

**Order of the**  
**Inter-American Court of Human Rights**  
**of July 1, 2009**  
**Case of Carpio Nicolle v. Guatemala**  
***(Monitoring Compliance with Judgment)***

**HAVING SEEN:**

1. The Judgment on the Merits, Reparations and Costs (hereinafter "the Judgment") rendered by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") on November 22, 2004, in which the Court ordered that:

[...]

1. The State investigates effectively the facts of the [...] case in order to identify, prosecute and punish those who perpetrated and masterminded the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, and the serious injuries to Sydney Shaw Díaz. The result of the proceeding be publicized, in the terms of paragraph 129 of th[e] Judgment.

2. The State removes all *de facto* and *de jure* obstacles and mechanisms that perpetuate impunity in th[e] case, grant the witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims sufficient guarantees of security, and use all possible measures to advance the proceeding, in the terms of paragraphs 130 to 134 of th[e] Judgment.

3. The State adopts specific measures to improve its investigat[ive] capacity, in the terms of paragraph 135 of th[e] Judgment.

4. The State carries out a public ceremony acknowledging its responsibility in relation to the instant case and in reparation, in the terms of paragraphs 136 and 137 of th[e] Judgment.

5. The State publish, within six months from the notice of th[e] Judgment, at least once in the Official Gazette and in another national newspaper, and in the bulletin with the highest circulation within the Guatemalan Armed Forces, the section of th[e] Judgment entitled Proven Facts (without the corresponding footnotes), [...] paragraphs 77 and 78 of the section entitled Merits and the operative paragraphs of th[e] Judgment, in the terms of paragraph 138 [...].

6. The State pay, for pecuniary damage, the amounts established in paragraphs 106 to 113 of th[e] Judgment to Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Mario Arturo López Arrivillaga and Sydney Shaw Arrivillaga, in the terms of said paragraphs and of paragraphs 97 to 100.

7. The State pay, for non-pecuniary damage, the amounts established in paragraph 120 of th[e] Judgment to Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad

Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Anibal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán, in the terms of said paragraph and of paragraphs 97 to 100.

8. The State pay the amount established in paragraph 145 of th[e] Judgment to Martha Arrivillaga de Carpio and to Rodrigo and Jorge Carpio Arrivillaga for costs and expenses, in the terms of said paragraph.

[...]

2. The Order of the Court of July 10, 2007, in which it declared:

1. That [...] the State ha[d] fully complied with the requirement to publish the relevant parts of the Judgment in the Official Gazette, in another newspaper with national circulation and in the bulletin of the armed forces (*fifth operative paragraph of the Judgment*).

2. That [...] the State ha[d] partially complied with the following operative paragraphs of the Judgment on the merits, reparations, and costs:

a) payment of the compensation awarded for pecuniary and non-pecuniary damages (*sixth and seventh operative paragraphs of the Judgment*), and

b) payment of the amount awarded for costs and expenses (*eighth operative paragraph of the Judgment*).

3. That it w[ould] keep the proceeding open in order to monitor compliance with the obligations that remain unfulfilled in this case, namely:

a) investigation, identification, and punishment of the perpetrators and masterminds of the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, and Rivas González, as well as the serious injuries to Sydney Shaw Díaz (*first, second, and third operative paragraphs of the Judgment*);

b) holding of a public ceremony to acknowledge its responsibility (*fourth operative paragraph of the Judgment*)

c) payment of the unpaid balance of the amounts awarded for pecuniary and non-pecuniary damages (*sixth and seventh operative paragraphs of the Judgment*), and

d) payment of the unpaid balance of costs and expenses (*eighth operative paragraph of the Judgment*).

3. The Order of the President of the Court (hereinafter "the President") of November 18, 2008, in which, in consultation with all other judges of this Court, it was decided to call the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), the Republic of Guatemala (hereinafter "the State" or "Guatemala") and the representatives of the victims (hereinafter "the representatives") to a private hearing in order to obtain information from the State regarding compliance with the Judgment and to hear the comments of the Commission and the representatives in that regard.

4. The private hearing held at the seat of the Court in San José de Costa Rica on January 20, 2009.<sup>1</sup> During the course of said private hearing, the State, the

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<sup>1</sup> In accordance with Article 6(2) of the Rules of Procedure, the hearing was held before a commission of Judges composed of: Judge Diego García-Sayán, Vice-President; Judge Leonardo Franco and Judge Rhadys Abreu Blondet. The following persons appeared at the hearing: on behalf of the Inter-American Commission: Juan Pablo Albán-Alencastro; on behalf of the victims and their representatives: Karen Fischer, victim, and Gisela De León, Francisco Quintana and Marcela Martino from the Center for Justice and International Law (CEJIL) and, on behalf of the State: Ruth del Valle Cobar, Chairman of the Presidential

Commission and the representatives discussed the obligations that have not yet been fulfilled.

5. At said hearing, the State and the representatives submitted documentation. In addition, the Court requested the State to submit a written report regarding compliance with the Judgment. In such report, the State was to describe the measures adopted in order to comply with the three obligations that remained unfulfilled and, whenever possible, provide the specific dates when it expects to comply with said obligations. Specifically, the State was required to provide detailed information about: a) the measures adopted to allow Mr. Jorge Carpio's next of kin, especially Karen Fischer, access to the court record, and b) the steps taken to further the investigation of this case, including dates and specific results. This requirement was reiterated by the Secretariat of the Court (hereinafter "the Secretariat") in the letters dated January 28 and March 2, 2009. To date, the State has failed to submit the required information.

#### **CONSIDERING:**

1. That Guatemala has been a State Party to the American Convention since May 25, 1978 and accepted the jurisdiction of the Court on March 9, 1987.

2. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

3. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For such purpose, States are required to ensure implementation of the Court's rulings at the domestic level.<sup>2</sup>

4. That, given that the Court's judgments are final and not subject to appeal, as set out in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the Judgments of the Court conforms to a basic principle of the Law of International Responsibility of States, upheld by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by this Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke the provisions of its internal law to escape their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.<sup>3</sup>

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Human Rights Executive Policy Coordinating Commission (COPREDEH); Delia Marina Dávila Salazar, Agent, y Vivian Nohemí González Westendorff, Deputy Agent.

<sup>2</sup> Cf. *Case of Baena-Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Herrera-Ulloa v. Costa Rica*. Monitoring Compliance with Judgment. Order of the President of the Court of June 2, 2009, Considering clause No. 4; *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Monitoring Compliance with Judgment. Order of the President of the Court of June 8, 2009, Considering clause No. 3.

<sup>3</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Court of May 20, 2009,

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>4</sup>

7. That the Court considers that the hearing held to monitor compliance with the obligations that remain unfulfilled has been very useful.

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8. That, as regards the investigation, identification and punishment of the perpetrators and masterminds of the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, as well as the serious injuries to Sydney Shaw Díaz (*first operative paragraph of the Judgment*), the State informed the Court that domestic authorities were able to find “a female eyewitness who says she recognized one of the individuals that participated in these incidents”; “interviews have been conducted with some other people [...] who suffered attacks in the same place where Mr. Jorge Carpio and others were murdered,” and that the Attorney General’s Office “is locating the National Civil Police officers employed in that jurisdiction at the time of the incidents in order to identify any other matters that could assist the investigation.”

9. That the representatives stated that impunity “is the State’s answer to this case.” They added that “even though Jorge Carpio was a prominent figure in Guatemalan society, four years after the Judgment was entered in this case, there has been no significant progress in the investigation into his extrajudicial execution and that of Alejandro Ávila Guzmán, Juan Vicente Villacorta Fajardo and Rigoberto Rivas González, as well as into the injuries caused to Shaw Díaz [...]” Furthermore, they stated that “the State’s report basically consists of a list of isolated actions and fails to indicate when they were taken or the line of investigation being pursued.” They added that, at the private hearing, the agent of the State simply mentioned that there had been “significant progress” and “further developments.”

10. That the Commission pointed out that “without undermining the significance of the investigative measures described [...], the Commission must express its concern over the fact that four years have elapsed since the entry of the Judgment, fifteen and a half years since [the] murder[s] and we are still in the same place we were when this case was brought before the Commission [and] before the Court.” The Commission added that “it is regrettable that in a case in which the State, during the hearing held before the Inter-American Court, publicly acknowledged its international responsibility, precisely due to lack of due diligence in the investigation process. That is, it is

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Considering clause No. 5; *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*, *supra* note 2, Considering clause No. 4.

<sup>4</sup> Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 2, Considering clause No. 6, and *Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador*. Monitoring Compliance with Judgment. Order of the Court of April 29, 2009, Considering clause No. 6.

regrettable that since then, despite such acknowledgement, there has not been sufficient commitment to exercise the required due diligence [in the] investigation process.”

11. That, in cases of extrajudicial executions, it is essential for States to conduct an effective investigation regarding the deprivation of the right to life enshrined in Article 4 of the Convention and to punish all those responsible therefor, especially when State officials are involved.<sup>5</sup>

12. That the duty to investigate is an imperative obligation of the State that derives from international law and, as previously pointed out by this Court, in cases of gross violation of fundamental rights the pressing need to prevent the recurrence of such violations depends, to a great extent, on tackling impunity and satisfying the right of both the victims and society as a whole to know the truth about what happened.<sup>6</sup>

13. That the Court has defined impunity as the overall lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention.<sup>7</sup> Furthermore, the fight against impunity extends beyond criminal justice insofar as, depending on each specific case, other legal consequences may arise for both the State and the perpetrators.

14. That impunity may result from many circumstances, whether from failing to organize the government apparatus to investigate crimes<sup>8</sup> or conducting domestic proceedings in a manner that causes undue delay or hindrance;<sup>9</sup> from failing to statutorily define an independent crime, which prevents the effective conduct of a criminal proceeding;<sup>10</sup> from enacting self-amnesty laws;<sup>11</sup> from failing to execute an

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<sup>5</sup> Cf. *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 101, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Monitoring Compliance with Judgment. Order of the President of the Court of January 27, 2009, Considering clause No. 17.

<sup>6</sup> Cf. *Case of Vargas-Areco v. Paraguay*. Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 155, para. 81; *Case of Escué-Zapata v. Colombia*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 75, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 18.

<sup>7</sup> Cf. *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, para. 173; *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2008. Series C No. 190, para. 69, and *Case of Bámaca-Velásquez v. Guatemala*. Monitoring Compliance with Judgment. Order of the Court of January 27, 2009, Considering clause No. 24.

<sup>8</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 176 and 177, *Case of Tiu-Tojín v. Guatemala*, *supra* note 7, para. 69, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

<sup>9</sup> Cf. *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 115; *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 116, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

<sup>10</sup> Cf. *Case of Heliodoro-Portugal v. Panama*. Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 183, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

<sup>11</sup> Cf. *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, para. 43, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 190, and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

imposed sentence<sup>12</sup> or from sentencing a convicted offender to minimum punishment, which is wholly disproportionate to the gravity of the crime,<sup>13</sup> among others.

15. That ending impunity, by all legal means available, is an essential factor in eradicating crimes such as extrajudicial executions.<sup>14</sup> A proceeding pursued until its conclusion and achieving its intended purpose is the clearest sign that human rights violations will not be tolerated, contributes to provide reparations to the victims and shows society that justice has been served.

16. That the Court has held that the duty to investigate must not be regarded by the State as a mere formality preordained to be ineffective, or as a mere pursuit of private interests, dependent on the initiative of the victims or their next of kin or upon evidence offered by private individuals.<sup>15</sup> Therefore, an effective investigation must be capable of yielding results or providing appropriate responses to violations of the rights enshrined in the Convention.

17. That in order to determine whether an investigation is effective, the Court may resort to international standards and documents that address several aspects of the investigation into human rights abuses, such as the United Nations Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, contained in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).<sup>16</sup>

18. That the Inter-American Court has specified that the discovery of the truth within the framework of the duty to investigate an alleged extrajudicial execution should be sought from the early stages of the investigation process with great determination. In this regard, State authorities conducting an investigation into an extrajudicial, arbitrary or summary execution must, *inter alia*, a) identify the victim; b) recover and preserve evidentiary material related to the death; c) identify possible witnesses and obtain statements from them concerning the death under investigation; d) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is essential that a thorough investigation of the crime scene be conducted and rigorous autopsies and

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<sup>12</sup> Cf. *Case of Valle-Jaramillo et al. v. Colombia*, *supra* note 5, para. 165, and *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

<sup>13</sup> Cf. *Case of Vargas-Areco v. Paraguay*, *supra* note 6, paras. 106 to 109, and *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 20.

<sup>14</sup> Cf. *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 81, and *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 21.

<sup>15</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 8, para. 177; *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 22, and *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 19, para. 101.

<sup>16</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121, and *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 23.

analyses of human remains be performed by competent professionals and using the most appropriate procedures.<sup>17</sup>

19. That investigators probing reports or evidence of extrajudicial executions must be independent. This requires not only hierarchical or institutional independence, but also actual independence from any institution or individual that may come under investigation.<sup>18</sup>

20. That, over fifteen years after the incidents took place and four years after the entry of the Judgment on the merits, the violations found in the instant case remain unpunished. This situation leads the Court to reiterate that Guatemala has clear obligations under the American Convention, specifically in relation to Articles 67 and 68 thereof and, therefore, the State must promptly and fully comply with its obligation to investigate the facts of this case.

21. That, despite the request that the Court made to the State in the Order of July 10, 2007 (*supra* Having Seen clause No. 2), reiterated by the Order of the President of November 18, 2008 (*supra* Having Seen clause No. 3) as well as by the judges during the private hearing, and by means of two letters from the Secretariat (*supra* Having Seen clause No. 5), the State has failed to comply with its obligation to provide detailed information regarding compliance with this obligation. Therefore, the Court requests the State to submit a detailed report on the measures taken to investigate the facts of this case. In that regard, dates and specific results must be provided regarding the steps taken in order to identify all those responsible for the crimes. The next of kin of the victims shall have full access to and be allowed to participate at all stages of the proceeding, in accordance with domestic laws and the American Convention.<sup>19</sup> Especially, the State must inform the Court of the number and nature of the procedural steps being followed to investigate the systematic patterns underlying this extrajudicial execution.

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22. That, with regard to the State's duty to remove all *de facto* and *de jure* obstacles and mechanisms that perpetuate impunity in the case, grant the witnesses, judicial authorities, prosecutors, other judicial agents and the next of kin of the victims sufficient guarantees of security, and use all possible measures to advance the proceeding (*second operative paragraph of the Judgment*), the State informed the Court of Decree No. 70-96 "Law on the Protection of Persons Participating in Criminal Proceedings and Persons engaged in the Administration of Criminal Justice", passed by Congress, the main purpose of which is to provide protection to officers and employees of the Judiciary, civil security forces and the Attorney General's Office, as well as to lay and expert witnesses, consultants, complainants and other individuals that are at risk due to their participation in criminal proceedings. [To that end], the Protection Service

<sup>17</sup> Cf. *Case of Juan Humberto Sánchez*, *supra* note 16, paras. 127 and 132; *Case of Zambrano-Vélez et al. v. Ecuador*, *supra* note 16, para. 121; *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 24, and *Case of Kawas-Fernández v. Honduras*, *supra* note 15, para. 102.

<sup>18</sup> Cf. *Case of Zambrano-Vélez et al. v. Ecuador*, *supra* note 16, para. 122, and *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, *supra* note 5, Considering clause No. 25.

<sup>19</sup> Cf. *Case of Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Kawas-Fernández*, *supra* note 15, para. 194, and *Case of Baldeón-García v. Peru*. Monitoring Compliance with Judgment. Order of the Court of April 3, 2009, Considering clause No. 14.

[was] created [...], and will be established within the organization of the Attorney General's Office." According to the State, the regulation to be issued by the Attorney General for such purposes "has already been issued" and approximately eighty individuals are receiving protection through that office.

23. That, in addition, the State informed the Court of the legislative measure implemented, i.e. Decree No. 21-2006 "Organized Crime Control Law", which seeks to "define the criminal conduct attributable to the members and/or associates of criminal organizations; establish and regulate special criminal investigation and prosecution methods [...]; establish provisions regarding individuals assisting in the criminal prosecution of these activities, protective measures, punishment, and measures designed to prevent, combat, dismantle and eradicate organized crime." Furthermore, the Judiciary has allegedly created a "Security Services for Officers of the Court" to protect judges. Finally, Guatemala stated that the "International Commission against Impunity in Guatemala (CICIG), established by an Agreement between the United Nations and Guatemala is currently hearing high-profile cases."

24. That the representatives pointed out that "despite the enactment of the legislation mentioned by the [State] and the family's efforts to gather testimony from individuals from the area where the incidents took place, those in charge of the investigation were unable to use such testimony due to the State's refusal to provide [...] protection to these people and their families." They added that "according to data from the Attorney General's Office, collected by the MINAPADMAG Foundation, during the year after the Judgment of this Honorable Court, there were 220 reports of attacks or threats against officers of the court. Concerns over the risk faced in Guatemala by investigative assistants, prosecutors and judges in the performance of their duties have been raised by several international organizations, and such risk hinders the investigation of this and other cases and punishment of those responsible."

25. That the Court recognized the progress made through the issuance of the Decrees as well as the creation of a "Security Services for Officers of the Court." However, the information available is not enough for this Court to be able to assess the implementation of said law or its efficacy in the protection of persons participating in the instant case. In this connection, the Court notes that, according to the representatives, security safeguards were not provided to the witnesses offered by Mr. Carpio's next of kin. Therefore, the State is required to provide further information. In addition, the State must submit a global report on mechanisms and goals regarding protection of officers of the court, the victims' next of kin or witnesses. It is the duty of the State to identify *ex officio* the risk facing any interested party or person involved in the investigation as well as to handle in a diligent manner any concerns raised in that regard by the parties involved in the proceedings. The State shall warn every witness about such risk, assess the level of risk regularly and adopt appropriate measures accordingly.

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26. That, with regard to the duty of the State to adopt specific measures to improve its investigative capacity (*third operative paragraph of the Judgment*), the State pointed out that "the Attorney General's Office [...] is reorganizing the Human Rights Prosecutor's Office [in charge] of investigating past crimes," among which this case is included. The State added that an "analysis and investigations unit" will be created, which will be attached to said Office. Furthermore, "permanent investigators [...] of the



Criminalistic Investigation Division of the Attorney General's Office will be assigned" to the case. In addition, Guatemala stated that "training courses are being implemented through the [...] Attorney General's Office, with the participation of other governmental and non-governmental organizations." Finally, "investigation strategies and plans [...] to ensure that the investigation is effective" are reportedly being devised.

27. That the representatives pointed out that the information provided by the State "refers to future plans [...], but does not include [any] specific step that [has already been taken and] will effectively help bring [...] justice."

28. That, according to the Judgment, the duty of the State to adopt specific measures to improve its investigative capacity entails providing the organizations involved in the prevention and investigation of extrajudicial executions with sufficient human, financial, logistical and scientific resources to ensure proper processing of all the evidence, scientific or otherwise, for the purpose of solving crimes. Said processing must conform to relevant applicable international standards, such as those set out in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

29. That the Court appreciates the training activities that the Attorney General's Office is planning. However, the information before the Court does not demonstrate that they have already been put in place or that they conform to the Judgment. Therefore, the State is required to provide more information.

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30. That, with regard to the obligation to hold a public ceremony acknowledging its responsibility (*fourth operative paragraph of the Judgment*), the State informed the Court that "they were awaiting a date to be set by the President of the Republic of Guatemala in order to comply with this obligation." The State added that they intended to hold a "public ceremony to pay tribute to the work and courage of Abraham García as a prosecutor in the investigation into the murder of Jorge Carpio" and that "the Attorney General's Office has been requested to provide information regarding his employment record."

31. That the representatives requested the Court to order the State that the organization of the public ceremony "be previously coordinated with the beneficiaries so that they are able to participate in the coordination as well as in the ceremony itself" and that, in addition, as ordered in the Judgment, "tribute be paid to police commissioner Cesar Augusto Medina Mateo, who was murdered, as well as to the then prosecutor Abraham Méndez García."

32. That the Commission stated that the Judgment specified a period of six months for the State to comply with this order. It also stated that "while it is important that the highest authority of the Guatemalan State is willing to host the ceremony of public acknowledgment of responsibility, the fact that said authority is the one who will host the ceremony [...] cannot operate to delay the ceremony, [given that] as time goes by [this type of measures] begin to lose significance.

33. That the Court would like to remind the State of the importance of complying with this measure of reparation given its true symbolic value, as a measure of satisfaction and as a safeguard against the recurrence of incidents such as the ones

that took place in the instant case. Therefore, the Court requires the State to adopt such measures as may be necessary to ensure prompt compliance with this obligation and to allow the beneficiaries to participate in the coordination of the ceremony.

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34. That, with regard to the obligation of the State to pay the unpaid balance of the amounts awarded for pecuniary and non-pecuniary damages as well as for costs and expenses (*sixth, seventh, and eighth operative paragraphs of the Judgment*), the State informed the Court that, on July 11, 2008, the last outstanding payment was made to 26 beneficiaries. In addition, the State pointed out that since beneficiary Nixon Roberto Rivas Mansilla passed away in 2007, the payment “was made to his mother, Rosa Everilda Mansilla Pineda, as his legitimate heir.” Therefore, the State considers that it “has fully paid [...] the amount of monetary damages awarded by the Court in favor of the beneficiaries.”<sup>20</sup>

35. The representatives stated that they agreed that the State “has fully complied with this obligation, except for the payment made to Rosa Mansilla.” They claimed that they “[have] not been able to contact her [...] to confirm the information provided [by the State].”

36. That the Commission appreciated the steps taken by the State and that it awaited information about the payment made to Mrs. Mansilla Pineda.

37. That, the record before the Court shows that, on November 10, 2008, Mrs. Mansilla Pineda received the amount of GTQ 154,487.36 (one hundred fifty-four thousand, four hundred eighty-seven and 36 quetzales) as the “third and last payment, plus interest on the amounts of the second and third payments, awarded in the [J]udgment for pecuniary and non-pecuniary damage.” Furthermore, the abovementioned person considered “to have been fully compensated in relation to monetary damages.”<sup>21</sup>

38. That, based on the foregoing, the Court finds that the State has fully complied with operative paragraphs six, seven and eight of the Judgment.

**THEREFORE,**

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

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, and Article 25(1) of the Statute and 63(4) of the Rules of Procedure of the Court,

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<sup>20</sup> Payment receipt signed by Rosa Everilda Mansilla Pineda (record of compliance monitoring proceeding, Volume II, pages 776 to 778).

<sup>21</sup> Record of full compliance with the Judgment on pecuniary and non-pecuniary reparations signed by Rosa Everilda Mansilla Pineda before a notary public on November 10, 2008 (record of compliance monitoring proceeding, Volume II, pages 776 to 778).

**DECLARES,**

1. That, in accordance with paragraphs 34 to 38 of this Order, the State has fully complied with operative paragraphs number six, seven and eight of the Judgment regarding payment of the compensation awarded for pecuniary and non-pecuniary damages, as well as reimbursement of costs and expenses.
2. That, in accordance with paragraphs 21, 25, 29 and 33 of this Order, the State has not complied with its obligation to:
  - a) investigate, identify, and punish the perpetrators and masterminds of the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, and Rivas González, as well as the serious injuries to Sydney Shaw Díaz (*first operative paragraph of the Judgment*);
  - b) remove all *de facto* and *de jure* obstacles and mechanisms that perpetuate impunity in the case, grant the witnesses, judicial authorities, prosecutors, other judicial agents and the next of kin of the victims sufficient guarantees of security, and use all possible measures to advance the proceeding (*second operative paragraph of the Judgment*);
  - c) adopt specific measures to improve its investigative capacity (*third operative paragraph of the Judgment*), and
  - b) hold a public ceremony to acknowledge its responsibility (*fourth operative paragraph of the Judgment*).
3. That it will keep this monitoring proceeding open until full compliance with the abovementioned obligations is achieved.

**AND DECIDES:**

1. To call upon the State to adopt all such measures as may be necessary to effectively and promptly fulfill any pending obligations ordered by the Court, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter-American Court of Human Rights, by September 15, 2009, a report detailing all measures adopted to comply with the reparations ordered by this Court that have not been fulfilled, as well as the information specified in paragraphs 21 and 25 of this Order.
3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit such comments as may be deemed appropriate on the State report mentioned in the preceding operative paragraph, within a period of four and six weeks respectively, following receipt of the report.
7. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission and the representatives of the victims.

Cecilia Medina-Quiroga  
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Cecilia Medina-Quiroga  
President

Pablo Saavedra-Alessandri  
Secretary