

**Order of the
Inter-American Court of Human Rights
of May 9, 2008**

**Case of Fermín Ramírez v. Guatemala
(Monitoring Compliance with Judgment)**

**Case of Raxcacó Reyes *et al.* v. Guatemala
(Monitoring Compliance with Judgment)**

**Case of Raxcacó Reyes *et al.*
Request for Extension of Provisional Measures**

HAVING SEEN:

A) *Case of Fermín Ramírez*

1. The Judgment on the merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") of June 20, 2005 fully notified to the State on July 15, 2005, by which it was unanimously ruled that:

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

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

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

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

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

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

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

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

[...]

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

DECLARE[D]:

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

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

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

AND DECIDE[D]:

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

[...]

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

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

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

6. The note of the Secretariat of the Court (hereinafter, the "Secretariat") of January 29, 2007, by which the State was ordered to send a copy of the Prison System Act [*Ley de Régimen Penitenciario*] and of the Internal Regulations of the Farms for Rehabilitation and Compliance with the Convictions under the charge of the General Bureau of the Prison System [*Reglamento Interno de las Granjas Modelo de Rehabilitación y Cumplimiento de Condenas a Cargo de la Dirección General del Sistema Penitenciario*] to which the State referred in its first compliance report and in addition, the State was granted an extension until March 1, 2007 to submit the additional report. Said note was repeated on April 20 and June 25, 2007 and the requested information was sent on July 18, 2007.

7. The Order of the President of the Court (hereinafter, the "President") of March 28, 2008 by which, in exercise of Court's power to monitor compliance with its decisions, in consultation with the other Judges of the Tribunal and pursuant to Articles 63(2), 67 and 68(1) of the American Convention of Human Rights (hereinafter, the "Convention" or the "American Convention") and Articles 25(1) and 25(2) of the Court's Statute (hereinafter, the "Statute") and Articles 4, 14(1), 25(7) and 29(2) of the Rules of Procedure of the Tribunal (hereinafter, the "Rules of Procedure"), it was decided to summon the Inter-American Commission, the State, the representatives of the victim in the case of Fermín Ramírez, the representatives of the victim in the case of Raxcacó Reyes and the representatives of the beneficiaries of the provisional measures ordered in the case of Raxcacó Reyes et al. to a hearing to be held in private at the seat of the Court on May 8, 2008, as from 3.00 p.m. to 4.45 p.m. in order for the Tribunal to obtain information on the State's compliance with the Judgments delivered in the aforesaid cases, listen to the observations of the Commission and the representatives of the victims and receive information on the request for extension of provisional measures, inasmuch as such relates to the judgments whose compliance are being monitoring.

8. The private hearing held at the Court's seat in San José de Costa Rica on May 8, 2008.¹ During the course of the private hearing, the State, the Inter-American Commission and the representatives referred to the issues pending compliance of the instant case.

B) Case of Raxcacó Reyes

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

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

¹ To this hearing, there appeared on behalf of the Inter-American Commission, Mr. Juan Pablo Albán Alencastro, advisor and Mrs. Silvia Serrano, advisor; on behalf of the representatives, Mrs. Soraya Long, Marcela Martino and Gisela De León, of the Center for Justice and International Law (CEJIL), Mrs. Nydia Lissette Arévalo Flores de Corzantes and Mr. Reyes Ovidio Girón Vasquez, of the Instituto de la Defensa Pública Penal and Mr. Alejandro Rodríguez Barilla and David Augusto Dávila Navarro, of the Institute of Comparative Studies of Criminal Sciences [Instituto de Estudios Comparados en Ciencias Penales] of Guatemala and on behalf of the State, Mrs. Ruth del Valle Cobar, President of the Presidential Commission on Human Rights; Yovana López Salguero and Vivian González Westendorff, lawyers.

punishable with the death penalty established prior to ratification of the American Convention.

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

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

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

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

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

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

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

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

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

[...]

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

11. The briefs of October 13 and December 19, 2006, March 6 and 8, April 11, May 8, July 9, October 2 and December 13, 2007 and April 16 and 25, 2008 by which the State informed on the progress made regarding the compliance with the Judgment.

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

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

14. The Order of the President of the Court of March 28, 2008 (*supra* Having Seen clause 7).

15. The private hearing held by the Court (*supra* Having Seen clause 8) during which the State, the Commission and the representatives referred to the issues pending compliance of the instant case.

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

16. The Order of the Court of August 30, 2004, in its first operative paragraph one decided:

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

17. The Judgment on the merits, reparations and costs delivered by the Inter-American Court in the case of Raxcacó Reyes (*supra* Having Seen clause 9) by which the Tribunal decided, *inter alia*, that:

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

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

19. The Order of the Tribunal of July 4, 2006, by which it was decided to "consider the provisional measures adopted to the benefit of Mr. Hugo Humberto Ruiz Fuentes closed".

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

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

22. The brief of February 28, 2008, by which the representatives of the beneficiaries of these measures requested the extension of the measures hereof "in favor of all the people who are sentenced to death" in Guatemala.

23. The Order of the President of the Court of March 28, 2008 (*supra* Having Seen clause 7).

24. The State's communication of April 2, 2008 by which it submitted additional information.

25. The note of the Inter-American Commission of April 4, 2008 in which it exposed additional considerations to the request of extension of provisional measures filed by the representatives.

26. The private hearing held by the Court (*supra* Having Seen clause 8) during which the State, the Commission and the representatives referred to the request for extension of provisional measures filed in the instant case.

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.
2. That Guatemala has been a State Party to the American Convention since May 25, 1978, and that it accepted the binding jurisdiction of the Court on March 9, 1987.
3. That, pursuant to section 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertakes to comply with the judgment of the Court in any case to which they are parties.”²
4. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.³

A) *REGARDING THE CASE OF FERMÍN RAMÍREZ*

5. That, as it has been verified by the Court in its order of September 22, 2006, the State has complied with the provisions of Operative Paragraph thirteen of the Judgment on the merits and reparations delivered by the Court on June 20, 2005, as it effectively made reimbursement of costs and expenses to the *Instituto de Estudios Comparados en Ciencias Penales* (Institute of Comparative Studies of Criminal Sciences) (*supra* Having Seen clause 2).

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6. That, as to the obligation to conduct, within a reasonable time, a new proceeding against Mr. Fermín Ramírez, satisfying the demands of due process of law, with all the guarantees of hearings and defense for the accused (*operative paragraph seven of the Judgment*), as well as the obligation to refrain from executing him whichever the outcome of the trial (*operative paragraph nine of the Judgment*), the State informed that it has conducted a new oral and public proceeding and that the Court for Criminal, Drug-trafficking and Environmental Offenses (*Tribunal de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente*)

² See *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Gómez Palomino v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering Clause 7 .

³ See *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of September 9, 1994, Series A N°.14, para. 35; *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 30, 2007; Considering Clause five; and *Case of Plan de Sánchez Massacre v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 28, 2007, Considering Clause three.

in and for Escuintla delivered a judgment on June 21, 2006, in which the Court, unanimously, sentenced Mr. Fermín Ramírez to 40 years imprisonment on the count of aggravated rape, under the terms of Section 175 of the Criminal Code. The defense filed an appeal against such judgment, which was solved on November 2, 2006 by the Forth Chamber of the Appellate Court on Criminal, Drug-trafficking and Environmental Offenses that did not admit the appeal and therefore, did not modify the appealed judgment. On January 22, 2007 the Criminal Chamber of the Supreme Court of Justice declared inadmissible the appeal for review by a higher court filed by the defense counsels of Mr. Fermín Ramírez. Finally, the State pointed out that, in July 2007, there were no notices or recourses pending determination and the appeal was final. That information was repeated during the hearing (*supra* Having Seen clause 8).

7. That the representatives mentioned that the State complied with part of that obligation as to the fact of conducting a new proceeding with the corresponding guarantees, but the State sentenced him to 40 years imprisonment without him being accused of committing aggravated crimes that may increase the prison sentence. Moreover, the Commission took note of the fact that the State did not apply Section 132 of the Criminal Code regarding the dangerousness of the agent and pointed out that the State has complied with the obligation to refrain from executing Mr. Fermín Ramírez.

8. That the parties agree on that these issues of the Judgment have been effectively complied with by the State. As has been shown in the previous Order for monitoring compliance in this case (*supra* Having Seen clause 2), this Court truly values the progress made by the State in such sense, especially the terms of Agreement N° 96-2006 rendered by the Supreme Court of Justice of Guatemala, which constitutes an important precedent within the environment of the Inter-American system as to the enforcement of judgments of this Tribunal.

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9. That, as to the obligation to provide Mr. Fermín Ramírez, free of charge and at national health-care facilities, with his prior consent, with any medical and psychological treatment, including the provision of medicines (operative paragraph eleven of the Judgment), the State informed that Mr. Fermín Ramírez has received regular medical, psychological and dental care by a multidisciplinary team of the health facility of the penitentiary center. He has been provided with medical treatment due to the fact that he suffered minor health conditions. Besides, in July 2007 and April 2008, he went through medical examinations which revealed he has been suffering from gastritis and possible ulcer for the last 6 years, and therefore, he was being treated for such conditions. Furthermore, the State informed that, at the moment, he is not receiving any psychological treatment since there is no adequate space room.

10. That the representatives mentioned that the medical treatment Mr. Fermín Ramírez is receiving is not adequate; that the prescribed medicines are supplied in an irregular and insufficient way; that he has to buy his own medicines and that he has a severe pain in his teeth and has not received dental treatment for it. They acknowledged that he has received psychological therapy by specialized staff, but they pointed out that the person in charge of such therapy has been removed from its position, that by January 2008, no other professional has been hired and that for the last six months, Mr. Fermín Ramírez has not been treated by the psychiatrist.

11. That the Commission acknowledged that the State has made efforts in order to treat the health condition of Mr. Fermín Ramírez. Notwithstanding, the Commission expressed its concern since the next-of- kin of Mr. Fermín Ramírez are the ones who are providing him with medicine, which constitutes a State's obligation.

12. That, despite the fact that the State has referred to the treatment provided to Mr. Fermín Ramírez, it is not clear whether Mr. Fermín Ramírez has been regularly provided with assistance according to his needs. The Court values the willingness of the State and urges it to make efforts in order to ensure that the necessary treatment is provided to Mr. Fermín Ramírez in an adequate, fully and effective way, according to what professionals in charge of his health prescribe.

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13. That as to the duty to adopt, within a reasonable time limit, the necessary measures to ensure that prison conditions conform to international standards on human rights (*operative paragraph twelve of the Judgment*), especially with regard to Mr. Fermín Ramírez, the State informed that he is confined in unit B- 4 of "Canada", a High Security Facility, in the location of Escuintla, where there are bathrooms, adequate conditions and room in corridors and backyard; he works as a cook, he makes craftsmanship and he is in the second stage of a literacy program.

14. That, with regard to the representatives, they mentioned that the unit of the High Security Facility of Escuintla where Mr. Fermín Ramírez is confined, has insufficient permanent water and the number of bathrooms are not enough. Furthermore, the facility does not count with any work or professional training program or workshops. They pointed out that he is self managing the craftsmanship and educational programs and that he is not allowed to take part in outdoor activities. Besides, they added that the area of recreation is reduced, there is overpopulation in said facility and that the physician and dentist only attend the center three times per week.

15. That in the instant case, the responsibility of the State was determined based on the confinement conditions suffered by Mr. Fermín Ramírez. Upon delivery of the Judgment, the State must adopt all the measures necessary to end these conditions.

B) REGARDING THE CASE OF RAXCACÓ REYES

16. That as to the obligation of the State to set aside the death penalty imposed on Mr. Raxcacó Reyes (*operative paragraph eight of the Judgment*), the State informed that on October 17, 2007, the Sixth Court on Criminal, Drug-trafficking and Environmental Offenses annulled the death penalty and sentenced Mr. Raxcacó Reyes to "forty years imprisonment" and that the defendant filed a special appeal against such decision. On March 11, 2008 the Second Chamber of the Appellate Court on Criminal, Drug- Trafficking and Environmental Offenses decided to disallow the special appeal filed by Mr. Raxcacó Reyes and confirmed the judgment delivered by the Sixth Court on Criminal matters.

17. That the representatives stated that the new penalty imposed on Mr. Raxcacó Reyes "is disproportionate in comparison to the seriousness of the crime committed".

18. That the Commission did not submit any observations in that regard.

19. That it spring from the file of the Tribunal that the State has replaced the death penalty imposed on Mr. Raxcacó Reyes with a sentence to serve a prison term;

that the maximum prison term in Guatemala is fifty years and that Mr. Raxcacó Reyes has been sentenced to forty years; that neither of the parties alleged that the domestic courts have failed in their duty to state their decisions or have committed a violation of the judicial guarantees; that the domestic judges heard the arguments presented by the representatives of Mr. Raxcacó Reyes and what he had to say at the hearing held to such effect. As a consequence, the Court deems that the State has fully complied with this part of the Judgment.

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20. That as to the duty to provide Mr. Raxcacó Reyes, prior manifestation of his consent and for the time necessary, with an adequate medical and psychological treatment, including the supply of medications (*operative paragraph ten of the Judgment*), the State detailed several steps that it has taken from January 15, 2002 to June 15, 2007 in order to comply with this issue. Furthermore, it pointed out that "[t]he Division of Psychology and the psychologist of the criminal facility informed that Mr. Raxcacó Reyes voluntarily stated that he did not need the psychological treatment and therefore, he does not receive therapy or any other type of medicine".

21. That the representatives and the Commission acknowledged that the State has provided certain type of medical care but they pointed out that the victim's next-of-kin are the ones who are providing him with the necessary medicine. That the Commission expressed that the State must

t bear in mind that "a good part" of the physical conditions and diseases the victim is suffering are a direct consequence of the suffering he was subjected to, and particularly, of the excessive time he remained uncertain about the possible execution.

22. That the Court considers that the State has taken some steps in order to comply with this part of the Judgment, but it deems it is adequate to obtain further information by the State, especially regarding the alleged lack of supply of medicine to the victim. Furthermore, the Tribunal deems it is appropriate that the representatives confirm whether the wish of Mr. Raxcacó Reyes is not to receive psychological treatment.

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23. That as to the duty to adopt the necessary measures to enable Mr. Raxcacó Reyes to receive periodic visits from Mrs. Olga Isabel Vicente (*operative paragraph eleven of the Judgment*), the State informed that Mrs. Vicente is confined in the *Center of Female Orientation* (COF) and that, after having been personally interviewed, Mrs. Vicente would have pointed out that "it has been approximately two years since she has no relationship with Mr. Raxcacó Reyes since he has a relationship with another inmate of the *Center of Female Orientation*, who has requested permission to visit him at the *Granja Modelo de Rehabilitación Pavón*, affirming that they are a couple. Therefore, she stated that she does not wish to communicate with Mr. Raxcacó Reyes despite the fact that he is still her husband and pointed out that she is not ready to visit him".

24. That neither the representatives nor the Commission made reference to that argument of the State.

25. That, based on the foregoing, the Court considers it is appropriate to request the representatives and the Commission to refer to such argument.

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26. That regarding the duty of the State to adopt, within a reasonable time, the educational, work-related and other measures necessary to ensure the social readaptation of Mr. Raxcacó Reyes when he has served the sentence imposed (*operative paragraph twelve of the Judgment*), the State pointed out that the victim "participates in the creation of craftsmanship and works as a gardener in front of the Director's Office of *Granja Pavón*. Besides, he is attending an adult educational program of CONALFA [Literacy National Committee] and he is in the second stage of the post-literacy program that comprises the fourth, fifth and sixth grade of primary school and English lectures".

27. That the representatives pointed out that the State has not provided a formal working environment for the readaptation processes.

28. That the Commission did not submit any observations in that regard.

29. That the Tribunal considers that the State must clarify how much Mr. Raxcacó Reyes earns for the gardener position, in what way such job is useful for the readaptation of the victim, whether the education he receives is provided on application to the State or at the request of the inmates, of the victim himself or of a non-governmental organization and how the State supports Mr. Raxcacó Reyes in the creation of craftsmanship.

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30. That as to the duty to publish the Judgment (*operative paragraph thirteen of the Judgment*) the State informed that on September 22, 2006, the pertinent parts of the Judgment were published in *Diario de Centroamérica* and on March 28, 2008 in the national newspaper "El Periódico".

31. That the representatives did not make reference to this issue in the private hearing held in the instant case (*supra* Having Seen clause 8) but previously, they pointed out that "the publications made by the State do not satisfy the requirements established [in] the [J]udgment" since "even though the paragraphs set forth in the [J]udgment are literally published, there is no reference to the number of such paragraphs, nor to the chapters to which they correspond."

32. That the Commission neither referred to this measure of reparation in the private hearing but it previously noted "with satisfaction the material compliance with what was ordered by the Court".

33. That it spring from the case file before this Tribunal, that, in fact, the publications of the Judgment do not include the number of the paragraphs thereof nor the chapters to which they correspond. Nevertheless, the full text of the paragraphs is published. Furthermore, the Court notes that the representatives did not submit any justification proving that the lack of numbers of the paragraphs and chapters affects, in any way, the purpose of the reparation. As a consequence, the Court deems that the State has fully complied with this part of the Judgment.

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34. That as to the payment for reimbursement of expenses (*operative paragraph fourteen of the Judgment*), the State pointed out that on February 26, 2007 it delivered the amount of US\$ 5.000 (five thousand United State dollars) in Guatemalan currency, according to what was ordered by the Court.

35. That the representatives did not object to the above mentioned.

36. That the Commission did not refer to this issue in the private hearing, but it previously pointed out that "the Guatemalan State has complied with that duty".

37. That it spring from the case file that the State has made the payment so ordered by the Court, and therefore the Court considers that it has fully complied with this part of the Judgment.

C) *COMMON ISSUES BETWEEN THE JUDGMENTS DELIVERED IN THE CASES OF FERMÍN RAMÍREZ AND RAXCACÓ REYES*

38. That as to the duty of the State to abstain from applying the part of Section 12 of the Guatemalan Penal Code regarding the dangerousness of the agent and conform it to the Convention within a reasonable time (*operative paragraph eight of the Judgment delivered in the case of Fermín Ramírez*) as well as the amendment of Section 201 of the Penal Code (*operative paragraph five of the Judgment delivered in the case of Raxcacó Reyes*), the State informed that there are preliminary drafts which propose the amendment of such rules but that "they have been observed"; that on March 31, 2008, the Guatemalan Congress was requested to inform on the steps taken to carry out the amendment of such section, request that has still not been answered, which will be transmitted to this Court "in due time". Furthermore, the State pointed out that the Executive branch is preparing a bill to submit to the Legislative branch, based on the terms ordered in the Judgments delivered in these cases.

39. That, furthermore, as to the State's duty to abstain from applying the death penalty and executing those convicted of the crime of kidnapping or abduction (*operative paragraph six of the Judgment delivered in the case of Raxcacó Reyes*), the State pointed out that "[t]he Supreme Court of Justice, by means of its President, Oscar Humberto Vásquez Oliva, informed [...] that "the enforcement of the death penalty in the proceedings under process for the crime of [kidnapping or abduction] is suspended by virtue of the Judgment delivered by the Inter-American Court [...]. In relation to the delivery of the judgments that declare the validity or inadmissibility of the review of the cases of kidnapping or abduction, in some of these cases, the evidence does not satisfy the requirements established by the Guatemalan penal procedural legislation and it is owing to this, that such distinction exists."

40. That the representatives pointed out that the State has failed to comply with such issues, since by May 2008, no bill has been submitted to the Congress of the Republic in order to modify such provisions of the Guatemalan Penal Code. Besides, they noted that the Commission on Legislation and Constitutional Issues has rejected a bill to repeal the death penalty for the crimes of kidnapping and murder. That they stated that the President has not exercised the authority to present a bill and has not fostered any legislative reforms as ordered by the Court. They consider that the legislative reforms must be extended to all the rules that are included in the categories declared by the Court, that is, those that prescribe the punishment of death penalty for the dangerousness of the agent or those that have broadened the categories of crimes that prescribe death penalty after the ratification of the

American Convention. They pointed out that in the Penal Code; there are another two rules that prescribe the punishment of death penalty for the dangerousness of the agent: The crime of parricide established in Section 131 and magnicide of Section 383. With regard to the crimes that have included the death penalty as punishment, it can be mentioned the crime of extrajudicial execution provided for in Section 132 bis, forced disappearance provided for in Section 201st., and the aggravated crime as a result of Section 52 of the Drug-Trafficking Act. Besides, the Guatemalan legislation provides for a crime with the compulsory punishment of death penalty and that is, the crime of aggravated rape of Section 179 of the Penal Code. Furthermore, they informed that seven people who were convicted under the terms of Section 132 of the Guatemalan Penal Code have a chance of being executed, since the State has neither revoked nor commuted the death sentence. In this sense, they informed that the Supreme Court of Justice, at the beginning, admitted appeals for review filed with it by several people convicted to death penalty for the crime of kidnapping or abduction and, in compliance with the order of this Court, it reversed six judgments dealing with abduction. Notwithstanding, "as from September, 2006, the Supreme Court of Justice reversed its own case-law and placed little value on the decision of the [Inter-American] Court denying the appeals for review then filed that were intended to set aside the judgments on death penalty. These decisions would have, besides, been confirmed by the Court on Constitutional matters, which it is concerning since they have set case law as to the fact that such decisions are binding on all the Guatemalan courts but they do not acknowledged the compulsory and binding nature of the Judgments delivered by this Court. Moreover, they expressed that even though since the year 2005, the courts have not imposed the death penalty as punishment, the prosecutors have in fact asked for death penalty in several proceedings and that State's officials have publicly stated the need to accelerate the executions.

41. That the Commission pointed out that the State has the obligation to supply effective and suitable judicial remedies in order to review the death sentences imposed for those criminal types that are incompatible with the American Convention. The Commission notes that there is no legislative initiative to obtain the effective modification of said provisions, though there is a bill that continues under study of the Executive branch. Therefore, the Commission considered it is vital to make an effort in order to submit bills to the national Legislative branch in order to amend said sections of the Penal Code.

42. That according to the arguments of the parties, the State has not complied with these parts of the Judgments, in spite of the fact that the reform of such rules of the Penal Code is a basic aspect of such decisions.

43. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁴ As the representatives pointed out, if the domestic superior judicial instances do not enforce

⁴ See *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Palamara Iribarne v. Chile*; Monitoring Compliance with Judgment. *Supra* note 3, considering clause six and *Case of Plan de Sánchez Massacre v. Guatemala*, Monitoring Compliance with Judgment, *supra* note 3, considering clause four.

the provisions of these Judgments, other people would be in the paradoxical situation of being compelling to submit their cases before the Inter-American system.

44. That this Tribunal deems appropriate to repeat that what is ordered by the Court in its operative paragraphs of the Judgments provide, in fact, general guidelines, inasmuch as the origin of this form of reparation was the non-compliance by the State with Article 2 of the American Convention, by keeping in force those rules of the Penal Code once Guatemala ratified said treaty. This order of the Court binds all the state powers and organs.⁵ In particular, in the case of *Fermín Ramírez*, according to the terms of paragraphs 81 and 90 to 98 of the Judgment, the introduction in the penal text of the dangerousness of the agent as criteria for the typical classification of facts and the application of certain penalties, is incompatible with the principle of criminal lawfulness (*nullum crimen nulla poena sine lege praevia*) and, therefore, contrary to the Convention. In that way, the so ordered reparation establishes, on the one hand, the duty of state's organs in charge of administering penal justice to abstain from applying the part of Section 132 of the Guatemalan Penal Code as to the dangerousness of the agent to any prosecuted, accused or convicted person under this criminal type. On the other hand, it spring from there that the duty of the Guatemalan legislative branch as to the modification of this provision within a reasonable time, so as to guarantee the respect for the principle of *nullum crimen nulla poena sine lege praevia*, eliminating the reference made to the dangerousness established in such provision. As to the case of *Raxcacó Reyes*, this Court has decided that Section 201 of the Guatemalan Penal Code is contrary to the American Convention and that the State, apart from modifying such rule under the terms of paragraph 132 of the Judgment, must abstain from applying it and refrain from executing the people who have been convicted of the crime classified in said section, as long as those reforms are not made.

45. That the Court underlines that those States that have ratified the Convention, in exercise of their sovereign authorities, have acquired the commitment to adapt their legislation and with that, ensure the application of the rules recognized by the state itself, by the state's agents or organs. This state commitment becomes more evident when the Court itself points out in a specific case that certain rules of the domestic legislation violate the American Convention and, therefore, orders as a guarantee of non-repetition the adaptation of the domestic law. The opposite thing would be translated in a concerning suspension of the conventional rules that would be inconsistent with the effective enforcement of the human rights and the sovereign decision of the State to bind itself to comply with the rules of the Convention.

46. That, in such way, in order to ensure the useful effect of the provisions of the American Convention and its own effects, according to the obligations contained in Articles 1(1) and 2 of the Convention, the Court urges the State to adopt the measures necessary to adapt its domestic rules and, in consequence, requests it that in the next report refers to the arguments exposed by the representatives (*supra* para. 40).

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⁵ See *Case of Baena Ricardo et al. v. Panama*. Competence, *Supra* note 2, para. 60; *Case of Gómez Palomino v. Peru*; Monitoring Compliance with Judgment, *supra* note 2; considering clause seven and *Case of García Asto and Ramírez Rojas v. Peru*; Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering Clause six.

47. That as to the duty to adopt, within a reasonable time, the necessary measures to adapt prison conditions to the corresponding international standards (*operative paragraphs twelve of the Judgment delivered in the case of Fermín Ramírez and nine of the Judgment delivered in the case of Raxcacó Reyes*), the State pointed out the "Prison System Act" was passed by means of Decree N° 33-2006 of the Congress of the Republic and that it has been published in the *Diario de Centro América* on October 6, 2006, and that said act regulates the Guatemalan National Penitentiary System, in particular, the pre-trial detention centers and the centers for compliance with convictions of penalties. Said act was a complement to the "Internal Regulations of the Farms for Rehabilitation and Compliance with the Convictions under the Charge of the General Bureau of the Prison System" (*Reglamento Interno de las Granjas Modelo de Rehabilitación y Cumplimiento de Condenas a Cargo de la Dirección General del Sistema Penitenciario*), as published in the *Diario de Centro America* on November 29, 2006. Furthermore, during the hearing, the State informed that there have been proposals to build pre-trial penitentiary centers and convictions centers, remodel other centers and open up new areas, in order to comply with international standards. Moreover, that at the moment, working and educational programs have been implemented in several centers and 19 centers offer basic literacy programs and some of them, basic and higher education programs.

48. That the representatives stated that on April 6, 2007 the Prison System Act entered into force. Nevertheless, by December, 2007, the act has not been implemented yet, since the budget has not been assigned nor the necessary regulations ordered. Besides, they sustained that said act is discriminatory and does not comply with international standards, since it establishes Maximum Security Centers where there are no social re-insertion programs and the regulation of said system is vested on the penitentiary authority. Moreover, those people sentenced to death have no possibility to commute their punishments. Likewise, they stated that three new prisons were built but the locations of such centers are still unknown.

49. That the Commission took note of the legislative reforms carried out by the State in this regard, but it considered that its effectiveness and the compliance with the decision of the Court must be valued upon the application of the new legislation and the effective improvement of the general prison conditions. Therefore, it expressed its concern since even though progress have been made in order to improve prison conditions at the national level, the progress is minimum and the new prisons that were built do not comply with the minimum standards.

50. That this Court truly values the progress made in the planning of other centers. In turn, the Court is aware that the relief and amendment of the situation in the prisons of a State is a short, medium or long-term procedure, that calls for a set of measures of several authorities, that is, administrative, judicial and even legislative, addressed to heal the prison and detention conditions. This Tribunal could not evaluate this set of measures, in all its ranges and dimensions, within the framework of a procedure for monitoring compliance with a specific judgment. Notwithstanding, the State cannot allege domestic legal reasons to help adopting final, specific and effective measures in order to adapt the prisons to the international standards. In that way, the Court deems it is necessary to request the State that, in the next briefs, submit specific and updated information on the current condition of the situation and the measures adopted to that end, especially, the main prison problems and the specific measures adopted or to be implemented.

D) Regarding the request for extension of provisional measures (supra Having Seen clause 22) and the duty to adopt the legislative and administrative measures necessary to adopt a procedure that ensures that any person condemned to death has the right to apply for and, if applicable, obtain pardon or commutation of sentence (operative paragraphs ten of the Judgment delivered in the case of Fermín Ramírez and seven of the Judgment delivered in the case of Raxcacó Reyes)

51. That the representatives alleged in the brief of February 28, 2008 and in the private hearing, that:

a) On February 12, 2008, the Congress of the Republic passed the "Regulatory Act for the Commutation of the Punishment for the People Convicted with Death Penalty", by means of Decree N° 6-2008 which "vests on the President the power to hear and decide on the measure of grace";

b) Said act would present certain flaws, among which: "the administrative body, responsible for providing the pardon, is not contemplated[;] does not estipulate the legal basis for the pardon[;] does not estipulate the right to a hearing [...] does not contemplate a probatory period [, and] it creates the institution of tacit denial, by which, in case the President does not issue a ruling within a term of 30 days, the remedy is considered denied [...], and within the following twenty-four (24) hours the tried and convicted person is immediately executed";

c) The way the measure of grace is regulated constitutes it in "a prior bureaucratic formality that is not meant to comply with the role of protecting the right to life";

d) The so-called Decree was vetoed by the President of the Republic by means of Governmental Agreement N° 104-2008 on March 14, 2008;

e) Even though the decree is being reconsidered by the Governmental Commission of the Congress "it is not clear what would be the decision the Congress of the Republic with regard to such decree or similar alternatives, since the procedures regulated by the Basic Law of the Legislative body are not clear and there exist the will, repeated openly by many deputies of the ruling party and of the opposition, to pass a law that accelerate the executions of those sentenced to death";

f) "the decree in question was approved by 140 out of 143 deputies that were present at the Congress";

g) "there exist an important possibility that an Act containing the same characteristics and purposes of the vetoed decree be approved" and

h) The situation of risk of those people sentenced to death "is not only the result of the passing of the Decree N° 6-2008, but [of] a number of facts [...] namely: The lack of legislative amendment of the criminal types that the Court considered to be incompatible with the American Convention, the refusal of the State to decide the legal situation of those people sentenced to death by such rules [...] and the current political context regarding the debate of the death penalty and the statements made by deputies, even after the presidential veto, of their will to continue with the executions. It is the non-compliance by the State with the Judgments in the cases of Fermín Ramírez

and Ernesto Raxcacó what resulted in a risky situation for those sentenced to death”.

52. That the Commission pointed out that the goal of the pardon law was to accelerate the enforcement of the convictions which, according to its criterion, derives from the presidential veto. It considered that a pardon law should be passed in total satisfaction with the Guatemalan constitutional principles and the demands of the Judgments of the Court. It stated that the application of the death penalty in the above mentioned cases would imply an “open non-compliance” with the decisions of the Court that ordered the State to reform the criminal types, modify the system of remedies and refrain from executing the convicted people as long as it complies with such duties. It sustained that the “execution of any person [sentenced] to death in Guatemala would not conform to the American Convention on Human Rights nor to the rulings of the Commission and the Court” and considered it is necessary that, in the procedure to monitor compliance with the Judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes*, the Court adopt measures to protect such persons. Additionally, the Commission pointed out that if the Court considers that the above mentioned exceeds its authority to monitor compliance with such Judgments, it should take it as an express request for provisional measures.

53. That the State pointed out that the Governmental Agreement N° 104-2008, through which the President of the Republic vetoed the Decree N° 6-2008, contained the following observations:

a) This law violates Article 2 of the Political Constitution of the Republic because the provisions contained in Articles 5 and 8 and related to the personal background of the applicant, the term for the administrative silence and the term to request the pardon violate the principle of “legal certainty” that the State must ensure to every inhabitant of the Republic; b) the Decree violates Articles 2 and 3 of the Constitution since, by using the argument of establishing pardon for the death penalty, what it is impliedly doing is restoring the enforcement of this penalty, which goes against the most basic principle of the Constitution, that is the right to life ensured and protected by the State ; c) it violates Article 15 since, by using the argument of establishing pardon for death penalty, makes effective the new procedure for enforcement of said penalty which turns the law in retroactive, which is not only prohibited by the Constitution but the provision does not favor the inmate; this procedure for the enforcement of the penalty was abolished by the repealing of Decree N° 159 of the Legislative National Assembly and therefore, suppressed from the Guatemalan legal system (Decree 32-2000 of the Congress of the Republic dated May 11, 2000); d) it violates the last paragraph of Article 18 of the Constitution because the procedure for the enforcement of death penalty has already been abolished by means of the so-called Decree N° 159 and the issuance of Decree 6-2008 of the Congress of the Republic is a serious setback for the tendency to abolish the death penalty; together with that, Article 46 of the Political Constitution of the Republic is being violated and therefore, subsection 3 of Article 4 of the American Convention on Human Rights prevails and thus, it is determined that once said penalty is abolished it will no longer be reestablished; in this case, once the procedure for enforcement was abolished, the tendency towards abolishing the death penalty made some progress and, by virtue of the law that marked such tendency, the death penalty can no longer be reestablished, though such provision continues existing under the penal legal system; e) it violates Article 19 of the Constitution inasmuch as the application of the death penalty maintains the tendency to eliminate the human being from the social center, at the same time that the Constitution provides that the prison system must tend to the social re-insertion and reeducation of the inmates and must help them in such effect.

54. That, furthermore, the State informed that the Decree 6-2008 “is under suspension until the full Congress of the Republic hears it again and reconsiders or denies the presidential veto; to such end, the Congress must obtain 105 votes in order to make use of the Parliamentary sovereignty and in this way, the related decree can enter into force. The State acknowledged that the Decree N° 6-2008 “does not comply with the Judgments of [...] Court in the cases of *Fermín Ramírez* and *Ronald Ernesto Raxcacó Reyes*, in relation to the creation of a procedure that

ensures that any person condemned to death has the right to apply for and, if applicable, obtain pardon or commutation of sentence, according to a regulation that establishes which authority should grant it, the cases in which it can be granted and the corresponding processing, after the due process is followed in which the legal remedies have been fully used".

55. That, in relation to the nature of the provisional measures ordered in the case of *Raxcacó Reyes et al.* the State mentioned that such measures "aim at safeguarding the lives of the beneficiaries of such measures while their cases are being processed before the Inter-American system of protection of human rights, and therefore, the request for extension of the measures is not consistent with the sense of the already existing measure". Nevertheless, the State pointed out that "it does not oppose to the adoption of measures in favor of those people sentenced to death".

56. That it spring from the information supplied by the State that 25 people are sentenced to death in Guatemala, and 6 of them are fugitives from justice. From the remaining 19 of them, 7 persons were convicted of murder, namely: 1. Miguel Ángel López Caló; 2. Dimas Samayoa García; 3. Santos Hernández Torres; 4. Adolfo Rodas Hernández; 5. Antonio Israel Jiménez Godínez; 6. Miguel Ángel Rodríguez Revolorio, and 7. Juan Pablo Rafael Eduardo Ocampo Alcalá. The Court has no information regarding to whom of these persons Article 132 of the Penal Code, that the Court considered incompatible with the Convention in the case of *Fermín Ramírez*, was applied. The State should inform on this regard. Moreover, 12 persons are convicted of kidnapping or abduction, namely: 1. Carlos Enrique Chun Choc; 2. Gustavo Adolfo Carranza Castañeda; 3. Jorge Arturo Mazate Paz; 4. Carlos Amilcar González Díaz; 5. Audelio Díaz González; 6. Moisés Esteban Santizo Ola; 7. Edwar Mike Pineda Morales; 8. Ramiro Geovanny Padilla Marroquín; 9. Waldemar Hidalgo Marroquín; 10. Jaime Raúl Quezada Corzo; 11. Douglas Rembil Montt Solórzano and 12. Bernardino Rodríguez Lara. The Court is unaware of the fact if in all of these cases, the part of Article 201 of the Penal Code that the Tribunal considered as an extension of the classification of crimes punished with death penalty, was applied to. The State should inform on this regard. Mr. Bernardino Rodríguez Lara (case N° 12) only is actually protected by the Court by virtue of the provisional measures ordered in this case.

57. That the Court considers that the several duties of the State that derived from the Judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes* are applicable to all or some of the individuals mentioned in the aforesaid considering clause. In fact, according to the operative paragraph six and paragraph 132 of the Judgment in the case of *Raxcacó Reyes*, the State will not be able to execute those people convicted of kidnapping or abduction that did not result in the death of the victim. As mentioned above, the Court cannot identify which of those persons are included in this assumption. Moreover, according to the operative paragraph eight and paragraphs 81 and 90 to 98 of the Judgment in the case of *Fermín Ramírez*, the State will not be able to execute those persons to whom the part of Section 132 of the Penal Code regarding the dangerousness of the agent has been applied. The Court can neither identify those who are included in that assumption. Finally, by virtue of the operative paragraphs ten of the Judgment in the case of *Fermín Ramírez* and seven of the Judgment in the case of *Raxcacó Reyes*, the State will not be able to execute any person sentenced to death, whatever the reason for the punishment of death penalty imposed on them was, while the decision regarding the pardon or commutation of the penalty is still pending. According to this assumption, there are 25 persons sentenced to death and any other that in the future could be sentenced to the same penalty.

58. That, by virtue of the foregoing, the Tribunal has the authority, within the scope of monitoring compliance with the Judgments delivered in the aforesaid cases, to verify that the State complies with the duties so established.

59. That, as ordered in other cases⁶ the Court considers that, unlike the provisional measures that the Tribunal orders in accordance with Article 63(2) of the American Convention, that requires the *prima facie* demonstration of a situation of extreme gravity and urgency, the cases analyzed in this Order are of extreme gravity and urgency that have not only been *prima facie* demonstrated, but fully proved before the Court and expressly declared by it in the Judgment. Therefore, the Court ordered the State to adopt the measures for reparation mentioned above. Likewise, it is not about avoid causing irreparable damage to people for events that still have not occurred, but it is about ending with the consequences of the violation of the Convention already so declared by the Court in final Judgments.

60. That, based on the foregoing, it is unnecessary the extension of the provisional measures requested by the representatives and supported by the Commission. In fact, the duty of the state of not executing those people sentenced to death derived from the Judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes*, under the provisions set forth in the previous considering clauses.

61. That, moreover, the provisional measures ordered in the case of *Raxcacó Reyes et al.* have a specific goal, namely, to protect the life of Mr. Bernardino Rodríguez Lara in order to not hinder the processing of his case before the Inter-American system for the protection of human rights. The purpose exposed by the representatives in their request for extension is different from the one mentioned above and, due to the lack of connection, it does not have to do with an extension of measures but with a new request for provisional measures that, according to Article 63 of the Convention, can only be filed by the Inter-American Commission.

62. That, even when the Commission has, in fact, filed a request for provisional measures, Considering clauses 59 and 60 *supra* are applicable.

63. That, as to the duty of the State to adopt a procedure that ensures that any person condemned to death has the right to apply for and, if applicable, obtain pardon or commutation of sentence, the Court recalls the State that the remedies it must offer, including the pardon, must not be simple formalities condemned, beforehand, to be useless. Otherwise, the provisions of the Convention would not be effective. To such regard, the Court values that the State itself has pointed out that the Decree N° 6- 2008 did not contain a remedy that complied with the conventional demands established in the Judgments of the cases of *Fermín Ramírez* and *Raxcacó Reyes*. In such sense, the Tribunal understands that in the case the Congress of the Republic of Guatemala denies the presidential veto of such Decree, the State would not have complied with its international duties and, as a logical consequence, will not be able to execute any person sentenced to death until the legislation conforms to the American Convention. It is worth recalling that according to the case law of this Court,

When the Legislative Power fails to set aside and / or adopts laws which are contrary to the American Convention, the Judiciary is bound to honor the obligation to respect rights as stated in Article 1(1) of the said Convention, and consequently, it must refrain from enforcing any laws contrary to such Convention. The observance by State agents or officials of a law which violates the Convention gives rise to the international liability of such State, as contemplated in International Human Rights Law, in the sense that every

⁶ See *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering Clause nine and ten.

State is internationally responsible for the acts or omissions of any of its powers or bodies for the violation of internationally protected rights, pursuant to Article 1(1) of the American Convention.

[...]

The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights [evidently, within the framework of its corresponding competences and the corresponding procedural regulations]. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.⁷

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64. That the Court values the relevance of the hearing held to monitor the issues pending compliance in these cases.

65. That the Court shall consider the general status of compliance with the issues pending compliance of the Judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes*, once it obtains the corresponding information.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

A) *Regarding the case of Fermín Ramírez*

1. That the State has complied with the duties established in the following operative paragraphs of the Judgment on the merits and reparations delivered by the Tribunal on June 20, 2005:

a) pay the reimbursement of expenses to the *Instituto de Estudios Comparados de Ciencias Políticas* of Guatemala within the one-year term

⁷ See *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of September 26, 2006. Series C No. 154, para. 123 and 124, and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158. , para. 128.

as of the notification of the present judgment, in the terms of paragraphs 131 through 137 of such Judgment (*operative paragraph thirteen*);

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

B) Regarding the case of Raxcacó Reyes

3. That the State has fully complied with the following operative paragraphs of the Judgment on the merits and reparations of September 25, 2005:

- a) To set aside the punishment imposed on Mr. Raxcacó Reyes (*operative paragraph eight of the Judgment*);
- b) To publish the pertinent parts of the Judgment delivered in this instant case (*operative paragraph thirteen of the Judgment*) and
- c) To make the payment for reimbursement of the expenses (*operative paragraph fourteen of the Judgment*),

4. That in accordance with what was set forth in this Order, the State has partially complied with the following operative paragraph of the Judgment delivered in the case of *Raxcacó Reyes*:

- a) To provide Mr. Raxcacó Reyes with adequate medical treatment (*operative paragraph ten of the Judgment*)

5. That it will keep open the procedure to monitor compliance with the following aspects pending compliance of the Judgment delivered in the case of *Raxcacó Reyes*, to wit:

- a) To modify Section 201 of the Guatemalan Penal Code (*operative paragraph five of the Judgment*);

- b) To abstain from applying the death penalty and executing those convicted of the crime of kidnapping or abduction (*operative paragraph six of the Judgment*);
- c) To adopt a procedure that ensures that any person condemned to death has the right to apply for and, if applicable, obtain pardon or commutation of sentence (*operative paragraph seven of the Judgment*);
- d) To adopt the necessary measures to adapt prison conditions to the corresponding international standards (*operative paragraph nine of the Judgment*);
- e) To adopt the necessary measures to enable Mr. Raxcacó Reyes to receive periodic visits from Olga Isabel Vicente (*operative paragraph eleven of the Judgment*); and
- f) To adopt the educational, work-related and other measures necessary to ensure the social readaptation of Mr. Raxcacó Reyes when he has served the sentence imposed (*operative paragraph twelve of the Judgment*).

AND DECIDES:

1. To order the State of Guatemala to adopt all the measures necessary to effectively and promptly comply with the issues pending compliance with the Judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes* as pointed out in the second, fourth and fifth *supra* declaratory paragraphs.
2. To order the State of Guatemala to submit to the Inter-American Court of Human Rights, not later than September 15, 2008, a report describing all the measures adopted in each case to comply with the reparations ordered by this Court, which are still pending compliance. As to the case of *Raxcacó Reyes*, the State shall include in its report what has been pointed out in the considering paragraphs 22, 29, 50 and 56 of this Order and with regard to the case of *Fermín Ramírez*, what has been pointed out in the considering paragraphs 12, 15, 50 and 56.
3. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report. As to the case of *Raxcacó Reyes*, the representatives shall submit to the Court the information referred to in the considering paragraphs 22 and 25 of this Order and the Commission the information requested in the considering paragraph 25 *supra*.
4. To reject the request for extension of provisional measures filed by the representatives of the beneficiaries, based on the reasons mentioned in the considering paragraphs 51 to 63 of this Order.
5. To repeat the State to maintain the provisional measures necessary to protect the life of Mr. Bernardino Rodríguez Lara in order not to hinder the processing of his case before the Inter-American system for protection of human rights.
6. To order the State to submit a report on the court orders it has adopted in order to comply with the provisional measures ordered in favor of Bernardino Rodríguez Lara, no later than September 15, 2008 and to continue informing the

Inter-American Court of Human Right, every four months, on the compliance with the measures so ordered.

7. To request the beneficiary of the provisional measures or his representatives to submit the observations to the State's reports mentioned in the above operative paragraph within a term of four weeks as from its receipt and the Inter-American Commission on Human Right to submit the observations to such reports within a term of six weeks as from its receipt.

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

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary