



## RESOLUTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS\* OF

12 MARCH 2020

### *CASE OF RAMÍREZ ESCOBAR ET AL. VS. GUATEMALA*

### SUPERVISION OF COMPLIANCE WITH SENTENCES AND REIMBURSEMENT TO THE VICTIMS' LEGAL ASSISTANCE FUND

#### IN VIEW OF:

1. The Judgment on the merits, reparations and costs (hereinafter "the Judgment") rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") on 9 March 2018<sup>1</sup>. In this Judgment, the Court declared the Republic of Guatemala (hereinafter "the State" or "Guatemala") internationally responsible for arbitrary interference in family life, violation of the protection of the family, personal integrity and judicial guarantees, in relation to the rights of the child and the duty to adopt domestic law provisions, to the detriment of Flor de María Ramírez Escobar (mother), Gustavo Tobar Fajardo (father) and Osmin Tobar Ramírez (son). This is because Osmin Tobar (aged seven) and J.R. (his younger brother aged one and a half) were separated from their family and placed in a children's home in January 1997, following an anonymous complaint that they had been abandoned. As a result of an abandonment proceeding, the Ramírez brothers were adopted by two different American families in June 1998, despite pending appeals against the declaration of abandonment. The Court also found a violation of the prohibition of discrimination, as the decision to separate the family was based on arguments relating to their economic position, gender stereotypes regarding the attribution of parental roles to the mother and father, as well as the sexual orientation of their maternal grandmother. It also found a violation of the right to personal liberty derived from the arbitrary nature of the measure of confinement of Osmin in a home with the impossibility of visits, and the lack of regulation, supervision and oversight of the place. In addition, the Court concluded that the State violated Osmin's rights to identity and to a name, as his name was changed and he was separated from his culture. These violations were committed in a context of serious irregularities in the adoption process of children in Guatemala,

\*Judges Eduardo Vio Grossi and Eduardo Ferrer Mac-Gregor Poisot did not take part in the deliberation and signing of this resolution for reasons of force majeure.

<sup>1</sup> Cf. *Case of Ramírez Escobar et al v. Guatemala. Merits, Reparations and Costs*. Judgment of 9 March 2018. Series C No. 351. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_351\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_351_esp.pdf). The Judgment was notified to the State on 17 May 2018.



favoured by an institutional weakness of the control bodies and a flexible and inadequate regulation that facilitated the formation of organised criminal networks and structures dedicated to the "lucrative" business of international adoptions in Guatemala. The Court established that its Judgment constitutes in itself a form of reparation and, additionally, ordered the State to provide certain measures of reparation.

2. Reports submitted by the State between October 2018 and January 2020, in response to requests from the Court or its Presidency, through notes from the Registry of the Court.

3. The written submissions submitted by the victims' representatives (hereinafter "the representatives")<sup>2</sup> between December 2018 and February 2020.

4. The written observations submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on 3 April 2019.

## **WHEREAS:**

1. In the exercise of its jurisdictional function of supervising the enforcement of its decisions<sup>3</sup> the Court has been monitoring the execution of the Judgment issued in the instant case in 2018 (*supra* Citation 1). In that Judgment, the Court ordered twelve measures of reparation (*infra* Whereas 3, 4, 20, 24, 28 and 32). In addition, it ordered the State to reimburse to the Court's Victims' Legal Assistance Fund (hereinafter also "Assistance Fund") the amount spent during the processing of the merits stage of the instant case (*infra* Whereas 37).

2. In accordance with Article 68(1) of the American Convention on Human Rights, "[t]he States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties". This obligation includes the duty of the State to report to the Court on the measures adopted to comply with each of the points ordered, which is fundamental to evaluate the state of compliance with the Judgment as a whole.<sup>4</sup> The States Parties to the Convention must ensure compliance with the provisions of the Convention and their own effects (*effet utile*) at the level of their respective domestic law. These obligations must be interpreted and applied in such a way that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>5</sup>

3. Next, the Court will assess the information submitted by the parties and the Inter-American Commission with respect to eight measures of reparation ordered by the Court in the Judgment, on which there is information to declare some degree of compliance by Guatemala. As for the remaining four reparations, the Court will make a request for information. The Court will also rule on the reimbursement to the Assistance Fund. The Court will structure its considerations as follows:

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<sup>2</sup> Asociación El Refugio de la Niñez en Guatemala and Centro por la Justicia y el Derecho Internacional (CEJIL).

<sup>3</sup> This power is also derived from the provisions of Articles 33, 62(1), 62(3) and 65 of the American Convention on Human Rights and 30 of its Statute, and is regulated in Article 69 of its Rules of Procedure.

<sup>4</sup> Cf. *Case of Five Pensioners v. Peru. Supervision of compliance with Judgment*. Judgment of the Inter-American Court of Human Rights of 17 November 2004, Whereas 5, and *Case of Colindres Schonenberg v. El Salvador. Supervision of Compliance with Judgment*. Resolution of the Inter-American Court of Human Rights of 22 November 2019, Whereas 2.

<sup>5</sup> *Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of the Inter-American Court of Human Rights of 24 September 1999. Series C No. 54, para. 37, and *Case of Colindres Schonenberg v. El Salvador, supra* note 4, Whereas 2.

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**A. Restitution of Ramirez family ties**

*A.1. Measures ordered by the Court*

4. In the eleventh operative paragraph and in paragraphs 379 to 385 of the Judgment, the Court ordered that the State "should adopt all necessary and appropriate measures to facilitate and contribute to the restitution of the family ties between Osmin Tobar Ramírez and his parents, including providing the psychological treatment, psychiatric treatment and therapeutic support required by the victims and scholarships for the study of English and Spanish, psychiatric treatment and therapeutic support required by the victims and scholarships for the study of the English and Spanish languages, as well as [that it] should make a serious, multidisciplinary and ex officio effort to initiate, promote and, if necessary, continue a relationship between Flor de María Ramírez Escobar and Osmin Tobar Ramírez and J.R.". It was established that "[f]or the fulfillment of these reparations, the State may use its own public institutions or contract private entities and persons with experience in these matters, always guaranteeing the participation of the victims and their representatives in any decision adopted in this regard. Furthermore, in paragraphs 380 to 385, the Court specified the "minimum parameters" that Guatemala had to comply with for the restitution of the family relationship between Osmin and his parents, as well as of the latter with J.R.

*A.2. Considerations of the Court*

*A.2.a. Restoration of the family relationship between Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and their son Osmin*

5. During the compliance monitoring stage, the State and the representatives have not referred to the measures that would be adopted to "facilitate and contribute to the restitution of family ties" between Osmin and his mother and father. They have only submitted information on the measures that the Court established as "minimum parameters" for compliance with this process of family reunification, namely: to provide them with psychological and psychiatric treatment and therapeutic support to accompany and assist them in this process (*infra* Whereas 7 to 12), and to provide them with language study grants to facilitate communication between them (*infra* Whereas 13 to 16).

6. Without prejudice to the assessments that this Court will make on the information provided on compliance with the aforementioned "minimum parameters", the State is requested to report on what other measures it is adopting to facilitate and contribute to the restitution of the ties between Osmin and his mother and father. The implementation of these measures is essential to try to repair, as far as possible, the harm caused to the victims in this case, who experienced family separation for prolonged periods of time.<sup>6</sup>. Consequently, the Court considers that this measure is pending compliance.

*i) Psychological, psychiatric treatment and therapeutic support in the process of family reintegration*

7. In paragraph 380 of the Judgment, the Court ruled that "[i]n order to create the most favourable and appropriate conditions for the reestablishment of the family relationship and taking into account the psychological suffering caused to the victims [...], the State shall

<sup>6</sup> Cf. *Case of Ramírez Escobar et al v. Guatemala*, *supra* note 1, para. 379.

shall provide free and immediate psychological and psychiatric treatment as required by each of the victims. In providing psychological or psychiatric treatment, the particular circumstances and needs of each victim shall be taken into account, so that collective, family and individual treatment is provided, according to the needs of each victim and after an individual assessment by a health professional. Without prejudice to the above and in a complementary manner, Guatemala should provide therapeutic support to the family by professionals with expertise in the field, to accompany and assist them, if they so wish, in the process of family reintegration. The Ramirez family must inform the State within six months of notification of this Judgment whether they wish to receive this assistance. Once consent has been received, the State must immediately designate an expert or establish a team of professionals, who will carry out and implement a work plan without delay. Likewise, the State must guarantee the impartiality and suitability of the expert or experts who participate in the process of reintegration, who must also be familiar with the [...] Judgment as well as the other relevant circumstances of what happened to the Ramírez family.

8. This Court finds that, within the time period granted in the aforementioned paragraph of the Judgment, the representatives informed the State that "the victims do indeed wish to receive psychological care and [therapeutic] accompaniment in the reintegration process".<sup>7</sup> In this regard, on November 16, 2018, the representatives sent a note to the Presidential Commission for the Coordination of the Executive's Human Rights Policy of Guatemala (hereinafter also "COPREDEH"), in which they detailed that the "wish of the victims [is] to receive such individual attention from the psychologist Zoila Ajuchán Chis, who has been providing them with psychological support for some time", and that "[i]n terms of therapeutic support to assist in the process of family reintegration [...] they [are] waiting to receive it..."....] they are awaiting the State's proposal regarding the professionals with expertise in the field who could eventually provide the respective family accompaniment".<sup>8</sup>

9. The Court appreciates that the State has acknowledged the victims' wish to continue their psychological treatment with the professional who has been treating them for some time.<sup>9</sup> Guatemala reported that it contacted the psychologist proposed by the victims for this purpose, who stated that "she only provides her professional services to the Asociación Refugio de la Niñez", "which does not have a private clinic" and "for her to provide this service it had to be coordinated with that organisation". It indicated that, in a meeting held with the representatives, the lawyer of the said association stated that it could make the professional available to the victims, a situation that would be reported to the State, and that it was therefore awaiting this information. In view of the foregoing, Guatemala has maintained that said measure is pending compliance, "but not because of [its] inactivity".<sup>10</sup> For their part, the representatives expressed "the total willingness on the part of the [Association] El Refugio de la Niñez to coordinate with the State the necessary actions to ensure that this measure is implemented" and requested the State "to indicate the

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<sup>7</sup> Cf. written submission of the representatives of 6 December 2018.

<sup>8</sup> Cf. letter of 16 November 2018 sent by the representatives to the President of the Presidential Commission for the Coordination of the Executive's Human Rights Policy -COPREDEH- (annex to the representatives' written observations of 6 December 2018). The State confirmed that it had received this note from the representatives. Cf. State report of 6 December 2018.

<sup>9</sup> The State reported that it offered such care through professionals from the Ministry of Public Health and Social Assistance, however, this measure "was not accepted by the victims". Cf. State report of 20 May 2019.

<sup>10</sup> Cf. State reports of 20 May 2019 and 13 January 2020.

information needed by the psychologist to initiate immediate psychological care for the victims".<sup>11</sup>.

10. Both the State and the representatives have expressed their willingness to make the necessary arrangements to provide psychological treatment to the victims. However, the Court notes that this has not been able to progress because one of the organizations representing the victims (Asociación El Refugio de la Niñez) has not confirmed whether the psychologist with whom the victims wish to receive this treatment can in fact provide it. In light of the above, the representatives are requested that, as soon as possible, the aforementioned association indicate whether this is possible, considering that this measure should have been implemented immediately, and that almost two years have passed since the notification of the Judgment without the victims having been guaranteed this treatment. The State is also requested to indicate whether it requires any other information, in addition to confirmation by the association, in order to initiate psychological treatment for the victims.

11. Finally, taking into account what the representatives indicated in November 2018 (*supra* Recital 8), the Court awaits an update from the State on how it will provide therapeutic support to the victims in the family reunification process.

12. Consequently, the Court considers that the measure relating to the provision of psychological and psychiatric treatment and therapeutic support required by the victims is still pending.

*ii) Grants for the study of English and Spanish languages*

13. In paragraph 381 of the Judgment, the Court ordered the State to "provide scholarships to the members of the Ramírez family to enable Mrs. Flor de María Ramírez Escobar and Mr. Gustavo Tobar Fajardo to learn English and their son Osmín Tobar Ramírez to learn Spanish, in order to facilitate communication between them". It was provided that "[t]he centres or institutions for which these educational scholarships are granted shall be determined by mutual agreement between the State and the victims", and that "[t]hese scholarships shall include the cost of the tuition and materials necessary to carry out the studies [...] indicated".

14. Based on the information provided by the State and the observations of the representatives, the Court finds that, upon acceptance by the victims, Flor de María Ramírez Escobar and Gustavo Tobar Fajardo were awarded two scholarships to study English at the School of Linguistic Sciences, Language Learning Center (CALUSAC) of the University of San Carlos of Guatemala, where they have been enrolled since May 2019. The representatives confirmed that Gustavo Tobar Fajardo "satisfactorily began English classes" in September 2019, and that Flor de María Ramírez Escobar "was given the information to begin the English course[, but they are] waiting for her to communicate her decision to do so".<sup>12</sup>.

15. With regard to the scholarship for Osmin Tobar Ramírez to study Spanish, the representatives stated that "it is his wish to study in a virtual or distance mode, taking into account his working hours and place of residence" and that, "in coordination with Osmín", "they identified as a suitable alternative for these purposes the

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<sup>11</sup> Cf. *written* submissions of the representatives of 20 September 2019 and 11 February 2020.

<sup>12</sup> Cf. State report of 20 May 2019; written observations of the representatives of 11 February 2020, and enrolment cards of the School of Linguistic Sciences, Language Learning Centre (CALUSAC) of the University of San Carlos de Guatemala, in the names of Gustavo Tobar Fajardo and Flor de María Ramírez Escobar (annexes to the State report of 20 May 2019).

courses taught by Professor María Elena Estrada, whose classes are taught in [this] modality".<sup>13</sup>. The Court takes a positive view of the fact that, through COPREDEH, the teacher proposed by the victim has been contacted in order to request her services.<sup>14</sup>. According to Guatemala, the said teacher was asked for certain information<sup>15</sup> and, in response, she "indicated that she would be sending the proposal to COPREDEH, because she was in the process of obtaining certification from the Rafael Landívar University".<sup>16</sup>. The Court notes that the State reported the above in August 2019, without having informed the Court whether it had received the aforementioned proposal or whether it had contacted the professor again. In this regard, Guatemala is requested to submit updated information and, considering the statement made by the representatives in their brief of February 2020 regarding "the openness to receive alternative proposals from the State", to indicate other possibilities by which the professor could be contacted again.<sup>17</sup>to indicate other possibilities through which Osmin could be awarded a scholarship in virtual or distance mode for the study of the Spanish language.

16. Based on the foregoing, the Court considers that the State has partially complied with the measure to provide language study scholarships to Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and Osmin Tobar Ramírez to facilitate communication between them. The foregoing, inasmuch as Guatemala provided scholarships for the study of English to Mrs. Ramírez Escobar and Mr. Tobar Fajardo, and has yet to grant a scholarship for the study of Spanish to Osmin.

*A.2.b. Relationship of Flor de María Ramírez Escobar and Osmin Tobar Ramírez with J.R.*

17. In paragraph 382 of the Judgment, the Court ordered that "the State must design and implement, with the assistance of professional experts in the matter, a procedure of progressive rapprochement aimed at the effective bonding between Flor de María Ramírez Escobar and Osmin Tobar Ramírez and J.R.". It was established that "[f]or this purpose, the State shall immediately appoint a multidisciplinary team of professionals who, without delay, shall design a work plan to achieve a progressive rapprochement between the members of the family". Paragraphs 382 to 385 specified the terms in which this measure was to be implemented and what would be supervised by this Court.

18. The State indicated that "it is coordinating with professionals from [its institutions] in order to form the multidisciplinary team to comply with [this] measure of reparation". It also requested the Court to provide it with J.R.'s address in order to locate him. It also indicated that Osmin Tobar had stated that he would provide a means of contacting him, but that "to date it has not been possible to obtain [this information]".<sup>18</sup>. In this regard, the representatives stated that, "for the proper implementation of this measure, before contacting J.R., the State should start by forming the multidisciplinary group, which in turn should proceed to draw up [a] work plan", so that "the process would be carried out under all the necessary provisions to ensure that J.R. is not re-victimised [...]".<sup>19</sup>.

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<sup>13</sup> Cf. written submission of the representatives of 7 March 2019.

<sup>14</sup> The representatives welcomed the fact that the State had contacted the teacher proposed by the representatives in relation to the study of the Spanish language in favour of Osmin Tobar Ramírez, whose classes would be taught in "virtual modality". Cf. written submission of the representatives of February 11, 2020.

<sup>15</sup> According to the State, it was requested to provide the following information: a) "[i]f it was possible to teach the course to the victim"; b) "structure of the course"; c) "proposal and/or methodological design"; d) "academic support accrediting her as a teacher of the Spanish course"; e) "text to be used, if applicable"; f) "cost and duration of the course", and g) "way of accrediting the course". Cf. State report of 8 August 2019.

<sup>16</sup> Cf. State report of 8 August 2019.

<sup>17</sup> Cf. written submission of the representatives of 11 February 2020.

<sup>18</sup> Cf. State report of 8 August 2019.

<sup>19</sup> Cf. written submission of the representatives of 11 February 2020.

19. The Court agrees with the representatives that, prior to contacting J.R., the State must form the multidisciplinary team and design the work plan for the progressive rapprochement of the members of the family. In accordance with paragraph 383 of the Judgment, the State must, at the very least, present a plan for the first approach with J.R., in such a way that he is informed, adequately and making use of psychosocial resources, about the most relevant facts of the case and necessary to make an informed decision as to whether he wants to participate in this measure of progressive rapprochement. In this sense, this Court considers that this measure has yet to be complied with. Therefore, the State is required to present updated and detailed information regarding its implementation in the terms indicated above, in order to have sufficient information to pronounce on its implementation and compliance in a subsequent resolution.

## ***B. Alteration of the birth certificate of Osmin Tobar Ramirez and restoration of legal family ties***

### *B.1. Measures ordered by the Court*

20. In the twelfth operative paragraph and in paragraphs 388 to 390 of the Judgment, the Court ordered, *inter alia*, that the State should "adopt, *ex officio*, all appropriate and necessary measures to modify the birth certificate of Osmín Tobar Ramírez, so that the legal family ties and other rights that arose at the time of his birth are restored to him, as well as the name and surname given to him by his biological parents and other personal data, which should include the correction of all state records in Guatemala in which Osmín Tobar Ramírez appears with the names and surnames given by [the] adoptive parents". In addition, it "order[d] the State to activate and use the diplomatic mechanisms available to coordinate cooperation with the United States of America to facilitate the correction of the name and personal data of Osmín Tobar Ramírez in the records of that State in which he appears".

### *B.2. Considerations of the Court*

21. The Court has found, on the basis of the evidence provided by the State as well as the observations of the representatives, that Guatemala amended the birth certificate of Osmin Tobar Ramírez<sup>20</sup>in accordance with the terms set forth in the Judgment<sup>21</sup>and granted him a "Personal Identification Document" with this name.<sup>22</sup>

22. The representatives emphasised that the modification of Osmin's birth certificate "represents a great step forward in the fulfilment of this reparation measure". Without prejudice to this, they underlined "that the relevant modifications are still pending in all state registries". In addition, they requested that the State be required to present "information on what the legal consequences and scope of the modifications to the birth certificate and all state registries would be,

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<sup>20</sup> Copy of the birth certificate of Osmin Ricardo Amilcar Tobar Ramírez (annex to the written observations of the representatives of 20 September 2019).

<sup>21</sup> The representatives noted that the modification of the birth certificate of Mr. Osmin Tobar Ramírez derived from "the permanent advocacy of the victims and their representatives before the Guatemalan authorities". *Cf.* Written submission of the representatives of 20 September 2019.

<sup>22</sup> Copy certified before a notary public of 9 October 2019 of the Personal Identification Document of Osmin Ricardo Amilcar Tobar Ramírez issued by the National Registry of Persons of the Republic of Guatemala (annex to the State report of 19 December 2019).

with respect to the U.S. citizenship that Osmin acquired during the adoption process".<sup>23</sup>.

23. Based on the foregoing, the Court considers that the State has partially complied with this measure for reparation, since it complied with the component that refers to adopting measures to modify the birth certificate of Osmin Tobar Ramírez, while other aspects of the reparation remain pending (*supra* Whereas 20). In order to ensure that the modification of the State's records is carried out with the informed consent of Osmin Tobar Ramírez, the State is requested to inform which records are still pending modification of his data. The State is also requested to report on the steps taken to activate the diplomatic mechanisms available to coordinate cooperation with the United States of America in order to facilitate the modification of Osmin's name and personal data in the records of that country.

### **C. Publication and dissemination of the Judgment**

#### *C.1. Measures ordered by the Court*

24. In the sixteenth operative paragraph and in paragraphs 402 and 403 of the Judgment, the Court ordered the State to publish the following within six months of notification of the Judgment: (a) the official summary of the Judgment prepared by the Court, once only, in the official gazette and in a newspaper of wide national circulation, in a legible and appropriate font size, and (b) this Judgment in its entirety, available for at least a period of one year, on an official *website* of the State, in a manner accessible to the public from the home page of the aforementioned *website*. The Court also ordered the State to translate the Judgment into English within six months of notification of the Judgment, since Osmin Tobar Ramírez is not fluent in Spanish, and that the State should send a copy of the translation to this Court.

#### *C.2. Considerations of the Court*

25. The Court has found, on the basis of the evidence provided by the State, as well as the observations of the representatives and the Commission<sup>24</sup> and the Commission<sup>25</sup> that Guatemala complied with the obligation to publish: i) the official summary of the Judgment in the Official Gazette "Diario de Centroamérica" and in the newspaper "Nuestro Diario", and ii) the full text of the Judgment on the website of the Presidential Coordinating Commission of the Judgment.<sup>26</sup> and ii) the full text of the Judgment on the *website* of the Presidential Commission for Coordinating Executive Policy on Human Rights in Guatemala -COPREDEH--. The latter

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<sup>23</sup> Cf. Observations of the representatives of March 7, 2019 and February 11, 2020. In this regard, the Commission observed that in complying with this measure "the State must ensure that the modification is carried out with the full consent of Osmin Tobar [...] so as not to prejudice his migratory situation. Cf. Written observations of the Inter-American Commission of 3 April 2019.

<sup>24</sup> The victims' representatives noted "favourably that the State has complied [...] with the ordered publications". They stressed that "the newspaper Nuestro Diario" was the "most suitable for these purposes", and that the publication on the official *website* "is accessible" and "its content is complete". Cf. written submission of the representatives of 7 March 2019.

<sup>25</sup> Cf. Written observations of the Inter-American Commission of 3 April 2019.

<sup>26</sup> Cf. Copy of the publication made in the official newspaper "Diario de Centroamérica" of 28 November 2018, pp. 22 and 23, and copy of the publication made in "Nuestro Diario" of 30 November 2018, pp. 44 and 45 (annexes to the State report of 17 January 2019).

publication is accessible to the public from the home page of the site.  
*web*<sup>27</sup>.

26. With regard to the translation of the Judgment into English, the State reported that "it is taking administrative and financial steps to hire a suitable professional to carry out this measure of reparation".<sup>28</sup> Taking into account that the execution of the aforementioned translation does not represent a high level of complexity for its compliance, and that more than a year has passed since the expiry of the time limit granted by the Court for this purpose (*supra* Whereas 24), the State is required to translate the Judgment into English as soon as possible and it is reiterated that the copy of the Judgment must be forwarded to the Court.

27. By virtue of the foregoing, the Court considers that Guatemala has fully complied with the measures relating to the publication and dissemination of the Judgment and its official summary, ordered in the sixteenth operative paragraph and paragraph 402 of the Judgment. The Court will continue to monitor only the measure relating to the translation of the Judgment into English, which is pending compliance.

#### ***D. Compensation for non-pecuniary and pecuniary damage and reimbursement of costs and expenses***

##### *D.1. Measures ordered by the Court*

28. In the eighteenth operative paragraph of the Judgment, the Court ruled that "within one year from the notification of the [...] Judgment, the State must pay the amounts set out in paragraphs 416<sup>29</sup>, 420<sup>30</sup> y 426<sup>31</sup> of the Judgment, by way of compensation for material and non-material damages and for the reimbursement of costs and expenses, in the terms of the aforementioned paragraphs and paragraphs 430 to 435<sup>32</sup> of the Judgment.

##### *D.2. Considerations of the Court*

29. On the basis of the information and supporting evidence provided by the State<sup>33</sup> as well as the observations of the representatives<sup>34</sup> the Court finds that Guatemala has complied with

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<sup>27</sup> The State reported that the full text of the Judgment was available at the following link: [copredek.gob.gt](http://copredek.gob.gt). The State also provided a screenshot of the aforementioned publication (annex to the State report of January 17, 2019). The last time the aforementioned page was visited, it was found that the Judgment is still available at the aforementioned link (last visited on 12 March 2020).

<sup>28</sup> Cf. State report of 20 May 2019.

<sup>29</sup> The Court fixed in equity, for consequential damages, the amounts of USD \$5,000.00 (five thousand United States dollars) for each of the victims Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and Osmin Tobar Ramírez.

<sup>30</sup> The Court fixed in equity, for non-pecuniary damages, the amount of USD \$100,000.00 (one hundred thousand United States dollars) for each of the victims Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and Osmin Tobar Ramírez.

<sup>31</sup> The Court ordered Guatemala to reimburse CEJIL for costs and expenses in the amount of USD \$45,000.00 (forty-five thousand United States dollars).

<sup>32</sup> These paragraphs set out the "[m]odality of compliance with the payments ordered" in the Judgment.

<sup>33</sup> Cf. Copy of the payment for material damage in favour of Flor de María Ramírez Escobar made before a notary public on 7 November 2018 (annex to the State report of 17 January 2019); Copy of the payment for material damages in favour of Gustavo Tobar Fajardo made before a notary public on 7 November 2018 (annex to the State report of 17 January 2019), and copy of the payment for material and non-material damages in favour of Osmin Ricardo Amilcar Tobar Ramírez made before a notary public on 27 November 2019 (annex to the State report of 19 December 2019).

pay the victims Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and Osmin Tobar Ramírez, the amounts set out in paragraphs 416 and 420 of the Judgment, as compensation for material and non-material damages.

30. The only thing that remains to be complied with is the reimbursement of costs and expenses ordered in the Judgment.<sup>35</sup> ordered in the Judgment. Considering that the one-year period granted for compliance with this measure has already expired, the Court requires Guatemala to make such payment as soon as possible and to inform the Court accordingly. In addition, the corresponding default interest should be included, in accordance with paragraphs 426, 430 and 435 of the Judgment.

31. Consequently, the Court considers that the State has fully complied with the measure of reparation ordered in the eighteenth operative paragraph of the Judgment, as regards the payment of compensation for pecuniary and non-pecuniary damage. The Court will continue to monitor the measure relating to the reimbursement of costs and expenses, which is pending compliance.

#### ***E. Request for information on outstanding reparations***

32. In operative paragraphs 13, 14, 15 and 17 of the Judgment, the Court ordered the State to comply with the following measures of reparation:

- i) "to initiate and effectively conduct the appropriate criminal, administrative and disciplinary investigations into the facts of this case, and, where appropriate, to determine and punish those responsible, in accordance with the provisions of paragraphs 394 and 395 of [the] Judgment";
- ii) "to make a public act of acknowledgement of international responsibility, in accordance with paragraph 398 of [the] Judgment";
- iii) "make a documentary on the facts of the present case, the context in which they developed and the violations found in the Judgment, in accordance with the provisions of paragraph 401 of [the] Judgment", and
- iv) "adopt the necessary measures to create and implement an effective national programme to ensure adequate supervision, oversight and control of the institutionalisation of children, taking into account the criteria set out in paragraph 408 of [the] Judgment".

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<sup>34</sup> In March 2019, the representatives confirmed that on "7 November 2018, Mrs. Flor Ramírez Escobar and Mr. Gustavo Tobar Fajardo received the payment corresponding to the material damage, but not the compensation for non-material damage". Subsequently, in September 2019, the representatives indicated that Flor Ramírez Escobar and Gustavo Tobar Fajardo "received the outstanding payment, which has fully settled the compensation in their favour". Finally, in February 2020, the representatives stated that the payments "for consequential damages and non-pecuniary damages in favor of Osmin" had been made, and therefore, "the State has complied with all the pending payments", and considered that "this measure of reparation has been satisfactorily complied with". Cf. Observations of the representatives of 7 March and 20 September 2019, and 11 February 2020.

<sup>35</sup> In relation to the reimbursement of costs and expenses, the representatives requested the Court to order the State to "carry out all the necessary actions to make the corresponding payments". Cf. written submission of the representatives of 20 September 2019.

33. Regarding the obligation to investigate (*supra* Recital 32.i), Guatemala indicated that "there is no information regarding the identification and individualisation and/or apprehension of any person involved in the facts of the present case" and that "as soon as it has such information, it will inform [the Court]".<sup>36</sup> Due to the scant information provided, the Court considers that Guatemala has not yet complied with its obligation to investigate the facts of the instant case, and requests the State to explain what actions it has taken to do so.

34. With respect to the public act of acknowledgment of international responsibility (*supra* Whereas 32.ii), the State indicated that "[t]he proposal of the victims and their representatives is that the act [...] be presided over by the President of the Republic in the Hearing Room of the Supreme Court of Justice"; however, "it was not possible to harmonize [said] proposal [...] with the agenda of the President, and therefore the necessary actions would continue to be taken to coordinate and reach a consensus on the holding of said act with the new constitutional authorities".<sup>37</sup> Taking into account that almost a year has elapsed since the expiry of the one-year period granted in the Judgment for compliance with this measure, as well as the common interest of the parties to the conflict in the case of the new constitutional authorities,<sup>38</sup> and the common interest of the parties in achieving compliance, it is requested that, no later than 1 July 2020, the relevant State authorities, the representatives and/or those victims interested, hold a meeting in order to jointly draw up a proposal for the public act of acknowledgement of international responsibility, in accordance with the provisions of paragraph 398 of the Judgment, which will enable the aforementioned act to be carried out in the shortest possible time. The parties are requested to submit the said joint proposal to the Court within the time limit indicated in the eighth operative paragraph of this Resolution.

35. Regarding the production of a documentary on the facts, context and violations in the instant case (*supra* Consideration 32.iii), the State argued that "[t]he victims and their representatives offered to work on a proposed script that would present the facts of the case as they saw fit, [and that] when they had it, they would present it to the State, which to date has not been done".<sup>39</sup> For their part, the representatives indicated that they requested a meeting with the State by the end of January 2020, and that "one of the objectives of the meeting [...] was to address this point", but that "given the lack of response from the State, this has not been possible".<sup>40</sup> Taking into account

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<sup>36</sup> Cf. State report of 8 August 2019. In response, the representatives considered that it is necessary to "require the State to submit information on the actions taken to comply with this measure and, in the absence of information in this regard, to consider this measure to be non-compliant". Cf. Written observations of the representatives of February 11, 2020.

<sup>37</sup> Cf. State report of 13 January 2020. In this regard, the representatives indicated that "[i]n various meetings held internally, the victims and their representatives [...] requested that the President be the one to issue the apology. They indicated that "they originally proposed that the event should take place in April 2019, which did not materialise due to [...] lack of space in the President's agenda". Subsequently, they requested that "it be held on 17 June 2019 - Father's Day in Guatemala - which had great symbolic value for the victims. However, the State never gave a concrete response, limiting itself to informing that the request was being submitted to the presidency". Furthermore, "the victims requested that the event be held in the Sala de Vistas of the Supreme Court of Justice, taking into consideration the substantive participation of the judicial body in the irregular adoption process that occurred in this case. However, the State also failed to report on any action to guarantee this space. Cf. Brief of observations of the representatives of February 11, 2020.

<sup>38</sup> The Court provided in the Judgment that: "[...] The State must agree with the victims or their representatives on the manner in which the public act of acknowledgment is to be carried out, as well as the particularities required, such as the place and date for its performance. To this end, the State has a period of one year from the date of notification of this Judgment. Cf. *Case of Ramírez Escobar et al. v. Guatemala*, *supra* note 1, para. 398.

<sup>39</sup> Cf. State report of 13 January 2020.

<sup>40</sup> Cf. written submission of the representatives of 11 February 2020.

that the two-year period granted in the Judgment for compliance with this measure is about to expire<sup>41</sup> and that the representatives have undertaken to make a proposal for its implementation, the representatives are requested to communicate this proposal to Guatemala no later than July 1, 2020, so that, as soon as possible, progress can be made with compliance with this reparation. The parties are also requested to submit information in this regard within the period indicated in the eighth operative paragraph of this Resolution.

36. Finally, on the measure relating to the creation and implementation of a national programme to guarantee adequate supervision, oversight and control of the institutionalisation of children (*supra* Recital 32.iv), the Court notes with concern that Guatemala has not submitted information on its implementation.<sup>42</sup> Consequently, the State is requested to provide detailed and updated information on the actions it is taking to comply with this guarantee of non-repetition.

#### ***F. Reimbursement to the Victims' Legal Aid Fund***

37. In the nineteenth operative paragraph and paragraphs 427 to 429 and 435 of the Judgment, the Court ordered the State to reimburse the Victims' Legal Assistance Fund the amount of US\$ 2,082.79 (two thousand eighty-two dollars and seventy-nine cents of the United States of America) for the expenses incurred during the processing of the merits of the case. It was established that this amount should be reimbursed to the Inter-American Court within six months of notification of the Judgment. The Court also established that in the event that the State should default on the payments ordered in the Judgment, it should pay interest on the amount owed, corresponding to the bank interest on arrears in the Republic of Guatemala.

38. The Court confirms that, by means of a bank transfer on 30 July 2019, the State complied with its obligation to reimburse the Victims' Legal Assistance Fund the amount ordered in paragraph 429 of the Judgment. However, Guatemala made this payment eight months and eleven days after the deadline established in the Judgment, which expired on 19 November 2018. Since the aforementioned payment did not include an amount for the default interest derived from the delay, the State is required to pay the amount corresponding to the aforementioned default interest to the Court's Assistance Fund as soon as possible, in terms of paragraph 435 of the Judgment.

39. The Court recalls that the creation of the Legal Assistance Fund of the Inter-American System was approved in 2008 by the OAS General Assembly.<sup>43</sup> and was approved by the OAS General Assembly in 2008.

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<sup>41</sup> In this regard, the Court provided in the Judgment that: "[...] The State has a period of two years from the notification of the present Judgment for the making, screening and distribution of the said documentary, counting from the notification of the present Judgment". *Cf. Case of Ramírez Escobar et al. v. Guatemala, supra* note 1, para. 401.

<sup>42</sup> The representatives emphasized that the State "did not submit any information in this regard, nor has it provided any information [...] regarding the actions aimed at implementing this program. Consequently, they requested the Court to "consider this measure as pending compliance and to require the State to submit information in this regard, detailing the actions planned and a work schedule for the design and implementation of this measure of reparation. *Cf. Brief of observations of the representatives of February 11, 2020.*

<sup>43</sup> With the "aim [of] facilitating access to the inter-American human rights system for those persons who do not currently have the necessary resources to bring their case before the system. *Cf. AG/RES. 2426 (XXXVIII-O/08)* Resolution adopted by the OAS General Assembly during the XXXVIII Regular Session of the OAS, fourth plenary session, held on June 3, 2008, "Creation of the Legal Assistance Fund of the Inter-American Human Rights System", operative paragraph 2.a.

to have two separate accounts: one for the Inter-American Commission and one for the Inter-American Court.<sup>44</sup> With regard to the financing of the Court's Assistance Fund, the Court recalls that since its operation in 2010, it has depended on voluntary capital contributions from cooperating sources and the contribution of a member State of the OAS, as well as the reimbursements made by the responsible States, which is why the resources available to it are limited.<sup>45</sup> as well as the reimbursements made by the responsible States, which is why the resources available to the Court are limited. For this reason, the Court highlights the willingness of the Republic of Guatemala to comply with its international obligations by returning the resources to the Assistance Fund. The reimbursement made by Guatemala will contribute to the sustainability of said Fund, which is aimed at providing economic assistance to alleged victims who lack sufficient economic resources to cover the costs of litigation before the Inter-American Court, guaranteeing their access to justice on equal terms.

**THEREFORE:**

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

in the exercise of its powers to monitor compliance with its decisions, in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 24, 25 and 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure, as well as Articles 1, 4 and 5 of the Rules of Procedure of the Fund for Legal Assistance to Victims,

**RESOLVES:**

1. To declare, in accordance with Recitals 25, 27, 29 and 31 of this Resolution, that the State has fully complied with the measures relating to:
  - a) make the publications of the Judgment and the official summary ordered in paragraph 402 of the Judgment (*sixteenth operative paragraph of the Judgment*), and
  - b) pay the victims Flor de María Ramírez Escobar, Gustavo Tobar Fajardo and Osmin Tobar Ramírez the amounts established in paragraphs 416 and 420 of the Judgment, as compensation for material and non-material damages (*operative paragraph eighteen of the Judgment*).
2. To declare, in accordance with Recitals 16 and 23 of this Resolution, that the State has partially complied with the measures relating to:
  - a) to provide study grants to members of the Ramírez family for Mrs Flor de María Ramírez Escobar and Mr Gustavo Tobar Fajardo to learn English and for their son Osmin Tobar Ramírez to learn Spanish in order to facilitate communication between them.

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<sup>44</sup> Article 2.1 of the Regulations of the Legal Assistance Fund for Victims of the Inter-American System stipulated that it is financed by "voluntary capital contributions from OAS Member States, Permanent Observer States, and other States and donors that wish to collaborate. Cf. CP/RES. 963 (1728/09), Resolution adopted on 11 November 2009 by the Permanent Council of the OAS, "Regulations for the Functioning of the Legal Assistance Fund of the Inter-American Human Rights System", Article 2.1.

<sup>45</sup> The Victims' Legal Assistance Fund of the Inter-American Court does not have resources from the regular budget of the OAS. To date, funds have come from cooperation projects signed by the Court with Norway and Denmark, and from the voluntary contribution made by Colombia. In this regard, see: Annual Report of the

Inter-American Court of Human Rights 2019, pp. 160-169, available at:  
<http://www.corteidh.or.cr/tablas/informe2019/espanol.pdf>

*eleventh of the Judgment*). The State complied with the obligation to provide the respective scholarships to Mrs. Ramírez Escobar and Mr. Tobar Fajardo, and the State has yet to provide the scholarship to Osmin Tobar Ramírez; and

- b) adopt, *ex officio*, all appropriate and necessary measures to amend the birth certificate of Osmin Tobar Ramírez, so that his legal family ties and other rights arising at the time of his birth, as well as his first and last name and other personal data, are restored to him (*operative paragraph twelve of the Judgment*). The State complied with the adoption of measures to modify the birth certificate of Osmin Tobar Ramírez, while the other aspects of the reparation relating to the modification of his data in other state registries and the activation of the diplomatic mechanisms available with the United States to facilitate the modification of his data in the records of that country remain pending.

3. To declare, in accordance with the provisions of Whereas 38 of this Resolution, that the State has complied with the obligation to reimburse to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount ordered in paragraph 429 and the nineteenth operative paragraph of the Judgment.

4. Declare, in accordance with what is indicated in Recitals 32 to 36 of this Resolution, that the State has not yet complied with the following measures of reparation, with respect to which a specific request for information was made:

- a) initiate and effectively conduct the appropriate criminal, administrative and disciplinary investigations into the facts of this case and, where appropriate, determine and punish those responsible (*operative paragraph thirteen of the Judgment*);
- b) make a public act of acknowledgement of international responsibility (*fourteenth operative paragraph of the Judgment*);
- c) make a documentary on the facts of the present case, the context in which they took place and the violations found in the Judgment (*operative paragraph fifteenth of the Judgment*), and
- d) adopt the necessary measures to create and implement an effective national programme to guarantee adequate supervision, oversight and control of the institutionalisation of children (*paragraph seventeen of the Judgment*).

5. Keep open the procedure for monitoring compliance with the outstanding compliance points, namely:

- a) adopt all necessary and appropriate measures to facilitate and contribute to a restitution of the family ties between Osmin Tobar Ramírez and his parents, including providing the psychological and psychiatric treatment and therapeutic support required by the victims and a Spanish language scholarship for Osmin Tobar Ramírez, as well as making a serious, multidisciplinary and *ex officio* effort to initiate, promote and, where appropriate, continue a relationship between Flor de María Ramírez Escobar and Osmin Tobar Ramírez and J.R. (*eleventh operative paragraph of the Judgment*);
- b) adopt, *ex officio*, all appropriate and necessary measures to restore Osmin Tobar Ramírez's legal family ties and other rights.

The child's name and surname and other personal data (*twelfth operative paragraph of the Judgment*);

- c) initiate and effectively conduct the appropriate criminal, administrative and disciplinary investigations into the facts of this case and, where appropriate, determine and punish those responsible (*operative paragraph thirteen of the Judgment*);
- d) make a public act of acknowledgement of international responsibility (*fourteenth operative paragraph of the Judgment*);
- e) make a documentary on the facts of the present case, the context in which they took place and the violations found in the Judgment (*operative paragraph fifteenth of the Judgment*);
- f) translate the Judgment in the present case into English and forward a copy of that translation to this Court (*sixteenth operative paragraph of the Judgment*);
- g) adopt the necessary measures to create and implement an effective national programme to guarantee adequate supervision, oversight and control of the institutionalisation of children (*paragraph seventeen of the Judgment*), and
- h) pay the amount set out in paragraph 426 of the Judgment for reimbursement of costs and expenses, in the terms of paragraphs 430 to 435 of the Judgment (*eighteenth operative paragraph of the Judgment*).

6. Order the State of Guatemala to adopt, definitively and as soon as possible, such measures as may be necessary to give effective and prompt compliance with the reparations indicated in the previous operative paragraph, in accordance with what is considered in this Resolution, and with the provisions of Article 68(1) of the American Convention on Human Rights.

7. To order, in accordance with Recitals 34 and 35 of this Resolution, that the State and the representatives of the victims hold, no later than 1 July 2020, a meeting to jointly prepare a proposal for the public act of acknowledgement of international responsibility, as well as for the representatives to inform the State of their proposal for the documentary on the facts, context and violations in the present case.

8. Order the State of Guatemala to submit to the Inter-American Court of Human Rights, no later than 31 July 2020, a report on compliance with the reparations indicated in the fifth operative paragraph of this Resolution.

9. Request the representatives of the victims and the Inter-American Commission on Human Rights to present observations on the State's report mentioned in the previous operative paragraph, within four and six weeks, respectively, from receipt of the report.

10. Order the Secretariat of the Court to notify the State of Guatemala, the representatives of the victims and the Inter-American Commission on Human Rights of the present Resolution.

I/A Court H.R. Case of Ramirez Escobar et al. v. Guatemala. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of 12 March 2020.

Elizabeth Odio Benito President

L. Patricio Pazmiño Freire

Humberto Antonio Sierra Porto

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

Communicate and execute,

Elizabeth Odio Benito President

Pablo Saavedra Alessandri