

Maritza Urrutia v. Guatemala

ABSTRACT¹

This is a case about the unlawful arrest, detention and torture of a political dissident in Guatemala.

I. FACTS

A. Chronology of Events

July 22, 1992: Maritza Ninette Urrutia García lives with her parents, son, sister, niece, and nephew in Guatemala City, Guatemala.² She is a thirty-three year old elementary schoolteacher and also an assistant to a psychologist who conducts various tests in elementary schools.³ In addition to her work with elementary schools, Ms. Urrutia García is a member of the Guerrilla Army of the Poor (*Ejército Guerrillero de los Pobres*, “EGP”), a rebel group within the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*, “URNG”) in Guatemala.⁴

As Ms. Urrutia García walks along Fifth Avenue in Zone Thirteen in Guatemala City, unknown men watch and follow her.⁵

July 23, 1992: Ms. Urrutia García drops off her four-year-old son at school and walks back home along Fifth Avenue, the same street where she was watched and followed the previous day.⁶ Three men dressed in civilian clothes grab Ms. Urrutia García and force her into a white car with tinted windows while a fourth man drives the car away.⁷ The men place a hood over Ms. Urrutia García’s head and take her to the

1. Monica Rodriguez, Author; Grace Kim and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 58.23 (Nov. 27, 2003).

3. *Id.* ¶¶ 58.4; 58.23.

4. *Id.*

5. *Id.*

6. *Id.* ¶ 58.4; *Maritza Urrutia v. Guatemala*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 11.043, ¶ 2 (Jan. 9, 2002).

7. *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, ¶ 58.4.

Guatemalan Army's clandestine detention center known as "La Isla."⁸ La Isla is located behind the Military Police Station at Sixteenth Avenue and Thirteenth Street of Zone 6 in Guatemala City.⁹ The kidnappers hold Ms. Urrutia García captive for eight days.¹⁰

Edmundo Urrutia Castellanos, Ms. Urrutia García's father, discovers his daughter is missing and files complaints before the appropriate national bodies, the Ombudsman Office, and the National Police.¹¹ Upon receiving his report, the Ombudsman Office orders an investigation into the reported facts and prepares a writ of *habeas corpus* in Ms. Urrutia García's favor.¹²

July 23, 1992 – July 30, 1992: Throughout the eight days that the abductors keep Ms. Urrutia García in captivity, they lock her in a room, handcuff her to a bed, and keep her head covered with a hood.¹³ Her captors try to prevent her from sleeping by leaving the light on and the radio blasting at full volume at all hours.¹⁴ Her abductors continuously interrogate Ms. Urrutia García regarding her and her former husband's connection to the EGP.¹⁵

Her kidnappers threaten her with physical torture, death, and the murder of her family to induce her to collaborate.¹⁶ They continuously threaten that she will never see her son again.¹⁷ They show her letters she has written to her son's father and pictures of her son, mother, and other members of her family, as well as her home and car.¹⁸ They also show her pictures of guerilla fighters who have been tortured and killed in combat.¹⁹ Her abductors tell her that this how her family will find her.²⁰

Throughout her captivity, Ms. Urrutia García is forced to telephone her family and lie about her situation.²¹ Her captors force her to film a statement in which she reads a message drafted by her

8. *Id.*

9. *Id.*

10. *Id.* ¶ 58.5.

11. *Id.* ¶ 58.12.

12. *Id.* ¶ 58.13.

