

**REASONED CONCURRING OPINION OF
JUDGE SERGIO GARCÍA RAMÍREZ
TO THE JUDGMENT IN THE MARITZA URRUTIA CASE,
OF NOVEMBER 27, 2003**

1. In the judgment on merits and reparations in this case, the Inter-American Court of Human Rights has examined some relevant issues that it also considered in the judgment in the *Mack Chang* case, delivered on November 26, 2003. This is particularly true with regard to the State's acknowledgement of institutional or international responsibility in relation to certain facts or specific claims set out in the Inter-American Commission's application. In the case in point, the State acknowledged its institutional responsibility with regard to the violation of Article 1(1) of the American Convention, without, at the same time, making any express acknowledgement concerning the facts, the "occurrence" of which it was accepting.

2. I do not consider it necessary to examine in detail the arguments and the scope of the acknowledgement of responsibility made by the State in this *concurring reasoned opinion*. It would be difficult to accept responsibility for the violation of Article 1(1), referring to the general obligation to respect and ensure the exercise of the rights and obligations established in the American Convention and, at the same time, admit "that the facts had occurred," without extending this acknowledgement to the nature and characteristics of such facts, from which the so-called institutional responsibility arises. It would appear that the State was only referring to the general function of protection that is incumbent on a State with regard to all persons subject to its jurisdiction, without taking into account the other concurrent elements in this specific case. If this is so, the ultimate consequence would be the acknowledgement of institutional responsibility for any facts, without distinguishing their source, that affect persons or property subject to the protection of the State in the terms of the American Convention.

3. In any case, we are again faced with the problem that arises from the acknowledgement by the defendant State of facts, claims and/or responsibilities, when that State does not fully identify itself with a plain acceptance of the facts and an acquiescence to the claims that the conclusion of the case on merits and the transfer to the reparations stage may involve, if the international court considers it pertinent. In the instant case, the Court had to evaluate the scope of the State's acknowledgement, as it did more extensively in the judgment in the *Mack Chang* case. Therefore, I refer to what I stated in my *concurring reasoned opinion* to the judgment in that case.

4. I consider that it is important to emphasize the Court's analysis of the treatment inflicted on Maritza Urrutia by State agents, who violated her right to physical and moral integrity, protected by Article 5 of the Convention. This treatment amounted to torture in the terms of this Article. Consequently, there was a violation of both the Pact of San José and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture. In its respective considerations, which I fully endorse, the Court emphasized that the prohibition of torture encompasses all possible forms of torture, and that this absolute prohibition forms part of international *jus cogens*.

5. I believe that it is important that the Court has rejected emphatically any form of torture, and also the alleged explanation of torture – it cannot be called justification – arising from the need to combat some of the most serious types of

criminality. These inadmissible arguments give rise once again to the false dilemma between respect for human rights, on the one hand, and public safety or national security, on the other hand. This dangerous and unacceptable dilemma is, today, a reference point for the most relevant political, ethical and legal debate, and the effective preservation of the democratic system depends largely on its results.

6. Obviously, the State must ensure public safety and national security, since this protection is one of the State's fundamental obligations. However, it is no less obvious that this obligation should be fulfilled without violating either the rule of law or scrupulous respect for human rights, which are also fundamental obligations of the public authorities; because, as has been affirmed since the historic declarations on rights of the eighteenth century – which are the source of the contemporary concept of human rights, and the origin and foundations of the modern state – the protection of human rights is the purpose of government. The energetic fight against crimes that harm society and endanger its very subsistence and its highest values should not be waged in violation of the rule of law, the democratic system, and the essential rights of the people.

7. Some of the facts set out in the instant case and the concepts of violation examined in this regard, have been re-examined by the Court in the context of other violations declared in the judgment. The existence of the facts is not denied, but it was considered more appropriate to examine them as violations of different Articles to those invoked in the application. This is especially true of the presentation to the public of audiovisual recordings made by the victim, which were widely broadcast in the media, and the interference in specific aspects of her private life. Both facts have been acknowledged in the judgment as violating human rights, although they have been given a different classification to the one set forth in the application.

8. I believe that the treatment of these statements made by the victim is especially relevant; they were obtained under intense pressure and transmitted to the public by television. In these declarations, among other matters, Maritza Urrutia acknowledged facts that harmed her and stated points of view that did not correspond to those she really held. The Inter-American Court understands that this entails a violation of various paragraphs and subparagraphs of Article 8 of the American Convention, since the accused has the right “not to be compelled to be a witness against himself or to plead guilty (Article 8(2)(g)) and “a confession of guilt by the accused shall be valid only if it is made without coercion of any kind” (Article 8(3)).

9. Article 8, entitled “Judicial Guarantees” [in Spanish – “Right to a Fair Trial” in English] includes a series of rights that correspond, substantially, to “due process of law.” Here, as in Article 25 on “Judicial Protection,” access to justice is guaranteed, and conditions are established so that this access is not reduced to its formal dimension (the possibility of presenting a petition, evidence and arguments before a competent, independent and impartial court), but also extends to its material dimension (the possibility of obtaining a fair judgment). In this respect, the provisions of both Articles are a valuable instrument for the protection and defense of the individual in the face of acts or omissions of the State that violate or attempt to violate any of the rights embodied in the American Convention.

10. In other cases, the Court has made considerable progress in the understanding of the judicial guarantees established in Article 8, considering that the rules of due process of law apply also to proceedings before authorities that are explicitly administrative. All the guarantees included in Article 8 are relevant in any

proceeding designed to determine the rights and obligations of a person, and not only in criminal proceedings. Consequently, the extended formula included in the first paragraph, a formula that sets out principles and objectives of a general scope, makes the application of the measures established in the remaining paragraphs binding, when this is pertinent for the case in question. This is so, because the instruments, rights or guarantees set out in the remaining paragraphs of Article 8 correspond to the procedural defense system which ensures that those rights and obligations are determined fairly, and they are obviously not restricted to criminal matters, but involve all areas of the social life of the individual in which, therefore, petitions and disputes can be submitted that must be resolved by different State bodies with jurisdictional or para-jurisdictional attributes, or their subsidiary organs.

11. It is relevant that the judgment in the *Maritza Urrutia* case should make a significant contribution to the understanding of Article 8, when we consider that the guarantees included in its second and third paragraph, which are directly related to the facts of this case, should be observed both in legal proceedings, strictly speaking, and in non-legal proceedings and procedures, or those that are not related to a legal action, but precede or are concomitant with it and that may have an unfavorable and unjustified impact on the juridical status of the person participating in the action. This applies, of course, to investigations prior to the prosecution of an accused person and to other acts relating to the prosecution or that can cause relevant effects for the judicial or extrajudicial determination of the rights and obligations of an individual, as was seen in the case in question.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary