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File Number(s):	Report No. 99/05; Petition 133/04
Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Jose Miguel Merida Escobar v. Guatemala
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	27 October 2005
Citation:	Merida Escobar v. Guatemala, Petition 133/04, Inter-Am. C.H.R., Report No. 99/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANTS: William Ramirez Fernandez, Nadezhda Vasquez Cucho and Helen Mack Chang
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I. SUMMARY

1. On February 19, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Amanda Gertrudis Escobar Ruíz (mother of the victim), Fernando Nicolás Mérida Fernández (father of the victim), Amparo Antonieta Mérida Escobar, Rosmel Omar Mérida Escobar, and Ever Obdulio Mérida Escobar (brothers of the victim), as well as by William Ramírez Fernández, Nadezhda Vásquez Cucho, and Helen Mack Chang (representing the Myrna Mack Foundation), (hereinafter “the petitioners”), which alleged that the State of Guatemala (hereinafter “the State” or “the Guatemalan State”) violated the rights protected by Articles 1, 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of José Miguel Mérida Escobar, who was executed extrajudicially, and his family.

2. In a communication dated September 13, 2004, new petitioners were added to the initial petition as direct family members of the victim. They are: Rosa Amalia Alvarado López (widow of the victim), Elder Fernando Mérida Alvarado (son of the victim), Abner Giovanni Mérida Alvarado (son of the victim), José Miguel Mérida Alvarado (son of the victim), and Edilsar Omar Mérida Alvarado (son of the victim).

3. On April 27, 2005, co-petitioners William Ramírez Fernández, Nadezhda Vásquez Cucho, and Helen Mack Chang, representatives of the Myrna Mack Foundation, informed the Commission that they were withdrawing as co-petitioners in the case.

4. At a hearing held before the IACHR on October 27, 2004, the parties formalized their interest in arriving at a friendly settlement in this matter. The final agreement was signed on July 22, 2005.

5. In this report, adopted in accordance with Article 49 of the American Convention, the IACHR summarizes the alleged facts, transcribes the agreement between the parties, and decides on its publication.

II. PROCEDURES OF THE COMMISSION

6. The original petition was received by the Commission on February 19, 2004. On June 28, 2004, it was transmitted to the State, which was granted a period of two months to respond to the petitioners' arguments. The petitioners were notified of this communication on the same date.

7. At a hearing held before the IACHR on October 27, 2004, the parties formally expressed their interest in arriving at a friendly settlement in this matter and signed a basic document with a view to achieving this agreement. The parties concluded a final agreement on July 22, 2005.

8. On August 1, 2005, the State sent to the Commission the document entitled "Agreement on a Friendly Settlement in the case of the extrajudicial execution of José Miguel Mérida Escobar".

III. THE FACTS

9. José Miguel Mérida Escobar was executed extrajudicially on August 5, 1991. José Miguel Mérida Escobar was working as Chief of the Homicide Section of the Criminal Investigation Department of the National Police.

10. As Chief of the Homicide Section, Mr. Mérida Escobar was in charge of the investigation in the proceedings under way in the case of the murder of anthropologist Myrna Mack Chang. During the investigation, Mérida Escobar reported to his superiors that he had been threatened and followed. The report of Mérida Escobar, dated September 29, 1990, concluded that Myrna Mack had been murdered for political reasons and that the prime suspect was a member of the Security Department of the Presidential Staff of the Guatemalan Army. However, this police report was not made public until May 1991, the date on which the Director of the National Police was removed from office.[FN1]

[FN1] See Inter-American Court, Case of Myrna Mack Chang, Judgment of November 25, 2003. Series C No. 101.

134.87. José Mérida Escobar and Julio Pérez Ixcajop, National Police investigators assigned to investigate the murder, submitted a report on September 29, 1990 in which they concluded that Myrna Mack Chang had been murdered for political reasons. They further identified as a suspect in this murder Army Sergeant Major Noel de Jesús Beteta Álvarez, a member of the President's Security Department of the Presidential Military Staff. In addition, they stated that Myrna Mack

Chang had previously been under surveillance by State security officials. The National Police did not submit this report to the competent tribunal until several months had gone by;

134.88. On the orders of the National Police Director at the time, Colonel Julio Caballeros, the aforesaid report was replaced by another shorter report dated November 4, 1990, which was submitted to the courts. This report indicated that the motive for the crime had been robbery;

134.89. Several months later, in April or May 1991, the new Director of the National Police provided a copy of the initial police report prepared by José Mérida Escobar and Julio Pérez Ixcajop to the head of the Ministerio Público, who in June of that year included it intcourt file 202. On June 26, 1991 Investigator Mérida Escobar testified in court and confirmed his report of September 29, 1990;

11. On June 26, 1991, José Miguel Mérida Escobar testified in the courts in the case of Myrna Mack, confirming the content of his police report in spite of fears for his own life and that of his family. Following that testimony, death threats increased to the point that Mérida Escobar went to the Office of the Public Prosecutor for Human Rights and to the Ministerio Público [Office of the Attorney General] to report these threats and the fact that he was being followed by members of the military intelligence service. Mérida Escobar reported that he was being watched and threatened and requested protection for himself and his family. However, no authority took appropriate steps to safeguard the life of Mérida Escobar.

12. On August 5, 1991 Mérida Escobar was murdered by shots to the head, neck, left chest, and left arm, dying instantly. The November 9, 1992 report of the Office of the Public Prosecutor for Human Rights established that members of the Guatemalan Army were involved in the surveillance and subsequent murder of Mr. Mérida Escobar. The circumstances of his death were never clarified by the State and the perpetrators never received punishment of any kind.

IV. FRIENDLY SETTLEMENT

13. The parties formally expressed their intention to seek a friendly settlement in this case on October 27, 2004 during the hearing held before the Commission. At that meeting a document of understanding was concluded between the parties, in which they agreed that a friendly settlement in this case would refer to acceptance by the State of international responsibility for the extrajudicial execution of José Miguel Mérida Escobar by members of the Guatemalan intelligence service, and for denial of justice, by failing to investigate, prosecute, and punish the material and intellectual authors of the crime. The agreement should additionally refer to the State's obligation to make reparations for the material damages and pain and suffering caused to the parents, widow, children, and brothers of Mérida Escobar.

14. As a result of conversations initiated during that hearing and continued in private by the parties, on August 1 the State sent to the Commission a document signed by both parties, entitled "Agreement for a Friendly Settlement in the case of the Extrajudicial Execution of José Miguel Mérida Escobar". The agreement was signed on July 22, 2005, and it reads as follows:

FRIENDLY SETTLEMENT AGREEMENT IN THE CASE OF THE EXTRAJUDICIAL EXECUTION OF JOSE MIGUEL MERIDA ESCOBAR P-133/04

...

III. RESPONSIBILITY OF THE STATE

The Government of Guatemala recognizes the international responsibility of the State for the extrajudicial execution of the Chief of the Homicide Section of the National Police, JOSÉ MIGUEL MÉRIDA ESCOBAR, who was the victim of retaliation, persecution, and threats by members of the Guatemalan Military Intelligence as a result of his valiant work as an investigator in the case of the murder of Myrna Mack Chang, and who was subsequently executed extrajudicially on August 5, 1991. Likewise, the Government of Guatemala recognizes the international responsibility of the Guatemalan State for refusal to administer justice by investigating, prosecuting, and punishing the material and intellectual authors of the extrajudicial execution of José Miguel Mérida Escobar.

This recognition of responsibility includes recognition by the State of Guatemala that the right to life of police investigator José Miguel Mérida Escobar was violated when he was executed extrajudicially, a violation of Article 4 of the American Convention. Furthermore, the State of Guatemala also failed to comply with its obligation to investigate an extrajudicial execution carried out by state agents, because it did not use all available means to conduct a serious and effective investigation within a reasonable period of time, which would have served to clarify the facts; and it failed to prosecute, judge, and ultimately punish all the parties responsible for the extrajudicial execution of José Miguel Mérida Escobar. Consequently, the State recognizes violations of Articles 8 and 25 of the American Convention, to the detriment of the victim and his next of kin, violation of the right to humane treatment, as a result of the harassment and persecution suffered by the next of kin of the victim and the feeling of anguish generated by the impunity of the state agents themselves, in violation of Article 5 of the American Convention, with respect to the victim's direct family members.

The international responsibility of the State is recognized without prejudice to any individual responsibility that may be determined.

IV. RIGHT TO REPARATIONS FOR DAMAGES

The right to reparations to assist the victim's next of kin is reflected in various universal and regional treaties and conventions, and even in the resolutions issued by the Inter-American Court of Human Rights itself. Pecuniary compensation is the most common way to compensate victims and/or their next of kin. It is extremely difficult to compute the appropriate amount, and usually the decision is made to opt for a prudent amount that does not necessarily cover absolutely all the damages or losses incurred, but does provide relatives with a sufficient amount to compensate for their suffering and the damages caused. It is therefore the right of the next of kin to obtain integral reparations, including measures of compensation for serious damages and losses incurred, in addition to measures to satisfy them individually and their dignity in the community, including moral and symbolic reparations.

V. ECONOMIC REPARATIONS

....

The amount of economic reparations may not be published and shall remain confidential out of concerns for the security of the family of José Miguel Mérida Escobar.[FN2]

[FN2] In response to the request by the petitioners to keep the amount of economic reparations confidential this section of the agreement was eliminated.

VI. OTHER TYPES OF REPARATIONS

In this Agreement for a Friendly Settlement, the State pledges to fulfill the following commitments:

INVESTIGATION

The Government of Guatemala shall take steps to ensure that the Ministerio Público conducts a serious and effective investigation, that culminates in a criminal proceeding that identifies, prosecutes and convicts all the material and intellectual parties responsible for the extrajudicial execution of police investigator José Miguel Mérida Escobar, in addition to the parties responsible for irregularities in the criminal investigation of this case.

MEASURES TO HONOR THE MEMORY OF THE VICTIM

- a) The Government of the Republic pledges to make appropriate arrangements with the Ministry of the Interior and International Cooperation to establish a fellowship for police studies abroad.
- b) The Government of the Republic pledges to look into the feasibility of drawing up a letter of recognition of the international responsibility of the State of Guatemala for the extrajudicial execution of José Miguel Mérida Escobar, a letter which will be circulated to international organizations by way of the Official Gazette and the Internet.
- c) The Government of Guatemala pledges to take the relevant steps to ensure that the Ministry of the Interior authorizes placement of a plaque in honor of police investigator José Miguel Mérida Escobar at the facilities of the Palace of the Civil National Police, in memory of José Miguel Mérida Escobar.
However, the petitioners are advised that if placement of the plaque at the place indicated should not be authorized, an alternative will be arranged.
- d) The Government of the Republic pledges to ensure that the appropriate authorities will take steps to determine the viability of changing the name of the Santa Luisa district in the Municipality of San José del Golfo, department of Guatemala, where he resided with his family, to the name of José Miguel Mérida Escobar.

LIFE PENSION

(I) The Government of the Republic shall take steps to ensure that the Executive Agency provides a life pension to the parents of José Miguel Mérida Escobar, Amanda Gertrudis Escobar Ruiz, and Fernando Nicolás Mérida Hernández, and a pension to his youngest son, Edilsar Omar Mérida Alvarado, until he completes his advanced technical studies. Through the power of the President of the Republic to grant this type of benefits, in accordance with the provisions of Art. 183, paragraph “t” of the Political Constitution of the Republic of Guatemala.

These steps shall be initiated as soon as the family provides information regarding its productive activities or work, and data on them. As for the minor’s pension, we need information on his schooling and his age, to determine the possibility of granting the pension or scholarship requested.

HEALTH

The Government of the Republic pledges to take the relevant steps to ensure that the Ministry of Public Health provide for psychological treatment for Mrs. Rosa Amalia López, the widow of the victim, and for the youngest of his sons, Edilsar Omar Mérida Alvarado.

EDUCATION

The Government of the Republic pledges to take the relevant steps to ensure that the Ministry of Education arranges for a scholarship to be granted to the youngest son of the victim, Edilsar Omar Mérida Alvarado, in accordance with his level of education, and provided it is legally possible to do so.

VII. NOTIFICATION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

According to the terms indicated, the parties signing this agreement pledge to notify the Commission, either jointly or separately, of the commitments contained in it and to report periodically to the Commission on progress made in fulfilling them.

VIII. TAX EXEMPT PAYMENTS

Payments made by the State of Guatemala to the parents, widow, and sons of the victim under this friendly agreement shall not be subject to taxes of any kind.

IX. INTERPRETATION

The meaning and scope of this agreement for a friendly settlement shall be interpreted in accordance with the relevant parts of Articles 29 and 30 of the American Convention on Human Rights, and according to the principle of good faith. In the event that the parties should have a question or disagreement regarding the contents of this friendly settlement agreement, the Inter-American Commission on Human Rights shall decide on its interpretation.

X. PUBLICATION

The parties respectfully request the honorable Commission to publish this agreement in a report on friendly settlement, once it has verified that each of the commitments described in the clauses of this instrument has been carried out in full.

XI. SUPERVISION

Pursuant to Article 48(1)(f) of the American Convention on Human Rights, the IACHR shall supervise compliance with the commitments contained in this agreement until they are completely implemented.

XII.

The obligations and commitments assumed by the State through this Agreement for a Friendly Settlement, and especially paragraphs V and VI of this instrument, shall be carried out in accordance with the timetable attached to this document.

XIII. TIME PERIODS

The State of Guatemala pledges to execute the pecuniary and nonpecuniary reparations within the time periods established, counting from the date this agreement is signed. The agreed period may be extended by the mutual consent of the parties, for a maximum period of two months, after verifying justified cause, or an unavoidable situation or an act of God.

XIV. LEGAL BASIS

This Friendly Settlement Agreement is based on respect for the human rights recognized in Articles 1, 4, 5, 7, 8, 25, and 48(1)(f) of the American Convention on Human Rights, and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, in addition to Articles 1, 2, 3, 44, 46, and 183 of the Political Constitution of the Republic of Guatemala, in addition to the principle established in int, and the Global Agreement on Human Rights and the Peace Accords, signed by the Government of Guatemala and the Guatemalan National Revolutionary Unit [Unidad Revolucionaria Nacional Guatemalteca].

In Guatemala City, July 22, 2005.

Signed: for the Government of Guatemala, Frank La Rue Lewy – President of the Presidential Human Rights Commission (COPREDEH); for the petitioners, Ever Obdulio Mérida Escobar (brother of the victim) – representing the parents and siblings of the victim; Rosa Amalia Alvarado López (widow of the victim) – representing the children of José Miguel Mérida Escobar.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is “to reach a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.” Consent to carry out this procedure

is an expression of good faith on the part of the State to comply with the purposes and objectives of the Convention, by virtue of the principle of *pacta sunt servanda*, according to which states shall comply in good faith with obligations assumed under treaties. It also wishes to reiterate that the friendly settlement procedure stipulated in the Convention allows for individual cases to be settled in a noncontentious manner, and, in a number of different countries, it has proven to offer an important vehicle for resolving cases that can be used by both parties.

16. The Commission further reiterates that, if parties mutually agree, the amount of compensation may remain confidential. In this case, parties have reached an agreement about the amount of the compensation and have requested that the amount shall remain confidential.

17. The Commission wishes to recognize the efforts made by the State of Guatemala to reach a friendly solution in this matter. The IACHR similarly recognizes the importance of the measures that the State has agreed to implement in recognition of the rights of the next of kin of José Miguel Mérida Escobar, who was executed extrajudicially. The Commission shall monitor and follow up on compliance with the agreement being approved.

18. In the view of the IACHR, the agreement concluded is fully compatible with the obligations emanating from the American Convention.

VI. CONCLUSIONS

19. On the basis of the foregoing considerations and by virtue of the procedure referred to in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the friendly settlement agreement achieved in the present case, based on the objectives and purposes of the American Convention.

20. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement reached in this matter.
2. To continue to monitor and supervise each and every one of the clauses of the friendly agreement, and in this context, to remind the parties of their commitment to report periodically to the IACHR on compliance with this friendly settlement.
3. To publish this report and include it in its annual report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on the 27th day of October, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President, and Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez.