

**Order of the
Inter-American Court of Human Rights*
of November 16, 2009
Case of Myrna Mack Chang v. Guatemala
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on the merits, reparations, and costs (hereinafter, "the Judgment") rendered by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or "the Tribunal") on November 25, 2003.

2. The Orders issued by the Inter-American Court on September 12, 2005 and on November 26, 2007. In the latter it decided:

1. [...] the State has complied fully with operative paragraphs numbers six, ten, eleven and twelve of the Judgment dated November 25, 2003.

2. [...] the State has complied in part with operative paragraph number five in the Judgment rendered on November 25, 2003, as regards the duty of the State to investigate and possibly to punish those responsible for the extrajudicial execution of Myrna Mack Chang, since as set forth in Considering Clauses numbers nine and sixteen in the [...] Order, all the pertaining steps which have to be taken in order to arrest Mr. Juan Valencia Osorio for him to serve his sentence are still pending, for he is still fleeing from justice. Consequently, as far as this latter point is concerned, the compliance monitoring proceedings will be kept open.

And [decided]:

1. To require the State to adopt whatever measures may be necessary to put into effect and promptly comply with the point pending compliance and ordered by the Court in the Judgment on the merits, reparations, and costs of November 25, 2003 and in the instant Order, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request that the State submit to the Inter-American Court no later than April 4, 2008 a detailed report describing the measures adopted to carry out the reparations ordered by this Court with which compliance is still pending, pursuant to Considering Clauses numbers nine and sixteen and to declaratory paragraph number two of the [...] Order.

3. To ask the representatives of the victim and of her next of kin, and the Inter-American Commission, to submit their comments to the report by the State mentioned in the [second] operative paragraph, within four and six weeks, respectively, as of the date such report is received.

4. To continue to monitor the points in the Judgment on the merits, reparations, and costs rendered by the Court with which compliance is still pending.

* For reasons beyond their control, the President of the Court, Judge Cecilia Medina Quiroga, and Judge Leonardo A. Franco did not take part in the deliberations leading to the instant Order, and did not sign it. The Vice-President, Judge Diego García-Sayán, presided, under Article 5(1) of the Rules of Procedure of the Court.

[...]

3. The briefs dated January 22, February 22, and March 27, 2008; and June 25 and October 2, 2009, whereby the Republic of Guatemala (hereinafter "Guatemala" or "the State") reported on compliance with the Judgment.

4. The briefs dated January 11, May 15 and October 1, 2008 and October 2, 2009, whereby the representatives of the victims (hereinafter "the representatives") submitted their comments on the reports forwarded by the State.

5. The communications dated May 15, 2008 and August 06, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") filed its observations on the reports forwarded by the State.

6. The communication from the Secretariat dated April 21, 2009, whereby, following instructions by the President of the Court (hereinafter "the President"), the Secretariat of the Court requested the State to submit updated and detailed information about the steps it had taken in order to effectively apprehend Mr. Juan Valencia Osorio.

7. The Order by the President issued on August 14, 2009, whereby it summoned the State, the Inter-American Commission and the representatives to a private hearing to be held at the seat of the Inter-American Court on October 1, 2009.

8. The private hearing held on October 1, 2009,¹ in the course of which the State, the Commission and the representatives dwelt on compliance with the Judgment in the instant case.

Considering:

1. That monitoring compliance with its own decisions is a power inherent to the jurisdictional functions of the Court.

2. That Guatemala has been a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") since May 25, 1978, and that it accepted the contentious jurisdiction of the Court on March 9, 1987.

3. That since the Court Judgments are final and not subject to appeal, pursuant to Article 67 of the American Convention, the States must comply with them promptly and fully.

4. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in

¹ Pursuant to Article 6(2) of the Rules of Procedure, the Court held the hearing with the following commission of Judges: Sergio García Ramírez, Rhadys Abreu Blondet and Leonardo A. Franco. In such hearing there appeared, for the Inter-American Commission: Lilly Ching, counsel; for the representatives of the victims: Helen Beatriz Mack Chang, President of the *Fundación Mack* [Mack Foundation]; and for the State: Delia Marina Dávila Salazar, Agent for the State, and María Elena de Jesús Rodríguez López, Deputy Agent.

any case to which they are parties." The treaty obligations of the States Parties are binding on all the powers and functions of the States.

5. That for the sake of fulfilling its mandate to monitor compliance with the commitment made by States Parties under Article 68(1) of the Convention, the Court must learn first the degree in which its decisions are observed. Therefore, the Tribunal must monitor whether the States who are responsible effectively comply with the reparations ordered by the Court.

6. That every State Party to the Convention having recognized the compulsory jurisdiction of the Court has the duty to abide by the obligations imposed by the Tribunal. This obligation includes the duty the State has to report on the measures adopted in order to comply with the orders in such decisions by the Court. Timely observance of the obligation the State has to report to the Court on the exact manner in which it is complying with each of the points ordered by the latter is essential for the purpose of assessing the status of compliance with the Judgment as a whole.

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7. That in the Order issued by the Tribunal on November 26, 2007 (*supra* Having Seen Clause Number 2), when monitoring full compliance with the Judgment rendered in the instant case, the Court considered it imperative to keep open the monitoring proceedings as regards the point with which compliance is still pending, which bears on the duty the State has to take the pertaining steps in order to effectively arrest Mr. Juan Valencia Osorio for him to serve his sentence, for he is still fleeing from justice. Consequently, the Court requested the State to report about all matters concerning the actions it has taken in order to implement such measure.

8. That in its reports and at the private hearing, the State has mentioned repeatedly the steps it has carried out in order to effectively arrest Mr. Juan Valencia Osorio. In such context it has pointed out, *inter alia*, that:

(a) "the *División de Investigación Criminal* [Criminal Investigation Division] with the *Sección Auxiliar de Tribunales* [Court Auxiliary Section] of the *Policía Nacional Civil* [Civil National Police] [...] on September 25, 2006 [appointed] two investigators from such Section in order to follow up on the investigation aimed at arresting Mr. Juan Valencia Osorio [and that] the investigators detailed to the case went over to the AFIS (Automated Fingerprint Identification System) Section of the Criminalistics Cabinet, in order to check whether he still held a driver's license and they verified that as from the month of October, 2004 the fugitive had ceased to renew such document;"

(b) "fixed surveillance posts were set up at the residence of the defendant, which produced no results as far as determining his whereabouts is concerned [, but] according to the testimony of a witness, such person would probably be in the Republic of Costa Rica or in Venezuela;"

(c) "it was established that an arrest warrant was on record and still in force, dated January 21, 2004, and issued by the *Juzgado Segundo de Ejecución* [Execution Court Number Two] for the crime of Murder;"

(d) "coordinations with the central national INTERPOL office in [Guatemala] are kept current, so that the pertaining steps be taken in order to locate Mr. Juan Valencia Osorio internationally", and

(e) "that it will continue to monitor the actions taken by the *Ministerio Público* [Office of the Public Attorney] and the *Ministerio de Gobernación* [Ministry of Government] in order to find out the whereabouts of Mr. Juan Valencia Osorio, for the purpose of keeping the Court[...] informed about this commitment."

9. That with regard to compliance with such obligation, the representatives pointed out in their comments, as well as in the course of the private hearing, *inter alia*, that:

(a) "it cannot be established that actual specific action is being taken towards arresting Mr. Valencia Osorio, [for the State does not] inform anything about whether the information given by [the] witness was verified against the records [...] in [the countries mentioned by the State], and whether the agents mentioned continue investigating the facts up to this date;"

(b) although the State had informed about the fixed surveillance post set up at the residence of Mr. Juan Valencia Osorio in order to apprehend him, it did not inform "how long [did] the fixed post surveillance at the residence last and which was the surveillance daily schedule that was kept;"

(c) "on previous occasions the State ha[d] informed about the existence of a *Comité de Impulso* [Expediting Committee], of which it has only reported on the membership. [However, the] State [would] not have said anything about the actions it has taken or that are being carried out in order to find out the whereabouts of Mr. Valencia Osorio so as to effect his arrest;" and

(d) They moved for the Court to request "the State [...] to provide full and detailed information about the actions that are being taken in order to locate and apprehend Mr. Juan Valencia Osorio."

10. That the Commission, in its observations, as well as in the course of the private hearing, "set much store on the State having adopted some measures in order to enforce the arrest warrant and observ[ed] that there exist a number of actions that are still to be taken [...] and that, in fact, up to this date, the arrest warrant against Mr. Juan Valencia Osorio remains unenforced." It concluded by expressing that it "hope[d] that the State would continue to provide specific information about the steps taken in order to comply with such obligation" and requested it to inform on whether any diplomatic action had been taken in order to learn whether such person had actually left the country and could be in Costa Rica or in Venezuela, as the State alleged.

11. The Court considers it necessary to affirm once more that under the obligation to respect rights enshrined in Article 1(1) of the American Convention, the State has the obligation to avoid and combat impunity, which the Court has defined as “the absence of any investigation, pursuit, arrest, prosecution and conviction of those responsible for the violations of human rights.” In order to discharge such duty the State has to combat this situation by all available legal means, because “impunity leads to the chronic repetition of the human rights violations and to the total defenselessness of the victims and of their next of kin.”² In such sense, the failure to apprehend those responsible, besides perpetuating uncertainty in the victims as to the risks they run, evidences that in the case the State has not adopted the adequate measures in order to enforce its own decisions. This Court has pointed out already that failure to comply with court rulings is in itself an infringement of the judicial protection guarantee,³ and undermines the right to a fair trial.

12. That, as relates to operative paragraph number five, with which compliance is still pending, the Tribunal points out, along with the representatives and the Commission, that the information the State submitted in the course of the hearing is the same it has filed before with regard to the steps taken regarding the arrest of Juan Valencia Osorio, who was convicted by the domestic jurisdiction in the case of the extrajudicial execution of Myrna Mack Chang and who is at present fleeing from justice. Consequently, this Court considers that the State has not provided detailed and updated information about compliance with the obligations stemming from such operative paragraph.

13. That by reason of all the foregoing, the Court considers it essential for the State to adopt specific measures in order to fulfill promptly and fully its obligation to comply with the judgment rendered by the judicial authorities with domestic jurisdiction, in relation with *operative paragraph number five in the Judgment on the merits, reparations and costs rendered on November 25, 2003 (supra* Having Seen Clause Number 1). On account of the foregoing, the State must submit to this Court detailed and updated information about the measures adopted in order to comply with such obligation.

Therefore:

The Inter-American Court of Human Rights,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on

² Cf. *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*. Merits. Judgment rendered on March 8, 1998. Series C No. 37, para. 173; and *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 244, and *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, para. 167.

³ Cf. *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 82; *Case of Acevedo Jaramillo et al. v. Peru*. Judgment delivered on February 7, 2005. Series C No. 144, para. 220, and *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Office of the Comptroller”) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 72.

Human Rights, and Articles 25(1) and 30 of its Statute and 30(2) of its Rules of Procedure,

Declares:

1. That it will keep the monitoring proceedings open until full compliance with operative paragraph number five in the Judgment rendered on November 25, 2003, as regards the duty the State has to enforce the judgment delivered by its own domestic jurisdiction, for which purpose it must take the pertinent steps in order to actually apprehend Mr. Juan Valencia Osorio so that he can serve his sentence, for he is actually fleeing justice, as it has been set forth in Considering Clauses Numbers 12 and 13 of the instant Order.

And Decides:

1. To request the State to adopt whatever measures may be necessary to put into effect and promptly comply with the order pending compliance and delivered by the Court in the Judgment on the merits, reparations, and costs on November 25, 2003 and in the instant Order, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request the State to file detailed and updated information indicating the measures adopted in order to comply with the orders by this Court, as set forth in Having Seen Clauses Numbers 12 and 13 and in declarative point number one of the instant Order, no later than four months after notice of the instant Order be served upon it.

3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit their comments on the report by the State, mentioned in the operative paragraph above, within four and six weeks, respectively, as of the date the report is received.

4. To continue to monitor the point with which compliance is still pending in the Judgment on the merits, reparations, and costs rendered by the Inter-American Court of Human Rights.

5. To serve notice of the instant Order upon the State, upon the Inter-American Commission on Human Rights and upon the representatives of the victims.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary