

**Order of the
Inter-American Court of Human Rights
of November 27, 2007
Case of the "White Van" (Paniagua Morales *et al.*) v. Guatemala
(*Monitoring Compliance with Judgment*)**

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on March 8, 1998.

2. The Judgment on the reparations delivered by the Court on May 25, 2001.

3. The Order of the Court of November 27, 2007, in which it was declared:

1. That the procedure to monitor compliance with the points stated in Considering clause seventh of the [...] Order will remain open .

And Decided:

2. To exhort the State to adopt such measures as may be necessary to effectively and promptly comply with the reparations ordered in the March 8, 1998 Judgment on the merits and the May 25, 2001 Judgment on reparations, compliance with which is pending, pursuant to the provisions of article 68(1) of the American Convention on Human Rights.

3. To order the State to submit a detailed report, no later than April 1, 2004, stating all measures adopted to investigate what happened to the victims in the instant case; the steps taken with respect to the transfer of the mortal remains of Pablo Corado Barrientos and their subsequent burial at the place chosen by his next of kin; the legislative, administrative or other measures adopted to ensure the reliability and public nature of the detainee records; and the measures adopted for payment of compensation for pecuniary and non-pecuniary damage as well as for costs and expenses, in accordance with operative paragraphs one and five of the Judgment on reparations [...].

4. To order the Inter-American Commission on Human Rights, as well as the victims or, if applicable, their next of kin and their representatives to submit their observations to the report by the State mentioned in the previous operative paragraph within two months of the date of receipt thereof.

5. To continue monitoring compliance with the March 8, 1998 Judgment on the merits and the May 25, 2001 Judgment on reparations [...].

[...]

4. The Order of the President of the Court (hereinafter, the "President") of October 29, 2007, whereby, in exercise of the Court's power to monitor compliance with its decisions, in consultation with the other Judges of the Tribunal and pursuant

to Article 67 and 68(1) of the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention"), and Articles 25(1) of the Statute and Articles 14(1) and 29(2) of its Rules of Procedure, it was decided to summon the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission"), the representatives of the victims and their next-of-kin (hereinafter, the "representatives") and the State of Guatemala (hereinafter, the "State" or "Guatemala") to a hearing to be held in private on November 23, 2007 with the purpose of obtaining information from the State regarding compliance with aspects of the Judgments on the merits and on reparations delivered in the case at hand (*supra* Having Seen clauses 1 and 2) that are still pending compliance and receiving the observations submitted by the Commission and the representatives.

5. The brief of November 21, 2007, by which Mr. Mark Martel, representative of some of the victims, referred to the compliance with the Judgments and pointed out that he could not attend the private hearing called by the President.

6. The hearing held in private by the Court at its seat in San José of Costa Rica on November 23, 2007,¹ during which the State and the Inter-American Commission made reference to the aspects of the Judgment that are still pending compliance in the case at hand.

7. The documents submitted by the State during the hearing held in private on November 23, 2007, at the seat of the Court.

CONSIDERING:

1. It is an inherent power of the judicial 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 that it accepted the binding jurisdiction of the Court on March 9, 1987.

3. That article 68(1) of the American Convention stipulates 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". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.²

4. That, in consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

¹ Pursuant to Article 62 of the Rules of Procedures, the Court held the hearing together with the following commission of Judges: Judge Sergio García Ramírez, President; Judge Leonardo A. Franco and Judge Rhadys Abreu Blondet. To this hearing, there appeared: a) on behalf of the Inter-American Commission: Florentín Meléndez, President of the Commission and Delegate; Lilly Ching and Manuela Cuví Rodríguez, advisors, and b) on behalf of the State of Guatemala: Frank La Rue Lewy, President of COPREDEH; Juan José Barrios Taracena, Ambassador to Guatemala in Costa Rica; María Elena de Jesús Rodríguez López, Carol Angélica Quiros Ortiz, Lesbia Andina Contreras Santos and Vivian Noemí González Westendorff, advisors of the Legal Division of COPREDEH.

² Cf. *Case of Baena Ricardo et al.* . Competence. Judgment of November 28, 2003. Series C No. 104, para 131; *Case of García Asto and Ramírez Rojas*. Monitoring compliance with Judgment. Order of July 12, 2007; Considering Clause four and Case of *Molina Theissen*. Monitoring compliance with Judgment. Order of July 10, 2007; Considering Clause two.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility.³

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 applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended 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.⁴

7. That the Court values the advantage of the hearing held to monitor the aspects of the case which are still pending compliance (*supra* Having Seen clause 6), which is represented by the good will and cooperation shown by the parties that have coincided with the non-compliance of some aspects of the referred Judgments.

8. That, according to the Operative Paragraph Six of the Judgment on the merits (*supra*, Having Seen clause 1) and Two of the Judgment on the reparations (*supra* Having Seen clause 2), the State must investigate the facts that resulted in the violations of the American Convention, identify and, if applicable, punish the responsible.

9. That, during the private hearing, the State acknowledged "the weakness" of justice in the case at hand. Furthermore, it informed that in relation to the criminal action N° 165-67, 27 investigated people were finally dismissed and that at the moment, the case is under review by the Human Rights' Prosecution Office "in order to determine the lines of investigation necessary for the reopening of the case and the enlightening of the facts". For the State, the dismissal does not mean that the investigations are finally closed. Moreover, the State pointed out that it acknowledged that "the moral reparation is not complete as long as justice is made" and that it is not requesting to finish monitoring compliance with the Judgment on this aspect, but the opposite, to keep the procedure open.

10. That in the hearing held in private the Commission considered that the State has not complied with the Judgment as to the investigation, aspect that was regarded as "a fundamental part" of the case. The Commission acknowledged the complexity of the issue and stated that it hopes that the State adopts specific measures to comply with the Judgments.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of September 9, 1994, Series A N°14, para. 35; *Case of García Asto and Ramírez Rojas*, *supra* note 1, Considering clause six and *Case of Molina Theissen*, *supra* note 2, Considering clause three.

⁴ Cf. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Gómez Palomino*. Monitoring compliance with Judgment. Order of October 18, 2007 Considering Clause four and *Case of García Asto and Ramírez Rojas*, *supra* note 2, Considering Clause seven.

11. That Mr. Mark Martel pointed out (*supra* Having Seen clause 5) that the "most important part of th[e] judgment[s] of the Court is the order to investigate[,] prosecute and punish the responsible".

12. That this Tribunal cannot fail to mention that nineteen years have passed since the occurrence of the events, that the investigation has made little progress and that the responsible of the violations declared by the Court have not been punished. Therefore, it is up to the State, through its competent organs, to continue with the necessary and corresponding investigations. To such end, the Tribunal points out that the treaty obligations of the States Parties are binding on all State powers and organs.

13. That, having regard to the foregoing, the Court considered that this aspect of the Judgments has not been complied with by the State, thus it decides to continue monitoring the compliance therein.

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14. That, according to the Operative Paragraph three of the Judgment on the reparations (*supra* Having Seen clause 2) the State should have provided the resources and adopted the other necessary measures for the transfer of the mortal rests of Mr. Pablo Corado Barrientos and its burial in the place chosen by his next-of- kin.

15. That the State informed that the mortal rests of Mr. Pablo Corado Barrientos were buried in the General Cemetery of Verbena on February 13, 1988. That, on May 23, 1995, the body of the victim was uncovered in order to be "transferred to the General Charnel House of the Cemetery because the time fixed by the Cemetery's management at the time of the burial has elapsed". That, on March 31, 2006, a slab in memory of Mr. Corado Barrientos was set up in the General Charnel House of the Cemetery. That in said act the victim's brother, Mr. Florentino Corado Barrientos, was present.

16. That during the hearing held in private regarding the case at hand, the State submitted a transcript dated November 20, 2007 in which Mr. Florentino Corado Barrientos said to "be totally in favor of setting up a slab in memory of the victim, Pablo Corado Barrientos [and] also agreed that the mortal rests remain in that place".

17. That the Commission believes it is positive that the State has furnished the Court the acceptance on the part of Mr. Corado Barrientos' brother as evidence.

18. That, by virtue of the foregoing, the Court considers that the State has complied with the operative paragraph three of the Judgment on the reparations.

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19. That, pursuant to the operative paragraph one of the Judgment on the reparations (*supra* Having Seen clause 2) the State should have paid to the victims

and their next- of- kin the amounts set by the Tribunal as compensations. Furthermore, pursuant to the operative paragraph five of the Judgment on the reparations, the State should have reimbursed the representatives for the costs and expenses established by the Court.

20. That the State informed in the hearing held in private that has made a disbursement of US\$ 519.345, 00 (five hundred and nineteen thousand three hundred forty-five United States dollars) as compensation and reimbursement of costs and expenses. Said payments would have been made "in 2001 and 2002". Furthermore, the State pointed out that it had made the payment to Mr. Oscar Humberto Vásquez Solórzano on January 2, 2002 and that it had paid the compensation established in favor of Mr. Germán Giovanni Paniagua Morales in the city of Ottawa, Canada, on June 19, 2006. The State also submitted supporting documentation concerning those payments.

21. That the State further noted that it could not make the compensatory payments established in favor of Mr. Augusto Angárta Ramírez, Doris Torres Gil and Marco Antonio Montes Letona due to the fact that it could not locate them.

22. That the Commission stated in the hearing held in private that it "looks favorably to the fact that the part of the reparation of the pecuniary damages has been satisfied, except for the three [...] Colombian persons [...] and [that it] is certainly concerned with the fact that the State [...] has not provided specific information regarding the measures adopted to locate those persons [...], for example, consular cooperation [...] actions with Colombia".

23. That, in view of the facts stated by the Commission, the State undertakes to commence, between December 2007 and January 2007, the corresponding proceedings with the Government of Colombia as well as to publish an official statement in said country, in order to search for Mr. Augusto Angárta Ramírez, Doris Torres Gil and Marco Antonio Montes Letona.

24. That the Court deems appropriate that the State carries out the corresponding proceedings to find the whereabouts of the three peoples who were awarded compensatory payments in their favor.

25. That the Tribunal deems it appropriate to receive the observations of the victims or its representatives with respect to the documentation concerning the payment of the compensations and the reimbursement of the costs and expenses, submitted by the State in the private hearing (*supra* Having Seen Clause 7), for which it sets the term established in the operative part of this Order (*infra* Operative Paragraph 1).

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26. That, in accordance with the Fourth Operative Paragraph of the Judgment on the Reparations (*supra* Having Seen clause 2), the State must adopt, in its internal legislation, pursuant to Article 2 of the Convention, the legislative, administrative and any other kind of measures necessary to guarantee the reliability of the register of detainees and publicize it.

27. That the State submitted during the private hearing a copy of the Decree N° 33-2006 whereby the State approved the "Prisons Act", whose article 93 establishes the following:

The Prisons Systems must have available a permanent system of public information, with the purpose of knowing, at any time:

- a) The complete name of the detainee;
- b) The photograph, front and profile
- c) Reasons of the detention;
- d) Hour, date and place of detention;
- e) Hour and date of appearance before the judge;
- f) Information regarding the transfers to which the individual has been subjected; and
- g) Information of the judge who ordered the deprivation of freedom, prosecutor in charge of the case and appointed defense counsel.

The information system should allow knowing the identity of the detainee by means of the photograph and the period of time that the detention of each of the persons entered to the center lasts.

28. That the Commission, despite the fact that it valued the adoption of said law, stated that the same refers only to the prisons system and interpreted that the Court's decision regarding this issue "does not make any specific reference to the persons detained in the prison system but to a register of detainees technically speaking, that is to say, to every person deprived of freedom in Guatemala".

29. That in response to the statement made by the Commission, the State expressed their agreement with the idea of creating a register of people deprived of freedom.

30. That the Court considers that it is necessary, in accordance with the information provided by the State, the creation of a register of the people deprived of freedom which shall include centers for untried prisoners, youth detention centers for juveniles in conflict with the law, military detention centers and police detention centers.

31. That, as a result of the foregoing, the Court considers that the State has partially complied with the operative paragraph four of the Judgment on the reparations and that, as a consequence, the State must set up a register to include all people who are deprived of freedom.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions and 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 29(2) of its Rules of Procedure,

DECLARES:

1. That, in accordance with the terms established in the Considering clauses 14 to 18 herein, the State has fully complied with the operative paragraph three of the Judgment on the reparations (*supra* Having Seen clause 2) with respect to the burial of the mortal rests of Mr. Pablo Corado Barrientos.
2. That, in accordance with the provisions established in Considering clauses 26 to 31 herein, the State has partially complied with the operative paragraph four of the Judgment on the reparations (*supra* Having Seen clause 2) as to the register of detainees.
3. That the procedure to monitor compliance with the following pending aspects will remain open:
 - a) Investigation of the facts of the case at hand in order to identify, prosecute and, if applicable, punish the responsible (*operative paragraph six of the Judgment in the merits and two of the Judgment on the reparations*).
 - b) Search for Mr. Augusto Angárita Ramírez, Doris Torres Gil and Marco Antonio Letona and the payment of the corresponding compensations (*operative paragraph one of the Judgment on the reparations*) and
 - c) Setting up of a register that includes all people who are deprived of freedom for whatever reason other than the one established in the Prisons Act, in accordance with the terms stipulated in the Considering clauses 28 to 31 herein (*operative paragraph four of the Judgment on the reparations*).
4. That, pursuant to Considering Clause 25 herein, the victims or their representatives should submit the observations they deem relevant as to the documentation submitted by the State in relation to the receipts of compensatory payments and reimbursement of costs and expenses (*operative paragraph one and five of the Judgment on the reparations*).

AND DECIDES:

1. To request the victims or their representatives that, in accordance with the declaratory paragraph four herein, submit their observations no later than February 1st, 2008.

2. Request the State of Guatemala to adopt all measures necessary to effectively and promptly fulfill those aspects which are still pending compliance, in accordance with the terms established in Article 68(1) of the American Convention on Human Rights.
3. To order the State of Guatemala to submit to the Inter-American Court of Human Rights, not later than April 4, 2008, a report describing all the measures adopted to comply with the decisions ordered by this Court, which are still pending compliance. Specially, to inform about the measures adopted, after the final dismissal ordered at the domestic level (*supra* Considering Clause 9), by the Office of the Public Prosecutor in order to continue with the investigation of the facts declared by this Tribunal to have violated the American Convention on Human Rights; if the statute of limitations of the criminal action takes effect in the instant case and the measures adopted to search for Mr. Augusto Angárta Ramírez, Doris Torres Gil and Marco Antonio Montes Letona, in accordance with the terms of Considering Clauses 23 and 24 herein.
4. To call upon the representatives of the victims and their next- of- kin, and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.
5. To continue monitoring the aspects of the Judgments on the merits and the reparations that are still pending compliance.
6. To require the Secretariat of the Court to notify this Order to the State of Guatemala, 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-Alesandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary