

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 16, 2011**

CASE OF TIU TOJIN v. GUATEMALA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Merits, Reparations and Costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 26, 2008, whereby the Court unanimously ordered that the State:

6. [...] investigate the acts that led to the violations in this case, and identify, prosecute and, if necessary, punish those responsible, under the terms of paragraphs 68 to 100 of the [...] Judgment[;]

7. [...] proceed immediately with the search and locating of María and Josefa Tiu Tojin, according to paragraphs 101 through 105 of the [...] Judgment[;]

8. [...] publish at least once in the Official Gazette, and in another national daily newspaper, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII, as well as the operative paragraphs, of the [...] Judgment, excluding the footnotes, within six months following the notification of the Judgment, in accordance with Paragraph 106 therein[;]

9. [...] broadcast on the radio, in the K'iche language and Spanish, on just one occasion, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII, as well as the operative paragraphs, of the [...] Judgment, excluding the footnotes, within one year following the notification of the Judgment, in accordance Paragraph 108 therein[, and]

10. [...] carry out the payment to reimburse the costs and expenses within one year following notification of the [...] Judgment, according to Paragraph 129 therein.

2. The State of Guatemala's (hereinafter "the State" or "Guatemala") briefs of February 25, March 25, August 18, September 27, and October 12, 2010, whereby it submitted information on monitoring compliance with the Judgment.

3. The communications of the representatives of the victims (hereinafter "the representatives") of August 24, September 17, October 15, and November 17, 2010, whereby they submitted their observations regarding monitoring compliance with the Judgment.

4. The briefs of June 4, 2010 and October 21, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on monitoring compliance with the Judgment.

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

2. Guatemala is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since May 25, 1978, and it acknowledged the contentious jurisdiction of the Court on March 9, 1987.

3. In accordance with the provisions of Article 67 of the American Convention, the State should fully and promptly comply with the Court's Judgments. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the Court's decisions in any case to which they are parties." To this end, States should ensure the domestic implementation of provisions set forth in the Court's rulings.¹

4. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, neglect their pre-established international responsibility.² The treaty obligations of State Parties are binding on all branches and bodies of the State.³

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

A) Regarding the duty to investigate the acts that led to the violations in this case, and identify, prosecute and, if necessary, punish those responsible (Operative Paragraph 6 of the Judgment)

6. The State indicated that "[t]he present case, identified by file number MP001-2008-41431 and which is under the responsibility of the Special Cases Section of the Human

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgement of the Inter-American Court of Human Rights of November 28, 2003.. Series C No. 104, para. 60; *Case of Valle Jaramillo v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 28, 2011, Considering Clause 3, and *Case of Tibi v. Ecuador. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of March 3, 2011, Considering Clause 3.

² Cf. *International responsibility for the issuance and application of laws that violate the Convention (Art. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Valle Jaramillo*, *supra* note 1, Considering Clause 4, and *Case of Tibi*, *supra* note 1, Considering Clause 4.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause 3; *Case of Valle Jaramillo*, *supra* note 1, Considering Clause 4, and *Case of Tibi*, *supra* note 1, Considering Clause 4.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgement of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of Valle Jaramillo*, *supra* note 1, Considering Clause 5, and *Case of Tibi*, *supra* note 1, Considering Clause 5.

Rights Division of the Public Prosecutor's Office, is in the phase of confidential investigation, in conformity with Article 314 of the Code of Civil Procedure."

7. The representatives indicated that "it is essential that [they and] the State determine the relevant and appropriate mechanisms for dialogue and duly investigate the facts." Thusly, the representatives noted that "they have no issue with coming together with the State in order to address this issue."

8. For its part, the Commission "observe[d] with concern that the State had only affirmed that the investigation is presently at the "confidential investigation" stage, without providing further details on the matter." In this regard, the Commission "request[ed] that the Court require that the State swiftly provide detailed information on the investigation together with the corresponding evidence."

9. Accordingly, the Tribunal observes that more than twenty years after the occurrence of the acts in question, and more than two years since pronouncement of the Judgment, the violations found in the present case continue to benefit from impunity. In the Judgment, the Court stated that impunity was a factor in the systematic patterns that enabled gross human rights violations to be committed during the armed conflict in Guatemala.⁵ Furthermore, the Court notes that "the Guatemalan justice system was ineffective in ensuring the enforcement of the law and the protection of the rights of victims in regard to almost all human rights violations committed at that time." Furthermore, "in that sense, the lack of investigation into such acts was a determining factor in the routine human rights violations."⁶

10. As a consequence, the Court reiterates the contents of the Judgment and its constant jurisprudence with regard to, pursuant to the guarantee obligation provided for in Article 1(1) of the American Convention, the State obligation to prevent and combat impunity, which the Court has defined as "the combined lack of investigation, prosecution, arrest, trial and conviction of those responsible for violations of the rights protected by the American Convention." In this regard, the Court has declared that the State "has the obligation to combat this situation by using all available legal means because impunity fosters the chronic repetition of such human rights violations and the total defenselessness of victims and their relatives."⁷ This obligation implies the States Parties' duty set forth in the Convention to organize the governmental apparatus, and organize all structures of public authority in general, in such a way so as to be able to legally ensure the free and full exercise of human rights.⁸

11. Furthermore, the State acknowledgment of the international responsibility set forth in the present case should translate into prompt and effective compliance with the orders given by the Tribunal in the form of reparation measures. The State must be consistent with its acknowledgment and, therefore, with its international obligations. Therefore, it must provide redress for the victims that is proportional to the damage caused, as well as

⁵ Cf. *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of November 26, 2008. Series C No. 190, para. 70.

⁶ Cf. *Case of Tiu Tojín*, *supra* note 5, para. 51.

Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 37, para. 173; *Case of Ivcher Bronstein v. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of August 27, 2010, Considering Clause 10, and Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 18, 2010, Considering Clause 21.*

⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166; *Case of Heliodoro Portugal v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause 10, and *Case of Ivcher Bronstein*, *supra* note 7, Considering Clause 10.

adopting all the measures that are necessary so that similar acts are not repeated. It is worth emphasizing that, in addition, the initial reparative value that an acknowledgment may have for the victims and their next-of-kin goes away as time goes by if the State authorities remain inactive and do not repair the damage caused.⁹

12. Given the foregoing, the Court requests that the State present complete, detailed, and updated information on all of the actions taken to investigate the facts in this case. In particular, it is the State's responsibility to inform the Court on the number and characteristics of the procedural steps that are being put forth to investigate the facts in question, as well as the dates and specific results of the efforts it has taken to identify those responsible for the crimes. In addition, the State must submit to the Court a copy of the main documents related to these procedural steps.

B) Regarding the obligation to proceed immediately with the search and locating of María and Josefa Tiu Tojín (Operative Paragraph 7 of the Judgment)

13. The State reported that "initiative number 3590, the Ley de la Comisión para la Búsqueda de Personas, Víctimas de la Desaparición Forzada y otras formas de Desaparición [Law on the Commission for the Search of Victims of Forced Disappearance and Other Missing Persons] is making its way through the Guatemalan Congress." The State also reported that as part of the committee begun at the Presidential Commission on Human Rights (COPREDEH in Spanish) together with representatives of the Guatemalan International Humanitarian Law Commission (COGUADIH in Spanish), they have planned to study the creation of a "Temporary Committee for the Search for Persons Missing during Internal Armed Conflict." According to the State, "a discussion is ongoing between [g]overnment, civil society, and [the International Committee of the Red Cross] for a proposal that provides for, at least": (a) "[a] unified registry of missing persons and possible burial sites," (b) "[a] plan to coordinate the exhumation of victims' remains and to deliver them to their families," (c) "[t]he creation of a national communication policy that for all families who are currently searching for a missing loved one," (d) "[t]he implementation of a permanent and sustainable psychosocial support system," (e) "[t]he identification and participation of competent State authorities to undertake investigations into the body of facts relevant to a person's disappearance," (f) "[t]he integration of the information and experience of all civil society organizations that have worked on this issue;" and, (g) "[t]he creation of a budget for its functioning."

14. The representatives noted that "too much time has passed [without the State's efforts materializing], which denotes [...] lack of political will." Additionally, they indicated that "in this legislative period it is going to be difficult to introduce [this] law because in [2011] there will be general elections [in Guatemala]."

15. The Inter-American Commission "observe[d] that from the information presented [by the State], the manner in which [the measures adopted] would have a specific and immediate impact is not evident" in the present case. It also "consider[ed] the search and locating of the victims to be an obligation of the highest priority" and remarked that the Court, when ordering this obligation in its Judgment, specified that the search should start "immediately."

⁹ Cf. *Case of Molina Theissen v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering Clause 18; *Case of Montero Aranguren et al. v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Clause 14, and *Case of El Amparo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause 14.

16. In this end, the Court recalls that the search and delivery of remains and the subsequent investigation into the facts not only allows for closure for the next-of-kin of the disappeared victim, but also facilitates the attainment of justice. The remains are proof of what has taken place and provide evidence of the treatment the victim received, the manner in which he was executed, the *modus operandi*, and the efforts made to conceal it. The place in which such remains are found may also provide valuable information on the perpetrators or the institution they belonged to, above all when dealing with clandestine cemeteries or graves located on State premises.¹⁰

17. Although the State values the initiative regarding the "Ley de la Comisión para la Búsqueda de Personas, Víctimas de la Desaparición Forzada y otras formas de Desaparición [Law on the Commission for the Search of Victims of Forced Disappearance and Other Missing Persons]," it deems it to be crucial that the State adopt specific measures to promptly and fully comply with its obligations to search and locate the mortal remains of María and Josefa Tiu Tojín. In this regard, the State shall submit a schedule for all the efforts it will make to search, locate and identify the remains, the possible dates thereof, and the institutions or persons that will conduct them. In this schedule, the State shall indicate the administrative or budgetary measures it will take prior to beginning its investigatory activities. It must also identify difficulties encountered in the case and a plan to overcome them within a certain period.

C) Regarding the obligation to publish, at least once, in the Official Gazette, and in another national daily newspaper, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII of the Judgment (Operative Paragraph 8 of the Judgment)

18. The State reported that on "March 3 and 31, 2009, the Judgment on Merits, Reparations, and Costs was published in the written media "The Official Gazette or the Central American Gazette" and the newspaper "El Periódico." The State submitted copies of both publications.

19. The representatives noted they "did not have any observations" regarding the State's information, and that this point "had been satisfactorily complied with."

20. For its part, the Commission appreciated that the State had fully complied with this point.

21. The Court notes that the State has provided documentation showing the publications were made in the Official Gazette/Central American Gazette on March 3, 2009, and in *El Periódico*, a widely circulated national newspaper, on March 31, 2009. In this respect, the Court deems that the State's publications satisfy the Court's order, for which it declares that the State has complied with this reparation measure.

D) Regarding the obligation to broadcast on the radio, in the K'iche language and Spanish, one just one occasion, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII, as well as the Operative Paragraphs, of the [...] Judgment, excluding the footnotes (Operative Paragraph 9 of the Judgment)

22. The State indicated that "on October 11 and 18, 2009 the Judgment was announced on Radio Quiché from 11:00 to 11:45 a.m." in "Spanish." The State reported that, following

¹⁰ *Case of Molina Theissen, supra* note 9, Considering Clause 22.

the translation of the Judgment into the K'iche' language by the Academy of Mayan Languages, "it was then broadcast on Radio Quiché 90.7 FM on June 27 and July 4, 2010 from 3:00 to 4:00 pm." Regarding both broadcasts, the State submitted a CD and a certificate for each broadcast. The State added that "[that radio station] was chosen because it has coverage in all municipal areas in the Department of Quiché, as well as in [the Departments] of Baja Verapaz, Sololá, Guatemala, Totonicapán, Huehuetenango, Chimaltenango, and San Marcos."

23. The representatives noted they "did not have any observations" regarding the State's information, and that this point "had been satisfactorily complied with."

24. For its part, the Commission appreciated that the State had fully complied with this point.

25. The Court observes that the State has provided documentation and recordings as evidence of the radio broadcast of the Judgment in K'iche' and Spanish on Radio Quiché 90.7 FM. In this respect, the Court deems that the State has fully complied with this reparation measure.

***E) Regarding the obligation to reimburse legal costs and expenses
(Operative Paragraphs 14 of the Judgment)***

26. The State reported that with the support of the National Compensation Program, on December 22, 2009, Ms. Victoriana Tiu Tojín was paid the amount specified in the Judgment. On December 22, 2009, the State presented a copy of the record of the "Judgment Compliance Settlement of November [26, 2008], as dictated by the Inter-American Court," corresponding to "File No. 14-01-1103." The State also specified that "when paying compensation for pecuniary, [...] non-pecuniary damages, costs, and expenses stemming from obligations acquired before bodies of the Inter-American system [...], it has incorporated in the corresponding clause of the Judgment Compliance Settlement that the beneficiary or beneficiaries *"agree not to file any other future monetary claims relating to this case and to abstain from initiating any judicial, extrajudicial, or administrative actions before national or international bodies against the State of Guatemala for this act."* According to the State, "the specific function of incorporating the aforementioned clause relates to administrative and financial oversight that make it possible to determine if the person in question was paid economic reparations." Similarly, the State indicated that "all State institutions are subject to auditing by the National Comptroller General's Office for the income and expenses they incur through fulfilling their obligations. Thus, at no point are the merits of the proceeding mentioned."

27. The representatives noted they "did not have any observations" regarding the State's information as this obligation issued by the Court "had been satisfactorily complied with." Although at one point representatives manifested their doubt regarding the settlement signed by Victoriana Tiu Tojín, considering that "if interpreted literally, it would appear that the beneficiary is automatically submitting not a settlement for the reimbursement of costs and expenses, but rather a settlement for the whole case," at a later date, they stated that, based on the clarification made by the State regarding the aforementioned settlement clause, "there was [no longer] any doubt regarding [the] matter."

28. The Commission noted that "it could understand that when the State created the settlement agreement, it necessarily did so with the intention of being consistent with the object and end goal of the [J]udgment of the Court, as well as its obligations under the American Convention. In that regard, the settlement mentioned here cannot be interpreted as impeding the fulfillment of the totality of the Court's orders."

29. Taking into consideration the information and observations submitted by all the parties, the Tribunal notes that the State has complied with the obligation to pay all that is necessary to reimburse costs and expenses.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 62(1), 67, and 68(1) of the American Convention on Human Rights, Article 25(1) and 30 of the Statute, and Article 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with the present Order, the State has complied with the following operative paragraphs of the Judgment:

- a) To publish at least once in the Official Gazette, and in another national daily newspaper, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII of the Judgment (*Operative Paragraph 8 and Considering Clause 21*);
- b) To broadcast on the radio, in the K'iche language and Spanish, on just one occasion, Chapters I, IV and VI and paragraphs 67 to 120 from Chapter VII of the Judgment (*Operative Paragraph 9 and Considering Clause 25*); and,
- c) To reimburse legal costs and expenses (*Operative Paragraphs 10 and Considering Clause 29*).

2. When monitoring full compliance with the Judgment issued in the instant case, and after analyzing the information provided by the State, the Commission, and the representatives, the Court will keep the procedure open to monitor compliance with those aspects still pending compliance in the instant case, namely:

- a) To investigate the acts that led to the violations in this case, and identify, prosecute and, if necessary, punish those responsible (*Operative Paragraph 6 and Considering Clauses 9 and 12*); and,
- b) To proceed immediately with the search and locate of María and Josefa Tiu Tojin (*Operative Paragraph 7 and Considering Clauses 16 and 17*).

AND RULES:

1. To request that the Republic of Guatemala adopt all measures necessary to effectively and promptly comply with those points that are outstanding, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request that the State of Venezuela submit to the Inter-American Court of Human Rights, on August 20, 2011, a report with information on all the measures adopted to comply with the reparation measures ordered by this Tribunal that are still pending

compliance, in accordance with Declarative Paragraph 2 of this Order. At a later date, the State should continue to submit reports on compliance once every three months.

3. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit their relevant observations on the State reports mentioned in the previous operative paragraph, within four and six weeks, respectively, following the receipt of said reports.

4. To keep the procedure open to monitor compliance with the points of the Judgment on Merits, Reparations and Costs of November 26, 2008 that are pending fulfillment, as stated in Declarative Paragraph 2.

5. To order the Secretariat of the Court to serve notice of this Order on the State of Guatemala, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary