

**Order of the President of the
Inter-American Court of Human Rights
of March 28, 2008
Case of Fermín Ramírez v. Guatemala
(Monitoring Compliance with Judgment)
Case of Raxcacó Reyes *et al.* v. Guatemala
(Monitoring Compliance with Judgment)
Case of Raxcacó Reyes *et al.*
Request for the Extension of Provisional Measures**

HAVING SEEN:

A) Case of Fermín Ramírez

1. The Judgment on the merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal"), fully notified to the State on July 15, 2005, by which it was unanimously ruled that:

7. The State must hold, within a reasonable period of time, a new trial against Mr. Fermín Ramírez, satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused. If he is charged with the crime of murder, classification that was in force when the facts that he was charged with occurred, the current criminal legislation must be applied with the exclusion of the reference to dangerousness, in the terms of the following operative paragraph.

8. The State must abstain from applying the part of Article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and modify it within a reasonable period of time, adjusting it to the American Convention, pursuant to what was established in Article 2 of the same, thus guaranteeing the respect for freedom from ex post facto laws, enshrined in Article 9 of the same international instrument. The reference to the dangerousness of the agent included in this stipulation must be eliminated.

9. The State must abstain from executing Mr. Fermín Ramírez, whichever the result of the trial referred to in Operative Paragraph seven.

10. The State must adopt, within a reasonable period of time, the legislative and administrative measures necessary to establish a procedure that guarantees that every person sentenced to death has the right to request pardon or commutation of the sentence, pursuant to a regulation that determines the authority with the power to grant it, the events in which it proceeds and the corresponding procedure; in these cases the sentence must not be executed while the decision regarding the pardon or commutation of the sentence requested is pending.

11. The State must provide Mr. Fermín Ramírez, prior manifestation of his consent for such effect, as of the notification of [...] Judgment and for the time necessary, without any cost and through the national health service, with an adequate treatment, including the supply of medications.

12. The State must adopt, within a reasonable period of time, the measures necessary so that the conditions of the prisons adjust to the international rules of human rights.

13. The State must pay the reimbursement of expenses within the one-year term as of the notification of [...] judgment, in the terms of paragraphs 131 through 137 of [the] Judgment.

14. The obligations of the State within the framework of the provisional measures ordered are replaced by those ordered in [the] Judgment, once the State ensures compliance of Operative Paragraphs 7, 8, and 9 of the [...] Judgment.

[...]

2. The Order of the Court of September 22, 2006, whereby it:

DECLARED:

1. That, in accordance with Considering clause number eight of [...] Order, the State has complied with the provisions of Operative Paragraph thirteen of the Judgment on the merits and reparations delivered by the Court on June 20, 2005, as it effectively made reimbursement of costs and expenses to the *Instituto de Estudios Comparados en Ciencias Penales* of Guatemala (Institute of Comparative Studies of Criminal Sciences) under the provisions of paragraphs 131 to 137 of the Judgment

2. That it will keep open the proceedings for monitoring compliance with the aspects pending fulfillment, namely the obligations to:

- a) Effectively conduct, within a reasonable time, a new trial against Fermín Ramírez, satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused (Operative Paragraph number seven);
- b) Refrain from applying the part of Article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and adapt it to the Convention within a reasonable time (Operative Paragraph number eight),
- c) Refrain from executing Fermín Ramírez, whichever the outcome of the trial referred to in Operative Paragraph seven (Operative Paragraph number nine);
- d) Adopt the legislative and administrative measures necessary to establish a procedure that guarantees that every person sentenced to death has the right to request a pardon or commutation of the sentence (Operative Paragraph number ten);
- e) Provide Fermín Ramírez with an adequate treatment (Operative Paragraph number eleven);
- f) Adopt, within a reasonable time limit, the necessary measures to ensure that prison conditions conform to international standards on human rights (Operative Paragraph number twelve);

AND DECIDE[D]:

1. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the merits and reparations delivered by the Court on June 20, 2005 and [...] Order, according to the provisions of Article 68(1) of the American Convention on Human Rights

[...]

3. The briefs submitted on January 19, July 18, August 2 and November 7, 2007, by which the State of Guatemala informed on the progress made regarding the compliance with the Judgment delivered in the instant case.

4. The briefs submitted by the representatives of Mr. Fermín Ramírez on August 23, 2007 and January 11, 2008, by which he made observations to the already mentioned State's reports.

5. The briefs submitted by the Inter-American Commission of Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") on September 19, and December 21, 2007, by which the Commission made observations to the already mentioned State's reports.

6. The note of the Secretariat of the Court (hereinafter, the "Secretariat") of January 29, 2007, by which the State was ordered to send a copy of the Prison Act [*Ley de Régimen Penitenciario*] and of the Internal Rules of Rehabilitation

Correctional Farms and Compliance Programs in charge of the General Directorate of the Prison System [*Reglamento Interno de las Granjas Modelo de Rehabilitación y Cumplimiento de Condenas a Cargo de la Dirección General del Sistema Penitenciario*] to which the State referred in its first compliance report and in addition, the State was granted an extension until March 1, 2007 to submit the additional report. Said note was repeated on April 20 and June 25, 2007, but the requested information has not been submitted by the time of the delivery of this Order.

B) Case of Raxcacó Reyes.

7. The Judgment on the merits, reparations and costs delivered on September 15, 2005, by which it was declared, *inter alia*, that:

5. The State shall modify, within a reasonable time, Article 201 of the Penal Code in force, in order to define various specific crime categories that distinguish the different forms of kidnapping or abduction, based on their characteristics, the gravity of the facts, and the circumstances of the crime, with the corresponding provision of different punishments, proportionate to each category, and also the empowerment of the courts to individualize punishments in keeping with the specifics of the crime and the perpetrator, within the maximum and minimum limits that each crime category should include. This modification shall, under no circumstances, expand the list of crimes punishable with the death penalty established prior to ratification of the American Convention.

6. While carrying out the modifications indicated in the previous paragraph, the State shall abstain from applying the death penalty and executing those convicted of the crime of kidnapping or abduction, in the terms of paragraph 132 of [...] judgment.

7. The State shall adopt, within a reasonable period, a procedure that ensures that any person condemned to death has the right to apply for and, if applicable, obtain pardon or commutation of sentence, in accordance with a regulation that establishes the authority empowered to grant this, the presumptions of admissibility and the respective procedure. In such cases, the sentence shall not be executed while the decision on the pardon or commutation of sentence applied for is pending.

8. The State shall annul the punishment imposed on Mr. Raxcacó Reyes in the judgment of the Sixth Court for Criminal Sentencing, Drug-Trafficking and Environmental Crimes [...] within a reasonable time and, without the need for a new trial, shall decide another punishment which, under no circumstances, may be the death penalty. The State shall ensure that the new punishment is proportionate to the nature and seriousness of the crime prosecuted and takes into account any attenuating or aggravating circumstances related to the case; to this end, before delivering judgment, it shall offer the parties the opportunity to exercise their right to a hearing.

9. The State shall adopt, within a reasonable time, the necessary measures to adapt prison conditions to the corresponding international standards.

10. The State shall provide Mr. Raxcacó Reyes, as of notification of [...] judgment and after he has expressed his consent, for the time necessary, without any cost and through the national health services, with adequate medical and psychological treatment, including the medication prescribed by duly qualified specialists.

11. The State shall adopt, as of notification of [...] judgment, the necessary measures to enable Mr. Raxcacó Reyes to receive periodic visits from Olga Isabel Vicente.

12. The State shall adopt, within a reasonable time, the educational, work-related and other measures necessary to ensure the social readaptation of Mr. Raxcacó Reyes when he has served the sentence imposed in accordance with the eighth operative paragraph of [...] judgment.

13. The State shall publish, within one year from notification of [...] judgment, in the official gazette and in another newspaper with widespread national circulation, at least once, the chapter on Proven Facts, paragraphs 65, 66, 72, 81, 82, 85, 86, 102 and 113, corresponding to Chapters VIII, IX, X and XI, and the first to sixteenth operative paragraphs of [...] judgment. The publication shall include the titles of the said chapters and omit the footnotes.

14. The State shall make the payment for reimbursement of expenses within one year of notification of [...] judgment, in the terms of paragraph 138 of [the] Judgment.

[...]

8. The Interpretation of the Judgment on the merits, reparations and costs delivered by the Tribunal on February 6, 2006.

9. The briefs of October 13 and December 19, 2006, March 6, March 8, April 11, May 8, July 9, October 2 and December 13, 2007, by which the State informed on the progress made regarding the compliance with the Judgment.

10. The communications of January 19, April 12, May 8, May 16, August 7, November 5, 2007 and January 16, 2008, by which the victims' representatives submitted their observations to the State's reports.

11. The briefs of February 8, April 27, May 30, June 22, September 4, December 21, 2007 and January 24, 2008, by which the Inter-American Commission submitted the observations to the State's reports.

C) Request for extension of provisional measures in the case of Raxcacó Reyes et al.

12. The Order of the Court delivered on August 30, 2004, in the first operative paragraph of which it was decided:

To require the State to adopt forthwith the necessary measures to protect the lives of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor so as not to hinder the processing of their cases before the inter-American system for the protection of human rights.

13. The Judgment on the merits, reparations and costs delivered by the Inter-American Court in the case of Raxcacó Reyes (*supra* Having Seen clause 7) by which the Tribunal decided that:

15. The State's obligations in the context of the provisional measures ordered by the Court in the instant case are replaced, exclusively with regard to Mr. Raxcacó Reyes, by those ordered in [the] judgment, as of the date on which it is notified.

14. The Order of the Court of April 20, 2006, by which the Tribunal rejected the request for extension of provisional measures in favor of Mr. Tirso Román Valenzuela Ávila filed by the beneficiaries' representatives.

15. The Order of the Tribunal of July 4, 2006, by which it was decided to "close the file on the provisional measures ordered in favor of Mr. Hugo Humberto Ruiz Fuentes."

16. The Order of the Court of February 2, 2007, by which it was decided to maintain those measures necessary to protect the life of Bernardino Rodríguez Lara and Pablo Arturo Ruiz Almengor.

17. The Order of the Court of November 21, 2007, by which it was decided to lift the provisional measures regarding Mr. Pablo Arturo Ruiz Almengor and keep the measures necessary to protect the life of Mr. Bernardino Rodríguez Lara.

18. The brief of February 28, 2008, by which the representatives of the beneficiaries of these measures requested the extension of the measures hereof "in favor of all the people who are sentenced to death" in Guatemala. The alleged facts on which the request for extension is based are the following:

a) Since 2000, no execution of death sentences has been carried out; this is because Decree N° 32-200 repealed Decree N° 159 that vested on the President the power to grant a measure of grace;

b) On February 12, 2008, the Republic of Guatemala Congress passed the "Law Governing Commutation of Death Sentences" [*Ley Reguladora de la Conmutación de la Pena para los Condenados a Muerte*], which "vests on the President the power to hear and decide on a measure of grace";

c) Said act would present many drawbacks, namely: "it does not establish the administrative body responsible for receiving the pardon, [...] does not stipulate the legal basis for the pardon[...] does not stipulate the right to a hearing [...] does not contemplate a probatory period [, and] it creates the institution of tacit denial, by which, if the President does not issue a ruling within a term of 30 days, the remedy is considered denied [...], and within the following twenty-four (24) hours the convict is immediately executed";

c) "The Republic of Guatemala Congress did not approve the Law on Commutation of Sentences in order to comply with the obligation ordered by the Inter-American Court in its judgments but, on the contrary, it did it just to execute the people sentenced to death."

d) The different banks of the Congress argued that "by approving this Law, people sentenced to death can be executed and offenders will be dissuaded from committing any felonies", and

e) The way the measure of grace is regulated characterizes it as " a previous bureaucratic formalism, which is not aimed at complying with the role of protecting the right to life."

19. The request made by the representatives in order for the Court to, under the terms of Article 63(2) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention"),

a. Request the State of Guatemala to adopt, forthwith, such measures necessary to protect the life and personal integrity of the people who are, at present, sentenced to death and to extend such protection to all those persons who are under a situation of danger;

b. [...] in order to fully comply with the order of the [...] Court in [the] case[s] of Raxcacó Reyes and Fermín Ramírez [...] request the State of Guatemala to stay the approval of Decree 6-2008.

c. Request the State to inform the Inter-American Court of Human Rights [...] on the court orders that it has adopted in order to comply with these provisional measures.

20. The note of the Secretariat of the Court of March 4, 2008, whereby the State and the Commission were requested to, no later than March 25, 2008, submit the observations they deem relevant regarding the request of extension submitted by the representatives (*supra* Having Seen clause 18). Furthermore, it requested the State to submit, in addition to the brief of observations, a list enumerating all the persons who are sentenced to death penalty, the crimes committed and the corresponding criminal classification according to which they were convicted.

21. The brief of March 25, 2008, by which the State pointed out that Decree N° 6-2008, approved by the Congress, which contains the Law Governing Commutation of Death Sentences, "has been sent to the President for his approval." On March 14, 2008, "the President of the Republic, in a press conference, informed that in exercise of his right to veto, was not passing Decree 6-2008, thus such document returned to the Congress so that in a period of time no longer than thirty days, it will reconsider or reject the veto." Finally, the State expressed that "the request for extension of the

[provisional measures filed by the representatives] does not meet the requirements of the measure in itself, since not all people sentenced to death penalty have brought their cases before any body of the Inter-American system[.]. Nevertheless, the State [...] does not challenge the adoption of measures in favor of those persons sentenced to death penalty, [if they] are requested apart from [this] case [...] by the Inter-American Commission [...] or ordered ex officio by the [...] Court." The State did not submit the list requested by the Secretariat (*supra* Having Seen clause 20).

22. The communication of the Inter-American Commission of March 25, 2008, in which it stated that "during the last weeks [...] it have received several petitions and requests for precautionary measures by the representatives of those persons sentenced to death in Guatemala, pointing out the imminence of the application of such sentence." The Commission named 25 persons who are sentenced to death, 6 of which are fugitives. It considered that the death penalty would be imposed to "those crimes that have no punishment at the time the Convention entered into force" and to those crimes "whose classification does not meet the standards of legality defined by [the] Court." Finally, it pointed out that "it would be pertinent for the Court to rule over the obligation of the State to provide suitable and effective legal remedies in order to review the death sentence", which would be "part of the procedure of execution of the judgments delivered in the cases of Raxcacó and Fermín Ramírez." Nevertheless, it stated that in the case the Court considers that the above mentioned is not the subject-matter of the monitoring compliance with the Judgments delivered in the aforesaid cases, it requests the Court to consider the Commission's brief "as an express request for provisional measures."

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.
2. That the State of Guatemala has been a State Party to the American Convention since May 25, 1978, and that it accepted the binding jurisdiction of the Court on March 9, 1987.
3. That, pursuant to section 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertakes to comply with the judgment of the Court in any case to which they are parties."¹

A) Regarding the case of Fermín Ramírez

4. That, as to the obligation to hold, within a reasonable period of time, a new trial against Mr. Fermín Ramírez, satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused (*operative paragraph seven of the Judgment*), the State informed that the First Trial Court for Criminal, Drug-trafficking and Environmental Offenses in and for the city of Escuintla conducted a new, oral and public trial and as a result, said Court delivered a judgment on June 21,

¹ Cf. *Case of Baena Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para 60; *Case of Gómez Palomino*. Monitoring Compliance with Judgment. Order of October 18, 2007; Considering Clause seven.

2006, sentencing Mr. Fermín Ramírez to 40 years imprisonment (non-commutable) on the count of aggravated rape. The defense filed a special appeal against such verdict, which was decided over on November 2, 2006, by the Fourth Chamber of the Appellate Court on Criminal, Drug-trafficking and Environmental Offenses matters, that dismissed such appeal and, therefore, decided not to modify the judgment. On January 22, 2007, the Criminal Chamber of the Supreme Court of Justice would have denied the appeal for annulment lodged by the defense of Mr. Fermín Ramírez. On July 2007, according to the State, there were no modifications or remedies pending resolution and the appeal for annulment was final.

5. That the representatives did not refer to this aspect, but the Commission requested the State to submit additional information on the progress of the stage of appeals.

6. That the State has submitted information regarding this aspect, and therefore, it has been fully complied with. Nevertheless, this President considers relevant to obtain further information to determine if such judgment is final or if there is some remedy still pending resolution.

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7. That, as to the State's obligation to refrain from applying Article 132 of the Criminal Code of Guatemala regarding the dangerousness of the agent, and adapt said rule to the Convention within a reasonable time (*operative paragraph eight of the Judgment*), the State informed that in the Judgment of June 21, 2006, the Tribunal refrained from applying such rule with regard to Mr. Fermín Ramírez.

8. That the representatives have pointed out that the State has failed to comply with this aspect, since up to August 2007, no bill was submitted to the Parliament in order to amend Article 132 of the Criminal Code of Guatemala. Besides, they recalled that the *Commission of Legislation and Constitutional Affairs* [*Comisión de Legislación y Puntos Constitucionales*] has quashed a bill intended to repeal the death sentence for the crimes of kidnapping and murder. Furthermore, they informed that seven convicts under the provisions of Article 132 of the Penal Code of Guatemala, are in risk of being executed, since the State has neither revoked nor commuted the death sentence. In this sense, they asserted that the Criminal Chamber of the Supreme Court of Justice has denied several appeals for review that were intended to set aside the death sentences, and that officers of the State have also publicly affirmed the need to accelerate the executions.

9. That the Commission took note that the part of Article 132 of the Penal Code of Guatemala regarding the dangerousness has not been applied to Mr. Fermín Ramírez, but it emphasized that the State made no reference as to the possible application of said rule to other criminal procedures. Moreover, it considered essential that the State informs on the measures adopted to fully comply with this aspect; specially, if any general instruction has been given in order to avoid the application of the criteria of dangerousness to other criminal procedures.

10. That this President considers that the State should inform on the measures adopted to comply with this aspect of the Judgment, in particular, with regard to the entry into force and application of said provisions of the Criminal Code to other procedures, since there is no information related to such issue in the reports.

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11. That in relation to the obligation to refrain from executing Mr. Fermín Ramírez, whichever the result of the trial is (*operative paragraph nine of the Judgment*), the State informed that in the new trial against Mr. Fermín Ramírez was effectively conducted and that he was sentenced to 40 years imprisonment (non-commutable) on the count of aggravated rape.

12. That the representatives have made no reference regarding such aspect and the Commission expressed that the State has respected that measure.

13. That, even though the obligation to refrain from executing Mr. Ramírez is independent of the outcome of the new proceedings and the death penalty is inapplicable *vis-à-vis* the crime for which the defendant was tried and convicted, according to what has been determined, this Court deems it convenient to verify that said judgment is final until full observance thereof is declared.

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14. That as to the duty to adopt legislative and administrative measures necessary to implement a procedure that guarantees that whoever is sentenced to death penalty will be entitled to request a pardon or commutation of the sentence (*operative paragraph ten of the Judgment*), the State informed that the Court is aware of the proposals and legislative initiatives regarding this issue, but that, for the time being, the Court on Constitutional Affairs cannot deliver a judgment on the constitutionality of such measures. Furthermore, it informed that, "no person who has applied for pardon or sentence commutation has been executed."

15. That the representatives expressed that the State has not complied with this aspect, since no bill intended to regulate the measure of grace properly guarantees the right to a hearing and due process of law for the person sentenced to death. Specially, the representatives consider that the present bill N° 3521 is incompatible with the American Convention.

16. That the Commission acknowledged the efforts made by the State in such respect and considered that it is essential to bear in mind the international parameters in order to amend a law. Moreover, it deemed that the State should submit further detailed and updated information regarding this aspect.

17. That this President considers it is necessary to obtain thorough and detailed information regarding the current situation with regard the possible regulation of the pardon in connection with the death sentence.

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18. That as to the duty to provide Mr. Fermín Ramírez, prior manifestation of his consent, without any cost and through the national health services, with an adequate treatment, including the supply of medications (*operative paragraph eleven of the Judgment*), the State informed that a multidisciplinary staff of a criminal center clinic has been providing, on a regular basis, Mr. Fermín Ramírez with medical care, psychological and deontological treatment. Mr. Fermín Ramírez has been receiving medical care in order to treat some minor diseases. Besides, on July 4, 2007, he undergone a physical examination and it was found that he was suffering from gastritis and possible ulcer for 6 years then, for what he is receiving adequate medication to treat such diseases.

19. That the representatives stated that the medical care he is receiving is inadequate and that the prescribed medicines are insufficient and irregularly administered to him. Moreover, Mr. Fermín Ramírez has not received any deontological treatment. The acknowledged that he received psychological therapy by specialized staff; notwithstanding, they informed that the people who were in charge of that area, have been removed and by January, 2008 no new personnel has been hired.

20. That the Commission requested the Court to order the State to submit updated information.

21. That this President notes contradictions between the information provided by the parties, for there it considers relevant to receive further information in order to establish compliance with this aspect.

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22. That with reference to the duty to adopt, within a reasonable period of time, the measures necessary so that the conditions of the prisons adjust to the international rules of human rights (*operative paragraph twelve of the Judgment*), the State indicated that the "Prison Act" was approved by means of Decree N°33-2006 of the Republic of Guatemala Congress and that it was published in the *Diario de Centro América* ("Central American Newspaper") on October 6, 2006. Said Law governs the National Prison System of Guatemala, the pre-trial detention centers and those centers built to serve sentences. Said Act was completed with the "Internal Regulation of the Model Farms for Rehabilitation and Compliance with the Sentences under the Charge of the General Bureau of the Prison System", published in the *Diario de Centro America* on November 29, 2006. As to Mr. Fermín Ramírez, it informed that he is detained in sector B-4 of the Canada High Security Center, in the city of Escuintla, where there are toilets and space in the corridor and a yard; he works as a cook, he makes handicrafts and is attending the last phase of a literacy campaign.

23. That the representatives stated that on April 6, 2007 the Prison Act entered into force. Nevertheless, by December 2007, such Act has not been implemented, due to the fact that the budget has not been assigned and the necessary regulations have not been drawn up. Furthermore, they sustained that said law fails to comply with the international standards since it establish Maximum Security Centers where there are no programs on social readaptation and the regulation of such system is vested in the prison authorities. As to Mr. Fermín Ramírez, they stated that in the place where he is confined, water is permanently lacking, and the number of toilets is not enough. Moreover, the center does not count with any work-related or professional training program nor even any workshops. He manages the handicrafts activities on his own, as well as the educational programs. Besides, no out-door activity is allowed.

24. That the Commission took note of the important reforms carried out by the State in this regard, but it considered that its effectiveness and the compliance with the order delivered by the Court must be taken into consideration as from the application of the new legislation and the effective improvement of the general prison conditions. Moreover, it considered that the State should provide further detailed and updated information.

25. That this President notes that the State has made improvements in order to comply with this obligation, but that it is time to receive more information in order to establish compliance with this aspect.

B) Regarding the case of Raxcacó Reyes

26. That as to the amendment of Article 201 of the Criminal Code (operative paragraph five of the Judgment), the State has submitted no information.

27. That the representatives stated that, "there is no bill in the Congress [...] intended to amend Article 201."

28. That the Commission is still waiting for further information in such regard.

29. That this President considers that the State should inform on the measures already adopted in order to comply with this aspect of the Judgment.

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30. That with regard to the State's duty to abstain from applying the death penalty and executing those convicted of the crime of kidnapping or abduction (*operative paragraph six of the Judgment*), the State informed that a person sentenced to death penalty was released,² has commuted the death sentence of two convicts to a time imprisonment,³ decreed the provisional stay of execution of another convict,⁴ and that the appeal for review of seven convicts are still pending resolution.⁵

31. That the representatives stated that even though as from the Judgment delivered by the Court in the instant case "the courts have not imposed any death sentence based on the terms of Article 201 of the [C]riminal [C]ode, the Supreme Court of Justice, through the Criminal Chamber, has affirmed 6 death sentences denying the appeals for revision filed." Furthermore, they expressed that the Court on Constitutional Affairs denied a writ of amparo lodged by a convict⁶ and that at the moment, said tribunal has taken up 4 cases involving writs of amparo "but has not delivered no judgment yet."

32. That the Commission is still waiting for further information in such regard.

33. That this President considers that the State should inform on the measures already adopted in order to comply with this aspect of the Judgment.

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34. That as to the obligation of the State to adopt legislative and administrative measures to establish a procedure that ensures that any person condemned to death has the right to apply for pardon or commutation of sentence (*operative paragraph seven of the Judgment*), the parties submitted information similar to the information presented in the case of Fermín Ramírez (*supra* Considering clauses 14 to 16).

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² Mr. Ramiro Geovanny Marroquín. The representatives argued that this information was not correct and that Mr. Marroquín is waiting for the execution of the judgment delivered against him.

³ Mr. Marvin Arnoldo Ramos Rosales and Pablo Arturo Ruiz Almengor.

⁴ Mr. Bernardino Rodríguez Lara. This stay obeys to the provisional measures ordered by the Court in the case of Raxcacó Reyes et al.

⁵ Mr. Carlos Enrique Chun Choc, Gustavo Adolfo Carranza Castañeda, Carlos Amílcar González Díaz, Waldemar Hidalgo Marroquí, Jaime Raúl Quezada Corso and Aurelio Díaz González.

⁶ Mr Jorge Arturo Mazate Paz.

35. That with regard to the obligation of the State to annul the punishment imposed on Mr. Raxcacó Reyes (*operative paragraph eight of the Judgment*), the State informed that on February 20, 2006, the Supreme Court of Justice delivered the Agreement N° 348-2006 by which a Tribunal was appointed in order to hold a new hearing within the proceedings initiated against the victim in order to replace the death sentence.⁷ That in the month of June, 2006, the plaintiff of said internal proceedings lodged a writ of amparo before the Court on Constitutional Affairs against the Agreement of the Supreme Court. On January 17, 2007, the Court on Constitutional Affairs denied the writ of amparo. That on October 17, 2007, the Sixth Court for Criminal Sentencing, Drug-Trafficking and Environmental Crimes set aside the death sentence and sentenced Mr. Raxcacó Reyes to "forty-years non-commutable imprisonment."

36. That the representatives stated that the new sentence imposed on Mr. Raxcacó Reyes "was disproportionate taking into account the seriousness of the crime committed", and for this reason, they lodged a "special appeal in order to reduce the imposed sentence." According to the representatives, "the new sentence [...] is only the partial compliance with the order delivered by the Court."

37. That the Commission pointed out that it was waiting for the information regarding the development of this stage of appeal.

38. That this President notes that the State has taken steps towards the compliance with this obligation, but that it would be advisable to receive more information in order to establish compliance with this aspect.

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39. That as to the duty of the State to adopt the necessary measures to adapt prison conditions to the corresponding international standards (*operative paragraph nine of the Judgment*), the State informed that it has redesigning seven prison centers,⁸ that it have carried out several projects within the inmates' population⁹ and that it made much progress in the health sector.

40. That the representatives pointed out that "it is necessary to assign an adequate budget for the Prison System in order to fully implement the Prison Act" and they also referred to the fact that "maximum security is still being applied to the prison called

⁷ Cf. Agreement N°348- 2006 of the President of the Judicial Department and of the Supreme Court of Justice of the Republic of Guatemala (case file of the Compliance with the Judgment, volume I, pages 23 to 26). The pertinent parts of said agreement establish that:

Article 1: The Sixth Court for Criminal Sentencing, Drug-Trafficking and Environmental Crimes in and for Guatemala is hereby appointed, [...] in order to effectively comply with the order of the Inter-American Court of Human Rights[...].

Based on the decision made by the aforesaid international tribunal, and for the sake of the due process of law, taking into account that the courts of justice are guarantors of the respect and observance of the rights enshrined in the Constitution, the Criminal Sentencing court hereby appointed shall hold a new hearing in the proceedings [...] initiated against Mr. Ronald Ernesto Raxcacó Reyes, in order to issue a ruling according to the terms of the judgment delivered by the Court of record.

⁸ Said centers would be: Santa Teresa, Minor Offenses, Quiché, Pavón, Puerto Barrios, Chimaltenango and Boquerón.

⁹ Said projects would be: making at processing fee level, carpentry, textile mills, stores, deontological engineer, dining- rooms, doing of macramé, omelettes stores, handicrafts with wood, sewing of balls, lathe, shoemaking florist's, manufacturing of "piñatas", different crafts, vegetables, fish farming, manufacturing of balls, of paintings for mirrors, of wooden lamps, of crowns, of hammocks, of nets, fibre, wooden crafts, production of brushing, fommy drawings, palette houses, oil painting, covers for bibles, frames, beauty shops and manufacture of embroidery beads.

"el infiernito" in Escuitla, the Boquerón in Cuilapa Santa Rosa and in some sectors of the Pre-Trial Detention Center for Men of the 18th zone, where confined people, especially those who were sentenced to death and young members of gangs, are subjected to extreme seclusion during 24 hours per day, under inhumane prison conditions, without access to work-related, educational and health programs."

41. That the Commission pointed out that "is waiting for the State to tak[e] those measures necessary to adapt the incarceration conditions to international standards in accordance with the order delivered by the Court."

42. That this President notes that the State has taken steps towards the compliance with this obligation, but that it would be advisable to receive further information.

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43. That with regard to the obligation to provide Mr. Raxcacó Reyes, prior manifestation of his consent, and for the time necessary, with adequate medical and psychological treatment, including the medication prescribed (*operative paragraph ten of the Judgment*), the State submitted a description of several steps taken in order to comply with this aspect since January 15, 2002 until June 15, 2007.

44. That the representatives pointed out that even though it is true that the State "has provided Mr. Raxcacó with medical care and the proper authorizations in order for him to attend certain appointments, the State has failed to provide the medicines prescribed for his health condition", which "are being bought by Mr. Raxcacó himself or his family."

45. That the Commission asserted that the State's obligation contained in this part of the Judgment "is clear inasmuch as it is the State's duty to provide the medication prescribed by duly qualified specialists, without any costs for Mr. Raxcacó Reyes."

46. That this President considers it is essential that the State provides information on this aspect pending compliance.

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47. That as to the duty to adopt the necessary measures to enable Mr. Raxcacó to receive periodic visits from Mrs. Olga Isabel Vicente (*operative paragraph eleven of the Judgment*), the State informed that Mrs. Vicente is confined in the Centro de Orientación Femenino (*Female Orientation Center*) and that "for these visits to be effective, they have to be periodically requested in the same form the other inmates do it."

48. That the representatives asserted that "Mrs. Olga Isabel Vicente has never visited the criminal center where Mr. Raxcacó Reyes is confined" and that it is "a contempt of the State" to demand from Mrs. Vicente a request for every visit she wishes to make.

49. That the Commission is still waiting for further information in such regard.

50. That this President considers it is essential that the State provides information on this aspect pending compliance.

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51. That with regard to the duty of the State to adopt the educational, work-related and other measures necessary to ensure the social readaptation of Mr. Raxcacó Reyes when he has served the sentence imposed (*operative paragraph twelve of the Judgment*), the State pointed out that the victim "is making handicrafts, in his own sector" and besides "he is not registered or enrolled in any academic activity."

52. That the representatives made reference to the fact that "his family" provides Mr. Raxcacó with the materials he uses to make handicrafts and that "he was not allowed to enter in any educational program that may contribute to his social reeducation and readaptation."

53. That the Commission pointed out that, "the educational and work-related measures are not being effectively implemented."

54. That this President considers it is advisable to receive further information to establish the compliance with this aspect.

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55. That with regard to the publication of the Judgment (*operative paragraph thirteen of the Judgment*) the State informed that on September 22, 2006, the Diario de Centro America (*Central American newspaper*) and on March 28, 2007, the "El Periódico", national newspaper, published the pertinent parts of the Judgment, respectively.

56. That the representatives pointed out that "the publications made by the State do not satisfy the requirements established [in] the [J]udgment" since "even though the paragraphs determined in the Judgment are literally published, there is no reference to the numbers of such paragraphs nor even the chapters to which they correspond."

57. That the Commission noted, "with satisfaction the substantial compliance with the order delivered by the Court."

58. That as is evident from the case file, the State has taken steps towards the compliance with this obligation, but it would be advisable to receive more information in order to establish compliance with this aspect.

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59. That with regard to the payment for reimbursement of expenses (*operative paragraph fourteen of the Judgment*), the State pointed out that on February 26, 2007, it delivered the sum of \$5.000, 00 (five thousand dollars of the United States of America) in Guatemalan currency, according to the order delivered by the Court.

60. That the representatives submitted no further information in such regard.

61. That the Commission "took note of the fact that the State of Guatemala has complied with this obligation."

62. That as is evident from the case file, the Court notes that the State has taken steps towards the compliance with this obligation, but that it would be advisable to receive further information.

C) *Regarding the request for extension of provisional measures*

63. That the representatives argued that the new Guatemalan legislation does not adjust to the American Convention inasmuch as it enshrines a measure of grace that shall be a previous bureaucratic formalism that will not be intended to comply with its role of protecting the right to life.

64. That according to the documentation provided by the Commission, at least, 25 persons would be sentenced to death in Guatemala and would be adversely affected by an allegedly ineffective measure of grace.

65. That according to the information provided by the parties, even though the President veto Decree N° 6-2008, such veto could be denied by the Congress of the Republic, in accordance with the terms of Article 179 of the Guatemalan Constitution.

66. That this President considers relevant that the Tribunal receives further information from the parties.

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67. That this President considers it is essential for the Inter-American Court to receive thorough and updated information on the compliance with the Judgments delivered in the above mentioned cases and listen to the observations made by the Inter-American Commission and the victims' representatives, as well as the position of the parties with regard the request for extension of the provisional measures.

68. That monitoring compliance with the Judgments delivered by the Inter-American Court has been carried out through a written procedure, in which the responsible State must submit reports requested by the Tribunal and, in view of such reports, the Inter-American Commission and the victims or their legal representatives may submit the corresponding observations. Without prejudice to the foregoing, the Tribunal itself has recognized that, if necessary and convenient, it may call upon the parties to hold a hearing in order to listen to the arguments raised regarding the compliance with the judgment.¹⁰

69. That though the request for provisional measures is, under the terms of Article 25(7) of the Rules of Procedure, subjected to a public hearing, in the instant case, the request for extension of the provisional measures filed by the beneficiaries' representatives is related to the compliance with the Judgments delivered by the Court in the cases of Fermín Ramírez and Raxcacó Reyes, inasmuch as it refer to operative paragraph ten and seven, respectively, thus, such request shall be examined in a private hearing.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the authority granted by Articles 63(2), 67 and 68(1) of the American Convention on Human Rights, Article 25(1) and 25(2) of the Statute of the Court and Articles 4, 14(1), 25(7) and 29(2) of the Rules of Procedure of the Court and in consultation with the other Judges of this Tribunal,

¹⁰ Cf. *Case of Baena Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 105 and 106.

DECIDES :

1. To summon the Inter-American Commission on Human Rights, the State of Guatemala, the representatives of the victim in the case of Fermín Ramírez, the representatives of the victim in the case of Raxcacó Reyes and the representatives of the beneficiaries of the provisional measures ordered in the case of Raxcacó Reyes et al to a private hearing to be held in the venue of the Inter-American Court of Human Rights on May 8, 2008, as from 3.00 p.m. to 4.45 p.m. in order for the Court to obtain information from the State regarding the compliance with the Judgments delivered in the above mentioned cases, listen to the observations made by the Inter-American Commission on Human Rights and the victims' representatives in such regard and receive information on the request for extension of provisional measures, inasmuch as such request relates to the judgments whose compliance being monitoring.

2. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and beneficiaries.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary