seen clause No. 8(a)). That the Court affirms the Judgment issued in the instant case, particularly that "[i]n cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and punish all those responsible, especially when State agents are involved, as failing to do so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life."⁴ Therefore, the Court urges the State to have all the measures adopted to arrest Mr. Valencia-Osorio in order to fully comply with the Court's order in operative paragraph No. 5 of the Judgment of November 25, 2003.

10. That pursuant to Considering clauses 6, 7 and 8 hereof, the Court considers that the State has complied with Operative paragraph 6 of the Judgment, which provides for the obligation to remove all material and legal obstacles and mechanisms that prevent those responsible from being punished.

11. That the Court acknowledges the information provided by the State regarding the efforts made as to the Amparo Proceedings bill and the creation of the "International Commission against Impunity in Guatemala" (*supra* Having Seen clauses No. 5(b)).

12. That according to the State, the representatives and the Inter-American Commission's statements regarding the obligation to provide human rights and International Humanitarian Law training courses for the Army and Police staff (*supra* Having Seen clauses No. 5(c), 6(f), 9(c), and 10(c)), the Court considers that the State has complied with Operative paragraph No. 10 of the Judgment of November 25, 2003.

13. That according to the State, the representatives and the Commission as regards the creation of the "Myrna Mack non-reimbursable Financial Aid Programme" (*supra* Having Seen paragraphs 12, 13 and 14), the Court considers that Operative paragraph 11 of the Judgment has been complied with.

14. That the State and the representatives have informed that a plaque commemorating Myrna Mack-Chang has been placed at the new offices of AVANCSO (*supra* Having Seen clause No. 3 and 4), pursuant to the Judgment in this case. Therefore, the Court considers that the twelfth Operative paragraph of the Judgment has been fully complied with.

15. That in monitoring comprehensive compliance with the judgment on merits, reparations, and costs of the instant case, and after examining the information provided by the State, the Inter-American Commission, and the victim's representatives and next of kin in their briefs on compliance with reparations (*supra* "Having Seen" paragraphs 3, 4, 5, 8, 9, 10 12, 13 and 14), the Court has confirmed

⁴ *Cf. Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101, para. 156.

that the sixth, tenth, eleventh and twelfth operative paragraphs of said Judgment have been compliance by Guatemala.

16. That the Court considers it indispensable for the State to submit to the Court up-to-date and detailed information on the following issue pending compliance:

(a) to adopt the appropriate measures to effectively arrest Mr. Juan Valencia Osorio, who was convicted by the State's authorities as instigator of the extra-judicial execution of Myrna Mack-Chang, in relation to *operative paragraph No. 5 of the Judgment on the merits, reparations and costs of November 25, 2003 (supra Considering clause No. 9)*.

17. That the Court will consider closing the instant case, once it has received the pertinent information on the measures that are pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

by virtue of its authority to monitor compliance with its judgments pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and 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 Operative paragraphs No. 6, 10, 11 and 12 of the Judgment of November 25, 2003.

2. That the State has partially complied with operative paragraph No. 5 of the Judgment of November 25, 2003 which directs the State to investigate and punish those responsible for the extra-legal execution of Myrna Mack-Chang, since — pursuant to Considering clauses No. 9 and 16 hereof— the State has failed to adopt the measures aimed at arresting Mr. Juan Valencia-Osorio, who is currently on the run, so that he serves his sentence. Therefore, compliance with this Operative paragraph will continue under supervision.

AND DECIDES:

1. To request the State to adopt whatever measures may be necessary to put into effect and promptly comply with the order pending compliance and issued by the Court in the judgment on merits, reparations, and costs of 25 November 2003 and in the present Order, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request that the State submit to the Inter-American Court no later than April 4, 2008 a detailed report describing the measures adopted to carry out the reparations ordered by this Court that are still pending compliance, pursuant to Considering paragraphs tenth and thirteen and the third declaratory paragraph of the present Order.

3. To ask the representatives of the victim, her next of kin, and the Inter-American Commission to submit their comments to the report of the State

mentioned in the paragraph above, within four and six weeks, respectively, as of the date the report is received.

4. To continue to monitor the orders pending compliance under the Judgment on merits, reparations, and costs handed down by this Court.

5. To serve the present Order upon the State, to the Inter-American Commission, and to the representatives of the victim and her next of kin.

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