

Bámaca Velásquez v. Guatemala

ABSTRACT¹

Mr. Efraín Bámaca Velásquez was a commander of the Revolutionary Organization of the People in Arms (ORPA), one of the guerilla groups that comprised the Guatemalan National Revolutionary Unity. On March 12, 1992, there was an armed encounter between ORPA and the Guatemalan Army and Mr. Bámaca Velasquez was captured and tortured. Mr. Bámaca Velasquez was last seen on about July 1992 tied to a metal bed, his whereabouts have since been unknown. The State failed to undertake an effective investigation and to redress the crimes committed against him. The Court found that the State violated the American Convention on Human Rights and the American Convention to Prevent and Punish Torture. The case is notable because It is notable because the Court found a violation of Article 1 (Obligation to Respect Rights) of the American Convention in relation to Article 3 Common to the Geneva Conventions, as the victim was a member of a guerrilla group and had been captured during combat.

I. FACTS

A. Chronology of Events

1975: At the age of 18, Efraín Bámaca Velásquez joins the Guatemalan National Revolutionary Unit (*Unidad Revolucionaria Nacional de Guatemala*; “URNG”) and seeks to overthrow the Guatemalan government.²

1990: Mr. Bámaca Velásquez, now also known as “Comandante Everardo,” works his way up the ranks of the URNG and forms the Revolutionary Organization of the People in Arms (*Organización Revolucionaria del Pueblo en Armas*; “ORPA”), and leads the

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2. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUMAN RIGHTS WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

organization's "Luis Ixmatá" division.³ The ORPA becomes one of the URNG's four main guerilla groups.⁴

September 1991: Mr. Bámaca Velásquez meets and marries Jennifer Harbury, an American lawyer and human rights activist.⁵

March 12, 1992: Mr. Bámaca Velásquez disappears in Western Guatemala, after an encounter between the Guatemalan Army and the guerillas in the village of Montúfar.⁶ Mr. Bámaca Velásquez is the only combatant that goes missing after this encounter.⁷

March 13, 1992: A body with features similar to those of Mr. Bámaca Velásquez is found near the Ixcucua River and is buried in a cemetery in the city of Retalhuleu.⁸ Details of the autopsy, however, reveal that the physical description of the body does not match Mr. Bámaca Velásquez.⁹

April 24, 1992: The URNG writes a letter to the State's human rights ombudsman regarding Mr. Bámaca Velásquez's disappearance.¹⁰ It claims that the body of a fallen guerilla buried in the cemetery in the city of Retalhuleu shortly after Mr. Bámaca Velásquez disappeared was not Mr. Bámaca Velásquez.¹¹ The URNG also claims that Mr. Bámaca Velásquez was captured alive, secretly detained and tortured to obtain information.¹²

May 11, 1992: The State's Human Rights Ombudsman responds to the

3. *Id.*; Bámaca Velásquez v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 18 (Nov. 5, 2000).

4. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

5. *The Bámaca Case: An 18-Year Struggle for Justice*, GUAT. HUM. RTS. COMMISSION USA (June 8, 2010), http://www.ghrc-usa.org/Resources/UrgentActions/bamaca_case/details.htm#top.

6. Bámaca Velásquez v. Guatemala, Merits, ¶ 18.

7. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

8. Bámaca Velásquez v. Guatemala, Merits, ¶ 72.

9. *Id.*

10. Bámaca Velásquez v. Guatemala, Merits, ¶ 74; *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

11. *Id.*

12. Bámaca Velásquez v. Guatemala, Merits, ¶ 74.

URNG's letter.¹³ The response gives a detailed description of the body buried in the cemetery,¹⁴ specifying that the body had been found in the village of Montúfar after the encounter and that it appeared that the guerilla member had shot himself.¹⁵ The URNG then asked for photographs and an exhumation of the body in Montúfar.¹⁶ The Guatemalan Army, rather than the Human Rights Ombudsman, denies the URNG's request for the photographs, but the State grants URNG's request for exhumation of the body and sets the date for May 20, 1992.¹⁷ However, upon hearing about the exhumation, the State's Attorney General, Acisclo Valladares, stops the exhumation, since the army, rather than his office, had approved the request.¹⁸

December 1992: A guerilla from Mr. Bámaca Velásquez's unit, Santiago Cabrera López, escapes after being secretly detained by the Army.¹⁹ Via written testimony, he testifies to the United Nations Human Rights Commission in Geneva that he saw Mr. Bámaca Velásquez detained and tortured.²⁰ According to Mr. Cabrera López, on March 12, 1992, he overheard military intelligence officers comment that Mr. Bámaca Velásquez was caught during combat, and claims that he saw Mr. Bámaca Velásquez chained to a metal bed and interrogated over the next several days.²¹ Mr. Cabrera López claims that soon thereafter, in May 1992, soldiers warned him and other prisoners that they were never to speak of Mr. Bámaca Velásquez and told them that Mr. Bámaca Velásquez was killed when he tried to escape.²² Mr. Cabrera López, however, claims that he saw Mr. Bámaca Velásquez on two occasions after that; on the first occasion he was chained to a metal bed only in his underwear, his body swollen and bandaged, including his eyes, with a tank of gas next to him and on the second occasion, he was in a military

13. *Id.*

14. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

15. *Id.*; Bámaca Velásquez v. Guatemala, Merits, ¶ 74.

16. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

17. Bámaca Velásquez v. Guatemala, Merits, ¶ 73; *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

18. *Id.*

19. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

20. *Id.*

21. *Id.*

22. *Id.*

uniform and seemed to have recovered.²³

Mr. Cabrera López also testifies that he and another combatant were severely tortured by the State's soldiers during their secret detention.²⁴ He claims they were beaten with bricks, kicked, electrocuted on their legs and testicles, had grenades tied to their faces with the safety removed, and interrogated.²⁵

February 22, 1993: Mrs. Harbury and the Guatemalan Human Rights Commission file a petition for habeas corpus on behalf of Mr. Bámaca Velásquez against the President of Guatemala and the Minister of National Defense.²⁶

February 25, 1993 – February 26, 1993: The Supreme Court of Justice dismisses the petition because the body cannot be found.²⁷

August 17, 1993: The Second Criminal Trial Court Judge of Retalhuleu orders the exhumation of the body found near the Ixcucua River a second time.²⁸ The exhumed corpse does not resemble Mr. Bámaca Velásquez.²⁹

June 1, 1994: The Attorney General files a petition for habeas corpus on behalf of Mr. Bámaca Velásquez against the President of Guatemala, the Minister of Defense, the Director General of the National Police Force, and State police and military authorities.³⁰

September 1, 1994: The Supreme Court of Justice rejects the petition because there is no judicial order for the detention of Mr. Bámaca Velásquez and he has not been found in the custody of State agents.³¹

October 27, 1994: Mrs. Harbury holds a hunger strike in Washington D.C. and, in response, the President of Guatemala announces that the State will conduct an investigation into the whereabouts of Mr. Bámaca

23. *Id.*

24. *Id.*

25. *Id.*

26. Bámaca Velásquez v. Guatemala, Merits, ¶ 75.

27. *Id.*

28. *Id.* ¶ 76.

29. *Id.*

30. *Id.* ¶ 78.

31. *Id.*

Velásquez.³²

November 6, 1994: The United States television station, CBS, broadcasts an episode of the television show “60 Minutes” on Mr. Bámaca Velásquez’s disappearance.³³ The show claims that the CIA reported they had intelligence claiming that Mr. Bámaca Velásquez was alive after the army had notified his wife that he had died in combat.³⁴

November 8, 1994: The Supreme Court of Justice orders the Ombudsman to open pre-trial investigations as to the whereabouts of Mr. Bámaca Velásquez.³⁵

November 14, 1994: The United States Department of State releases a statement publicly holding the Guatemalan army responsible for Mr. Bámaca Velásquez’s disappearance.³⁶

March 28, 1995: Mr. Bámaca Velásquez’s case is transferred to the Retalhuleu Military Trial Court.³⁷

March 29, 1995: The President of Guatemala announces that at the time he accepted the presidency, the State’s army was not illegally imprisoning or detaining Mr. Bámaca Velásquez, as Mr. Bámaca Velásquez was already dead.³⁸

April 5 and 10, 1995: The Retalhuleu Military Trial Court dismisses the case against thirteen members of the armed forces for insufficient evidence of the torture and illegal detainment of Mr. Bámaca Velásquez.³⁹ In response, the representative of the Public Ministry files a complaint appealing the Retalhuleu Military Trial Court’s ruling.⁴⁰

May 7, 1995: Julio Arango Escobar becomes the special prosecutor of

32. *Id.* ¶ 79.

33. *Id.* ¶ 93 (C)(b).

34. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

35. *Bámaca Velásquez v. Guatemala*, Merits, ¶ 81.

36. *Id.*

37. *Id.*

38. *Id.* ¶ 83.

39. *Id.* ¶ 85.

40. *Id.*

Mr. Bámaca Velásquez's case.⁴¹

June 1995: Mr. Escobar receives information from the United States that Mr. Bámaca Velásquez's remains were buried in the military detachment of Las Cabañas.⁴² Mr. Escobar requests an exhumation based on this information.⁴³ The Second Judge of the Criminal, Narcoterrorism and Crimes Against the Environment Trial Court of Coatepeque, Quetzaltenango authorizes the exhumation that same month.⁴⁴

June 19, 1995: Upon receiving notice of the exhumation, Colonel Julio Roberto Alpiez, the commander responsible for the Las Cabañas military detachment, files an appeal.⁴⁵ The Second Criminal, Narcoterrorism and Crimes Against the Environment Trial Court of the Coatepeque, Quetzaltenango suspends the exhumation order due to this appeal.⁴⁶

June 1995: The Retalhuleu Military Trial Court presumes, against all forensic evidence and opinion, that the dead body found near the Ixcucua River on March 13, 1992, is Mr. Bámaca Velásquez and orders Mr. Bámaca Velásquez's death certificate to be issued accordingly.⁴⁷

July 17, 1995: The Eleventh Chamber of the Appeals Court of Retalhuleu finds that the Military Trial Court committed a substantial error and, on November 22, 1995, revokes the trial court's decision to dismiss the claims against thirteen soldiers and that the body found near the Ixcucua River is Mr. Bámaca Velásquez.⁴⁸

May-August 1995: Mr. Escobar receives death threats for representing Mr. Bámaca Velásquez and as a result resigns on August 2, 1995.⁴⁹

December 5, 1995: The Retalhuleu Military Trial Court decides that

41. *Id.* ¶ 88.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 86.

48. *Id.* ¶ 85.

49. *Id.* ¶ 89.

Mr. Bámaca Velásquez's case is without merit.⁵⁰

February 1998: Shilvia Anabella Jerez Romero becomes the special prosecutor for the case on Mr. Bámaca Velásquez's disappearance.⁵¹ She requests exhumation just as Mr. Escobar requested in June 1995.⁵² The State does not exhume the body.⁵³

At the time of the Inter-American Court's judgment, the whereabouts of Mr. Bámaca Velásquez were still unknown.⁵⁴

II. PROCEDURAL HISTORY

A. *Before the Commission*

March 31, 1993: The Commission opens Case Number 11.129 in response to a complaint filed by the petitioners regarding the mistreatment and detention of Mr. Bámaca Velásquez and other URNG combatants.⁵⁵

October 15, 1993: The Commission reiterates that the State should adopt the precautionary measures with regard to prisoners of war and clandestine detention centers.⁵⁶

December 15, 1993: The State notifies the Commission that the precautionary measures are unnecessary because they have no clandestine detention centers nor do they have any prisoners of war.⁵⁷

March 7, 1996: The Commission adopts Report No. 7/96 finding that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in relation to Article 1 (Obligation to Respect Rights) of the American Convention.⁵⁸

The Commission recommends that Guatemala accept

50. *Id.* ¶ 87.

51. *Id.* ¶ 90.

52. *Id.*

53. *Id.*

54. *Disappearance in Guatemala: The Case of Efraín Bámaca Velásquez*, 7 HUM. RTS. WATCH (Mar. 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

55. *Bámaca Velásquez v. Guatemala*, Merits, ¶ 6.

56. *Id.*

57. *Id.*

58. *Id.* ¶ 16.

responsibility for its actions, conduct a timely and effective investigation, punish those responsible, adopt the necessary measures to prevent such a situation from occurring again, reform its training programs for its armed forces, and compensate Mr. Bámaca Velásquez's wife and family within sixty days of this date.⁵⁹

B. Before the Court

August 30, 1996: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁰

October 31, 1996: The State files a preliminary objection, in which it asserts that petitioners failed to exhaust domestic remedies.⁶¹

January 6, 1997: The State files an answer to the petitioner's application, acknowledging its responsibility for international human rights violations in this case.⁶² Specifically, the State recognizes its failure to identify the persons criminally responsible for Mr. Bámaca Velásquez's disappearance.⁶³ The State requests a six month period of time to reach an agreement with the Commission on the reparations that should be given to Mr. Bámaca Velásquez's heirs.⁶⁴ Although the State accepts international responsibility, it notes that this does not imply that petitioners representing Mr. Bámaca Velásquez exhausted all domestic remedies.⁶⁵

January 28, 1997: The Commission affirms the State's acknowledgment of international responsibility.⁶⁶ The Commission also requests clarification as to whether the State had withdrawn its preliminary objection regarding the failure to exhaust domestic remedies.⁶⁷

April 7, 1997: The Commission again requests if the State withdrew its

59. *Id.*

60. *Id.* ¶ 1.

61. *Id.* ¶ 22.

62. *Id.* ¶ 23.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* ¶ 25.

67. *Id.*

preliminary objection.⁶⁸

April 16, 1997: The State declares that it withdrew its preliminary objection.⁶⁹ The Court also records this in its Order of April 16, 1997 and orders to proceed to the merits of the case.⁷⁰

1. Violations Alleged by Commission⁷¹

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1 (Obligation to Respect Rights) of the American Convention.

Article 1 (Obligation to Respect Rights) of the American Convention

in relation to:

Article 3 Common to the Geneva Conventions

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection) of the American Convention.

Article 1 (Obligation to Prevent and Punish Torture)

Article 2 (Acts that Constitute Torture)

Article 6 (Obligation to Take Effective Measures)

Article 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture.

2. Violations Alleged by Representatives of the Victims⁷²

Same Violations Alleged by Commission.

68. *Id.* ¶ 26.

69. *Id.*

70. *Id.*

71. *Id.* ¶ 2.

72. *Id.* ¶ 91 n.41. Center for Justice and International Law (“CEJIL”) served as representatives of Mr. Bámaca Velásquez and his next of kin.

June 27, 2000: The International Commission of Jurists submits an amicus curiae brief to the Court.⁷³

III. MERITS

A. *Composition of the Court*⁷⁴

Antônio Augusto Cançado Trindade, President
Máximo Pacheco Gómez, Vice President
Hernán Salgado Pesantes, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge
Oliver H. Jackman, Judge

Manuel E. Ventura Robles, Secretary
Renzo Pomi, Deputy Secretary

B. *Decision on the Merits*

November 25, 2000: The Court issues its Judgment on the Merits.⁷⁵

The Court found unanimously that the State had violated:

Article 7 (Right to Personal Liberty), in relation to Article 1 (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bámaca Velásquez,⁷⁶ because:

Any individual who has been detained and deprived of their personal freedom without any type of judicial supervision should be liberated immediately or brought before a judge under Article 7 of the Convention (Right to Personal Liberty).⁷⁷ Article 7 acts as a safeguard

73. *Id.* ¶ 64.

74. Judge Oliver Jackman abstained from hearing this case, as he was involved in the Commission processing of this case.

75. *Bámaca Velásquez v. Guatemala*, Merits, Judgment.

76. *Id.* ¶ 144.

77. *Id.* ¶ 140.

*between the liberty of the individual and the interference of the State.*⁷⁸
*Because the State's government detained Mr. Bámaca Velásquez for at least four months in clandestine detention, the State violated Article 7.*⁷⁹

Article 5 (Right to Humane Treatment), in relation to Article 1 (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bámaca Velásquez and his direct next of kin,⁸⁰ because:

*The mere fact that Mr. Bámaca Velásquez's detainment was not communicated to a competent judge or to Mr. Bámaca Velásquez's family constitutes an act against human dignity.*⁸¹ *The Court established that all testimony given about the abuse and torture of Mr. Bámaca Velásquez was direct evidence of the torture Mr. Bámaca Velásquez underwent. As a result, the State violated Mr. Bámaca Velásquez's Article 5 (Right to Humane Treatment) rights.*⁸²

*With regards to Mr. Bámaca Velásquez's direct next of kin, the Court states that forced disappearance cases are almost always accompanied by a violation of the victim's next of kin's rights under Article 5.*⁸³ *The Court considered the struggle of Mr. Bámaca Velásquez's wife and family to discover the truth about his disappearance, and all of the obstacles that existed to prevent an exhumation and the refusal to provide information. Ultimately, the Court concluded that the State also violated Mr. Bámaca Velásquez's direct next of kin's Article 5 rights.*⁸⁴

Article 4 (Right to Life), in relation to Article 1 (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bámaca Velásquez,⁸⁵ because:

As the Court established that the State's army had forcibly taken and disappeared Mr. Bámaca Velásquez for eight years and eight months without any news of his whereabouts, the Court presumed that the

78. *Id.*

79. *Id.* ¶¶ 142-144.

80. *Id.* ¶ 166.

81. *Id.* ¶¶ 149-150.

82. *Id.* ¶¶ 151, 154-158.

83. *Id.* ¶¶ 160-164.

84. *Id.* ¶¶ 165-166.

85. *Id.* ¶ 175.

*State's army executed Mr. Bámaca Velásquez.*⁸⁶ *The Court thereby concluded that the State violated Mr. Bámaca Velásquez's Article 4 (Right to Life) rights.*⁸⁷ *As such, the State violated its duty to maintain public order and its obligation to guarantee security in accordance with the law and respect every individual's fundamental rights within its jurisdiction.*⁸⁸

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1 (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bámaca Velásquez and his direct next of kin,⁸⁹ because:

*The State has a responsibility to ensure that each individual receives effective judicial protection against any violation of his fundamental rights, the guarantee of liberty, respect of life and integrity, and the prevention of his disappearance or inability to determine his whereabouts while under the control of the State.*⁹⁰ *To determine if the State violated Articles 8 (Right to a Fair Trial) or 25 (Right to Judicial Protection), the Court looked at the domestic proceedings as a whole.*⁹¹ *Taking into consideration the multiple habeas corpus attempts and the fact that the whereabouts of Mr. Bámaca Velásquez remain unknown, the Court decided that the State violated Mr. Bámaca Velásquez and his direct next of kin's Article 8 and Article 25 rights.*⁹²

Right to Truth enshrined in Articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 13 (Freedom of Thought and Expression), in relation to Article 1 (Obligation to Respect Rights) of the American Convention, to the detriment of Mr. Bámaca Velásquez and his next of kin,⁹³ because:

*The Court recognized the right to truth as a right embedded within Articles of the American Convention.*⁹⁴ *The Court, however, did not go into further analysis of this right because the discussion of Articles 8*

86. *Id.* ¶¶ 170-173.

87. *Id.* ¶¶ 174-175.

88. *Id.*

89. *Id.* ¶ 196.

90. *Id.* ¶¶ 191-192.

91. *Id.* ¶¶ 188-189.

92. *Id.* ¶¶ 192-196.

93. *Id.* ¶ 197.

94. *Id.*

(Right to a Fair Trial) and 25 (Right to Judicial Protection) subsume the right to truth.⁹⁵ Mr. Bámaca Velásquez and his next of kin's right to truth fell within the State's failure to clarify Mr. Bámaca Velásquez's whereabouts, and provide proper judicial and investigatory methods as required by Articles 8 and 25 of the American Convention.⁹⁶ For the forgoing reasons, the analysis of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) applies to the State's violation of the right to truth.⁹⁷

Article 1 (Obligation to Respect Rights), in relation to Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention and the Article 3 of the Geneva Convention, to the detriment of Mr. Bámaca Velásquez,⁹⁸ because:

*The State had an obligation to investigate, prosecute, try and convict those responsible.*⁹⁹ Article 1 of the American Convention obligates the State to uphold and protect the rights listed in the American Convention.¹⁰⁰ Article 3 common to the Geneva Conventions prohibits either party involved in an armed conflict to murder or violate the personal dignity of those hors de combat, which sometimes includes prisoners of war.¹⁰¹ The Court noted a similarity between Article 3 of the Geneva Convention and articles in the American Convention.¹⁰² The Court took note that the State is in a state of impunity with regards to the fact of this case.¹⁰³ The State failed to guarantee and respect Mr. Bámaca Velásquez's rights to personal safety, liberty, moral and mental integrity.¹⁰⁴ Thus, the State violated Article 1 (Obligation to Respect Rights) in relation to the violations established in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention.¹⁰⁵

95. *Id.* ¶¶ 200-02.

96. *Id.*

97. *Id.*

98. *Id.* ¶ 214.

99. *Id.* ¶ 211.

100. *Id.* ¶ 207.

101. *Id.*

102. *Id.* ¶ 209.

103. *Id.* ¶ 211.

104. *Id.* ¶ 213.

105. *Id.*

Articles 1 (Obligation to Prevent and Punish Torture), 2 (Acts that Constitute Torture), 6 (Obligation to Take Effective Measures), and 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Bámaca Velásquez,¹⁰⁶ because:

The State's army subjected Mr. Bámaca Velásquez to torture and inhumane treatment while imprisoned.¹⁰⁷ The Court defines torture as any act performed with the intention of causing mental or physical pain or suffering for the purposes of a criminal investigation.¹⁰⁸ States have an obligation to punish any person(s) that commit or attempt to commit any tort-like acts.¹⁰⁹ The State did not effectively prevent such acts because of its lack of investigation and punishment of those responsible.¹¹⁰ Therefore, the State failed to fulfill the commitments it made in the Inter-American Convention against Torture.¹¹¹

The Court found unanimously that the State had not violated:

Article 3 (Right to Juridical Personality), in relation to Article 1 (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bámaca Velásquez,¹¹² because:

A violation of Article 3 (Right to Juridical Personality) requires a complete negation of the person entitlement to basic civil rights.¹¹³ Forced disappearances do not invoke a violation of Article 3.¹¹⁴ Therefore, the Court concluded that the elements of juridical personality did not apply to cases of forced disappearances under the Inter-American Convention on forced Disappearances of Persons and that the State did not violate Article 3 of the Convention.¹¹⁵

C. Dissenting and Concurring Opinions

106. *Id.* ¶ 223.

107. *Id.* ¶ 220.

108. *Id.* ¶ 217.

109. *Id.*

110. *Id.* ¶ 220.

111. *Id.* ¶ 222.

112. *Id.* ¶ 181.

113. *Id.* ¶ 179.

114. *Id.*

115. *Id.* ¶¶ 178-181.

1. Concurring Separate Opinion of Judge Antônio Augusto Cançado Trindade

Judge Cançado Trindade agreed with the majority regarding the Judgment, but expressed an interest in adding additional comments to distinguish this case from other forced disappearance cases.¹¹⁶ The Mayan culture, to which Mr. Bámaca Velásquez belonged, has a tradition of keeping a link between the living and the dead.¹¹⁷ The lack of a worthy burial of Mr. Bámaca Velásquez's remains impeded the Mayan community from cultivating this link between the living and the dead.¹¹⁸ Thus, this violation did not only detrimentally affected Mr. Bámaca Velásquez but also his next of kin.¹¹⁹

Laws of many of States safeguard the respect for the dead.¹²⁰ International laws also exist requiring respect for the dead.¹²¹ Offering and upholding the respect owed to the dead advances human kind not only at a juridical level, but also a spiritual level.¹²² Judge Cançado Trindade argued that a universal juridical conscience, a part of *opinio juris communis*,¹²³ is the source of this notion and supports the spirituality of all cultures.¹²³

He asserted that enforcement of the Right to Truth ensures the ultimate sign of respect for the spiritual traditions that respect the link between the dead and the living.¹²⁴ Hiding the remains of a disappeared person flagrantly disrespects not only the deceased but disrupts the family's right and attempt to solidarity.¹²⁵ Therefore, the notion of victim extends both to Mr. Bámaca Velásquez and his closest relatives.¹²⁶

2. Concurring Separate Opinion of Judge Hernán Salgado Pesantes

116. Bámaca Velásquez v. Guatemala, Merits, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 91 ¶¶ 1, 4 (Nov. 5, 2000).

117. *Id.* ¶ 4.

118. *Id.*

119. *Id.* ¶¶ 5, 20.

120. *Id.* ¶ 12.

121. *Id.* ¶ 13.

122. *Id.* ¶¶ 16-17.

123. *Id.* ¶¶ 16-17, 28.

124. *Id.* ¶ 31.

125. *Id.*

126. *Id.* ¶ 40.

Judge Salgado Pesantes elaborated on the majority's discussion of the Right to Truth.¹²⁷ The Judge noted that the Right to Truth is particularly applicable in forced disappearance cases.¹²⁸ Although the American Convention does not explicitly mention the Right to Truth, this right is implicitly included through Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention.¹²⁹ These articles require society to be truthful.¹³⁰ Judge Salgado Pesantes argued that the Right to Truth doctrine should consider that the right to truth is essentially a moral prerogative.¹³¹ Judge Salgado Pesantes concluded by arguing that the failure to divulge the truth should be subject to different degrees of consequences.¹³²

3. Concurring Separate Opinion of Judge Sergio García Ramírez

Judge García Ramírez expanded upon the majority's opinion regarding the State's violation of Article 5 (Right to Humane Treatment) of the American Convention.¹³³ Specifically, Judge García Ramírez addressed two issues throughout his opinion.¹³⁴ The first issue concerned the concept of who were the victims of the violations.¹³⁵ The second issue focused on the admissibility of evidence and the burden of proof requirement in forced disappearance cases.¹³⁶

Judge García Ramírez pointed out that there are two types of victims: direct victims and indirect victims.¹³⁷ Mr. Bámaca Velásquez is the direct victim in this case; his family members are the indirect victims.¹³⁸ The law protects both types of victims equally.¹³⁹ Mr. Bámaca Velásquez's next of kin suffered severely cruel and inhumane treatment when the State failed to tell the family the truth about the

127. *Bámaca Velásquez v. Guatemala*, Merits, Concurring Opinion of Judge Hernán Salgado Pesantes, Inter-Am. Ct. H.R. (ser. C) No. 91, 1 (Nov. 5, 2000).

128. *Id.* ¶¶ 1-3.

129. *Id.* ¶ 5.

130. *Id.*

131. *Id.* ¶¶ 7-9.

132. *Id.*

133. *Bámaca Velásquez v. Guatemala*, Merits, Concurring Opinion of Judge Sergio García-Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 2 (Nov. 5, 2000).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* ¶¶ 4-5.

138. *Id.*

139. *Id.* ¶ 5.

whereabouts of Mr. Bámaca Velásquez's body.¹⁴⁰ The impact on the culture and community of the perpetrators' treatment of Mr. Bámaca Velásquez, and how the community perceives and characterizes this treatment enables the Court to determine whether the act constituted torture.¹⁴¹

Judge García Ramírez looked to Article 3 (Right to Juridical Personality) as the source for the indirect victim's enjoyment of their rights.¹⁴² When the State denies Mr. Bámaca Velásquez and his family of their right to juridical personality, it treats Mr. Bámaca Velásquez as an object.¹⁴³ The Right to Truth allows the direct and indirect victims' to repair this wrong.¹⁴⁴ While the Judge García Ramírez recognized that the Court could not interpret the 1949 Geneva Conventions, the Court could rely on *jus cogens* to argue that there is a right to not to be submitted to torture.¹⁴⁵

Regarding the second issue of admissibility of evidence.¹⁴⁶ Judge García Ramírez opined that evidence that had not met the admissibility rules should not be admitted into evidence.¹⁴⁷ Judge García Ramírez emphasized that admitting inadmissible evidence would make it impractical to comply with the Court's Rules of Procedure.¹⁴⁸ Additionally, admitting illegally obtained evidence would compromise the authenticity and legitimacy of the Court.¹⁴⁹

Judge García Ramírez subsequently analyzed the unique circumstances surrounding the burden of proof in forced disappearance cases.¹⁵⁰ In these types of cases, the State cannot rely on the petitioners' failure to obtain the necessary evidence for the proceedings since the plaintiff must rely on the State's cooperation.¹⁵¹ Thus, the Judge agreed with the majority that the Court should be hesitant to implement a strict burden of proof standard because a lower burden takes into consideration the realities of the petitioners' difficulty in obtaining evidence.¹⁵²

140. *Id.* ¶ 8.

141. *Id.* ¶ 9.

142. *Id.* ¶ 13.

143. *Id.* ¶ 14.

144. *Id.* ¶ 21.

145. *Id.* ¶¶ 24-25.

146. *Id.* ¶ 27.

147. *Id.* ¶ 28.

148. *Id.*

149. *Id.* ¶ 29.

150. *Id.* ¶ 30-32.

151. *Id.* ¶ 31.

152. *Id.* ¶ 32.

4. Concurring Separate Opinion of Judge Carlos Vicente de Roux Rengifo

Judge de Roux Rengifo argued that Article 3 (Right to Juridical Personality) is not relevant to the issue of whether or not a person may exercise their rights.¹⁵³ Judge de Roux Rengifo stated that there is a distinction between who has rights and obligations and how much of the rights and obligations the individual is entitled to.¹⁵⁴ Sometimes, he explained, a State may violate an individual's right so intensely and profoundly that it is equivalent to a negation of the individual's right of juridical personality.¹⁵⁵

Judge de Roux Rengifo discussed at length how forced disappearance cases could constitute a prime example of States committing such a profound violation that they entirely negate one's right to juridical personality.¹⁵⁶ Forced disappearance creates a situation of overwhelming uncertainty about whether the victim is dead or alive and his whereabouts.¹⁵⁷ In these cases, the task becomes to protect those with knowledge who are at risk of becoming disappeared and reconstruct lost information about the whereabouts of the victims that have actually disappeared.¹⁵⁸

Ultimately, however, Judge de Roux Rengifo determined that forced disappearances do not fall under the category of recognition of juridical personality, but to the category allotted to an individual exercising his rights.¹⁵⁹ Judge de Roux Rengifo went on to express disapproval of the majority treating these two categories as if they were the same.¹⁶⁰

IV. REPARATIONS

February 22, 2002: The Court issues its Judgment on Reparations and Costs.¹⁶¹

153. *Bámaca Velásquez v. Guatemala, Merits, Concurring Opinion of Judge Carlos Vicente de Roux Rengifo*, Inter-Am. Ct. H.R. 1 (ser. C) No. 91 (Nov. 5, 2000).

154. *Id.* ¶ 2.

155. *Id.* ¶ 4.

156. *Id.*

157. *Id.* ¶ 8.

158. *Id.*

159. *Id.* ¶ 9.

160. *Id.* ¶ 10.

161. *Bámaca Velásquez v. Guatemala, Reparations and Costs, Judgment*, Inter-Am. Ct.

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Conduct a Thorough and Effective Investigation and Disseminate the Results

The Court ordered the State to conduct a thorough and effective investigation regarding the disappearance of Mr. Bámaca Velásquez, to punish all of those who are found responsible, and to disseminate the results of the investigation.¹⁶²

2. Locate Mr. Bámaca Velásquez's Remains and Deliver them to Mr. Bámaca Velásquez's Next of Kin

In observance of the right of to human dignity, and in light of the State's Article 4 (Right to Life) violation, the Court ordered the State to locate the remains of Mr. Bámaca Velásquez and deliver them to his next of kin so that they can be buried in accordance with Mayan customs and religious beliefs.¹⁶³ The Court also ordered the State to perform the necessary exhumations in the presence of Mr. Bámaca Velásquez's next of kin to properly attain Mr. Bámaca Velásquez's remains, and to implement a national exhumations program.¹⁶⁴

3. Publish the Merits Judgment

In an act of public recognition and acceptance of responsibility, the Court ordered the State to publish once the operative paragraphs and chapter pertaining to the proven facts of the Court's November 25, 2000 Judgment on the Merits in the official gazette, *Diario Oficial* and in another daily newspaper with national circulation.¹⁶⁵

H.R. (ser. C) No. 91 (Feb. 22, 2002).

162. *Id.* ¶¶ 73-78.

163. *Id.* ¶¶ 79-83.

164. *Id.* ¶¶ 82-83.

165. *Id.* ¶ 84.

4. Adopt Human Rights Norms and Humanitarian Law in Domestic Law

In an effort to avoid any future violations, the Court ordered the State to adopt any measures necessary to ensure the protection of human rights and the free and full exercise of the rights to life, judicial protection and fair trial, and humane treatment.¹⁶⁶ The Court ordered the State to train public law enforcement officials on the prevention of forced disappearance in compliance with Article VIII of the Inter-American Convention on the Forced Disappearance of Person and fully apply Articles 1 (Obligation to Prevent and Punish Torture), 2 (Acts that Constitute Torture), 6 (Obligation to Take Effective Measures), and 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture.¹⁶⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court ordered that the State pay \$100,000, divided in equal parts, to Mr. Bámaca Velásquez's wife, father, and three sisters for lost wages from March 1997 to until Mr. Bámaca Velásquez's projected natural life expectancy.¹⁶⁸

The Court ordered that the State pay \$125,000 to Mrs. Harbury, Mr. Bámaca Velásquez's wife.¹⁶⁹ The Court awarded Mrs. Harbury \$80,000 or income she lost while looking for her husband from March 12, 1992 to January 1997, \$20,000 for her search expenses, and \$25,000 for medical expenses caused by Mr. Bámaca Velásquez's disappearance.¹⁷⁰

2. Non-Pecuniary Damages

The Court ordered the State to pay \$100,000 to Mr. Bámaca Velásquez for the mental and physical pain he experienced while in

166. *Id.* ¶ 85.

167. *Id.* ¶¶ 86-87.

168. *Id.* ¶¶ 50-53.

169. *Id.* ¶ 54(a).

170. *Id.*

captivity.¹⁷¹ This amount should be divided equally between Ms. Harbury and Mr. Bámaca Velásquez's father and sisters.¹⁷²

The Court ordered the State to pay \$80,000 to Mrs. Harbury for the deep anguish, cruel and inhumane treatment, and emotional trauma caused by the forced disappearance of Mr. Bámaca Velásquez and inability of the State to locate his whereabouts or remains.¹⁷³

The Court ordered the State to pay \$25,000 to Mr. Bámaca Velásquez's father for loss of emotional and economic support due to Mr. Bámaca Velásquez's forced disappearance.¹⁷⁴

The Court ordered the State to pay \$20,000 to Mr. Bámaca Velásquez's sisters Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, and Alberta Velásquez for loss of emotional and economic support due to Mr. Bámaca Velásquez's forced disappearance.¹⁷⁵

3. Costs and Expenses

The Court ordered the State to reimburse Mrs. Harbury \$18,000 for costs incurred during search for justice for her husband at the national and international levels.¹⁷⁶

The Court ordered the State to give CEJIL \$5,000 for attorney's fees.¹⁷⁷

4. Total Compensation (including Costs and Expenses ordered):

\$498,000

C. Deadlines

All compensation and specific performances are to be completed within six months of the date of the judgment, with the exception of the delivery of Mr. Bámaca Velásquez's remains, which must be returned to his family before December 2002.¹⁷⁸

171. *Id.* ¶¶ 62, 66.

172. *Id.* ¶¶ 53, 67.

173. *Id.* ¶ 65-66.

174. *Id.*

175. *Id.*

176. *Id.* ¶¶ 88, 91.

177. *Id.*

178. *Id.* ¶ 96.

1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

Judge Cançado Trindade concurred with the majority's decision on the Reparations but felt that it was necessary to elaborate on four points.¹⁷⁹

First, Judge Cançado Trindade addressed the philosophical question of time, the living law, and the dead.¹⁸⁰ Judge Cançado Trindade reflected that unity between the living and the dead exists through respect offered by the living to the dead.¹⁸¹ He also noted that time is a spiritual part of life and brings the living closer to the dead.¹⁸² He observed that the law seeks to protect people even after they have passed away,¹⁸³ and noted that the Court emphasized the importance of respecting Mr. Bámaca Velásquez's remains by stressing the urgency in finding and exhuming his body.¹⁸⁴

Second, Judge Cançado Trindade discussed the projection of human suffering in time.¹⁸⁵ He recognized that even after a decade after Mr. Bámaca Velásquez's disappearance, Ms. Harbury has "nightmares" of her "husband burned or begging for help,"¹⁸⁶ and longs to have him in her arms once more and lay him in his tomb.¹⁸⁷ Judge Cançado Trindade stressed that every person has a right to human dignity,¹⁸⁸ and the violation of this right humiliates the human being.¹⁸⁹ The projection of human suffering in time manifests itself in two ways: throughout the course of a person's life, and also through the relationship between the living and dead.¹⁹⁰ Thus, the Court intentionally made the order that the State determine the whereabouts of Mr. Bámaca Velásquez's remains the first reparation of this Judgment.¹⁹¹

Third, Judge Cançado Trindade wrote about the passing of time and the repercussions of solidarity between the living and the dead in

179. *Bámaca Velásquez v. Guatemala, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 1 (Feb. 22, 2002).*

180. *Id.*

181. *Id.* ¶ 2-3.

182. *Id.* ¶¶ 5-6.

183. *Id.* ¶ 8.

184. *Id.* ¶ 9.

185. *Id.* ¶¶ 1, 10.

186. *Id.* ¶ 10.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* ¶ 14.

191. *Id.*

the law.¹⁹² He observed that through social solidarity, the damage felt by one affects the whole social tissue,¹⁹³ renders suffering less unbearable, and unites the members of humankind.¹⁹⁴ Judge Cançado Trindade believes that considering social solidarity in time includes the dead's spiritual legacy.¹⁹⁵ Funerals are part of the cultural legacy; this in turn affects the succession of generations.¹⁹⁶ In this case, the Court rightly warned that caring for the remains is a form of observing the right to human dignity.¹⁹⁷

Lastly, Judge Cançado Trindade discussed the precariousness of the human condition and the universality of human rights.¹⁹⁸ Judge Cançado Trindade expressed his view that human kind consists not only of the living, but also the dead.¹⁹⁹ Human suffering projects itself in time and finds itself in the law.²⁰⁰ He recognized that the Court noted the intensity of the human suffering caused by the State's violations in this case.²⁰¹ Finally, Judge Cançado Trindade asserted that the living and the dead are linked much closer than one can assume, and the evolution of International Law of Human Rights must reflect this notion.²⁰²

2. Concurring Vote of Judge Sergio García Ramírez

Judge García Ramírez reflected on *restitutio in integrum*, the considerations of cultural specificity, reparations to honor, and the calculation of the damages and compensation.²⁰³

Restitutio in integrum literally means to restore the person to how he was prior to the unlawful conduct occurred.²⁰⁴ The idea is to make the person "full" again.²⁰⁵ Judge García Ramírez noted that *restitutio in integrum* is the perfect form of restitution, and only when it is

192. *Id.* ¶ 15.

193. *Id.* ¶ 16.

194. *Id.*

195. *Id.* ¶ 17.

196. *Id.* ¶ 20.

197. *Id.* ¶ 22.

198. *Id.* ¶ 25.

199. *Id.*

200. *Id.* ¶ 26.

201. *Id.*

202. *Id.*

203. *Bámaca Velásquez v. Guatemala, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 1 (Feb. 22, 2002).*

204. *Id.* ¶ 3.

205. *Id.*

unavailable should other measures of reparations be taken.²⁰⁶ He, however, advised the Court to reject this method once and for all.²⁰⁷ He argued that it is conceptually and materially impossible to fully restore the person back to the way they were before the violation.²⁰⁸ *Restitutio* only represents a reference point; an ideal and unattainable goal.²⁰⁹ The reparation system becomes the difference of what was and what may be.²¹⁰

Next, Judge García Ramírez commented on the fact that the Court considers the victim and his next of kin's culture when considering the reparations.²¹¹ The Court attempted to recognize the individuality of the subject so that the law and rights apply as perfectly as possible.²¹² In this case, the Court emphasized the importance of burying the remains in Mayan culture.²¹³

Judge García Ramírez subsequently discussed the reparations issued to honor Mr. Bámaca Velásquez.²¹⁴ The Judge concurred that requiring the State to publish the Judgment in the Official Gazette and in a national newspaper was the appropriate reparation.²¹⁵ This act satisfies the victims, recovers their honor and reputation, strengthens their culture, and asserts the truth about what happened.²¹⁶ Judge García Ramírez did note that the majority could have gone further in some aspects of the Judgment to reflect the vast social and legal impact of the case.²¹⁷

Lastly, Judge García Ramírez concurred with the calculation of damages and compensation determined by the majority.²¹⁸ Nonetheless, the Judge expressed his dissatisfaction with the method of deducting twenty-five percent from the amount that results based on the subject's income and life expectancy.²¹⁹ It is difficult for an individual to reserve twenty-five percent of his income and give the remainder to his next of kin considering the low wages earned by individuals who usually suffer

206. *Id.* ¶ 2.

207. *Id.*

208. *Id.* ¶ 3.

209. *Id.* ¶ 5.

210. *Id.*

211. *Id.* ¶ 6.

212. *Id.* ¶ 7.

213. *Id.* ¶ 8.

214. *Id.* ¶ 9.

215. *Id.*

216. *Id.* ¶ 10.

217. *Id.* ¶ 11.

218. *Id.* ¶ 13.

219. *Id.*

human rights violations.²²⁰ Judge García Ramírez argued that the Court should evaluate the amounts on more specific and realistic criteria.²²¹

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

June 30, 1998: The Court issued Provisional Measures through an Order of the President, after State agents threatened to kill Santiago Cabrera López, the guerilla who testified during Mr. Bámaca Velásquez's case.²²² The President of the Court ordered the State to immediately take the necessary precautions to ensure and protect Cabrera's life and physical integrity.²²³ The Court ordered the State inform the Court of measures taken to comply with this Provisional Measure by July 17, 1998.²²⁴

August 29, 1998: In a Provisional Measure, the Court reiterated that the State must protect and ensure the life and physical integrity of Santiago Cabrera López.²²⁵ The Court also extended the measure to protect Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmenlinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado and Carlos Alfonso Cabrera.²²⁶ The Court ordered the State to investigate and report on the situation of each of the aforementioned persons and to inform the Court every two months of its compliance with this provisional measure.²²⁷

September 5, 2001: From October 29, 1998 to July 5, 2001 the State reported that it had provided round the clock security measures to Santiago Cabrera López, Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmenlinda Cabrera, Teresa Aguilar Cabrera,

220. *Id.* ¶ 14.

221. *Id.* ¶ 15.

222. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) "Resolves" ¶¶ 1-2 (Jun. 30, 1998).

223. *Id.*

224. *Id.* ¶ 2.

225. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Resolves" ¶ 3 (Aug. 29, 1998).

226. *Id.*

227. *Id.* ¶ 4.

Olga Maldonado and Carlos Alfonso Cabrera, who had testified during Mr. Bámaca Velásquez's case, and been the beneficiary of previous provisional measures of the Court.²²⁸ The Commission, however, reported that the State was not providing anybody with any security measures, and if anything, the State had only called once a week for a couple of weeks to check on the status of each person.²²⁹ In light of the situation, the Court issued an additional Provisional Measure in which it reiterated the importance of the State's duty to protect the aforementioned persons and to investigate each one's condition and continue accurately reporting back to the Court every two months.²³⁰

December 20, 2002: In light of very serious threats and harassment to the Bámaca Velásquez's family, the President of the Court ordered the State to take Provisional Measures to ensure the protection, personal integrity, and lives of Mr. Bámaca Velásquez's family and relatives, specifically naming José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez, and all other relatives of Mr. Bámaca Velásquez who permanently live in Guatemala.²³¹

The President of the Court ordered the State to immediately take the necessary protective measures to guarantee the lives and personal integrity of the Mr. Bámaca Velásquez's family, and allow them to participate in the implementation of protective measures.²³² The Court ordered that the State update the Court on the progress of the implementation.²³³ Furthermore, the Court mandated the State to investigate and punish those responsible for the threats and harassment to the Mr. Bámaca Velásquez's family, and inform the Court of its progress no later than January 10, 2003.²³⁴

February 21, 2003: The Court issued Provisional Measures in which it ratified the December 20, 2002 Order of the President of the Court and ordered the State to perform all provisional measures stated in that

228. Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶¶ 3-19 (Sept. 5, 2001).

229. *Id.*

230. *Id.* "Resolve" ¶¶ 1-3.

231. Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) "Resolve" ¶¶ 1-5 (Dec. 20, 2002).

232. *Id.* ¶¶ 1-2.

233. *Id.*

234. *Id.*

order.²³⁵

September 26, 2003: After learning that Otoniel de la Roca Mendoza, another guerilla who testified during Mr. Bámaca Velásquez’s case, and his family and relatives were being harassed and threatened, the President of the Court ordered the State to immediately take the necessary precautions to ensure and protect the lives and physical integrity of Mr. Mendoza’s family and relatives.²³⁶ The Court also ordered the State to allow Mr. Mendoza, his family, and relatives to participate in the implementation of the provisional measures and to be kept updated on the progress of the implementation.²³⁷ The Court also ordered the State to investigate and punish those responsible for threatening and harassing Mr. Mendoza, his family, and relatives, and report its compliance with this provisional measure back to the Court by October 10, 2003.²³⁸

November 20, 2003: In a Provisional Measure, the Court ratified the September 26, 2003 Order of the President of the Court and ordered the State to perform all provisional measures stated in that order.²³⁹ It also added that the State must report by December 9, 2003, to the Commission regarding its compliance with the provisional measures of August 28, 1998, September 5, 2001, and February 21, 2003.²⁴⁰

November 27, 2003: The Court issued a Monitoring Compliance report, in which it found that the State had fully complied with its obligation to pay the pecuniary damages, non-pecuniary damages, and costs and expenses.²⁴¹ The Court urged the State to adopt the measures necessary to effectively and promptly comply with the other reparations delineated in the Judgment on November 25, 2000 and February 22, 2002.²⁴² Additionally, the Court required the State to submit on April 1, 2004,

235. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) “Resolve” ¶¶ 1-8 (Feb. 21, 2003).

236. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) “Resolve” ¶¶ 1-7 (Sept. 26, 2003).

237. *Id.* ¶ 3.

238. *Id.* ¶¶ 4-5.

239. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) “Decides” ¶¶ 1-8 (Nov. 20, 2003).

240. *Id.* ¶ 6.

241. *Bámaca Velásquez v. Guatemala*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. “Declares” ¶ 1 (Nov. 27, 2003).

242. *Id.* ¶ 3.

detailed report indicating the steps for an effective investigation of Mr. Bámaca Velásquez's case, and to find, exhume, and deliver his remains to his next of kin.²⁴³ The Court also noted that the State had yet to hold a public event to acknowledge the facts of the case and the compensation of the victims; create legislation to adopt the international standards of human rights; and publish in the Official Gazette and other national newspaper the facts and operative paragraphs of the November 25, 2000 Judgment.²⁴⁴ The Court asked the Commission and the victims' representatives to report on the State's progress.²⁴⁵

March 3, 2005: In a Monitoring Compliance decision, the Court stated that it would continue monitoring the State's compliance until the State locates Mr. Bámaca Velásquez's remains and returns them to his family; investigates and punishes those responsible for Mr. Bámaca Velásquez's disappearance; publishes the Judgment in the State's Official Gazette and a public recognition of its responsibility; and adopts legislation that complies with international standards of human rights.²⁴⁶ The Court requested that the State submit a report to the Court on its progress no later than May 23, 2005.²⁴⁷ Additionally, the Court asked the Commission and the victims' representatives to file a report on the State's compliance.²⁴⁸

March 11, 2005: The Court issued Provisional Measures in which it determined that the State must implement measures necessary to protect the following people: Santiago Cabrera López; Alfonso Cabrera Viagres; María Victoria López; Blanca Cabrera; Carmenlinda Cabrera; Teresa Aguilar Cabrera; Olga Maldonado; Carlos Alfonso Cabrera; José León Bámaca Hernández; Egidia Gebia Bámaca Velásquez; Josefina Bámaca Velásquez; Alberta Velásquez; Rudy López Velásquez and other family members of the Bámaca Velásquez family permanently residing in Guatemala; Emerita Mendoza; Wendy Pérez Álvarez; Sulni Madeli Pérez Álvarez; José Oswaldo Pérez Álvarez; Jacobo Álvarez; José Pioquinto Álvarez; Alez Javier Álvarez; Germán Aníbal de la Roca Mendoza; Kevin Otoniel de la Roca Mendoza; Blanca Noelia

243. *Id.* ¶ 4.

244. *Id.*

245. *Id.* ¶ 5.

246. *Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment*, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Mar. 03, 2005).

247. *Id.* ¶ 2.

248. *Id.* ¶ 3.

Meléndez; Aron Álvarez Mendoza and the family of Otoniel de la Roca Mendoza that permanently resides in Guatemala.²⁴⁹ The State shall allow the individuals to participate in the planning and implementation of these precautionary measures.²⁵⁰

The Court required the State to immediately investigate the facts resulting in the need for protection of these individuals and to punish those responsible.²⁵¹ The State shall report to the Court regarding its progress of these Provisional Measures every two months.²⁵² Additionally, the Court determined that the State inform the Court within ten days following the notification of this Provisional Measure, of the State's progress reading the Judgments of August 29, 1998, September 5, 2001, February 21, 2003 and November 20, 2003.²⁵³ The Court asked that the beneficiaries of these Provisional Measures submit their observations of the State's compliance within five days of the Court's notification to the State.²⁵⁴ Finally, the Court asked the Commission to present its observations of the State's compliance within seven days of the Court notifying the State of these Provisional Measures.²⁵⁵

July 4, 2006: The Court issued a Monitoring Compliance decision, in which it indicated that it will continue to monitor the State's compliance with the obligations set forth on March 3, 2005, and expects a report by the State no later than September 8, 2006.²⁵⁶ The Court again to requested that the victims' representatives and the Commission to submit their observations on the State's compliance of its obligations.²⁵⁷

July 10, 2007: In a Monitoring Compliance decision, the Court found that the State complied with its obligation to publish in the Judgment in the State's Official Gazette and another national newspaper.²⁵⁸ The Court will continue to monitor the remaining obligations detailed in

249. *Bámaca Velásquez v. Guatemala*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Resolves" ¶ 1 (Mar. 11, 2005).

250. *Id.* ¶ 3.

251. *Id.* ¶ 2.

252. *Id.* ¶ 7.

253. *Id.* ¶ 4.

254. *Id.* ¶ 5.

255. *Id.* ¶ 6.

256. *Bámaca Velásquez v. Guatemala*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. "Declares" ¶ 1-2 (Jul. 04, 2006).

257. *Id.* "Decides" ¶ 3.

258. *Bámaca Velásquez v. Guatemala*, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Jul. 10, 2007).

July 4, 2006's Monitoring Compliance.²⁵⁹ The State shall submit to the Court, by September 28, 2008, a detailed report indicating its progress on its compliance measures.²⁶⁰ Additionally, the Court requested that the victims' representatives and the commission report to the Court on the State's compliance.²⁶¹

January 27, 2009: In Provisional Measures and a Monitoring Compliance decision, the Court found that the State had partially complied with its obligations to adopt legislative measures necessary to adapt the State's legal system to international human rights and humanitarian standards.²⁶² The State had also partially complied with its obligation to effectively enforce these standards at the domestic level.²⁶³ In addition, the Court determined that the State had not fulfilled their obligation to locate and exhume Mr. Bámaca Velásquez's remains and investigate the facts giving rise to the violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture.²⁶⁴ The Court decided that it would continue to monitor this until complete compliance of the obligation is achieved.²⁶⁵

The Court requested that the State submit a report to the Court regarding its compliance, maintain the March 11, 2005 Provisional Measures, and submit a report, within four months of receipt of this Order, regarding implementation of the Provisional Measures.²⁶⁶ Lastly, the Court asked the Commission and the victims' representatives to submit a report regarding the State's compliance within four to six weeks following the receipt of this order.²⁶⁷

November 18, 2010: In a Monitoring Compliance decision, the Court found that the State has yet to fulfill following obligations: locate, exhume, and return Mr. Bámaca Velásquez's remains to his family; adopt legislation that will enforce compliance of international human rights standards at the domestic level; and investigate the facts which led to the violation of the American Convention and the Inter-American

259. *Id.* ¶ 2.

260. *Id.*

261. *Id.* "Decides" ¶ 3.

262. Bámaca Velásquez v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Jan. 27, 2009)

263. *Id.*

264. *Id.* ¶ 2.

265. *Id.* ¶¶ 1, 3.

266. *Id.* "Decides" ¶¶ 2, 4-5.

267. *Id.* ¶ 3.

Convention to Prevent and Punish Torture and punish those responsible.²⁶⁸ Additionally, the Court declared that decisions of the Public Prosecutor's Office and the Criminal Chamber of the Supreme Court of Justice of Guatemala, which tried to reopen the investigation, concur with the orders issued by the Court.²⁶⁹

In addition, the Court requested that the State present a detailed report to the Court on the measures adopted to fulfill its obligations no later than March 30, 2011.²⁷⁰ The Court also asked the Commission and the victims' representatives to file a report within four and six weeks following a receipt of the State's report.²⁷¹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Bámaca Velásquez v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Nov. 25, 2000\).](#)

[Bámaca Velásquez v. Guatemala, Merits, Concurring Opinion of Judge Sergio García Ramírez, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Nov. 25, 2000\).](#)

[Bámaca Velásquez v. Guatemala, Merits, Concurring Opinion of Judge Hernán Salgado Pesantes, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Nov. 25, 2000\).](#)

[Bámaca Velásquez v. Guatemala, Merits, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Nov. 25, 2000\).](#)

268. *Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. "Declares"* ¶ 1 (Nov. 18, 2010)

269. *Id.* ¶ 3.

270. *Id.* "Decides" ¶ 2.

271. *Id.* ¶ 3.

[Bámaca Velásquez v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Feb. 22, 2002\).](#)

[Bámaca Velásquez v. Guatemala, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Feb. 22, 2002\).](#)

[Bámaca Velásquez v. Guatemala, Reparations and Costs, Seperate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 91 \(Feb. 22, 2002\).](#)

3. Provisional Measures

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 27, 2009\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 11, 2008\) \(Available only in Spanish\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 11, 2005\) \(Available only in Spanish\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 26, 2003\) \(Available only in Spanish\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 21, 2003\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 20, 2002\) \(Available only in Spanish\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 5, 2001\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 29, 1998\).](#)

[Bámaca Velásquez v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jun. 30, 1998\).](#)

4. Compliance Monitoring

[Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Nov. 18, 2010\).](#)

[Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Jan. 27, 2009\).](#)

[Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Nov. 11, 2008\) \(Available only in Spanish\).](#)

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[Bámaca Velásquez v. Guatemala, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Nov. 27, 2003\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[None]

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