13. *Id.* ¶ 58.6.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* ¶ 58.7.

abductors and wears clothes and make-up also chosen by them.²² Her statement is about her participation in the EGP, as well as the participation of her brother and former husband.²³ In the video she announces her resignation from EGP and encourages her other companions to abandon the armed fight.²⁴ After the filming is concluded, Ms. Urrutia García is made to contact two television channels to ask if they will broadcast the video.²⁵

July 24, 1992: The Human Rights Office of the Archdiocese of Guatemala (*Oficina de Derechos Humano del Arzobispado de Guatemala*, “ODHAG”) files a writ of habeas corpus before the Supreme Court of Justice on behalf of Ms. Urrutia García.²⁶ The National Police’s Criminal Investigations Department informs the Eighth Criminal Court about Mr. Urrutia Castellanos’s complaint regarding the abduction of his daughter.²⁷

July 24 1992 – July 28, 1992: Officers from the Criminal Investigation Department of the National Police go to Ms. Urrutia García’s home to interview her parents and neighbors and prepare reports based on the interviews.²⁸

July 29, 1992: At 10:00 p.m., two Guatemalan news channels broadcast Ms. Urrutia García’s videotaped statements.²⁹

July 30, 1992: Ms. Urrutia García is released from captivity.³⁰ Her abductors threaten to kill her if she does not meet with the Attorney General, Acisclo Valladares, and ask for amnesty.³¹ Mr. Valladares takes her to the Fifth Criminal Court where she asks for amnesty from a judge.³² The judge simply signs the amnesty document, declining to ask about what happened during her imprisonment.³³ Ms. Urrutia García

22. *Id.* ¶ 58.8.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* ¶ 58.15.

27. *Id.* ¶ 58.16.

28. *Id.* ¶ 58.17.

29. *Id.* ¶ 58.8.

30. *Id.* ¶ 58.9.

31. *Id.* ¶¶ 51(a), 58.9.

32. *Id.* ¶ 58.9.

33. *Id.* ¶¶ 51(a), 58.9.

then gives a press conference to confirm the content of the video.³⁴

At some point after the press conference, ODHAG places Ms. Urrutia García and her family under the protection of the Guatemalan Archdiocesan Human Rights office.³⁵

August 6, 1992: The Attorney General's Office initiates an investigation based on complaint filed with the Fourth Criminal Trial Court.³⁶ Ms. Urrutia García is summoned to give her testimony in court, but fails to attend the hearing.³⁷ In addition, the President of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (*Comisión Presidencial de Derechos Humanos*, "COPREDEH") and the Special Security for Political Affairs of the Presidency of the Republic visit the office of ODHAG to request an interview with Ms. Urrutia García, but she refuses to speak with them.³⁸

August 7, 1992: Ms. Urrutia García's captivity has caused her so much fear for her life that she flees the country.³⁹ Before leaving the country, she reveals what happened to her during captivity to an official at ODHAG and to Ramiro de León Carpio, the Ombudsman.⁴⁰ Ms. Urrutia García asks the official to keep the information confidential.⁴¹ After her emigration, she goes to Mexico where she lives as a refugee for six years.⁴²

October 5, 1992: The Criminal Investigations Department of the National Police issues their reports of the interviews of Ms. Urrutia García's family members.⁴³ The report is inconclusive as to her disappearance; it merely summarizes what her parents and neighbors told the police.⁴⁴

October 6, 1992: The Ombudsman issues a report that finds that Ms. Urrutia García's human rights to personal liberty, safety, integrity,

34. *Id.* ¶ 58.9.

35. *Id.* ¶ 58.10.

36. *Id.* ¶ 58.18.

37. *Id.*

38. *Id.* ¶ 58.19.

39. *Id.* ¶¶ 51(a)-(b), 58.11.

40. *Id.* ¶ 58.20.

41. *Id.*

42. *Id.* ¶ 58.11.

43. *Id.* ¶ 58.17.

44. *Id.*

and freedom have been violated because she has been the victim of an enforced disappearance for eight days.⁴⁵ The report also declares that the State is responsible for violating Ms. Urrutia Garica's rights due to its failure to control repressive groups who continue to act outside the boundaries of the law.⁴⁶

June 19, 1995: The Attorney General's Office takes charge of the case.⁴⁷ The Office has, as of the date of the Court's judgment, failed to produce any results.⁴⁸

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

July 27, 1992: The Center for Legal Action on Human Rights (*Centro para la Acción Legal en Derechos Humanos*, "CALDH") submits a petition to the Inter-American Commission on behalf of Ms. Urrutia García.⁴⁹

August 9, 2000: The President of Guatemala, Alfonso Portillo, acknowledges the State's responsibility for what happened to Ms. Urrutia García.⁵⁰ Mr. Portillo also states that Guatemala will work towards a friendly settlement.⁵¹

March 2, 2001: The petitioners request that the Commission rule on the merits of the case, thus ending the parties' efforts to achieve a friendly settlement.⁵²

October 1, 2001: The Commission issues Merits Report No. 71/01, recommending that the State make a complete, impartial, and effective

45. *Id.* ¶ 58.21.

46. *Id.*

47. *Id.* ¶ 58.22.

48. *Id.*

49. *Id.* ¶ 5.

50. *Id.* ¶ 6.

51. *Id.*

52. *Id.*

investigation of the facts set forth by the petitioners so that the persons responsible for the violation of Ms. Urrutia García's rights may be prosecuted and punished.⁵³ Additionally, the Commission advises the State to conduct a genuine and impartial investigation of the State officials who participated in covering up Ms. Urrutia García's arbitrary detention, as well as the lack of investigation into the facts already established.⁵⁴ Finally, the Commission states that criminal and administrative sanctions should be administered where applicable.⁵⁵

B. Before the Court

January 9, 2002: The Commission submits the case to the Court after the State fails to adopt its recommendations.⁵⁶

1. Violations Alleged by Commission⁵⁷

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 13 (Right to Freedom of Thought and Expression)

Article 25 (Right to Judicial Protection)

all in relation to:

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

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (States Must Take Effective Measures to Prevent and Punish Torture)

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

2. Violations Alleged by Representatives of the Victims⁵⁸

53. *Id.* ¶ 7. The Commission's Report on the Merits was not available at the time of publication, and the Court's Judgment does not indicate whether the Commission found specific violations of the American Convention.

54. *Id.*

55. *Id.*

56. *Id.* ¶ 1.

57. *Id.* ¶ 2.

58. *Id.* ¶¶ 131-40. Fernando López and Frank La Rue served as representatives of Ms. Urrutia García. *Id.* ¶ 20.

Same Violations Alleged by Commission, plus:

Article 11 (Right to Privacy)

Article 19 (Rights of the Child) of the American Convention.

III. MERITS

A. *Composition of the Court*⁵⁹

Antônio Augusto Cançado Trindade, President

Sergio García Ramírez, Vice-President

Hernán Salgado Pesantes, Judge

Máximo Pacheco Gómez, Judge

Alirio Abreu Burelli, Judge

Carlos Vicente de Roux Rengifo, Judge

Arturo Martínez Gálvez, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary

Pablo Saavedra Alessandri

B. *Decision on the Merits*

November 27, 2003: The Court issues its Judgment on Merits, Reparations and Costs.⁶⁰

The Court found unanimously that the State had violated:

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Urrutia García,⁶¹ because:

The State deprived Ms. Urrutia García of her liberty when she was

59. Deputy Secretary excused himself from participating because of his involvement in the case during his work at the Inter-American Commission of Human Rights. The Judgment did not indicate which judge was missing from the decision on the Merits. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, page 1 (Nov. 27, 2003)*.

60. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103 (Nov. 27, 2003)*.

61. *Id.* “Operative Paragraph” ¶ 1.

*captured and arbitrarily detained for eight days.*⁶² Article 7 (Right to Personal Liberty) of the American Convention prohibits the detention of a person, except as permitted by law.⁶³ Similarly, Article 6 of the State's Constitution establishes that a person may only be deprived of his or her freedom by a court order.⁶⁴ The Constitution also permits someone to be detained when they are caught in flagrante delicto while committing an offense or a misdemeanor.⁶⁵ It is required, however, that the detained person be taken to a competent judicial authority within six hours of their detention.⁶⁶ Ms. Urrutia García was not caught in flagrante delicto; rather, she was innocently walking down the street. She was also never brought before a judge.⁶⁷ Thus, she was subject to arbitrary unlawful detention, constituting a violation of her rights enshrined in Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the American Convention.⁶⁸

Moreover, the Court acknowledged that the State, in efforts to demoralize the rebel groups, had an ongoing practice of abducting, interrogating, torturing, and threatening the victim's life or the life of their next of kin.⁶⁹ The State would do this without any form of judicial control.⁷⁰ The State's prevalent behavior indicated to the Court that that Ms. Urrutia García's detention constituted a violation of Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the American Convention.⁷¹

In addition, Article 7 of the Constitution of Guatemala states that a detained person must be notified immediately, both orally and in writing, of the reasons for their detention, the authority that ordered their detention, and the location where they are to be detained.⁷² Similarly, Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) of the American Convention imposes a positive obligation on

62. *Id.* ¶¶ 62-77.

63. *Id.* ¶ 65.

64. *Id.* ¶ 67.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* ¶¶ 67-68.

69. *Id.* ¶ 69.

70. *Id.*

71. *Id.* ¶ 70.

72. *Id.* ¶ 72.

*the State to take measures to avoid unlawful and arbitrary detention.*⁷³ *This includes guaranteeing the detained person legal representation and informing the detainee of the reason for his or her detention.*⁷⁴ *Neither Ms. Urrutia García nor her family members were notified of any of the above requirements.*⁷⁵ *The Court, therefore, found that the State had violated Article 7(4) of the Convention.*⁷⁶

*Furthermore, both the Inter-American Court and the European Court of Human Rights, when determining whether the detention was arbitrary and unlawful, have given special importance to the immediacy of judicial supervision of detentions.*⁷⁷ *The European Court determined that the word “immediately” in the European Convention should be interpreted on a case-by-case basis.*⁷⁸ *Nevertheless, the European Court noted that in no situation, no matter how serious, would an unduly prolonged period of detention be considered acceptable.*⁷⁹ *Also, a complete negation of prompt judicial supervision during a detention is considered one of the most serious forms of violations of Article 5 in the European Convention.*⁸⁰ *In the present case, Ms. Urrutia García was detained without a judicial order, without judicial supervision, and without the means to file an effective remedy against her detention.*⁸¹ *The writs of habeas corpus filed on her behalf were ineffective.*⁸² *For these reasons, the Court found that the State violated Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention.*⁸³

*Lastly, the Court referred to Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention stating that the remedies filed in favor of Ms. Urrutia García were ineffective and, therefore, the State also violated Article 7(6) of the Convention.*⁸⁴

Article 5 (Right to Humane Treatment), in relation to Article 1(1)

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* ¶ 73.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* ¶ 74.

82. *Id.*

83. *Id.* ¶ 75.

84. *Id.* ¶ 76.

of the American Convention, and Articles 1 (Obligation to Prevent and Punish Torture) and 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Urrutia García,⁸⁵ because:

State officials arbitrarily and unlawfully detained Ms. Urrutia García in conditions that amounted to cruel and inhumane treatment.⁸⁶ Article 5 (Right to Humane Treatment) of the American Convention protects an individual's moral and physical integrity and guarantees that no person will be subject to torture.⁸⁷ Ms. Urrutia García was kept in a room for eight days, hooded and handcuffed to a bed, all while the radio played at full volume and the light remained on, preventing her from sleeping.⁸⁸ She was aggressively interrogated for long periods of time and threatened with death and the death of her family if she did not cooperate with her captors.⁸⁹ In addition, she was forced to make and confirm a statement regarding her support of the EGP against her will.⁹⁰ It has been proved that these acts constitute mental violence against Ms. Urrutia García Garcia and that these acts were inflicted and prepared for the purpose of obliterating her personality and morale.⁹¹ The Court recognized that all forms of torture, both physical and psychological, are absolutely prohibited under the Convention.⁹² Moreover, under some circumstances, inflicting mental anguish may be considered a form of "psychological torture."⁹³ The Court thus found that the State violated Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention.⁹⁴

The State also did not prevent the violation of Ms. Urrutia García's rights and failed to investigate or punish those responsible for torturing Ms. Urrutia García.⁹⁵ Thus, the State failed to comply with Articles 1 (Obligation to Prevent and Punish Torture) and 6 (Obligation to Take

85. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs*, "Operative Paragraph" ¶ 2.

86. *Id.* ¶ 88.

87. *Id.* ¶ 81.

88. *Id.* ¶ 85.

89. *Id.*

90. *Id.*

91. *Id.* ¶ 94.

92. *Id.*

93. *Id.* ¶ 92.

94. *Id.* ¶ 88.

95. *Id.* ¶ 96.

*Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention against Torture.*⁹⁶

Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Urrutia García,⁹⁷ because:

*The results achieved from the two writs of habeas corpus submitted by ODHAG and the writ submitted by the Guatemalan Ombudsman in an effort to discover Ms. Urrutia García's whereabouts were ineffective.*⁹⁸ *The CEH Report stated that when Ms. Urrutia García, following her captors' orders, asked for amnesty at the Fifth Criminal Trial, the judicial authorities failed to investigate the legality of Ms. Urrutia García's detention.*⁹⁹ *Indeed, the document that granted her amnesty appeared to have been prepared before she had even appeared before the judge.*¹⁰⁰

*As previously established, State agents held Ms. Urrutia García captive, thus the State is responsible for creating effective recourse for the conditions of her detainment and obligated to provide an effective remedy to her.*¹⁰¹ *Given the situation of the State at that time, human rights remedies existed formally; however, the methods provided by the State proved illusory and could not be considered an effective recourse.*¹⁰² *Thus, the Court found that the State violated Article 25 (Right to Judicial Protection) of the American Convention.*¹⁰³

*It was also the State's obligation to conduct an impartial and effective investigation of the facts regarding Ms. Urrutia García's abduction, detention, and torture and to punish those responsible.*¹⁰⁴ *No such investigation was conducted; therefore, the Court found that the State*

96. *Id.*

97. *Id.* "Operative Paragraph" ¶ 3.

98. *Id.* ¶ 113.

99. *Id.* ¶ 115.

100. *Id.*

101. *Id.* ¶ 116.

102. *Id.*

103. *Id.*

104. *Id.* ¶ 119.

violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention.¹⁰⁵

The State was also found to have violated Articles 8(2) (Right to Be Presumed Innocent) and 8(3) (A Confession is Valid Only if Not Coerced) of the American Convention because Ms. Urrutia García was obligated to incriminate herself in such a way that would lead to unfavorable procedural consequences.¹⁰⁶ Persons subject to a judicial proceeding have limited rights during and before the proceeding that must be protected.¹⁰⁷ These rights include, but are not limited to, being represented by counsel, having the right to not give incriminating testimony against oneself, or confessing without having been coerced.¹⁰⁸

The Court concluded that for eleven years following Ms. Urrutia García's detention, the State failed to effectively investigate the human rights violations, essentially allowing those responsible to go unpunished.¹⁰⁹ This kind of "impunity promotes chronic repetition of human rights violations" and results in complete helplessness of victims and their next of kin.¹¹⁰

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Urrutia García,¹¹¹ because:

The Court noted that the State could not use Ms. Urrutia García's failure to appear, to produce evidence, or to cooperate as a sole defense for its lack of initiative in continuing the criminal investigation.¹¹² Under Article 8 of the Inter-American Convention to Prevent and Punish Torture, it is the express obligation of States to proceed, *de oficio* and immediately, in cases of torture such as this.¹¹³ Therefore, the State did not meet its obligations outlined in Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent

105. *Id.* ¶¶ 119, 130.

106. *Id.* ¶ 121.

107. *Id.* ¶ 120.

108. *Id.* ¶ 107.

109. *Id.* ¶ 129.

110. *Id.* ¶ 126.

111. *Id.* "Operative Paragraph" ¶ 3.

112. *Id.* ¶ 128.

113. *Id.* ¶¶ 128, 130.

and Punish Torture.¹¹⁴

The Court found unanimously that the State had not violated:

Article 13 (Freedom of Thought and Expression), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Urrutia García,¹¹⁵ because:

*The Court held that the State agents' actions of forcing Ms. Urrutia García to make false statements against her will and using coercive measures were facts subsumed in the discussion addressing the violations of Article 5 (Right to Humane Treatment) and 8 (Right to a Fair Trial) of the American Convention.*¹¹⁶

Article 11 (Right to Privacy), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Urrutia García,¹¹⁷ because:

*The Court found that the facts falling under this Article were included within the violation of Article 5 (Right to Humane Treatment) as outlined above.*¹¹⁸

The Court issued a unanimous acknowledgement regarding:

Article 19 (Rights of the Child), in relation to Article 1(1) of the American Convention, to the detriment of Fernando Sebastián Barrientos Urrutia,¹¹⁹ because:

*Fernando Sebastián, Ms. Urrutia García's son, suffered greatly from his mother's abduction and detention.*¹²⁰ *His claim under Article 19, however, was time-barred.*¹²¹ *Under the principle of iura novit curia, the Court chose nonetheless to examine the issue and decided that Fernando Sebastián's suffering would be considered when determining*

114. *Id.*

115. *Id.* ¶ 103.

116. *Id.*

117. *Id.*

118. *Id.* ¶ 136.

119. *Id.* ¶ 140.

120. *Id.*

121. *Id.*

reparations.¹²²

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

In his separate opinion, Judge Cançado Trindade added personal observations affirming the Court's characterization of the absolute prohibition of torture in all of its forms, including psychological torture, as belonging to the sphere of international *jus cogens*.¹²³ He specifically emphasized the noteworthiness of this case because of its juridical development in its affirmation of the absolute prohibition on torture, as well as the broad definition of what constitutes torture.¹²⁴

2. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez noted that a problem arises when a defendant State acknowledges responsibility, the facts, or the claims in the case, but does not completely accept responsibility of the facts and claims at the conclusion of the case.¹²⁵ He also emphasized the Court's analysis regarding the State's agents' violation of Ms. Urrutia García's right to physical and moral integrity.¹²⁶

Similar to Judge Cançado Trindade's concurring opinion, Judge García Ramírez supported the Court's categorical rejection of all forms torture and the Court's reference to international *jus cogens* prohibiting it as well.¹²⁷

Judge García Ramírez also stated that this Judgment will make significant contributions to the future interpretation of Article 8(2) (Right to Be Presumed Innocent) and 8(3) (A Confession is Valid Only if Not Coerced) of the American Convention.¹²⁸

122. *Id.*

123. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Concurring Opinion of Judge Antônio Augusto Cancado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 1 (Nov. 27, 2003).*

124. *Id.* ¶ 12.

125. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Reasoned Concurring Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 3 (Nov. 27, 2003).*

126. *Id.* ¶ 4.

127. *Id.* ¶¶ 4, 5.

128. *Id.* ¶ 11.

3. Separate Opinion of Judge Carlos Vicente de Roux Rengifo

In a separate opinion, Judge de Roux Rengifo stated that Ms. Urrutia García's alleged violation of her right to freedom of expression should have been addressed separately from, and not subsumed by, the violation of Article 5 (Right to Humane Treatment) of the Convention.¹²⁹ Specifically, because Article 13 (Freedom of Thought and Expression) of the Convention protects a person's rights in relation to third parties, the Court should have determined that the State violated Article 13 of the Convention.¹³⁰

4. Partially Dissenting Opinion of Judge Arturo Martínez Gálvez

In a separate opinion, Judge Martínez Gálvez disagreed with the majority's decision to consider reports of the Historical Clarification Commission and the Inter-Diocesan Project for Recovery of Historical Memory as evidence of the facts.¹³¹ Judge Martínez Gálvez also disagreed that the State's acknowledgement of institutional responsibility was sufficient grounds for a judgment against the State.¹³²

Finally, Judge Martínez Galvez stated that the amount awarded in compensation to Ms. Urrutia García was excessive.¹³³ The Judge specifically noted that it was unfair considering the financial situation of the State and the Guatemalan taxpayers who would essentially pay the amount.¹³⁴

IV. REPARATIONS

The Court ruled that the State had the following obligations:

129. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Separate Opinion of Judge de Roux Rengifo, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 4 (Nov. 27, 2003).*

130. *Id.* ¶ 5.

131. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Arturo Martinez Galvez, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ I (Nov. 27, 2003).* The Historical Clarification Commission was Guatemala's' truth and reconciliation commission established in 1994 to help reconcile the country and achieve peace after its civil war. The Inter-Diocesan Project for Recovery of Historical Memory documented atrocities on the basis of over 6,000 testimonies. *Id.*

132. *Id.*

133. *Id.* ¶ II.

134. *Id.*

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

1. Investigation and Punishment of Those Responsible

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

The State should investigate the facts of this case that resulted in violations of the American Convention and non-compliance with the obligations of the Inter-American Convention to Prevent and Punish Torture.¹³⁵

The State should also identify, prosecute and punish all individuals responsible for the violation of Ms. Urrutia García's rights.¹³⁶ As is permitted by law, Ms. Urrutia García must be given full access and be allowed to participate in all stages of the investigation and trial.¹³⁷

Lastly, the State should publish the results of the investigation and subsequent trial.¹³⁸

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court ruled by a six to one vote that the State had the following obligations:

The State must make a compensatory payment of \$6,000 to Ms. Urrutia García for loss of income, travel, and telephone calls.¹³⁹

The State must make a compensatory payment of \$1,000 to Mr. Urrutia Castellanos, Ms. Urrutia García's father, for expenditures incurred for plane tickets to visit his daughter.¹⁴⁰

The State must make a compensatory payment of \$1,000 to María Pilar García de Urrutia, Ms. Urrutia García's mother, for expenditures incurred in visiting her daughter and for telephone calls.¹⁴¹

135. *Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶¶ 176, 177, "Operative Paragraph" ¶ 5 (Nov. 27, 2003).*

136. *Id.*

137. *Id.* ¶ 177.

138. *Id.* ¶¶ 177, "Operative Paragraphs" ¶ 5.

139. *Id.* ¶ 160.

140. *Id.* ¶¶ 159, 160.

141. *Id.*

The State must make a compensatory payment of \$1,000 to Edmundo Urrutia García, Ms. Urrutia García's brother, for expenditures incurred for the plane ticket when visiting his sister.¹⁴²

The State must make a compensatory payment of \$1,000 to Carolina Urrutia García, Ms. Urrutia García's sister, for expenditures incurred for the plane tickets when she and her two children visited Ms. Urrutia García.¹⁴³

2. Non-Pecuniary Damages

The Court ruled by a six to one vote that the State had the following obligations:

The Court found that compensation to Ms. Urrutia García and her family was appropriate in light of their suffering due to the forced disappearance of Ms. Urrutia García, the change in living conditions of Ms. Urrutia García, and other consequences of a non-pecuniary nature that Ms. Urrutia García and her family suffered.¹⁴⁴

The State must pay \$20,000 to Ms. Urrutia García and \$10,000 to Fernando Sebastián Barrientos Urrutia as compensation for their non-pecuniary suffering.¹⁴⁵ The State must also pay \$6,000 each to Mr. Urrutia Castellanos and Ms. García de Urrutia and \$1,000 each to Mr. Urrutia García and Ms. Carolina Urrutia García.¹⁴⁶

3. Costs and Expenses

The Court ruled by a six to one vote that the State had the following obligation:

The State must pay the sum of \$6,000 to Ms. Urrutia García and CALDH as reimbursement for the costs and expenses incurred before the Inter-American system.¹⁴⁷

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

\$60,000

142. *Id.*

143. *Id.*

144. *Id.* ¶¶ 165, 166.

145. *Id.* ¶¶ 169, 170.

146. *Id.*

147. *Id.* ¶ 184.

C. Deadlines

The State must pay the compensation and reimbursement of costs and expenses, and adopt the other measures ordered within one year from notification of the judgment.¹⁴⁸ If the beneficiaries cannot receive the compensation during that one-year period, then the State shall deposit the money in an account or a deposit certificate in a solvent Guatemalan bank.¹⁴⁹ If the money has not been collected after ten years, then the money may be returned to the State, including the interest earned.¹⁵⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

December 20, 2004: Guatemala paid the \$60,000 amount awarded to Ms. Carolina Urrutia García, who acted as the representative of the entire family and was to distribute the money accordingly.¹⁵¹

September 21, 2005: The Court found that the State had fully complied with the following obligations: payment of pecuniary damages to Ms. Urrutia García, Mr. Urrutia Castellanos, Ms. García de Urrutia, Mr. Urrutia García, and Ms. Carolina Urrutia García;¹⁵² payment of non-pecuniary damages to Ms. Urrutia García, Mr. Urrutia Castellanos, Ms. García de Urrutia, Mr. Urrutia García, Ms. Carolina Urrutia García, and Mr. Barrientos Urrutia;¹⁵³ and payment of costs and expenses incurred in the case.¹⁵⁴

The Court stated that it would continue to monitor Guatemala's investigation of the facts of the case and the prosecution and

148. *Id.* ¶ 185.

149. *Id.* ¶ 188.

150. *Id.*

151. Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 3 (Sept. 21, 2005).

152. Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶¶ 2(1)(a)-(c) (Jan. 22, 2009).

153. *Id.*

154. *Id.*

punishment of those responsible for violating Ms. Urrutia García's rights.¹⁵⁵

April 23, 2007: Fifteen months after the deadline established by the Court, the State submitted its report.¹⁵⁶

November 21, 2007: The Court issues its Judgment on Monitoring Compliance.¹⁵⁷ In the judgment, the Court called for the State to adopt all necessary measures to promptly and effectively comply with the Court's judgment on the merits of November 27, 2003.¹⁵⁸ The State's late report of April 23, 2007 was a clear indication that the State had not complied with its obligations to investigate and prosecute the State agents accountable.¹⁵⁹ The Court also held that the State must submit a report to the Court that specifies the measures it has taken to comply with the Judgment on the Merits.¹⁶⁰

January 22, 2009: The Court highlighted the State's delay in constructing a legal proceeding against the agents responsible for violating Ms. Urrutia García's rights.¹⁶¹ This continuous delay has denied Ms. Urrutia García and her next of kin of the justice that is merited.¹⁶² The State reported information regarding investigations and proceedings that occurred in 2008.¹⁶³ Nonetheless, the Court found that the measures taken by the State were insufficient considering the amount of time that had passed.¹⁶⁴ Thus, the Court decided to leave the case open and continue monitoring the State's compliance.¹⁶⁵

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

155. *Id.* ¶ 2(2).

156. Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 3 (Nov. 21, 2007).

157. Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 21, 2007).

158. *Id.* "Decides" ¶ 1.

159. *Id.* ¶ 4.

160. *Id.* ¶ 2.

161. Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 7-9 (Jan. 22, 2009).

162. *Id.*

163. *Id.* "Considering" ¶ 5.

164. *Id.* "Declares" ¶ 1.

165. *Id.*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 103 \(Nov. 27, 2003\).](#)

[Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 103 \(Nov. 27, 2003\).](#)

[Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Reasoned Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 103 \(Nov. 27, 2003\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 22, 2009\).](#)

[Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 21, 2007\).](#)

[Maritza Urrutia v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 21, 2005\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Maritza Urrutia v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.043 \(Jan. 9, 2002\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW 59 (Matt Pollard & Nigel Rodley eds., 2009).