

**ORDER OF THE INTER-AMERICAN
COURT OF HUMAN RIGHTS
OF NOVEMBER 27, 2003**

**BÁMACA VELÁSQUEZ *
V. GUATEMALA CASE**

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits delivered in the *Bámaca Velásquez vs. Guatemala Case* by the Inter-American Court of Human Rights (hereinafter “the Court”, “the Inter-American Court” or “the Tribunal”) on November 25, 2000, wherein it:

1. declar[ed] that the State violated, to the detriment of Efraín Bámaca Velásquez, the right to personal liberty enshrined in Article 7 of the American Convention on Human Rights.

[...]

2. declar[ed] that the State violated, to the detriment of Efraín Bámaca Velásquez, as well as Jennifer Harbury, José de León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, and Josefina Bámaca Velásquez, the right to personal integrity enshrined in Articles 5(1) and 5(2) of the American Convention on Human Rights.

[...]

3. declar[ed] that the State violated, to the detriment of Efraín Bámaca Velásquez, the right to life enshrined in Article 4 of the American Convention on Human Rights.

[...]

5. declar[ed] that the State violated, to the detriment of Efraín Bámaca Velásquez, as well as Jennifer Harbury, José de León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, and Josefina Bámaca Velásquez, the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention on Human Rights.

[...]

6. declar[ed] that the State failed to comply with the general obligations of Article 1(1) of the American Convention on Human Rights regarding the violations of the substantive rights set forth in the previous operative paragraphs of the [...] Judgment.

[...]

7. declar[ed] that the State failed to comply with, to the detriment of Efraín Bámaca Velásquez, the obligation to prevent and punish torture pursuant to Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

[...]

8. decid[ed] that the State should order an investigation to identify the persons responsible for the violations of human rights as [stated] in [the] Judgment, as well as disclose the results of said investigation and punish the responsible parties.

* Judge Salgado Pesantes informed that Court that, for reasons of *force majeure*, he could not participate in the deliberation and signing of the instant Order.

[...]

9. decid[ed] that the State should compensate for the damage resulting from the violations set forth in operative paragraphs 1 to 7 [of the Judgment ...] as it commission[ed] to its President to, timely, arran[ge] the opening of the reparations stage.

2. The Judgment on reparations delivered in the Present Case by the Inter-American Court on February 22, 2002, wherein it stipulated:

1. that the State should find the mortal remains of Efraín Bámaca Velásquez, exhume them in the presence of his widow and next of kin, and give the remains to them [...].

2. that the State should investigate the facts that motivated the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture in the present Case, identify, and punish the responsible parties, as well as disclose the results of said investigation [...].

3. that the State should disclose in the Official Gazette and in another national newspaper, only one time, the chapter referring to the proven facts and the operative paragraph of the judgment on the merits delivered on November 25, 2000, and have a public event to recognize the liabilities for the facts of this Case and the compensation of the victims.

4. that the State should adopt the legislative measures and any other kind of measures as necessary to adapt the Guatemalan legal System to the international standards on human rights, and give full effect to said standards at a domestic level, pursuant to Article 2 of the American Convention on Human Rights.

5. that the State should pay non-pecuniary damages:

a) the sum of US\$100.000,00 (one hundred thousand US dollars) or its equivalent in Guatemalan currency to be equally distributed between José León Bámaca Hernández and Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, and Jennifer Harbury, in their power as right holders of Efraín Bámaca Velásquez [...].

b) to Jennifer Harbury, the sum of US\$80.000,00 (eighty thousand US dollars) or its equivalent in Guatemalan currency [...].

c) to José León Bámaca Hernández, the sum of US\$25.000,00 (twenty-five thousand US dollars) or its equivalent in Guatemalan currency [...].

d) to Egidia Gebia Bámaca Velásquez, the sum of US\$20.000,00 (twenty thousand US dollars) or its equivalent in Guatemalan currency [...].

e) to Josefina Bámaca Velásquez, the sum of US\$20.000,00 (twenty thousand US dollars) or its equivalent in Guatemalan currency [...].

f) to Alberta Velásquez, the sum of US\$5.000,00 (five thousand US dollars) or its equivalent in Guatemalan currency [...].

6. that the State pays pecuniary damage:

a) the sum of US\$100.000,00 (one hundred thousand US dollars) or its equivalent in Guatemalan currency, to be equally distributed to José León Bámaca Hernández and Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, and Jennifer Harbury, in their power as right holders of Efraín Bámaca Velásquez[...].

b) to Jennifer Harbury the sum of US\$125.000,00 (one hundred twenty-five thousand US dollars) or its equivalent in Guatemalan currency, on account of the income she was supposed to receive between March 12, 1992 and January 1997, the expenses on account of health damages resulting from the facts of the Case and the expenses to determine the whereabouts of Efraín Bámaca Velásquez [...].

7. that the State should pay on account of costs and expenses, the sum of US\$23.000,00 (twenty-three thousand US dollars) or its equivalent in Guatemalan currency, to the next of kin and representatives of the victims [...].

8. that the State should comply with the reparations measures set forth in the [...] Judgment within six months upon notice of submission thereof.

[...]

10. that the Inter-American Court of Human Rights shall supervise the fulfillment of [the] Judgment and shall terminate the [...] Case once the State has fully complied with it.

3. The March 6, 2002 note to the Secretariat, served the following day to the State of Guatemala (hereinafter "the State") together with the Judgment on the reparations; therefore, its compliance deadline was due on September 7, 2002, except the delivery of the mortal remains of Mr. Bámaca Velásquez, and the State had deadline until December 2002 at the latest.

4. The brief by Secretariat of the Inter-American Court (hereinafter "the Secretariat") on September 10, 2002, requesting the State to submit a report on the fulfillment of the Judgment since the deadline to report thereof was due on September 7, 2002 (*supra* Having Seen 3), a requirement that was reiterated by the Secretariat on November 1 and December 11, 2002.

5. The February 19, 2003 State communication, wherein it reported on the pecuniary damage payment dictated by the Tribunal on account of some formalities to find the mortal remains of Mr. Bámaca Velásquez and some steps related to the publication of the Judgment aimed at "fulfilling the Judgment on reparations."

6. The Secretariat brief on the same date, following instructions by the President of the Court (hereinafter "the President"), called upon the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and the representatives and next of kin of the victims (hereinafter "the representatives of the victims") the delivery of observations on the first report on the fulfillment of the Judgment on reparations filed by the State (*supra* Having Seen 5).

7. The March 7, 2003 State brief, wherein it reported on the publication in the Official Gazette and another national newspaper as stipulated by the Court in its operative paragraph three of the Judgment on reparations. However, it only submitted the publication in La Hora Newspaper on March 3, 2003.

8. The March 13, 2003 State communications, wherein it called upon the Commission and the representatives of the victims to submit observations on the State report on March 7, 2003 (*supra* Having Seen 7).

9. The brief by the representatives of the victims on March 21, 2003, wherein they stated their acceptance of the damage payment stipulated by the Tribunal in its operative paragraphs 5, 6, and 7 of the Judgment (*supra* Having Seen 2). Moreover, they stated that the publications by the State "did not compl[y] with the stipulations of the [...] Court [... because they provide] a capricious summary of the proven facts and the operative paragraphs" of the Judgment. Finally, they pointed out that the State had not complied with the operative paragraphs 1, 2, 3, and 4 thereof (*supra* Having Seen 2).

10. The communication by the Commission on April 21, 2003, wherein it reiterated the terms of the observations of the representatives of the victims (*supra* Having Seen 9).

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to oversee compliance with its decisions.

2. That the State of Guatemala became a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") on May 25, 1978, and accepted the binding jurisdiction of the Court on March 9, 1987.

3. In view of the definitive and unappealable nature of the judgments of the Court, pursuant to Article 67 of the American Convention, the State must promptly and completely comply with them within the term set for this purpose.

4. Article 68(1) of the American Convention states 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." In the case under discussion, the State must comply with the treaty obligations of the States Party, which are binding for all branches of government or bodies of the State.

5. The obligation to comply with the rulings in the Judgment of the Tribunal is in accordance with a basic principle of law regarding the international responsibility of the State, backed by international case law, according to which the States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already stated before and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they cannot refuse to fulfill the previously established international responsibility for domestic reasons¹.

6. When overseeing the absolute fulfillment of the judgment on the merits and reparations delivered in the present case, and after assessing the information submitted by the State, the representatives of the victims, and the Commission, the Court has confirmed that the State paid non-pecuniary damage, costs, and expenses pursuant to operative paragraphs 5, 6, and 7 of the Judgment on reparations.

