

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

OF JULY 4, 2006

BÁMACA VELÁSQUEZ V. GUATEMALA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits delivered in this case by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on November 25, 2000.

2. The judgment on reparations delivered in this case by the Inter-American Court on February 22, 2002.

3. The Order on compliance with judgment in this case issued by the Court on November 27, 2003, in which it declared, *inter alia*, that:

[...] the State ha[d] fully complied with operative paragraphs 5, 6 and 7 of the judgment on reparations delivered by the Court on February 22, 2002, regarding damages.

4. The Order on compliance with judgment issued by the Court on March 3, 2005, in which it declared that:

1. [...] it will keep the procedure of monitoring compliance open with regard to the following aspects of this case that are pending:

(a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and the return of the remains to them;

(b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification of those responsible, and the public divulgation of the results of this investigation;

(c) The publication, once only, in the official gazette and in another newspaper with national circulation, of the chapter on proven facts and the operative paragraphs of the judgment on merits of November 25, 2000, and the organization of a public act to acknowledge responsibility concerning the facts of the case and to make amends to the victims; and

(d) The adoption of the legislative and any other measures necessary to adapt the Guatemalan laws to international norms of human rights and humanitarian law, and to make those norms fully effective in the domestic sphere.

* Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would be unable to attend the deliberation of this Order.

And decided, *inter alia*, “[t]o request the State to submit to the Inter-American Court, by May 23, 2005, at the latest, a detailed report” on the aspects pending compliance.

5. The note of the Secretariat of the Court (hereinafter “the Secretariat”) of July 19, 2005, in which it reiterated to the State that it should submit the report on compliance (*supra* Having seen paragraph 4).

6. The communication of the State of Guatemala (hereinafter “the State”) of September 13, 2005, in which it indicated that it had complied partially with the third operative paragraph of the judgment on reparations, by the publication of the judgment in the *Diario de Centro América* on June 14, 2002.

7. The note of the Secretariat of September 16, 2005, in which it informed the State that it awaited “more detailed information concerning all the reparations ordered by the Court that are pending compliance.”

8. The observations of the Commission of September 18, 2005, in which they indicated that the State had not provided any information on the obligations that were pending compliance, and requested the Court to require the State to forward the publication it had referred to in the *Diario de Centro América*.

9. The observations of the representatives of September 30, 2005, in which they indicated that there was no documentary evidence concerning the information provided by the State regarding the publication in the *Diario de Centro América*. They also expressed their concern about the time that had elapsed without the State taking any concrete decisions to comply with the other aspects established in the operative paragraphs of the judgment on reparations.

10. The note of the Secretariat of January 24, 2006, in which, on the instructions of the President, it again reiterated to the State that it should submit the report by February 24, 2006, at the latest (*supra* Having seen paragraphs 4 and 5).

CONSIDERING:

1. That it is an inherent attribute of the jurisdictional functions of the Court to monitor compliance with its decisions.

2. That Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the compulsory jurisdiction of the Court on March 9, 1987.

3. That, 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.” Consequently, the State must ensure the implementation of the decisions in the Court’s judgments at the domestic level.¹

¹ Cf. *Case of the Constitutional Court*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 7, 2006, third considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph; *Case of Ricardo Canese*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph.

4. That 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 comply with them promptly and completely.

5. That the obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable with regard not only to the substantive norms of human rights treaties, but also to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations ordered by the Court. These obligations include the State's duty to report to the Court on the measures adopted to comply with the measures ordered by the Court in its decisions. The reporting obligation is twofold in nature and effective compliance requires the formal presentation of a document within the allotted time and with specific, true, current and detailed information on the issues to which this obligation refers.⁴ The State's prompt compliance with this obligation to inform the Court about the measures it is taking to comply with each element ordered by the Court is fundamental for assessing the status of compliance with the judgment as a whole.

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² Cf. *Case of the Constitutional Court*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 7, 2006, fifth considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, fifth considering paragraph; *Case of Ricardo Canese*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, fifth considering paragraph.

³ Cf. *Case of the Constitutional Court*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 7, 2006, sixth considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, sixth considering paragraph; *Case of Ricardo Canese*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, sixth considering paragraph.

⁴ Cf. *Case of the Mendoza Prisons*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, fourteenth considering paragraph; *Matter of the Jiguamiandó and the Curbaradó Communities*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, sixteenth considering paragraph; and *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, eighteenth considering paragraph.

8. That according to the Order of the Court of March 3, 2005 (*supra* Having seen paragraph 4), the State should have submitted a detailed report on the measures it has taken to execute the aspects pending compliance of the judgment on reparations in this case by May 23, 2005, at the latest (*supra* Having seen paragraph 2).

9. That, on September 13, 2005, the State submitted a brief report in this regard, without the necessary supporting documents and nearly four months after the time allotted for presenting it had expired (*supra* Having seen paragraph 6).

10. That, since that date, the State has not forwarded any information regarding compliance with the judgments of the Court, despite the reminders sent by the Secretariat of the Court (*supra* Having seen paragraphs 5 and 10).

11. That this attitude of the State is contrary to its obligation to comply and to report to the Court on the measures taken to implement the reparations ordered by the Court in the domestic sphere and, thereby, denies access to international justice to the victims and beneficiaries of the said reparations.⁵

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12. That, when monitoring complete compliance with the judgments on merits and reparations delivered in this case, and after examining the information provided by the State, the Inter-American Commission and the representatives in their respective briefs (*supra* Having seen paragraphs 6, 8 and 9), the Court observes that it has insufficient information on the following aspects that are pending compliance:

(a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and their return to them (*first operative paragraph of the judgment on reparations*);

(b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification and punishment of those responsible, and also the public divulgation of the results of the respective investigation (*eighth operative paragraph of the judgment on merits and second operative paragraph of the judgment on reparations*);

(c) The publication, once only, in the official gazette and in another newspaper with national circulation, of the chapter on proven facts and the operative paragraphs of the judgment on merits of November 25, 2000, and the organization of a public act to acknowledge [the State's] responsibility for the facts of the case and to make amends to the victims (*third operative paragraph of the judgment on reparations*); and

(d) The adoption of the legislative and any other measures necessary to adapt Guatemalan domestic laws to the international norms of human rights and humanitarian law, and to make these norms fully effective in the

⁵ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 130.

domestic sphere (*fourth operative paragraph of the judgment on reparations*).

13. That the Court notes with concern that more than four years have elapsed since the judgment on reparations in this case was delivered (*supra* Having seen paragraph 2), and it has not yet been fully complied with.

14. That the Court will consider the overall situation of compliance with its judgments on merits and reparations, and also its Orders in this case (*supra* Having seen paragraphs 3 and 4), once it receives the pertinent information on the measures pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions conferred by Article 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That it will continue the procedure on monitoring compliance with the pending aspects in this case, which are:

(a) The location of the remains of Efraín Bámaca Velásquez, their exhumation in the presence of his widow and next of kin, and their return to them;

(b) The investigation into the facts that gave rise to the violations of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture, the identification and punishment of those responsible, and the public divulgation of the results of this investigation;

(c) The publication, once only, in the official gazette and in another newspaper with national circulation, of the chapter on proven facts and the operative paragraphs of the judgment on merits of November 25, 2000, and the organization of a public act to acknowledge [the State's] responsibility for the facts of the case and to make amends to the victims; and

d) The adoption of the legislative and any other measures necessary to adapt Guatemalan domestic laws to the international norms of human rights and humanitarian law, and to make these norms fully effective in the domestic sphere.

AND DECIDES:

1. To require the State to adopt all necessary measures to fulfill effectively and promptly the aspects pending compliance that were ordered by the Court in the

judgments on merits and reparations, and also the Court's decisions in the Orders issued in this case (*supra* Having seen paragraphs 3 and 4), pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court, by September 8, 2006, at the latest, a detailed report, as specified in the seventh considering paragraph of this Order, indicating the measures adopted to comply with all the reparations ordered by the Court that are still pending compliance (*supra* first operative paragraph), and to present the corresponding supporting documentation.

3. To request the representatives of the victim and his next of kin and the Inter-American Commission to submit their observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

4. To continue monitoring the aspects pending compliance of the judgments on merits and reparations.

5. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission, and the representatives of the victim and his next of kin.

Sergio García Ramírez
President

Alirio Abreu Burelli

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary