

**Order of the
Inter-American Court of Human Rights
of July 10, 2007
Case of Carpio Nicolle *et al.* v. Guatemala
Monitoring Compliance with Judgment**

HAVING SEEN:

1. The Judgment on merits, reparations, and costs (hereinafter “the Judgment”) issued by the Inter-American Court of Human Rights (hereinafter “the Court”, “the Inter-American Court”, or “the Tribunal”) on November 22, 2004, through which it

Declare[d]

Unanimously that:

1. The State must effectively investigate the facts of the present case in order to identify, prosecute, and punish the instigators and perpetrators of the extrajudicial killing of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, and Rivas González, as well as the serious injuries of Sydney Shaw Díaz. The result of the process must be published, in the terms of paragraph 129 of the [...] Judgment.

2. The State must remove all the obstacles and mechanisms of fact and of law that maintain impunity in the present case, grant sufficient guarantees of security to the witnesses, judicial authorities, prosecutors, other operators of justice, and the next of kin of the victims, as well as use all measures available to it to carry out the process in the terms of paragraphs 130 through 134 of the [...] Judgment.

3. The State must adopt specific measures directed to strengthening its investigative capacity, in the terms of paragraph 135 of the [...] Judgment.

4. The State must hold a public act of acknowledgment of its responsibility in relation to the present case, as well as of amends, in the terms of paragraphs 136 and 137 of the [...] Judgment.

5. The State must publish, within a six-month term as of the notification of the [...] Judgment, at least once, in the Official Newspaper, in another newspaper of national circulation, and in the gazette of most circulation within Guatemalan armed forces, the Section of [the] Judgment called Proven Facts, without the corresponding footnotes, paragraphs 77 and 78 of the Section called Merits of [the] Judgment, as well as the operative paragraphs of the same, in the terms of paragraph 138 of the [...] Judgment.

6. The State must pay, for pecuniary damages, the amounts set in paragraphs 106 through 113 of the [...] Judgment to Messrs. Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Mario Arturo López Arrivillaga, and Sydney Shaw Arrivillaga, in the terms of said paragraphs and paragraphs 97 through 100.

7. The State must pay, for non-pecuniary damages, the amounts set in paragraph 120 of the [...] Judgment to Messrs. Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Anibal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine,

Alejandro Ávila Hernández, Sydney Ávila Hernández, María Paula González Chamo, and María Nohemi Guzmán, in the terms of said paragraph and of paragraphs 97 through 100.

8. The State must pay the amount set in paragraph 145 of the [...] Judgment to Mrs. Martha Arrivillaga de Carpio and Messrs. Rodrigo and Jorge Carpio Arrivillaga for costs and expenses, in the terms of said paragraph.

9. The State must make payment of compensations and reimbursement of costs and expenses within a one-year term, computed as of the notification of the [...] judgment, pursuant to that stated in paragraph 146 of [the] Judgment. Regarding the publication of the corresponding parts of the Judgment and the public act of acknowledgment of international responsibility and amends, the State must comply with said measures within a six-month period, computed as of notification of the [...] Judgment, in the terms of paragraph 146 of the same.

10. The State must deposit the compensation ordered in favor of the beneficiaries that are minors in a bank investment to their name in a solvent Guatemalan institution, in United States dollars or the local currency, at the election of the legal representative, within a one-year term and in the most favorable financial conditions allowed by the legislation and bank practices while they are minors, in the terms of paragraph 151 of [the] Judgment.

11. The State may comply with its pecuniary obligations through payments in United States dollars or an equal amount in the State's national currency, using for the corresponding calculation the exchange rate between both currencies in force in the New York Plaza, United States of America, the day prior to payment, in the terms of paragraph 149 of the [...] Judgment.

12. The payments for pecuniary damage, non-pecuniary damage, and costs and expenses established in the [...] Judgment may not be affected, reduced, or subject to any current or future tax or charge, in the terms of paragraph 152 of the [...] Judgment.

13. Should the State fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on payments in arrears in Guatemala.

14. If, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the said period of one year from notification of the [...] judgment, the State shall deposit such amounts in favor of the beneficiaries in an account or certificate of deposit in a solvent Guatemalan banking institution, in the terms of paragraph 150 of the [...] Judgment.

15. It shall monitor compliance with [the] judgment and will close the [...] case once that State has fully complied with all its provisions. Within one year of notification of [the] judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 154 of the same.

2. The different reports of the State of Guatemala (hereinafter "the State" or "Guatemala") regarding the advances in compliance with the Judgment.

3. The observations of the representatives of the victims (hereinafter "the representatives") and of the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to the State's reports on compliance (*supra* Having Seen paragraph 3).

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That Guatemala is a State Party to the American Convention since May 25, 1978 and that it acknowledged the compulsory jurisdiction of the Court on March 9, 1987.

3. 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 assume a previously established international responsibility.¹ The treaty obligations of the States Parties are binding for all the powers and organs of the State.

4. 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 (that is, those that include stipulations on the protected rights), 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.²

*
* *

5. That the State informed that it had published the Judgment in the "Diario de Centro América" on June 9, 2005; diffused the same on October 7, 2005, through an "Official Message" of the Division General Ministry of Defense of Guatemala, who ordered the printing of the publication of the Judgment in the Diario de Centro América and that it be placed on the general information bulletin board for two weeks "for the knowledge of all personnel;" and published the Judgment in the written newspaper "Prensa Libre" on December 27, 2005.

6. That the representatives stated that even though the Judgment had been published "in a newspaper with an ample national circulation" and in a newspaper "that acts as an official newspaper", the State has not responded satisfactorily in compliance to the fifth operative paragraph in relation to "the publication in the gazette with most circulation within Guatemalan armed forces," since "[t]here is no evidence that the Judgment was printed and placed on the bulletin board of general information" nor "is there any information about the location of the board and who has access to it." Therefore, they request that the Court "order the State to inform the members of the Army of the [J]udgment [...], either through a webpage or through their 'agenda'."

7. That the Commission valued "the State's actions tending to comply with this [measure of reparation], especially with the publication in the [O]fficial [N]ewspaper and in one of national circulation." However, it stated that if what is put forward by the representatives with regard to the diffusion of the Judgment within the army is true, the "modality of compliance is significantly different to that ordered by the Court."

¹ Cfr. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention of Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Sawhoyamaya Indigenous Community V. Paraguay*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering Clause number 3, and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 5.

² Cfr. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaya Indigenous Community V. Paraguay*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering Clause number 4, and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 6.

8. That the Court considers that the State has complied with the publication in the Official Newspaper and in a newspaper of ample national circulation.

9. That the Tribunal considers that the placement of a copy of the Judgment on the Army's general information bulletin board during a two-week period is enough to comply with the purpose of the fifth operative paragraph of the Judgment on reparations (*supra* Having Seen paragraph 1).

*
* *
*

10. That the State proposed a modality of alternative compliance to fulfill its obligation of payment of the compensations set by the Tribunal for pecuniary and non-pecuniary damage and for costs and expenses, due "to the budget crisis originated in the disasters caused by Hurricane Stan." Thus, the State offered "three successive payments corresponding to 33.33% of the total amount in the months of December of [...] 2005, 2006, and 2007."

11. That one part of the beneficiaries accepted this form of payment, and has received up to now two of the three payments proposed by the State, each one equal to 33.33% of the total. That the beneficiaries Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Daniela Carpio Fischer, Rodrigo Carpio Fischer, and Ricardo San Pedro Suárez "stated that they did not accept the terms of the payment proposal" made by the State, and requested that the total payment of the compensations be made effective in the first quarter of the year 2006. However, they received a first payment, as an advance payment, in January 2006 and a second similar payment in December 2006.

12. That based on the above, the Court observes that the State has complied partially with the sixth and seventh operative paragraphs of the Judgment issued in the present case (*supra* Having Seen paragraph 1).

13. That the State must pay all the beneficiaries the corresponding interests on loan arrears, pursuant to the thirteenth operative paragraph of the Judgment issued in this case, for the delay in payment of the compensations set by the Court, beyond the term established by the latter in the ninth operative paragraph of the mentioned Judgment (*supra* Having Seen paragraph 1).

14. That according to the tenth operative paragraph of the Judgment (*supra* Having Seen paragraph 1), the State should have deposited the compensation ordered in favor of the beneficiaries that are minors in a banking investment to their name. That from the information provided, it can be concluded that the State handed said payments over to the legal representatives of the minors, who promised to deposit the corresponding amounts in each of their children's accounts. That this modality does not correspond to that established by this Tribunal. That the Court does not have information on whether the legal representatives of the minors in fact made the deposit in favor of the latter. That, therefore, what corresponds is to request that the representatives of the victims inform if the deposits were made, and that they forward the corresponding support documents. That the State must make the final payment of the compensations corresponding to the minors pursuant to that stated in the tenth operative paragraph of the Judgment.

*
* *
*

15. That as stated in the eighth operative paragraph of the Judgment (*supra* Having Seen paragraph 1) the State should pay costs and expenses to Mrs. Martha Arrivillaga de Carpio and to Messrs. Rodrigo and Jorge Carpio Arrivillaga. That the State requested authorization from Mrs. Martha Arrivillaga de Carpio and the Center for Justice and International Law (CEJIL) to deliver to the first the amount that would correspond to the latter. That both Mrs. Arrivillaga and the CEJIL gave their authorization. That the State proceeded to deliver the first two fractioned payments of the amount corresponding to costs and expenses in favor of the beneficiaries.

16. That based on the above, the Court observes that the State has partially complied with the eighth operative paragraph of the Judgment on merits, reparations, and costs (*supra* Having Seen paragraph 1).

17. That the State must pay the beneficiaries the corresponding interests on loan arrears, pursuant to the thirteenth operative paragraph of the Judgment issued in this case, for delaying the payment of the costs and expenses set by the Court beyond the term established by the latter in the ninth operative paragraph of the mentioned Judgment (*supra* Having Seen paragraph 1).

*
* *

18. That the State asked the beneficiaries to present a proposal for the realization of the public act of acknowledgment of responsibility. That the representatives informed this Tribunal that all the beneficiaries asked "had no inconvenience in the fact that the act of pardon be carried out privately, in a meeting where the next of kin of all the deceased victims be summoned as well as all the surviving victims. This because they fear that the publicity could put the families in danger since the media could publish the amounts paid as reparation and they could therefore be victims of robberies, kidnappings, or others." Specifying the position of the victims and their next of kin, the representatives indicated that: a) "[i]n the case of the next of kin of Carpio Nicolle and Villacorta Fajardo they all [...] consider that it is not possible to carry out a public act if the State [...] has not complied with the other operative paragraphs ordered by [the Court];" b) "[w]ith regard to the next of kin of Messrs. Rivas Guzmán and Ávila González, Mrs. Rosa Everilda Mansilla (widow of the first) and Mr. Sydney Ávila Hernández (representative of the Ávila family), [...] they do not wish to issue any comment on this matter;" c) "Mr. Ricardo San Pedro has stated that he shares the decision of the Carpio family, as well as Mrs. Karen Fischer, her children, and Mr. Mario López Arrivillaga. Mr. Sydney Shaw, stated he has no interest in how the act is carried out," and d) "[t] Carpio family and the Villacorta family, as well as Karen Fischer and her children, Mr, Mario López Arrivillaga, and Mr. Ricardo San Pedro are of the opinion that the act of pardon, whether public or private, should be led by a high official of the Government, understanding as such the President or Vice-President of the Republic."

19. That the public act of acknowledgment of state responsibility (fourth operative paragraph of the Judgment) is a measure of reparation in itself, regardless of the other measures of reparation ordered by the Court. Therefore, it is not necessary to wait for compliance of the other measures of reparation to proceed with the realization of the public act in question.

20. That pursuant to paragraph 136 of the Judgment issued in this case (*supra* Having Seen paragraph 1) the act of acknowledgment of responsibility, besides being a measure of reparation in favor of Mr. Carpio Nicolle and the members of his retinue that were executed,

it is a guarantee of non-repetition. That pursuant to paragraph 137 of the Judgment, in that same act, "the State must publicly honor the dedication and value of two people involved in the facts of the present case: the Police Commissioner, César Augusto Medina Mateo, who was murdered and Mr. Abraham Méndez García, a prosecutor who had to go into exile due to the investigations he carried out." (the underlining does not belong to the original) That as can be concluded from paragraph 123(f) of the Judgment it was the representatives of the victims themselves who requested a public act.

21. That due to all of the above, the act of acknowledgment of responsibility cannot be private.

23. That based on that stated by the representatives, the public act carried out by the State must be limited to its acknowledgment of responsibility, in the terms of paragraphs 136 and 137 of the Judgment, thus abstaining from referring to any other type of reparations granted to the beneficiaries.

24. That the participation of the President or Vice-President of the Republic in the mentioned public act is at the State's discretion.

*
* *
*

25. That when supervising the overall compliance of the Judgment issued in the present case, and after analyzing the information provided by the State, the Inter-American Commission, and the representatives, the Court considers it necessary that the State present information on the following matters pending compliance:

- a) investigation, identification, and punishment of the instigators and perpetrators of the extrajudicial killing of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, and Rivas González, as well as of the serious injuries to Sydney Shaw Díaz (*first, second, and third operative paragraphs of the Judgment*);
- b) realization of a public act of acknowledgment of responsibility (*fourth operative paragraph of the Judgment*);
- c) payment of the remaining amount of the compensations set for pecuniary and non-pecuniary damages (*sixth and seventh operative paragraphs of the Judgment*), and
- e) payment of the remaining amount for costs and expenses (*eighth operative paragraph of the Judgment*).

26. That the Court will consider the general status of compliance with its Judgment on merits, reparations, and costs of November 22, 2004, when it has received the corresponding information on the reparations pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That pursuant to that stated in Considering Clauses 5 through 9 of this Order, the State has fully complied with the requirement to publish the corresponding parts of the Judgment in the Official Newspaper, in another newspaper of national circulation, and in the army's gazette (*fifth operative paragraph of the Judgment*).

2. That pursuant to that stated in Considering Clauses number 10 through 17 of this Order, the State has partially complied with the following operative paragraphs of the Judgment on merits, reparations, and costs:

a) payment of the compensations set for pecuniary and non-pecuniary damages (*sixth and seventh operative paragraphs of the Judgment*), and

b) payment of the amount set for costs and expenses (*eighth operative paragraph of the Judgment*).

3. That it will keep the monitoring procedure of compliance with the matters pending compliance in the present case open, specifically:

a) investigation, identification, and punishment of the instigators and perpetrators of the extrajudicial killing of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, and Rivas González, as well as the serious injuries of Sydney Shaw Díaz (*first, second, and third operative paragraphs of the Judgment*);

b) realization of a public act of acknowledgment of responsibility (*fourth operative paragraph of the Judgment*);

c) payment of the remaining amounts of the compensations set for pecuniary and non-pecuniary damages (*sixth and seventh operative paragraphs of the Judgment*), and

d) payment of the remaining amount of the costs and expenses (*eighth operative paragraph of the Judgment*).

AND DECIDES:

1. To order the State to adopt all the measures necessary to give an effective and prompt compliance to the matters pending compliance pursuant to that stated in Article 68(1) of the American Convention on Human Rights.

2. To request that the State present to the Inter-American Court, no later than September 28, 2007, a report in which it indicates all the measures adopted to comply with the reparations ordered by this Court that are still pending compliance.

3. To call upon the representative of the victims and their next of kin, and the Inter-American Commission on Human Rights to present the observations they consider appropriate to the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, computed as of its receipt.

4. To ask the representatives of the victims and their next of kin to inform and present, no later than September 28, 2007, the corresponding support documents verifying if the legal representatives of the beneficiaries that are minors made the deposits in favor of the latter of the amounts that corresponded to them from the compensations paid by the State.
5. To request that the State make the final payment of the compensations corresponding to the minors as stated in the tenth operative paragraph of the Judgment.
6. To continue monitoring the matters pending compliance of the judgment on merits, reparations, and costs of November 22, 2004.
7. To order the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their 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