7. After assessing the information submitted by the State, the representatives of the victims, and the Commission, the Court deems critical for the State to report to the Court on the following compliance pending issues:

- a) Formalities to find, exhume, and deliver the mortal remains of Efraín Bámaca Velásquez;
- b) Formalities to investigate the facts in the present case and identify and punish the abettors and perpetrators of the murder of Bámaca Velásquez (*Operative paragraphs eighth of the Judgment on the Merits*)

¹ Cfr., *Bulacio Case*. September 18, 2003 Judgment. Series C No. 100, para. 116-118; *Benavides Cevallos Case. Compliance with Judgment*. September 9, 2003 Order of the Court, Considering 3 and 6, and *Baena Ricardo et al Case Compliance with Judgment*. June 6, 2003 Order of the Court, Considering fourth.

on November 25, 2000, and second of the Judgment on Reparations on February 22, 2002);

- c) measures adopted to hold a public event to recognize the liabilities for the facts of this Case and the compensation of the victims pursuant to the Court Judgment²; and
 - d) the existence at the present time of legislative measures and any other measures to adapt the Guatemalan legal system to the international standards on human rights and give full effect (*effet utile*) to said standards at a domestic level.
8. After assessing publications printed by the State in "La Hora" Newspaper on March 3, 2003, the Court considers they do not comply with the Judgment on reparations (*supra* Having Seen 2 y 7).
9. Providing sufficient information on compliance with the Judgment is a duty of the State, repeatedly stated by this Court³.
10. Pursuant to the paragraph fulfilled by the State (*supra* Considering sixth), this Tribunal shall never demand any information whatsoever.
11. Pursuant to the paragraphs not fulfilled by the State (*supra* Considering seventh and eighth), the State should comply with them as soon as possible. The Court shall assess the general compliance status of its judgments on the merits (November 25, 2000) and reparations (February 22, 2002), upon receiving said State report and the corresponding observations of the representatives of the victims and the Commission.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to oversee compliance with its judgments and pursuant to the provisions of Articles 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 29(2) of its Rules of Procedure,

DECLARES:

² *Case Bámaca Velásquez. Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos), Sentencia de 22 de febrero de 2002. Series C No. 91, párr. 84.

³ *Cf., Neira Alegria et al. Case. Compliance with judgment.* November 28, 2002 Order of the Court, Considering nine; *El Amparo Case. Compliance with judgment.* November 28, 2002 Order of the Court, Considering eight; *Loayza Tamayo Case. Compliance with judgment.* November 27, 2002 Order of the Court, Considering eight; *Castillo Páez Case. Compliance with judgment.* November 27, 2002 Order of the Court, Considering nine; *Garrido y Baigorria Case. Compliance with judgment.* November 27, 2002 Order of the Court, Considering eight; *Blake Case. Compliance with judgment.* November 27, 2002 Order of the Court, Considering nine; *Caballero Delgado and Santana Case. Compliance with judgment.* November 27, 2002 Order of the Court, Considering six and seven; and *Baena Ricardo et al. Case. Compliance with judgment.* June 21, 2002 Order of the Court, Considering two; *Baena Ricardo et al. Case. Compliance with judgment* June 6, 2003 Order of the Court, Considering ten and twelve; and *"The Last Temptation of Christ" (Olmedo Bustos et al.) Case. Compliance with judgment.* November 28, 2003 Order of the Court, Considering ten.

1. pursuant to Considering six herein, the State has fully complied with operative paragraphs 5, 6, and 7 of the Judgment on reparations delivered by this Tribunal on February 22, 2002 regarding damages.
2. that it shall keep the proceedings to comply with the pending paragraphs in the present case pursuant to Considering seven and eight herein.

DECIDES:

3. To urge the State to adopt such measures as may be necessary to effectively and promptly comply with reparations in Judgments on November 25, 2000 and February 22, 2002 pending compliance, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
4. To call upon the State to submit, on April 1, 2004, at the latest, a detailed report indicating steps for an effective investigation related to Mr. Bámaca Velásquez; take steps to find the mortal remains of Bámaca Velásquez, exhume, and deliver them to his next of kin, take steps to hold have a public event to recognize the liabilities for the facts of this case and the compensation of the victims, take legislative measures and any other steps to adapt the legal system to the international standards on human rights, and take steps to publish only one time in the Official Gazette and any other national newspaper the chapter related to the proven facts and operative paragraph of the Judgment on the merits delivered on November 25, 2000; pursuant to Considering seven and eight herein.
5. to call upon the Inter-American Commission on Human Rights, as well as representatives of the victims and their next of kin to submit their observations of the State report mentioned in the previous operative paragraph within two months upon notice of submission of said report.
6. To continue overseeing the compliance with the Judgment on the merits delivered on November 25, 2000 and the Judgment on reparations delivered on February 22, 2002, in the *Bámaca Velásquez Case*.
7. To notify the present Order of fulfillment to the State, the Inter-American Commission on Human Rights, and the representatives of the victims and their next of kin.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary