

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 6, 2011
CASE OF THE DOS ERRES MASSACRE v. GUATEMALA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on preliminary objection, merits, reparations and costs (hereinafter “the judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on November 24, 2009, in which it ordered, *inter alia*, that:

8. The State must investigate, without delay, in a serious and effective manner, the facts that originated the violations declared in th[e] judgment in order to prosecute and, as appropriate, punish those responsible, in the terms of paragraphs 231 to 236 of th[e] judgment.

9. The State must file the necessary disciplinary, administrative or criminal actions, according to its domestic law, against those State authorities who may have committed the facts and obstructed the investigation, in the terms of paragraph 233(d) of th[e] judgment.

10. The State must adopt the necessary measures to amend the Law on *Amparo*, *Habeas Corpus* y Constitutionality in Guatemala, in the terms of paragraphs 238 to 242 of [the] judgment.

11. The State must proceed with the exhumation, identification and return to the next of kin of the mortal remains of the people who died in the Dos Erres Massacre, in the terms of paragraphs 244 to 249 of [the] judgment.

12. The State must provide training courses on human rights for different State authorities, in the terms of paragraphs 251 to 254 of [the] judgment.

13. The State must publish, once, in the Official Gazette and in another national newspaper, Chapters I, VIII; IX and X; paragraph 222 of Chapter XI, and paragraphs 225, 229 to 236, 238 to 242, 244 to 249, 251 to 254, 256, 259 to 264, 265, 268 to 270, 271 to 274 and 283 to 291 of Chapter XII of th[e] judgment, including the titles of each chapter and the corresponding section — without the corresponding footnotes — as well as the operative paragraphs. In addition, the entire judgment must be published, for at least one year, on an appropriate official website of the State, in the terms of paragraph 256 of th[e] judgment.

14. The State must organize the public acts ordered, in the terms of paragraphs 259 to 264 of th[e] judgment.

15. The State must erect a monument, in the terms of paragraph 265 of th[e] judgment.

* Judge Alberto Pérez Pérez informed the Court that, for reasons beyond his control, he was unable to take part in the deliberation and signature of this order.

16. The State must provide the medical and psychological treatment required by the 155 victims, in the terms of paragraphs 268 to 270 of th[e] judgment.

17. The State must create a website for the search for children abducted and illegally held, in the terms of paragraphs 271 to 274 of th[e] judgment.

18. The State must pay the amounts awarded in paragraphs 292 to 295 and 303 and 304 of th[e] judgment as compensation for non-pecuniary damage and reimbursement of costs and expenses, in the terms of paragraphs 278 to 295, 300 to 304 and 305 of th[e] judgment.

2. The reports of the Republic of Guatemala (hereinafter "Guatemala" or "the State") on the progress made in complying with the judgment, presented on March 25, June 2, December 17 and December 21, 2010, and March 18 and July 4, 2011.

3. The observations of the representatives of the victims (hereinafter "the representatives") on the State's reports on compliance, presented on April 20 and July 1, 2010, and January 19, February 9, February 15 and June 28, 2011.

4. The observations of the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on the State's reports on compliance, presented on May 14 and July 14, 2010, and February 17 and May 17, 2011.

5. The communication of the Secretariat of July 27, 2011, in which it reiterated to the State the request to forward the proof of payment to Rodrigo Mayén Ramírez, Receipt No. 95, which had been requested in a note of this Secretariat of May 30, 2011, Ref. CDH-11,681/230.

6. The communication of the Secretariat of June 30, 2011, in which it asked the representatives to submit, by July 4, 2011 at the latest, the names, together with any additional documentation, of those persons who had received payment of the corresponding compensation. It also asked the State, if applicable, to forward the names and corresponding proof of payment of those persons who had received payment of the compensation after May 9, 2011. On July 4, 2011, the State and the representatives answered the said communication. The communication of the Secretariat of July 5, 2011, in which it forwarded the above-mentioned information to the Inter-American Commission, and asked that it submit observations in this regard.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Guatemala has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since May 25, 1978, and accepted the compulsory jurisdiction of the Court on March 9, 1987.

3. In accordance with the provisions of Article 67 of the American Convention, the State must fully comply with the Court's judgments. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the Court's decisions in any case to which they are parties." To this

end, States must ensure implementation of the Court's decisions in the domestic sphere.¹

4. The obligation to comply with the Court's judgments conforms to a basic principle of the international responsibility of the State, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."² The treaty obligations of State Parties are binding on all powers and organs of the State.

5. The States Parties to the Convention must ensure compliance with its provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive norms of human rights treaties (in other words, those that contain provisions on the protected rights), but also to procedural norms, such as those concerning compliance with the Court's decisions. These obligations must be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

6. The States Parties to the Convention that have accepted the binding jurisdiction of the Court must comply with the Court's decisions. This includes the State's obligation to inform the Court about the measures taken to comply with those decisions. Prompt compliance with the State's obligation to advise the Court of how it is complying with each aspect ordered by the Court is essential in order to assess the status of compliance with the judgment as a whole.⁴

A) *Obligation to investigate the facts that originated the violations declared in the judgment, and obligation to file the appropriate disciplinary, administrative or criminal actions, according to its domestic legislation (eighth and ninth operative paragraphs of the judgment)*

7. In its report of December 21, 2009, the State advised that "in order to comply with the decisions of the [...] Inter-American Court, and the decisions of the Criminal Chamber of the Supreme Court of Justice, the Human Rights Prosecutor of the Public

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Tibi v. Ecuador*. Monitoring compliance with judgment. Order of the Court of March 3, 2011, considering paragraph 3, and *Case of Radilla Pacheco v. United Mexican States*. Monitoring compliance with judgment. Order of the Court of May 19, 2011, considering paragraph 3.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Art. 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 Tibi v. Ecuador*. Monitoring compliance with judgment, *supra* note 1, considering paragraph 4, and *Case of Radilla Pacheco v. United Mexican States*. Monitoring compliance with judgment, *supra* note 1, considering paragraph 5.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Tibi v. Ecuador*. Monitoring compliance with judgment. Order of the Court of March 3, 2011, considering paragraph 5, and *Case of Radilla Pacheco v. United Mexican States*. Monitoring compliance with judgment, *supra* note 1, considering paragraph 6.

⁴ Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, considering paragraph 7; *Case of Garibaldi v. Brazil*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of February 22, 2011, considering paragraph 7, and *Case of Castillo Páez v. Peru*. Monitoring compliance with judgment. Order of the Court of May 19, 2011, considering paragraph 6.

Prosecution Service took the necessary steps to execute the arrest warrants ordered against the individuals declared responsible in the [...] criminal proceedings.” As a result, “on February 10, 2010, [...] Manuel Pop Sun was arrested” and transferred to the Criminal, Drug Trafficking and Environmental Crimes Court of First Instance to give his first statement. A “commitment order and an indictment” were issued against him “on February 12, 2010, implicating him in proceedings for murder and human rights crimes.” In addition, on February 9, 2010, “Reyes Collin Gualip was arrested” and a commitment order and an indictment were issued against him on February 17, 2010, by the Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, implicating him in proceedings for the crime of murder.” In addition, the State indicated that on “March 3, 2010, Carlos Antonio Carías López, who during the massacre held the rank of Second Lieutenant of the Guatemalan Army, came forward voluntarily and was implicated in the proceedings for murder and theft.” The State also reported that the “Public Prosecution Service had requested the extradition of Gilberto Jordán, Jorge Vinicio Sosa Orantes and Pedro Pimentel Ríos, who had been captured in the United States.” Regarding the other defendants implicated in the proceedings, the State advised that, to “date they have not yet been arrested, and it is presumed that they have left Guatemala; therefore, a red notice is being processed to locate them abroad.” The State also underscored that, given its importance, the case had been transferred to the High Risk Court of the Supreme Court of Justice where the proceedings were currently being conducted.

8. In addition, the State reported that on “February 23, 2010, the defense counsel of one of the defendants presented an application for *amparo* as a result of the Criminal Chamber’s decision, claiming [...]: ‘the rights to liberty and to defense, as well as the juridical principle of due process.’ [The claim] was decided on January 18, 2011 by the Constitutional Court in favor of the defendants. The State also indicated that the *Asociación de Familiares de Detenidos y Desaparecidos de Guatemala* [Association of the Next of Kin of Detainees and Missing Persons of Guatemala] (hereinafter “FAMDEGUA”) had filed an appeal for clarification and expansion against the decision of the Constitutional Court, considering that “the decision violated an international obligation of the State.” This appeal is pending a decision. The State reiterated, through the Presidential Coordination Commission for the Executive’s Policies on Human Rights (hereinafter “COPREDEH”), its willingness to comply with all the measures ordered by the Inter-American Court, but that the “Executive is unable to interfere in the decisions of the Constitutional Court.” Therefore, it was awaiting the ruling, which would be communicated to the Inter-American Court in due course.

9. The representatives observed that, regarding the “reactivation of the arrest warrants and the arrests, [...] even though two of the defendants had been arrested — largely through the insistence and collaboration of the representatives at the domestic level — and another one turned himself in voluntarily, since then (around March 2010), no further sustained and serious efforts had been made to discover the whereabouts of the other individuals who had been found responsible and arrest them [...], either on or outside Guatemalan territory.” They indicated that the “lack of diligence in the immediate and conscientious search for those responsible, especially those of higher rank in the army, only make the possibility of discovering the truth more distant and justice illusory.” In addition, they observed that, although the State indicates that it has “requested the extradition of several of those responsible captured in the United States, [...] this request has not been made effective.” They considered it important that “the State forward this Court updated information on the progress of the requests for extradition regarding the three defendants who are in the United States, and the other defendants who were abroad.”

10. The representatives also stressed that it is “essential that the State [...] coordinate opportunely with the international police intelligence organizations and those of other States in order to bring the individuals who have already been captured to justice for these grave acts, as well as those who are still fugitives from justice.” In addition, they observed that it is especially important “to explore immediately lines of inquiry that take into consideration the pattern of systematic human rights violations at the time the facts occurred [...], and that they cover all the facts of the massacre.” The representatives asked the Inter-American Court to “require the State to report on the measures it has adopted to guarantee the right to life and integrity of all those involved in the investigations, and to forward a report that includes a “timetable of the different steps taken in the investigation and those that are pending, as well as the resources assigned to conduct them.” Similarly, the representatives observed “with concern that the State has failed to provide any information regarding the measures taken to analyze the possible irregularities and violations committed during the investigation.” Therefore, they considered it important to reiterate “that the effective and diligent investigation of the facts must cover, among other factors, the intimidation and threats against the victims’ next of kin, witnesses and other procedural subjects.” They also asked this Court to “urge the State to present information on the measures it has adopted and will adopt to remove the *de facto* and *de iure* obstacles that maintain impunity in this case [...].

11. Regarding the appeal admitted by the Constitutional Court of Guatemala on January 18, 2011, in favor of nine of the defendants, against the decision issued on February 8, 2010, by the Criminal Chamber of the Supreme Court of Justice, the representatives indicated that, given the incongruity of the ruling, they had filed a request for clarification and expansion of the decision. They also observed that “the result of the decision of the [Constitutional Court of Guatemala] is to paralyze once again the process of investigating the grave acts that resulted in these international proceedings.” Therefore, the representatives reiterated that this Court should summon the parties to a hearing on the impunity of several cases, including this one.

12. The Commission took note of the information forwarded by the State and appreciated the efforts made to reactivate the domestic proceedings and to execute the pending arrest warrants. However, it “consider[ed] that the State should report on its follow-up on the corresponding extradition requests, notifications, and other procedures, on and outside Guatemalan territory to determine the identification and possible prosecution of those responsible. In addition, it indicated that “it is not possible to discern the actions taken [by the State to comply with the ninth operative paragraph].” Furthermore, from the information forwarded, it is not possible to infer “which of the crimes ascribed to them is specifically related to this aspect of the judgment,” and there is no indication of the level of participation of those allegedly responsible with regard to the obstruction of justice in this case. Lastly, the Commission considered that “this aspect of the judgment represents an obligation, which although related to the [eighth operative] paragraph, must be assumed by the State independently, because the obligation to investigate and punish does not only cover the acts that occurred during the massacre, but also the irregularities and delays in the subsequent judicial proceedings, and the acts of harassment perpetrated and tolerated by the State agents, which have prolonged impunity in the case.”

13. Based on the information provided by the State and the observations presented by the representatives and the Commission, the Court assesses positively all the efforts made and measures taken by the State to conduct the investigation into the facts of the instant case, which, owing to its importance, was forwarded to the High

Risk Court of the Supreme Court of Justice. The Inter-American Court stresses that, on February 9, 10 and 12, 2010, three of those allegedly responsible for the facts were arrested, and on March 3, 2010, an individual who, at that time of the massacre was a Second Lieutenant in the Guatemalan Army, came forward voluntarily, and was implicated in the proceedings. In addition, the Court takes notes that the Public Prosecution Service requested the extradition of three of those who were possibly responsible for the facts, who were detained in the United States of America, but that, to date, other defendants have not been arrested because they appear to have left Guatemala.

14. The Court recalls that, in paragraphs 233, subparagraphs (a) to (f), 234 and 235 of its judgment, it established the criteria to be followed during the investigation of the facts in this case. In addition, the Court finds that, even though the State has taken different measures to arrest those allegedly responsible, it must make every effort to investigate the facts that gave rise to the violations declared in the judgment, because, more than 28 years after the facts occurred, impunity still exists in this case. Based on the foregoing, the Court reiterates to the State its obligation to intensify its efforts and take all appropriate actions as soon as possible in order to make progress in the corresponding investigations. Thus, this Court considers it essential that the State present complete, detailed and updated information on the implementation of the investigation, the measures taken and their results in compliance with the judgment.

B) Obligation to adopt the necessary measures to amend the Law on Amparo, Habeas Corpus and Constitutionality in Guatemala (tenth operative paragraph of the judgment)

15. The State advised that “the amendments to the Law on *Amparo, Habeas Corpus*, and Constitutionality [...] must be approved [by] at least two-thirds of all the members of the Congress of the Republic and, following their approval on third reading, they must be submitted to the consideration of the Constitutional Court.” In addition, it reported that, on March 28, 2008, it had forwarded the favorable opinion of the Special Justice Sector Reform Commission on bill No. 3319, which amends the said law, to the Constitutional Court. However, the State indicated that, “considering that bill No. 3319 did not include some important aspects to be amended, Congress, presented bill No. 3942 to complement it.” This bill, which was filed before a plenary session of Congress, was not approved on third reading. The State noted that “it appears that the Supreme Court of Justice is drafting another bill to amend the law in question; further information on this matter will be provided in due course.”

16. In this regard, the representatives observed that “although [they are] aware that the amendment of laws, especially an [amendment] with the characteristics of the Law on *Amparo*, requires an open and participatory process of consultation and discussion, the State is obliged to adopt measures to ensure that the amendment is adopted within a reasonable period of time.” They considered that the State’s report was “omissive with regard to the measures aimed at guaranteeing the effective use of the remedy of *amparo*, while its amendments are discussed and approved.”

17. In its observations, the Commission indicated that “it appreciates the initiatives adopted by the State.” However, it observed that “more than a year has gone by since the judgment was notified and there have been no specific results regarding compliance with this obligation.” In addition, it indicated that “the information provided by the State with regard to bill No. 3319 was presented in the [merits]

proceeding before the Court, and was assessed by the Court at the appropriate time"; thus, it considered that "the State must forward the information regarding: (i) the timetable for discussion of the legislative initiatives that were not approved by Congress; (ii) the compatibility of the new legislative proposals under discussion, with the standards established by the Court regarding the regulation of the remedy of *amparo*, and, (iii) the measures being taken to guarantee the effective use of the remedy of *amparo* while the corresponding amendment procedures are being carried out." On this last point, the Commission indicated that the State "had not forwarded information."

18. Based on the foregoing, the Court observes that the information forwarded by the State had already been provided during the merits proceeding of the present case, prior to issuing the judgment. Taking this into consideration and also the comments of the representatives and the Commission, this Court observes that the approval of an amendment to the Law on *Amparo, Habeas Corpus* and Constitutionality in Guatemala is currently dependent upon the drafting of amendments by the Constitutional Court, because the bill that was before the Congress of the Republic had not been promulgated. In this regard, the Court observes that, as mentioned by the State itself, on March 28, 2008, the favorable opinion on the bill was forwarded to the Constitutional Court for the drafting of the amendments to this law, without having produced any results to date, four years later. Therefore, the Court considers that the State must report on all the specific new initiatives, actions and measures, and their results, that have been implemented by the State in order to make progress towards amending the Law on *Amparo, Habeas Corpus*, and Constitutionality in Guatemala, and also on the measures it has adopted to guarantee the effective use of *amparo* while the corresponding law is being amended, in order to assess compliance with this measure of reparation.

C) Obligation to proceed with the exhumation, identification and return of the remains of those who died during the massacre (eleventh operative paragraph of the judgment)

19. The State indicated that "the Public Prosecution Service, in a communication of March 11, 2010, advised that the Forensic Anthropology Foundation of Guatemala (hereinafter "FAFG" or "the Foundation") was appointed as the expert to perform the exhumations." In addition, it indicated that these exhumations were commenced on April 6, 2010, and that "the procedures for the extraction and classification of skeletal remains concluded on April 13, 2010, when they were transferred to the FAFG laboratory for the extraction of samples and subsequent DNA testing." In addition, the State reported that the extraction of samples from the exhumed remains is currently being carrying out in order to map the DNA profiles to compare them with the DNA samples taken from the surviving next of kin. In this regard, the State indicated that "the remains "had not been classified individually, which has delayed their classification [...]. Also, owing to the ground conditions, the remains are in poor condition; therefore, there is a risk that it may not be possible to extract the DNA samples, which will complicate the individualization and full identification of the victims."

20. The representatives observed that the "participation of the FAFG in the implementation of this measure has been crucial in ensuring that it can be considered a true measure of reparation." They stated that said the Foundation's work has been "characterized at all times by the highest technical and professional quality, but also by the enormous compassion of its entire team, who have given special attention to

providing accessible and detailed information to the victims' next of kin regarding the procedure and what they can expect." They also appreciated greatly the Foundation's commitment, and urged the State to "guarantee all the necessary conditions to allow the Foundation to continue its work."

21. In this regard, the Commission appreciated the measures adopted to comply with the obligation to identify and return the remains to the next of kin of the victims. It indicated that "it awaits further information from the State on the actions aimed at overcoming the reported difficulties and on the progress made with the rest of the procedure," and that the State should continue "providing the necessary resources to allow the work to be performed so that the identification and return of the remains is carried out within the time frame granted by the Court."

22. The Court assesses positively the efforts made by the State to comply with this measure. The representatives and the Commission both agree in appreciating the steps taken by the State and the technical and professional work performed by the Foundation in the exhumation of the bodies. At the same time, the Court takes into account the State's comments on the difficulties encountered to compare the DNA samples extracted from the victims' next of kin with the remains, because these were not classified individually and were in poor condition, and that, consequently, there is a risk that it may not be possible to extract DNA samples.

23. In addition, the Court recalls the provisions of paragraph 249 of the judgment, which stated that "to make the individualization of the those exhumed viable and effective, the State must advise the representatives of the victims in writing of the procedure for the identification and return of the remains of those killed during the massacre and, if necessary, request their collaboration for the pertinent effects." Therefore, the Court finds that, as indicated in the judgment, the State must continue reporting on the measures implemented to identify those exhumed and the results, in order to comply with the eleventh operative paragraph of the judgment.

D) Obligation to implement training courses on human rights for different State authorities (twelfth operative paragraph of the judgment)

24. In its report of December 21, 2010, the State indicated that "through the Training Unit of the Public Prosecution Service, and with the support of COPREDEH, it had prepared a project to offer the course 'Application of national and international human rights law in proceedings for grave violations in Guatemala,' which seeks to train public prosecutors and assistant prosecutors of the Public Prosecution Service." It specified that the course is intended to be offered in four modules "covering concepts, classification, human rights institutions, and specific cases of the Inter-Commission on Human Rights and the Inter-American Court of Human Rights." It also indicated that, owing to the lack of funds it has not been possible to open the course immediately; therefore, "the Public Prosecution Service is currently seeking the necessary financial resources to implement the course." Lastly, the State indicated that the Ministry of National Defense "has advised that human rights issues are included at all levels of academic training (mid-level, university, and specializations)."

25. In their observations, the representatives indicated that "regarding training for the Armed Forces, the State merely indicated that, according to information from the Ministry of Defense, human rights topics are included at all levels of training, [...] without providing specific details that would allow the purpose, content and impact to be evaluated." Similarly, they added that "despite the State's obligation to "enhance"

existing courses, the information provided reveals that it has not even made a retrospective analysis of the training courses provided to the members of the Armed Forces [...].” They considered it important that these courses include “the obligation of all the authorities to collaborate in gathering evidence and guaranteeing access to information in cases of grave human rights violations.” Regarding the projected course “Application of national and international human rights law in proceedings for grave violations in Guatemala,” the representatives observed that it is “crucial that the training be addressed at influencing and improving the work of prosecutors and their assistants[, as well as providing them] with tools that allow them to conduct investigations effectively and within a reasonable time.” Lastly, the representatives indicated that “the State has never refer[red] to the measures it has adopted to train judges.”

26. The Commission appreciated the initiatives taken by the State; however, it observed that, based on “the information available, it cannot be concluded that the State is complying adequately with this aspect of the judgment.” Thus, it noted that “the State had not forwarded information regarding the results of the measures taken to offer training on human rights to justice operators in Guatemala,” and also that “despite the *pensum* on human rights included at the different training levels of the Armed Forces, the Court had specified in its judgment that the scope of this obligation included the creation of a permanent education program on human rights for members of the Armed Forces, judges and prosecutors, independently of, or to strengthen, those that already exist.” Furthermore, it indicated that the State must remove “all the obstacles that prevent or delay compliance with its obligations, including the allocation of the necessary financial, human and any other resources to train and strengthen the system of justice in Guatemala comprehensively.” Lastly, it indicated that the “six-month term granted for complying with this obligation has expired without effective compliance being achieved.”

27. According to the information presented by the parties, the Court observes that even though the State has taken some measures relating to the implementation of training courses, particularly measures regarding the elaboration of the project to offer the course “Application of national and international human rights law in proceedings for grave violations in Guatemala,” it also considers that these measures have been insufficient to comply with this aspect. The Court finds that the State must take, as soon as possible, all necessary measures to implement the training courses on human rights for the different State authorities indicated in paragraphs 251, 252 and 253 of the judgment. Consequently, the Court awaits that, in its next report, the State refer in detail to the measures it has adopted to offer the training courses, indicating the scheduling of the respective actions and the content of the training courses, who they will be offered to, and, if appropriate, the results.

E) Obligation to publish, once, in the Official Gazette and in another national newspaper all the relevant parts of the judgment, and also to publish the entire judgment, for at least one year, on an appropriate official website of the State (thirteenth operative paragraph of the judgment)

28. In its brief of March 25, 2010, the State reported that, on February 5 and 14, 2010, it had published in the *Diario de Centroamérica* and *El Periódico*, respectively, the extracts of the judgment indicated by the Court in the thirteenth operative paragraph. The State acknowledged that “there had been an involuntary error in the omission of section C of Chapter XII, ‘Measures of satisfaction, rehabilitation, and guarantees of non-repetition,’ and also in the publication in *El Periódico* in which

section C of Chapter XII appeared incorrectly as C.1"; it also indicated that this "does not affect the substance or the purpose of the publications because no paragraphs have been omitted in the proven facts or in the operative paragraphs of the judgment." In addition, it indicated that it would publish an erratum in *El Periódico*⁵ in this regard. The State also affirmed that the paragraphs had not been numbered in any other publication that the Court had ordered it to make, and argued that, in those cases, the Court had decided that "the State has complied" with the publication. Lastly, it indicated that, as of April 26, 2010, the entire judgment in this case has been available on the COPREDEH webpage (www.coprekeh.gob.gt).

29. The representatives indicated that, as they had stated in their communication of April 20, 2011, the publications of the relevant parts had some errors, because in the "publication in the *Diario de Centroamérica* section C of Chapter XII had been omitted, [...] as well as paragraph 255." Also, "in *El Periódico*," it "erroneously" referred "to section C of Chapter XII as C.1, and omitted sub-paragraph C.1, as well as paragraph 255." Regarding the State's obligation to comply with publishing the judgment on an official website, the representatives indicated that the "hyperlink available on the said webpage does not include the complete name of the judgment delivered by the Court. Similarly, a brief summary should be included on this website in which the State of Guatemala acknowledges its international responsibility for human rights violations." They also considered that "for this reparation to be adequate, it must at least include the complete name of the judgment, because a partial reference prevents the correct identification of the published document and therefore the proposed scope of this measure is not achieved." Lastly, in their observations of January 19, 2011, the representatives indicated that the "problems regarding the publication of the entire judgment on the [COPREDEH] webpage have been rectified."

30. The Inter-American Commission took note of the information presented and reiterated that, "despite the omissions pointed out by the representatives, the publications that have been made [...] represent an important step towards compliance with this measure of reparation. The Commission is awaiting information from the State regarding the erratum to be published, so as to be able "to verify full compliance regarding the publications." In relation to the integral publication on the website, the Commission appreciated the measures taken by the State.

31. Based on the information provided by the parties, the Court observes that the State has published the entire judgment on the website. Regarding the publication of the relevant parts of the judgment, the Court underlines that, on February 5 and 14, 2010, the State published the relevant parts of the judgment in the *Diario de Centroamérica* and *El Periódico*, respectively. In addition, it notes that, according to the information provided by the parties, the State acknowledged that, owing to an involuntary error, it named section C of Chapter XII erroneously and omitted subsection "C.1) Satisfaction." In this regard, the State itself indicated that it would publish an erratum to rectify the said errors (*supra* considering paragraph 28). The Court considers that this omission and the error in the designation of the section do not affect the essence of the purpose of publishing the relevant parts of the judgment. Furthermore, the representatives indicated that, in the publication made by the State,

⁵ Cf. Erratum: "Clarification of the publication of February 14, 2010, of the Dos Erres Massacre. Section C of Chapter XII was incorrectly designated C.1 Measures of satisfaction, rehabilitation, and guarantees of non-repetition, whereas the correct designation is C) Measures of satisfaction, rehabilitation and guarantees of non-repetition. Since subsection "C.1) Satisfaction" was omitted, it should be added."

it had also omitted paragraph 255 of the judgment. In this regard, the Court indicates that it did not order the publication of this paragraph in the judgment. Consequently, the Court finds that the State has complied with the thirteenth operative paragraph of the judgment regarding its publication on the website, as well as in relation to the publication in the Official Gazette and a major national newspaper.

F) Obligation to organize the public acts (fourteenth operative paragraph of the judgment)

32. The State indicated that “the legal representative of FAMDEGUA had advised that the beneficiaries would not accept any public act until the State has paid [the] financial compensation.” Therefore, the State indicated that it “will coordinate the organization of the public acts with the petitioners after payment has been made of the financial compensation awarded in the judgment.”

33. In this regard, the representatives observed that “an integral part of our work is to follow-up on the victims’ requests and concerns and present them to the authorities. Specifically, the assertion made in the State’s report occurred during a telephone conversation to communicate the feelings of some of the victims [...] and in no way signified that the representatives considered it necessary to delay compliance [with this measure]. The representatives also indicated that “it is truly regrettable and incompatible with its international responsibilities that the State attempts to fail to comply with a judgment of the Court [...] based on the content of an informal conversation regarding the concerns of some of the victims regarding payment of the compensation.”

34. The Inter-American Commission recalled that “the provision of this measure of reparation by the Court responded, among other matters, to the Court’s assessment of the opinions of the expert witnesses, psychologists, who confirmed the feeling of guilt and stigmatization to which the victims have been exposed due to the absence of justice [...].” Therefore, the Commission observed “that the State must coordinate with the representatives of the injured party to organize the required acts, in order to overcoming the stated obstacles and comply with this measure of reparation.”

35. Based on the information provided by the parties, the Court notes that the act of public acknowledgment of international responsibility and the projection of the documentary on the facts of the massacre of the Dos Erres community have not yet been carried out. According to paragraph 264 of the judgment, these measures should have been implemented within one year of notification of the judgment. Consequently, the Court finds that the State must take all the necessary steps to carry out this public act as soon as possible, as decided in paragraphs 261, 262 and 263 of the judgment, and in coordination with the victims and their representatives, who should provide their collaboration. In order to monitor compliance with this obligation, in its next report, the State must indicate: (a) the steps it has taken and will take in order to organize this measure of reparation, and (b) the scheduling or provisional dates on which the act will be held.

G) Obligation to erect a monument (fifteenth operative paragraph of the judgment)

36. The State advised that “due to the time that has elapsed since the massacre, the site of the Dos Erres community is now private property; consequently, access on foot or by car is restricted, and the owner’s authorization is needed to construct the

said monument." Therefore, the State indicated that "it is working on locating the owner of the property in order to arrange the respective authorization."

37. The representatives stated that, more than a year after notification of the judgment, "the explanations provided by the State to justify its delay are [...] unacceptable," and it is "incomprehensible that the State claims that it requires more than a year to identify the owner of the property in question, especially when most of the victims, and the residents of the neighboring areas, know who it is." They added that "the State itself had to obtain permission from this person in order to exhume the remains that were in a well on this property; hence it cannot claim that it does not know [...] his identity." They indicated that they believe that "the State's arguments reveal not only poor coordination between the State institutions, but also the reluctance to comply with this measure of reparation."

38. The Commission noted that the State had "indicated that it would forward information on this matter "opportunistically." In this regard, the Commission considered that "under this procedure to monitor judgment, the presentation by the State of detailed and updated information is essential in order to define the progress made or compliance with the obligations ordered by the Court." It added that the time granted by the Court had already expired and that "the information available does not permit identifying the specific actions that the State has taken to construct the monument, or the proposals made to overcome the problems that have arisen."

39. Based on the information provided by the parties, the Court notes that, to date, the State has not taken any steps to build the monument in the place occupied by the Dos Erres community in order to comply with the provisions of paragraph 265 of the judgment, and specifically its fifteenth operative paragraph. The Court considers that the identification of the owners of the land should not represent a problem. Therefore, the Court reiterates to the State its obligation to increase its efforts and to take all the necessary steps, as soon as possible, to make progress in complying with this measure of reparation. Consequently, this Court considers it essential that the State present updated and detailed information on the steps taken to comply with this measure, and their results.

H) Obligation to provide psychological and medical treatment to the victims (sixteenth operative paragraph of the judgment)

40. In its report of December 21, 2010, the State indicated that "the Ministry of Public Health and Social Welfare is the State institution in charge of providing medical services and psychological care." In addition, it indicated that, on "May 12, 2010, it had requested the legal representatives in the case to present information on the age, identification number, and exact addresses of the beneficiaries" so as to locate them, because many of the victims no longer live in the department of Petén. It added that "the information requested has not been forwarded by the legal representatives," and that on "December 13 and 14, 2010, they sent some identification documents; however, the State does not have the home address of the beneficiaries."

41. In this regard, the representatives indicated that "it was a matter of concern that the State authorities were arguing that they are unable to obtain the personal information of the victims more than one year after notification of the judgment, and attempting to hold one of the representative organizations responsible for its non-compliance." The representatives added that they are "very willing to collaborate and help" and that, consequently, "since the first half of 2010, FAMDEGUA has made lists

available with the names and addresses of all the people who reside in different parts of the country about whom it had information. It was precisely these lists [...] that made it possible for the State to contact the victims to start payment of the financial compensation; however, the State has not taken the initiative to coordinate the implementation of this measure of reparation through these channels.”

42. The Commission took note of the information provided by the State and observed that Guatemala “has not forwarded information on the actions or work plans in place to implement an adequate program of medical and psychological care for the victims; nor has it forwarded information on any other measures it would be using to locate the beneficiaries.” With regard to locating the victims, the Commission understood that the collaboration of the representatives was required, but indicated that “it is the State’s obligation to provide adequate reparation deriving from the attribution of international responsibility [...]. The State must use all available means to comply with this obligation.”

43. Based on the above, the Court observes that the State has not complied with the obligation to provide the medical and psychological treatment ordered in the sixteenth operative paragraph of the judgment. The Court takes into account the information provided by the parties and considers it important that the State coordinate with the representatives the necessary measures to locate the beneficiaries, and that the representatives cooperate in this regard. Consequently, this Court considers it essential that the State take all the necessary measures conducive to providing the victims immediately with adequate and free medical and psychological treatment, determined according to their health needs and by mutual agreement with the victims, including the provision of medication. In accordance with paragraph 270 of the judgment, this medical and psychological treatment may be provided by State specialized personnel and institutions or, if necessary, the State can have recourse to specialized private or civil society institutions. In order to monitor compliance with this obligation, the State must provide detailed and updated information on the measures adopted and the results.

1) Creation of a webpage to search for children abducted and illegally held (seventeenth operative paragraph)

44. The State advised that “several human rights institutions had been invited to working meetings during which it had expressed its commitment.” Despite this, it indicated that “some of the institutions [had been unable] to assume this commitment, owing to their budget, competence or mandate.” It added that the State was “studying other possibilities to comply with what was ordered.”

45. The representatives stated that the information provided by the State “again reveals the absence of resolve and a serious lack of coordination between the different State entities.”

46. The Commission observed that “the time frame for complying with this measure of reparation has already expired and the information presented by the State fails to show that it has taken even minimally effective measures to comply with it.” It also stated that Guatemala “must fulfill the requirements established by the Court, specifically regarding: (i) the allocation of the human, financial, logistic and any other resources required for its creation and operation, and (ii) the State must collaborate with the national and international institutions or associations responsible for locating children abducted during the domestic conflict.”

47. Based on the information provided by the parties, the Court concludes that the webpage to search for children abducted and illegally held has yet to be created and, the State specifically mentioned the difficulties it faced to comply with this measure of reparation. According to paragraph 274 of the judgment, this measure should have been implemented within one year of notification of the judgment. In this regard, the Court considers it essential that the State adopt the necessary measures and allocate the human, financial, logistic and any other resources required to create the webpage, so that it functions satisfactorily and fulfills the purpose for which it was created, in keeping with paragraphs 271, 272 and 273 of the judgment. In order to monitor compliance with this obligation, in its next report, the State must indicate the measures it has taken and will take to create the webpage and, if appropriate, the results obtained.

J) Payments for pecuniary and non-pecuniary damage and costs (eighteenth operative paragraph of the judgment)

48. In its report of December 17, 2010, the State indicated that, after verifying the identification documents forwarded by the legal representatives on December 14 and 15, 2010, it “determined that several of the names on the identification documents submitted differed from the names indicated in the said judgment.” It indicated that, in order to be able to make the payment and comply with all the requirements of the Guatemalan public administration auditing bodies, “the identity of the beneficiary” must be duly verified; therefore, it asked the Court to rule in this regard. In its following report, dated December 21, 2010, the State indicated that “after obtaining the funds from a deficit national budget, it had been able to allocate them and payment will be made before December 31, 2010.”

49. In its report of May 16, 2011, the State indicated that, on December 27, 2010, and January 13 and April 14, 2011, it had paid a total of 115 beneficiaries, as well as the costs and expenses of the legal representatives from [...] FAMDEGUA. It added that, at May 4, 2011, “13 people [were yet to be paid]; but their cheques have already been prepared, together with the payment certifications, and all that remains pending is that these beneficiaries contact COPREDEH to arrange the date of payment. Consequently, the State asks the Court, through the legal representatives, to locate these people and forward their requested identification documents.” It also indicated that it had not been able to contact a group of seven people, so that it did not have their personal data and it had not been possible to prepare the cheque and the settlement agreement in order to make the payment. In addition, it indicated that, based on the documents forwarded by the representatives, it had taken note that 20 beneficiaries were deceased and, as it had informed the representatives of FAMDEGUA, in accordance with domestic provisions, “their next of kin must carry out the intestacy inheritance procedures established in Guatemalan law, [because this] is required for the heirs to receive the corresponding financial compensation.”

50. In response to the Secretariat’s communication of May 30, 2011, the State submitted the following updated information on July 4, 2011: (a) regarding the payment to Rodrigo Mayén Ramírez, it forwarded copies of the corresponding cheque and certification; (b) after May 9, 2011, it had paid six beneficiaries, and forwarded the corresponding cheques and certifications of payment; thus, according to the State, 121 beneficiaries have received the respective payment of compensation; (c) it had noted the death of two beneficiaries: Merigilda Marroquín Miranda and Rafael Barrientos Mazariegos, and reported that the cheque and the certification issued in favor of the latter would be canceled due to his decease, and (d) that six beneficiaries,

for whom the cheques and certifications of payment have already been prepared, had not come forward to collect their compensation.

51. Furthermore, in its report of May 9, 2011, the State indicated that it had been unable to contact seven people. However, in its latest report, it indicated that, on June 28, 2010, COPREDEH had received a special power of attorney granted by Dionicio Rodríguez Campos to his wife Elena López, and the State was taking the necessary administrative measures to pay her the compensation. In addition, according to new information provided by the representatives, three of the beneficiaries listed had already received their payment. Lastly, the State indicated that, since it did not have information on all the beneficiaries, it had arranged a meeting with representatives of FAMDEGUA on July 6, 2011, in order to compare information and seek support from the regional headquarters of COPREDEH to locate people who are still owed compensation.

52. Regarding the costs and expenses of CEJIL, the State reported that, in order to comply with this commitment, it had issued the corresponding cheque, but it was not accepted by the representatives owing to banking difficulties. Subsequently, talks were resumed with CEJIL to coordinate the transaction and the signature of the certification of settlement. Therefore, it would duly inform the Court and forward the vouchers confirming payment of the corresponding costs and expenses.

53. The representatives indicated that “last December 27, [2010, members] of FAMDEGUA accompanied the victims to receive the payments owed to them by the State, after submitting the required documentation.” However, they also indicated that they did not have “detailed information for each victim,” so they were awaiting the information from the State. On June 28, 2011, the representatives initially stated that “based on the information obtained by FAMDEGUA, 115 people — including Rodrigo Mayen-Ramirez — had received the payment corresponding to the compensation ordered by the Court.” In their brief of July 4, 2011, the representatives stated that, according to the “information obtained by FAMDEGUA, [they could] confirm that from May 9, 2011, to date, [five beneficiaries] have received the amount [...] corresponding to compensation for non-pecuniary damage; but, at present, they did not have additional documentation to forward to the Court. Hence, according to the representatives, 120 beneficiaries have received payment of the corresponding compensation.

54. The representatives added that, in addition to the 20 deceased victims indicated by the State, two other victims had died: Rafael Barrientos Mazariegos and Meregilda Marroquín Miranda. The corresponding inheritance procedure was pending with regard to all the deceased victims. Moreover, of the 13 people who, according to the State, have yet to claim their compensation, FAMDEGUA indicated that some of them have already received the payment, without specifying their names. Lastly, with regard to those who have not been contacted, the representatives stated that contact details were provided to the State. Nevertheless, there were willing to provide the data again.

55. Regarding the reimbursement of costs and expenses, the representatives confirmed that, on December 27, 2010, the State had made the respective payment to FAMDEGUA. In the case of the reimbursement of costs and expenses to CEJIL, the representatives clarified that, in early 2011, they had informed “State officials that, receiving the cheque could compromise their safety during their working visit to

Guatemala and, given the amount in question, they could have difficulty bringing the money into Costa Rica; therefore they proposed that the payment be made via bank transfer. To this end and in accordance with the State's requirements, on May 30, 2011, CEJIL sent a draft settlement agreement to COPREDEH and is waiting for the payment to be made."

56. The Commission assessed positively the information submitted by the parties and awaited specific data regarding the beneficiaries of the reparations.

57. Based on the above, the Court assesses positively the efforts made by the State to pay the compensation for non-pecuniary damage to 121 beneficiaries,⁶ regarding whom the State submitted the respective proof of payment.⁷ In addition, this Court notes that, from the information provided by the parties, seven people have not collected the payment of the compensation, five people have not contacted COPREDEH to receive the corresponding payment, and 22 beneficiaries are deceased; in other words, 34 beneficiaries have not received the compensation payment. In this regard, the Court considers that the State and the representatives should coordinate the necessary measures to locate the people who have not received payment yet and, in the case of the deceased victims, the representatives should provide advice or initiate the appropriate legal measures or procedures so that their next of kin can receive the corresponding compensation. Furthermore, the State submitted the required information on the payment made to each victim, and the respective documentation, which was forwarded to the representatives and the Commission. At the date of this order, the Court is awaiting the observations of the Commission in this regard.

58. Notwithstanding the foregoing, this Court has verified that the State has made the payment of compensation for non-pecuniary damage to 121 beneficiaries, and the payment of costs and expenses to FAMDEGUA; hence, it considers that the eighteenth operative paragraph has been complied with partially. Consequently, the Court finds it pertinent that the State continue to report on the measures taken and their results in relation to the 34 victims who have yet to receive payment, either because they have not contacted the State officials or because they are deceased.

59. Furthermore, regarding payment of the reimbursement of costs and expenses to CEJIL, the Court takes into account the observations of the State and the representatives, and awaits pertinent information concerning the payment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

⁶ In this regard, it is worth emphasizing that the representatives confirmed the payment of compensation to 120 beneficiaries, regarding whom the State presented the corresponding proofs of payment. However, in the communication of July 4, 2011, the State included another beneficiary who had received the payment, and forwarded a copy of the corresponding cheque and proof of payment, but the representatives did not include the name of this person in the communication of July 4, 2011. Given that the Court has verified payment of the corresponding compensation to this beneficiary from the respective proofs of payment, the Court determines that the State has compensated 121 beneficiaries.

⁷ This Court notes that, with regard to the compensation payment for one of the victims, the stub of check No. 00000141 indicates a different amount to that indicated in proof of payment No. 28 and check No. 00000141. However, this Court understands that this person was paid the amount indicated in the last two documents mentioned.

in exercise of its authority to monitor compliance with its decisions in accordance with Articles 33, 61(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. As indicated in this order, the State has complied with the publication of the relevant parts of the judgment in the Official Gazette and in another national newspaper, as well as the publication of the whole judgment on an appropriate official website of the State (*thirteenth operative paragraph of the judgment*).

2. As indicated in this order, the State has complied partially with the payment of the compensation for non-pecuniary damages to 121 victims, while payment to 34 beneficiaries remains pending, either because they have not contacted the State or because they are deceased; in addition it has complied with the reimbursement of costs and expenses to FAMDEGUA (*eighteenth operative paragraph of the judgment*).

3. In order to monitor full compliance with the judgment issued in the instant case, and after analyzing the information provided by the State, the Commission, and the representatives, the Court will keep the procedure open to monitor compliance with those aspects that remain pending compliance in this case, namely:

a) To investigate, without delay, in a serious and effective manner, the facts that gave rise to the violations declared in the judgment, in order to prosecute and, as appropriate, punish those responsible (*eighth operative paragraph of the judgment*);

b) To initiate the pertinent disciplinary, administrative or criminal actions under domestic law, against the State authorities who may have committed the facts and obstructed the investigation of them (*ninth operative paragraph of the judgment*);

c) To adopt the pertinent measures to amend the Law on *Amparo*, *Habeas Corpus* and Constitutionality in Guatemala (*tenth operative paragraph of the judgment*);

d) To proceed with the exhumation, identification and return to their next of kin of the remains of those who died during the Dos Erres massacre (*eleventh operative paragraph of the judgment*);

e) To implement the training courses on human rights for different State authorities (*twelfth operative paragraph of the judgment*);

f) To organize the public acts ordered (*fourteenth operative paragraph*);

g) To erect a monument (*fifteenth operative paragraph*);

h) To provide the psychological and medical treatment required by the 155 victims (*sixteenth operative paragraph*);

i) To create a webpage to search for children abducted and illegally retained (*seventeenth operative paragraph*); and,

j) To pay the amounts established as compensation for non-pecuniary damage to the 34 people who, to date, have not yet received it for the reasons indicated in considering paragraphs 57 and 58 of this order, and the reimbursement of costs and expenses to CEJIL (*eighteenth operative paragraph of the judgment*).

AND DECIDES:

1. To require the State to take all necessary measures to comply effectively and promptly with the aspects pending compliance, 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, on October 18, 2011, a complete and detailed report indicating all the measures taken to comply with the reparations ordered by this Court that remain pending and, in particular, referring to the information required by this Court, as established in considering paragraphs 14, 18, 23, 27, 35, 39, 43, 47 and 58 of this order.
3. To request the representatives of the victims, and the Inter-American Commission on Human Rights to submit any observations they deem relevant on the State's report mentioned in the preceding operative paragraph, within two and four weeks, respectively, of receiving it.
4. To continue monitoring all the aspects pending compliance of the judgment on reparations and costs of November 24, 2009.
5. To request the Secretariat of the Court to notify this order to the Republic of Guatemala, the Inter-American Commission on Human Rights, and the victims or their representatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary