

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF GUDIEL ÁLVAREZ *ET AL.* (“*DIARIO MILITAR*”) v. GUATEMALA**

**JUDGMENT OF AUGUST 19, 2013**  
**(*Interpretation of the Judgment on merits, reparations, and costs*)**

In the case of *Gudiel Álvarez et al.*

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) composed of the following judges:<sup>1</sup>

Diego García-Sayán, President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge, and  
Alberto Pérez Pérez, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Article 68 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”), decides the request for interpretation of the Judgment on merits, reparations, and costs delivered by the Court on November 20, 2012, in this case (hereinafter also “the Judgment”), filed on March 20, 2013, by the representatives of the victims (hereinafter “the representatives”).

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<sup>1</sup> Judge Manuel E. Ventura Robles did not take part in the deliberation and signature of this Judgment of interpretation for reasons beyond his control. In addition, Judge Eduardo Vio Grossi, for reasons beyond his control, had not taken part in the deliberation and signature of the Judgment on merits, reparations, and costs in this case; therefore, pursuant to Article 68(3) of the Court’s Rules of Procedure, he did not take part in the deliberation and signature of this Judgment.

<sup>2</sup> The Court’s Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

**I**  
**REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT**

1. On November 20, 2012, the Court delivered the Judgment, which was notified to the parties and to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on December 21 that year.
2. On March 5, 2013, the Republic of Guatemala (hereinafter "Guatemala" or "the State") presented a brief in which it "state[d] its position" of "disagreement" with the Judgment. On March 20 and 25, 2013, the representatives and the Inter-American Commission presented their observations on the State's brief.
3. On March 20, 2013, the representatives filed a request for interpretation of the Judgment because they had "found contradictions and a lack of precision in relation to the payment of financial compensation to the victims and their next of kin." In particular, the representatives requested clarification of the method for paying the loss of earnings and non-pecuniary damages ordered in the Judgment in favor of the disappeared victims and their next of kin, and of the time frame for paying the compensation established in the said decision.
4. On April 1, 2013, in accordance with Article 68(2) of the Court's Rules of Procedure and on the instructions of the President of the Court, the Secretariat forwarded the said request for interpretation to the State and the Commission and gave them until May 1, 2013, to present any written arguments they deemed pertinent.
5. On April 30, 2013, the Commission and the State presented their written arguments concerning the said request for interpretation.

**II**  
**COMPETENCE**

6. Article 67 of the Convention establishes that:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

7. According to this article, the Court is competent to interpret its judgments. In order to examine the request for interpretation and take the corresponding decisions, the Court should be composed, whenever possible, of the judges who delivered the respective Judgment, pursuant to Article 68(3) of the Rules of Procedure. On this occasion, the Court is mainly composed of the judges who handed down the Judgment whose interpretation has been requested by the representatives (*supra* footnote **Error! Bookmark not defined.**).

**III**  
**THE BRIEF OF THE STATE OF MARCH 5, 2013, AND SIMILAR ARGUMENTS IN  
THE STATE'S BRIEF OF APRIL 30, 2013**

8. The Court observes that, within the 90-day period established in the Convention for filing a request for interpretation, the State presented a brief "indicating its disagreement with the [...] Court's interpretation of the reservation it had opportunely made when accepting the Court's contentious jurisdiction," because "the facts that gave rise to the dispute in this case exceed the

temporal competence of the [...] Court"; consequently, it did "not accept the judgment delivered in the case of the *Diario Militar*." In particular, the State indicated: (i) its disagreement with the facts of this case being categorized as forced disappearance, because this would entail the retroactive application of the pertinent norms; (ii) the alleged impossibility of condemning the State for the offense of forced disappearance, because it constitutes a crime and, as such, is committed by a person and must be determined by a criminal court; (iii) its disagreement with considering the crime of forced disappearance permanent; (iv) the irrelevance for the interpretation of the temporal competence of the Court "that it had accepted the Court's jurisdiction previously [...] and, therefore, the judgments handed down," as well as the acceptance of responsibility made by "an agent of the State" in this case, and (v) its disagreement with the measures of reparation ordered in the Judgment. However, it indicated that "it retains its commitment to make reparation to the victims of human rights violations that occurred during the internal armed conflict through the National Compensation Program, provided they request compensation from this program." In addition, the Court notes that, in its brief with observations of April 30, 2013 (*supra* para. 5), the State reiterated some of the assertions made in the brief of March 5, 2013, and indicated that it considered that, "in any case, the Judgment is not binding for the State of Guatemala."

9. Both the representatives and the Commission indicated their disagreement with the State's considerations, stressing, among other matters, the final and non-appealable nature of the Court's judgments, the obligation of States to comply with these decisions, and the competence of the Court to order the reparations it finds appropriate, as established in Articles 63, 67 and 68 of the American Convention. In particular, the representatives emphasized that "[e]ach and every issue raised by the State was decided in the Judgment after seven years of litigation, during which the State had ample opportunity to present its arguments"; consequently, "[a]t this stage of the proceedings, [...] the State's arguments relating to the Court's jurisdiction, State responsibility for the violations that were committed, and the reparations are inadmissible."

10. The Court finds that the issues raised by the State in its brief of March 5, 2013, do not constitute a request for interpretation. Even though the State did not entitle the brief as such or make a request in this regard, the Court finds it opportune to recall that the interpretation of a judgment cannot address and decide factual and legal issues that have already been presented at the appropriate procedural stage and on which the Court has adopted a final decision,<sup>3</sup> nor can it seek that the Court reassess matters it has already decided in its judgment.<sup>4</sup> Furthermore, the Court has also indicated that formulating abstract or hypothetical situations is not relevant to the purpose of a request for interpretation of Judgment.<sup>5</sup> Moreover, as previously decided by this Court,<sup>6</sup> the interpretation of judgment should not be used as a means of contesting the judgment whose interpretation is required; rather its purpose is merely to determine the

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<sup>3</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*. Judgment of June 3, 1999. Series C No. 53, para. 15, and *Case of Abril Alosilla et al. v. Peru. Interpretation of the judgment on merits, reparations and costs*. Judgment of November 21, 2011, Series C No. 235, para. 17.

<sup>4</sup> Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment of August 29, 2011. Series C No. 230, para. 30, and *Case of Atala Riffo and daughters v. Chile. Request for interpretation of the judgment on Merits, reparations and costs*. Judgment of November 21, 2012. Series C No. 254, para. 34.

<sup>5</sup> Cf. *Case of Cantoral Huamani and García Santa Cruz v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of January 28, 2008. Series C No. 176, para. 16.

<sup>6</sup> Cf. *Case of Loayza Tamayo. Interpretation of the judgment on merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16; *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 189, para. 13, and *Case of García Prieto et al. v. El Salvador. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2008. Series C No. 188, para. 7.

meaning of a ruling when one of the parties affirms that the text of its operative paragraphs or its considerations lacks clarity or precision, provided that those considerations have an impact on the said operative paragraphs.<sup>7</sup>

11. The Court also considers, as it has previously,<sup>8</sup> that proper implementation of the measures of reparation will be assessed during the stage of monitoring compliance with the Judgment; consequently, the Court will assess any information and observations that the parties may submit during that stage.

12. Within the framework of a proceeding for interpretation of the judgment, it is incumbent on this Court to resolve any disagreements indicated by the parties regarding the meaning and scope of the Judgment. However, the Court considers that the disagreements expressed by the State in its brief of March 5, 2013, do not refer to doubts about the meaning and scope of the Judgment and, consequently, they are not a matter for interpretation and do not affect the final and non-appealable nature of the Judgment. Hence, in this Judgment, the Court will only rule on the request for interpretation filed by the representatives on March 20, 2013 (*supra* para. 3).

13. Likewise, the similar arguments of the State in its brief of April 30, 2013 (*supra* paras. 5 and 8), will not be examined by the Court in this decision, because they do not refer to doubts about the meaning and scope of the Judgment or the questions posed by the representatives in their request for interpretation.

#### IV ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

14. The Court must verify whether the request presented by the representatives complies with the requirements for a request for interpretation of judgment established in the applicable norms: namely, Article 67 of the Convention, cited above, and Article 68 of the Rules of Procedure, the pertinent parts of which stipulate that:

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which interpretation is requested.

[...]

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

15. In addition, Article 31(3) of the Rules of Procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

16. The Court has verified that the representatives forwarded their request for interpretation on March 20, 2013, within the time frame established in Article 67 of the Convention for the presentation of a request for interpretation of judgment (*supra* para. 6),

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<sup>7</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits, supra*, para. 16; *Case of Salvador Chiriboga v. Ecuador, supra*, para. 11, and *Case of Abril Alosilla et al. v. Peru, supra*, para. 10.

<sup>8</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Interpretation of the judgment on merits, reparations and costs. Judgment of July 1, 2009. Series C No. 199*, para. 26.

because it was notified on December 21, 2012. Therefore, the request is admissible as regards the time of presentation.

## V

### **ANALYSIS OF THE ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION**

17. The Court will now analyze the representatives' request to determine whether, according to the norms and standards developed in its case law, it is admissible to clarify the meaning or scope of any element of the Judgment on merits, reparations, and costs. The Court will examine the issues raised by the representatives, together with the arguments presented by the State and the Commission.

18. The Court notes that, in their request for interpretation, the representatives asked for clarification of three elements of the Judgment concerning the reparations for pecuniary and non-pecuniary damage: (i) the method of payment and distribution of the compensation for loss of earnings; (ii) the method of payment and distribution of the compensation for non-pecuniary damage; and (iii) the date of expiry of the obligation to pay the compensation. This Court will proceed to examine the arguments presented by the representatives within the framework of the request for interpretation; it will rule on their admissibility and, if appropriate, will make the clarifications it deems pertinent.

19. When considering the questions raised by the representatives, the Court finds similarity in the questions posed with regard to two of the aspects described above. Consequently, the Court will consider the arguments in the following order: (A) the time frame for complying with payment of the compensation ordered in the Judgment, and (B) the criteria for distributing the compensation for loss of earnings and for non-pecuniary damage.

#### **A. Time frame for complying with payment of the compensation ordered in the Judgment**

##### *Arguments of the Commission and of the parities*

20. The representatives asked the Court to clarify the time frame for the State to make the payment for the compensation of pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment, owing to the different time frames established in paragraphs 367, 384 and 388 of the Judgment.

21. In this regard, the State indicated that "each paragraph of the Judgment that [... the representatives] have compared refers to a different type of compensation." However, Guatemala indicated that "if the [...] Court considers it prudent to clarify the exact date of each payment, the State does not object to this, because [...] the State does not accept the Judgment [...] and, therefore, offers to compensate the petitioners through the National Compensation Program."

22. Meanwhile, the Commission indicated that it understood that paragraph 367 referred specifically to consequential damages, so that the time frame established for this payment is one year. Despite this, the Commission underscored that "paragraphs 384 and 388 regarding the method of complying with all the payments for pecuniary and non-pecuniary damage, costs and expenses, appear to establish different time frames and, therefore, it would be appropriate to clarify this.

### *Considerations of the Court*

23. The Court observes that the representatives have requested clarification of the time frame established in the Judgment for the State to comply with the payment of the compensation established in the said Judgment.

24. In this regard, the Court notes that paragraph 384 of the Judgment grants the State two years to make the payment of all the compensation established in the Judgment and to reimburse the costs and expenses to the representatives.<sup>9</sup> Nevertheless, the Court notes that it is true that, in paragraphs 367 and 388 of the Judgment, reference is made to a period of one year for the payment of compensation for consequential damage in the former paragraph, and all the compensation in the latter.<sup>10</sup> The Court considers that an examination of the said provisions reveals that the mentions of a one-year period in paragraphs 367 and 388 constitute material errors. The Court underscores that paragraph 384, which is part of the section on “Method of complying with payments ordered,” is the specific provision of the Judgment with regard to the time frame for complying with the pecuniary obligations established therein. The main purpose of paragraph 384 is precisely to establish this time frame, contrary to paragraphs 367 and 388 of the Judgment where the reference to a time frame is incidental, because these paragraphs have other purposes. The purpose of paragraph 367 is to establish the compensation for consequential damage in favor of the victims, while the purpose of paragraph 388 is to ensure that the payment of the compensation established in the Judgment is made fully “without any deductions arising from possible taxes or charges.”

25. Therefore, pursuant to Article 76 of the Court’s Rules of Procedure,<sup>11</sup> this Court proceeds to rectify the references to time frames of one year for complying with the pecuniary obligations in paragraphs 367 and 388 of the Judgments. Consequently, it is clearly established that the State must pay the compensation and reimburse costs and expenses “within two years of notification of th[e] Judgment, without prejudice to making the complete payment before that date.”

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<sup>9</sup> In particular, paragraph 384 states that: “[t]he State must make the payment of the compensation for pecuniary and non-pecuniary damage as well as the reimbursement of costs and expenses established in this Judgment directly to the persons and organization indicated herein, within two years of notification of this Judgment, without prejudice to making the complete payment before that date.”

<sup>10</sup> In particular, paragraph 367 states that: “Regarding consequential damages, [...] the Court considers that it is reasonable that the family units had to incur certain expenses as a result of the facts of this case in order to undertake the search for justice and for the whereabouts of their loved ones, as well as to take care of the physical and psychological ailments they suffered as a result of the violations declared in this Judgment. The Court also takes into account the financial impact on the family unit caused by the disappearance of one or several of its members. Consequently, the Court establishes, in equity, the sum of US\$10,000.00 (ten thousand United States dollars) as compensation for consequential damage, which must be paid within one year of notification of this Judgment. For the purposes of the payment of the said amount, the representatives must indicate, within six months of notification of the Judgment, the person in each family unit to whom the said sum must be delivered.” Furthermore, paragraph 388 establishes: “[t]he amounts allocated in this Judgment as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses shall be delivered to the above-mentioned persons and organizations integrally, as established in this Judgment, without any deductions arising from possible taxes or charges, within one year of notification of this Judgment.”

<sup>11</sup> Article 76 of the Rules of Procedure establish that “[t]he Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified.” The Court recalls that even though, based on Article 76 of the Rules of Procedure, the parties may request a rectification of obvious mistakes, clerical errors, or errors in calculation only “within one month of the notice of the judgment or order,” this time frame does not apply in eventual rectifications that the Court may make *motu proprio*. *Case of Escher et al. v. Brazil. Monitoring compliance with judgment*. Order of the Court of May 17, 2010, fifteenth considering paragraph.

26. Furthermore, for the purpose of the eventual publication and dissemination of the Judgment, the Court orders the transmission to the parties and to the Commission of a corrected version of the Judgment with the pertinent rectification of the material errors found. Notwithstanding the foregoing, the Court recalls that, pursuant to Article 68 of the Rules of Procedure, the interpretation of a judgment does not suspend its execution; hence the time frames established in the Judgment must be calculated as of notification of the original version of the said decision; that is, as of December 21, 2012, taking into account that the rectifications do not affect the State's compliance with the measures of reparation established therein.

#### **B. Criteria for distributing the compensation for loss of earnings and non-pecuniary damage**

##### *Arguments of the Commission and of the parties*

27. The representatives requested clarification of four aspects of paragraph 364 of the Judgment, regarding the distribution of the compensation ordered for loss of earnings of the victims of forced disappearance. In particular, they indicated:

1. Subparagraph (b) of the said paragraph refers "to the date of death" of the victim of forced disappearance; [therefore,] they respectfully ask[ed] the [...] Court to clarify whether the date of death should be understood as the date of the forced disappearance recorded in the *Diario Militar*.
2. Subparagraph (d) refers to the case in which the payment corresponds "to his or her parents or, if they are deceased, to his or her siblings in equal shares," and they requested clarification about whether this means that the eventual payment corresponds to the parents in equal shares and, if one parent had died, whether the surviving parent should receive the total amount. In this regard, if neither parent is alive, they asked the Court to clarify whether the payment corresponds to the victim's siblings in equal shares.
3. Subparagraph (e) of the same paragraph, establishes "[...] the compensation shall be paid to the heirs in accordance with domestic inheritance laws." Regarding this provision, [they argued that] it is not clear whether this means that, for the distribution of the payment, the criteria established in Guatemala's civil legislation should be used or whether inheritance proceedings should be initiated pursuant to these laws. [According to the representatives, this] is relevant based on the implications of inheritance proceedings because this would necessarily entail financial costs and time, time that could exceed the time frame established by the Court. [...]
4. Regarding the application of the said criteria and for the purposes of the eventual distribution of the payments, [they requested clarification of whether] the next of kin of the disappeared victims who were not identified during the litigation of the case before the Commission and the Court should be considered. In other words, [whether compensation can be delivered to] individuals who were not named as petitioners during the litigation before the Commission or recognized as victims, owing to their family relationship, in the Judgment of the Court.

28. Furthermore, regarding the compensation for non-pecuniary damage, the representatives asked, with regard to paragraphs 375 and 385 of the Judgment, "which provision takes precedence," because they "found a contradiction as regards whether the criteria established by the Court indicating that domestic inheritance laws were a last option should be respected, or whether, based on the content of paragraph 385, recourse should be had to the applicable domestic law immediately." They underscored that "the criteria established in the Judgment not only avoid the costs entailed by an inheritance proceeding, but more importantly, they also ensure respect for the spirit of financial compensation." The representatives also expressed "some doubts about the eventual distribution of payments [under the criteria set out in paragraph 364] if the beneficiary was a family member who had died." In particular, they asked that the Court clarify "whether, when applying subparagraph (b) of paragraph 364, [the next of kin] that the [victims] had at the time of their death should be taken into account, even if these were different from those they had at the time of their [forced] disappearance," and "whether the disappeared victims' family members who were not identified during the litigation should be taken into consideration."

29. The State argued that it was not necessary to interpret the aspects indicated by the representatives, insofar as “most of them are regulated by the Civil Code in force in Guatemala,” because “they refer to doubts about the application of domestic law.” In this regard, it indicated that “it is not opposed to [...] the Court interpreting the aspects requested,” but that this “in no way replaces the provisions of the domestic law in force.” Therefore, “the beneficiaries must abide by the domestic procedures if they wish to receive compensation,” because “this is an essential requirement [...] for any person to be able to receive compensation.” Regarding the representatives’ doubt about the application of the criterion concerning “the date of death” of the disappeared victims, the State indicated that it “can only take into account the decision of the judge who declares the presumed death of each person.” In addition, regarding subparagraphs (d) and (e) of paragraph 364 of the Judgment, it argued that “regarding the inheritance proceedings,” “the State will be governed by the principles established in domestic law, regardless of the time and expense that undertaking an inheritance proceeding entails for the beneficiaries.” Furthermore, the State “opposed [...] taking into consideration” “the disappeared victims’ family members who were not identified during the litigation of the case before the Commission and the Court.” Nevertheless, it indicated that “the [...] persons who may receive the amounts established by the Court [...] are the persons identified in the [J]udgment, or their heirs duly accredited under domestic law.” Regarding the compensation for non-pecuniary damage, the State argued that it understood that the Court had “indicated that a domestic inheritance proceeding must be undertaken” and, in this regard, it “affirmed that it is not possible to make the payment to the heirs until they have been declared as such through the legal proceedings established by law,” which this “is a legal obligation and cannot be substituted, even if the [...] Court indicates that they can be dispensed from complying with this requirement.”

30. The Commission indicated that “subparagraph (b) of paragraph 364 of the Judgment refers to the death of the victim; therefore, it would be consistent with the rest of the Judgment to change the wording of this paragraph to the start of the execution of the forced disappearance. Regarding subparagraphs (d) and (e), the Commission consider[ed] it useful and relevant to clarify the specific aspects mentioned by the representatives in order to facilitate prompt compliance with the reparations ordered.” As regards the compensation for non-pecuniary damage, the Commission indicated that, according to paragraph 375 of the Judgment, the criteria for the payment of the non-pecuniary damage are the same as those established in paragraph 364 in relation to the pecuniary damage. However, “the Court must assess whether paragraph 385 affects the said criteria and, if so, clarify this aspect.”

#### *Considerations of the Court*

31. The Court reiterates that a request for interpretation should seek to clarify or render more precise the operative paragraphs of the judgment or the considerations that have an impact on the operative paragraphs of the judgment, rather than constituting a means of contesting the decision the interpretation of which is required (*supra* para. 10). In addition, the Court recalls that it is not possible to request the modification or annulment of the respective judgment by means of a request for interpretation.<sup>12</sup> Likewise, a request of this type cannot be used to expand the scope of a measure of reparation opportunely ordered.<sup>13</sup>

32. The Court observes that the representatives raised several questions concerning the application of paragraph 364 of the Judgment regarding the payment of the compensation for

<sup>12</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*, para. 16, and *Case of Salvador Chiriboga v. Ecuador*, *supra*, para. 11.

<sup>13</sup> Cf. *Case of Escher et al. v. Brazil. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 208, para. 11.



loss of earnings and for non-pecuniary damage established in the Judgment, as well as how it should be understood in combination with paragraph 385 of the Judgment. The Court reiterates that it will deal with the questions concerning these two types of compensation (loss of earnings and non-pecuniary damage) together, because it considers that the representatives' concerns in relation to the criteria established in the Judgment for complying with the two types of compensation are similar and related (*supra* para. 19).

33. The Court takes note that, underlying the questions posed by the representatives there are doubts about the scope of the provisions of the Judgment on merits, reparations and costs regarding the distribution of some of the compensation established in this decision. Consequently, the Court finds it admissible to interpret the meaning and scope of the aspects requested by the representatives (*infra* para. 36). The Court notes that this interpretation does not modify the measures of reparation, but rather seeks to clarify the provisions adopted by the Court, which, the Court reiterates, are final and non-appealable (*supra* paras. 6, 14 and 15).

34. Before making a specific analysis of the questions posed by the representatives, the Court finds it pertinent to make certain general clarifications about the criteria established in paragraph 364 of the Judgment, which stipulates the following:

364. The amounts indicated in favor of the above-mentioned persons as compensation for loss of earnings must be paid to their next of kin within the respective time frame established by the Court (*infra* para. 384), based on the following criteria:

- a) Fifty percent (50%) of the compensation to be distributed, in equal shares, among the children of the victim. If one or more of the children is deceased, their corresponding share shall increase the share of the other children of this victim;
- b) Fifty percent (50%) of the compensation to be paid to the spouse or permanent companion of the victim at the time of his or her death;
- c) In the event that there are no next of kin in one of the categories defined in the preceding paragraphs, the amount that would have corresponded to the next of kin in that category shall increase the share corresponding to the other category;
- d) If the victim had no children, or spouse, or permanent companion, the compensation shall be paid to his or her parents or, if they are deceased, to his or her siblings in equal shares, and
- e) In the event that there are no next of kin in one or more of the categories defined in the preceding paragraphs, the compensation shall be paid to the heirs in accordance with domestic inheritance laws.

35. From an analysis of this provision, the Court finds that it establishes four scenarios for the distribution of the compensation awarded in favor of the disappeared victims, in the order of their alternative application. In other words, the second scenario should only be applied in the absence of the first; the third should only be applied in the absence of the first and second, while the fourth scenario should only be applied if none of the next of kin established in the three preceding scenarios exist. Thus, this provision establishes that: (i) first, the compensation belonging to the disappeared or deceased victims must be delivered to and shared between their children and their spouse or permanent companion, in the proportions set out therein. If the victim had no children, or no spouse or permanent companion, the fifty percent corresponding to the non-existent category "shall increase the share corresponding to the other category" that does exist (*subparagraphs (a), (b) and (c) of paragraph 364 of the Judgment*); (ii) second, the Judgment establishes that if the disappeared victim had no children, or spouse, or permanent companion, then the compensation established in his or her name in the Judgment shall be paid to and shared between his or her parents (*first part of subparagraph (d) of paragraph 364*); (iii) the third scenario establishes that "if [the parents] are deceased," the compensation of the disappeared or deceased victim shall be paid to his or her siblings in equal shares (*last part of*

*subparagraph (d) of paragraph 364*), and (iv) the fourth scenario is applicable only if the disappeared or deceased victim had no children, no spouse or permanent companion, no parents or siblings, when the provisions of “domestic inheritance laws” must be applied (*subparagraph (e) of paragraph 364*).

36. Having made the foregoing considerations, the Court now proceeds to examine the specific requests made by the representatives, taking into account the corresponding arguments of the State and the Commission, in the following order: (B.1) application of paragraphs 364, 375 and 385 of the Judgment; (B.2) beneficiaries of or heirs to the compensation established in the Judgment; (B.3) application of subparagraph (b) of paragraph 364 of the Judgment; (B.4) application of subparagraph (d) of paragraph 364 of the Judgment, and (5) scope and application of subparagraph (e) of paragraph 364 of the Judgment.

*B.1) Application of paragraphs 364, 375 and 385 of the Judgment*

37. First, the Court proceeds to interpret the meaning and scope of paragraphs 364, 375 and 385 of the Judgment based on the questions posed by the representatives with regard to their application. In this regard, the Court considers that the interpretation of these provisions is directly related to the representatives’ questions on the universe of beneficiaries to whom the compensation established in the Judgment should be delivered (*supra* paras. 27 and 28). Consequently, the Court finds it pertinent to include some general considerations concerning the victims in this case, and will then examine the specific questions posed by the representatives.

38. In this regard, the Court notes that, according to the Judgment, most of the victims in this case can be divided into two groups: the 26 victims of forced disappearance recorded in the “*Diario Militar*” (also identified as “disappeared victims” throughout the Judgment), and the latter’s next of kin who were declared victims in their own right of the facts examined in this case (also identified as “next of kin of the disappeared victims” throughout the Judgment). In addition to these two groups of people, the following were also declared to be victims in their own right: a deceased victim recorded in the “*Diario Militar*” (Rudy Gustavo Figueroa) and his next of kin, owing to the State’s failure to investigate his death effectively, and Igor and Wendy Santizo Méndez, owing to the State’s failure to investigate their alleged detention and torture effectively. To facilitate the analysis of the questions posed by the representatives, in this Judgment on interpretation, the Court will identify the victims in this case in two groups: (i) the “victims recorded in the *Diario Militar*” (which includes the 26 victims of forced disappearance and Rudy Gustavo Figueroa Muñoz) and the “next of kin who are victims” (which includes the next of kin of the disappeared victims and the next of kin of Rudy Gustavo Figueroa Muñoz, who were declared victims in their own right in the Judgment).

39. The Court considers that the persons who the Court considered to be victims in this case is sufficiently clear in the Judgment; specifically in paragraphs 217, 222, 267, 281, 282, 291, 292, 302, 308, 312, 318 and 325, and in the Annex to this ruling. Under Article 63(1) of the Convention, the compensation ordered in the Judgment as a measure of reparation was established in favor of the persons declared victims in this ruling. In this regard, paragraph 325 stipulates:

The Court reiterates that, under Article 63(1) of the Convention, the injured party is considered to be the person declared a victim of the violation of any right recognized therein. Consequently, the Court considers “injured party” to be those persons identified in the Annex on victims of this Judgment and, as victims of the violations declared in Chapters VIII-1, VIII-2 and VIII-3, they will be considered beneficiaries of the reparations ordered by the Court.

40. In addition, the Court emphasizes that, in this case, the exception established in Article 35(2) of the Court's Rules of Procedure that allows other persons to be included as victims following the delivery of the Judgment was not applied,<sup>14</sup> in contrast to other cases decided by the Court.<sup>15</sup> Therefore, the Court underscores that, as argued by the State, the victims in this case are exclusively those persons declared as such in the pertinent parts of the Judgment.

41. Based on the above, the compensation ordered in the Judgment was established exclusively in favor of the victims in this case, as revealed by paragraphs 325, 363, 367, 371, 373 and 374 of the Judgment. However, in the absence of those entitled to the compensation, due to either their disappearance or death, the Court established two methods of paying the said compensation to their heirs.

42. On the one hand, the Court recalls that paragraph 364 establishes the criteria to be followed in order to distribute the compensation for loss of earnings of the victims of forced disappearance established in the Judgment (*supra* para. 34).

43. In addition, regarding the compensation established in the Judgment for non-pecuniary damage, in paragraph 375 of its Judgment the Court stipulated that:

375. [...] The amounts determined in favor of the persons who were disappeared, or of those victims or their next of kin who are now deceased, must be paid in accordance with the above-mentioned criteria (*supra* para. 364).

44. On the other hand, paragraph 385 of the Judgment states:

385. If any of the beneficiaries are deceased or die before they have received the respective compensation, this will be provided directly to the heirs, pursuant to the applicable domestic law.

45. In its consistent case law, when ordering the payment of compensation to victims who are deceased or have been forcibly disappeared in application of Article 63(1) of the Convention, the Court has established the manner in which this compensation must be delivered to the next of kin or heirs.<sup>16</sup> In some cases, the Court has ordered that this compensation be distributed among the next of kin or heirs according to the criteria established in the applicable domestic law. However, in certain cases, the Court has also found it appropriate to establish the criteria to be used by the State when distributing the compensation established in favor of deceased or disappeared victims.<sup>17</sup> These criteria do not necessarily coincide with the

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<sup>14</sup> Article 35(2) of the Court's Rules of Procedure establish that: "[w]hen it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims."

<sup>15</sup> Cf. *Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 310, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, Merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 251.

<sup>16</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Interpretation of the judgment on reparations and costs.* Judgment of September 9, 2005. Series 131, para. 32.

<sup>17</sup> In this regard see, *inter alia*: *Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, paras. 49, 52 to 55 and 58; *Case of El Amparo v. Venezuela. Reparations and costs.* Judgment of September 14, 1996. Series C No. 28, para. 41; *Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, paras. 91, 93, 101, 102 and 111; *Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109, paras. 230 and 231; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, paras. 240 and 241; *Case of the Río Negro Massacres v. Guatemala, supra*, para. 310, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 289.

provisions of domestic law on inheritance matters, and the Court has therefore weighed the effects of its rulings based on the factual framework of the case.<sup>18</sup>

46. Regarding the State's argument that "domestic inheritance proceedings must be undertaken" regardless of the Court's indications in this regard (*supra* para. 29), the Court recalls that Article 63(1) of the Convention empowers the Inter American Court to determine the measures that permit making reparation for the consequences of a violation, and to regulate all aspects thereof.<sup>19</sup> When ordering the different measures of reparation, the Court is not limited by the domestic law of the State found responsible.<sup>20</sup>

47. When the Court establishes criteria for the distribution of the compensation established in favor of disappeared or deceased persons, it is precisely to avoid, insofar as possible, that the next of kin of the victims, who have already accredited their identity and relationship before this Court, have to undertake domestic inheritance proceedings, which could delay unnecessarily the payment of the compensation established in the Judgment.

48. During the merits and reparations stage of this case and based on information provided by the Commission and the representatives that was not contested by the State, the Court identified the next of kin of the victims recorded in the *Diario Militar* who were also considered victims in their own right of certain violations declared in the Judgment (referred to in this Judgment as "next of kin who are victims," *supra* para. 38). To the contrary, the Judgment did not individualize those who, as heirs, should receive the compensation established in the Judgment in favor of the "next of kin who are victims." Consequently, the Court considers that by reading the three provisions on the distribution of compensation together, it is clear that paragraph 364 of the Judgment establishes the criteria that the State should apply in order to pay the compensation established in the Judgment in favor of the victims recorded in the *Diario Militar* (the 26 victims of forced disappearance and Rudy Gustavo Figueroa Muñoz); while the compensation established in favor of the "next of kin who are victims" who have died must be delivered "directly to their heirs, in accordance with the applicable domestic law."

49. Therefore, this Court interprets that paragraph 375 of the Judgment applies only to the distribution of the non-pecuniary compensation established in favor of the victims recorded in the *Diario Militar*, and that it is the provisions of paragraph 385 of that decision that apply to the "next of kin who are victims." Hence, this means that the reference to "their next of kin" in paragraph 375 is a material error.

50. The Court also notes that paragraph 385 uses the word "beneficiaries," so that, in addition to the "next of kin who are victims," those victims recorded in the *Diario Militar* are also covered (*supra* para. 44). In this regard, the Court finds it pertinent to clarify that, even though the provision in paragraph 385 of the Judgment is the prevailing criterion for the delivery of the

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<sup>18</sup> In this regard, *inter alia*, *Case of Aloeboetoe et al. v. Suriname. Reparations and costs*. Judgment of September 10, 1993. Series C No. 15, paras. 77 and 97; *Case of El Amparo v. Venezuela, supra*, paras. 40, 41 and 42; *Case of Neira Alegría et al. v. Peru. Reparations*. Judgment of September 19, 1996. Series C No. 29, paras. 60 and 61; *Case of Garrido and Baigorria v. Argentina. Reparations*. Judgment of August 27, 1998. Series C No. 39, paras. 55, 56 and 65; *Case of El Caracazo v. Venezuela, supra*, paras. 91 to 93; *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, Merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, paras. 164, 165 and 178; *Case of Carpio Nicolle et al. v. Guatemala. Merits, reparations and costs*. Judgment of November 22, 2004. Series C No. 117, paras. 98 and 99, and *Case of the Serrano Cruz Sisters v. El Salvador, supra*, para. 34.

<sup>19</sup> Cf. *Case of Aloeboetoe et al. v. Suriname, supra*, para. 44; *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2005. Series C No. 129, para. 147, and *Case of Radilla Pacheco v. Mexico. Preliminary objections, Merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 327.

<sup>20</sup> Cf. *Case of Aloeboetoe et al. v. Suriname, supra*, para. 44, and *Case of the Serrano Cruz Sisters v. El Salvador, supra*, para. 29.

compensation established in favor of the “next of kin who are victims,” this provision must be interpreted as subsidiary and complementary to the criteria established in paragraph 364 of the said decision for the victims recorded in the *Diario Militar*, as is evident from subparagraph (e) of that paragraph. Therefore, when distributing the compensation in favor of the victims recorded in the *Diario Militar*, the State must apply the criteria set out in subparagraphs (a), (b), (c) and (d) of paragraph 364 of the Judgment, and only apply domestic inheritance law when the existence of children, spouse, permanent companion, parents or siblings has not been established (*supra* para. 35).

51. Taking into account the provisions of paragraph 26, 48, 49 and 50 *supra*, and pursuant to Article 76 of the Court’s Rules of Procedure, the Court finds it pertinent to rectify the material error in paragraph 375 of the Judgment, as indicated in this Judgment, in order to provide greater clarity regarding its provisions and ensure that confusion does not arise in future following the publication and dissemination of the Judgment at the domestic level or during the stage of monitoring compliance with it.

*B.2) Beneficiaries of or heirs to the compensation established in the Judgment*

52. Now that the meaning and scope of paragraphs 364, 375 and 385 of the Judgment have been determined, the Court will proceed to rule on the questions posed by the representatives concerning the beneficiaries of or heirs to the compensation. Specifically, the representatives asked the Court whether, for the purposes of the distribution of the compensation, in keeping with paragraphs 364, 375 and 385 of the Judgment, only the victims’ next of kin who were identified and individualized in the proceedings should be considered, or whether, to the contrary, the victims’ next of kin who were not identified during the litigation of the case before the inter-American human rights system should be taken into account.

*B.2.a) Distribution of the compensation of the “next of kin who are victims”*

53. First, this Court reiterates that the compensation established in the Judgment was ordered in favor of those persons declared victims in this ruling. As mentioned previously, the victims include some family members of the victims recorded in the *Diario Militar* who, in turn, were declared victims in their own right (*supra* para. 38). Thus, the compensation established for the “next of kin who are victims” corresponds to them directly; in other words, they are the ones entitled to this compensation. According to paragraphs 384 and 385 of the Judgment, this compensation must be paid directly to those entitled to it, unless they are deceased, in which case the corresponding payment must be made directly to their heirs, in accordance with the applicable domestic law (*supra* paras. 38, 39, 48 and 49).

54. However, the Court recalls that the Judgment does not identify those persons who, as heirs, should receive the compensation established in the Judgment in favor of the “next of kin who are victims” who are deceased (*supra* para. 48). Therefore, the Court notes that, indeed, the compensation established in favor of the “next of kin who are victims” who are deceased or who die must be delivered to their heirs under domestic law, regardless of whether or not the latter are victims in this case.

*B.2.b) Distribution of the compensation of the victims recorded in the Diario Militar to their next of kin*

55. Furthermore, regarding the victims recorded in the *Diario Militar*, the Court recalls that the criteria established in paragraph 364 of the Judgment must be applied when delivering the compensation to their next of kin (*supra* paras. 48, 49 and 50). The Court clarifies that the next of kin of the victims recorded in the *Diario Militar* who are victims in their own right of the facts of

this case were duly identified during the proceedings before the inter-American human rights system, specifically before the Court. Furthermore, the human rights violations committed against them were duly established and proved during the proceedings on the merits of this case. As previously mentioned, when the Court establishes criteria for the distribution of compensation established in favor of disappeared or deceased persons, it seeks to facilitate the payment of the compensation to their next of kin who, in principle, are identified in the Judgment (*supra* para. 47).

56. However, based on what the representatives indicated in their request for interpretation, the Court understands that, possibly, the victims recorded in the *Diario Militar* has other family members who should receive part of the compensation provided in the Judgment in favor of the victims recorded in the *Diario Militar*, based on their status as heirs. The Court considers that the Judgment and, in particular, paragraphs 364 and 385 thereof, does not exclude the possibility that next of kin who are not identified or accredited as victims in the case, can receive, as heirs, part of the compensation established in favor of their relative recorded in the *Diario Militar*. However, in contrast to other cases, in this case, the Court did not establish in the Judgment a specific mechanism for determining other possible family members of the victims recorded in the *Diario Militar*.

57. Despite this, the Court considers that it is clear from the Judgment that the State must pay the compensation ordered in that decision in favor of the victims recorded in the *Diario Militar* within two years and as established in paragraph 364. Therefore, the Court considers it pertinent that, in order to assist the State to comply with the payment of the compensation to the victims within the time frame and in the manner set out in the Judgment, the possible next of kin of the victims recorded in the *Diario Militar* who are not identified in the Annex to the Judgment but who are in one of the categories indicated in paragraph 364 of the Judgment, must come forward and authenticate this before the Presidential Commission for Coordinating the Executive's Human Rights Policy (COPREDEH) or before the entity of the Executive Branch that the State designates to this end, within 30 days of notification of this decision. After these 30 days, the possible next of kin have six months to approach COPREDEH or, when appropriate, the entity designated by the State, with the pertinent identification documents, official documents that prove their family relationship, or other probative means that conclusively prove their identity and relationship to the victims of this case recorded in the *Diario Militar*. If, after those six months, other next of kin of the victims recorded in the *Diario Militar* corresponding to the categories established in paragraph 364 have not come forward before the competent domestic authorities, the State may distribute the compensation established in the Judgment in favor of the disappeared victims and of Rudy Gustavo Figueroa Muñoz among the next of kin identified in the Judgment. Regarding the latter, the Court stresses that the State may not demand that the "next of kin who are victims" already identified in the Judgment comply with additional requirements at the domestic level or file an inheritance proceeding for the purpose of the distribution of the compensation of the victims recorded in the *Diario Militar* (*infra* para. 61).

58. Moreover, the Court notes that, for the effects of their participation in the distribution of the compensation in accordance with the criteria established in paragraph 364 of the Judgment, the State must take into account the provisions of paragraph 372 of the Judgment, in the sense that it must consider Laurenta Marina Sosa Calderón to be the mother of Orencio Sosa Calderón, because, even though she is his sister, she was the one who took care of him and raised him on the death of their mother; also, it must consider the nephews of Rubén Amílcar Farfán to be his children because, according to information provided by the representatives and not disputed by the State, they considered him to be their father.<sup>21</sup> While the Court indicated these assumptions

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<sup>21</sup> Cf. *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 372.

in order to establish the non-pecuniary compensation, the Court clarifies that these criteria should also be taken into account for the purpose of the participation of these persons in the distribution of the pecuniary and the non-pecuniary compensation of their respective disappeared family members.

59. The Court also reiterates and emphasizes that the identification and accreditation of other next of kin does not establish these possible heirs of the victims recorded in the *Diario Militar* as victims in this case for the purpose of the reparations established in the Judgment. However, the Court points out that this does not preclude the possibility that such persons may file any actions they consider appropriate at the domestic level in relation to the facts of this case.

60. The Court notes that the State argued that it “cannot compensate the beneficiaries unless they prove their right to receive compensation,” meeting “all the requirements established in [domestic] law” to this end. However, at the same time Guatemala indicated that “[i]n the case of the beneficiaries established in the Judgment, they must identify themselves in accordance with the law and, in the case of their heirs because they are deceased, the beneficiaries established in the Judgment must prove their status as heirs pursuant to the provisions of domestic law.” Based on the foregoing, the Court finds it unclear whether the State’s arguments concerning the need to comply with the requirements of domestic law in order to receive the compensation ordered in the Judgment refer to the victims of this case or whether these arguments refer to other possible heirs of the victims, who were not identified and individualized in the Judgment.

61. Notwithstanding the above, the Court finds it relevant to clarify that the determination of the victims who are beneficiaries of the reparations established in the Judgment was made when delivering the Judgment, based on the arguments submitted by those who intervened in the case and the body of evidence provided to the proceedings, in light of the provisions of the American Convention and its underlying principles. Consequently, this determination cannot be modified by the State invoking provisions of domestic law.<sup>22</sup> Therefore, the Court notes that, in the domestic sphere, it is not possible to require additional evidence of their status as victims or next of kin of disappeared victims or beneficiaries of the reparations from those who have been explicitly declared as such by the Court in the Judgment, because this would entail re-examining factual and legal matters that have already been decided in the Judgment.<sup>23</sup> The Court reiterates that all aspects of the obligation to provide reparation (scope, nature, method and identification of the beneficiaries) are regulated by international law, and cannot be modified or disregarded by the responsible State invoking domestic legal provisions or difficulties.<sup>24</sup>

62. Furthermore, regarding the possible additional next of kin of the victims recorded in the *Diario Militar*, the Court considers that, despite the Court’s observations in paragraph 57 *supra*, the State has a certain margin of discretion as regards the other aspects relating to the determination of the other possible next of kin of the victims recorded in the *Diario Militar*, in order to provide them with their share of the compensation (*supra* paras. 34 and 35), in their capacity as heirs. The Court takes note of the State’s arguments that it “will be governed by the principles established in domestic law, regardless of the time and expense that undertaking an

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<sup>22</sup> Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 61. Also, *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs*. Judgment of June 20, 2005. Series C No. 126, para. 123, and *Case of Acosta Calderón v. Ecuador, supra*, para. 147.

<sup>23</sup> Cf. *Case of the Pueblo Bello Massacres v. Colombia. Interpretation of the judgment on merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 159, para. 34.

<sup>24</sup> Cf. *Case of Aloeboetoe et al. v. Suriname, supra*, para. 44, and *Case of the Serrano Cruz Sisters v. El Salvador, supra*, para. 29.

inheritance proceeding entails for the beneficiaries" (*supra* para. 29). In this regard, the Court observes that effective compliance with the payments ordered in the Judgment within two years is a State obligation, and the latter cannot abstain from assuming the international responsibility that has been established for domestic reasons.<sup>25</sup> In addition, the Court recalls that, according to the provisions of paragraph 383 of the Judgment, "during the proceedings on monitoring compliance with this Judgment, [the Court] may determine that the State reimburse the victims or their representatives the reasonable expenses they incur during this procedural stage." Thus, as the Court has underscored in other cases,<sup>26</sup> the State has the obligation to implement the appropriate mechanisms to ensure compliance with its obligations as expeditiously and efficiently as is possible, in the conditions and within the time frame stipulated in the Judgment and, particularly, to take the appropriate measures to ensure that the compensation established in favor of the victims recorded in the *Diario Militar* is paid in accordance with the distribution criteria established in paragraph 364 of the Judgment and within the two-year period established in paragraph 384 of the Judgment.

### *B.3) Application of subparagraph (b) of paragraph 364 of the Judgment*

63. The Court observes that the representatives asked how the expression "at the time of death," in subparagraph (b) of paragraph 364, should be interpreted, in relation to the disappeared victims.

64. In this regard, the Court notes that, in its Judgment, it clarified and reiterated that forced disappearance of persons, inasmuch as it is a complex phenomenon of human rights violations, is continuing and permanent in nature, because it begins with the deprivation of the victim's liberty and continues to be perpetrated until the whereabouts of the victim are known or, when applicable, his or her remains are reliably identified; at which time it can be considered that the violation has ceased. This continuing or permanent nature of forced disappearance has been recognized in Article III of the Inter-American Convention on Forced Disappearance of Persons, as well as in other international instruments, the jurisprudence of the European human rights system, decisions of the Human Rights Committee of the International Covenant on Civil and Political Rights, and decisions of high national courts.<sup>27</sup> Thus, in paragraph 191 of the Judgment, it is clearly stated that, "since 1988, the Court has established in its case law, the permanent or continuing nature of the forced disappearance of persons, which has been recognized repeatedly by international human rights law."<sup>28</sup> Also, in paragraph 195 of the Judgment, it is reiterated that "the permanent nature of forced disappearance means that it continues until the whereabouts of the disappeared person are known and his or her identity is determined with certainty"; hence, the forced "disappearance [of 24 disappeared victims] has not ceased, because their whereabouts or fate is still unknown."<sup>29</sup> Similarly, in paragraphs 206 and 207 of

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<sup>25</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of De la Cruz Flores v. Peru. Monitoring compliance with judgment and request for the adoption of provisional measures*. Order of the Court of September 1, 2010, fifth considering paragraph; *Case of Tristán Donoso v. Panama. Monitoring compliance with judgment*. Order of the Court of September 1, 2010, fifth considering paragraph, and *Case of Kimel v. Argentina. Monitoring compliance with judgment*. Order of the Court of November 15, 2010, eleventh considering paragraph.

<sup>26</sup> Cf. *Case of Suárez Rosero v. Ecuador. Interpretation of the judgment on reparations*. Judgment of May 29, 1999. Series C No. 51, para. 28.

<sup>27</sup> Cf. *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*, *supra*, footnote 182 and para. 193.

<sup>28</sup> *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*, *supra*, para. 191.

<sup>29</sup> Cf. *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*, *supra*, para. 195, citing: *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 59, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, paras. 112 and 113.



the Judgment, it is clarified that, even though the *Diario Militar* apparently records the execution of 17 of the 26 disappeared victims in this case, in cases of forced disappearance where there are indications that the victim is deceased, the determination of whether this phenomenon has been constituted and its cessation, if applicable, necessarily implies finding the remains and establishing their identity as reliably as possible, because, until the remains have been identified, the forced disappearance continues to be perpetrated.<sup>30</sup>

65. Despite the continuing nature of forced disappearance, the Court considers that a reasonable reading of the Judgment leads to the conclusion that the spouse or permanent companion who should inherit part of the compensation established in the Judgment in favor of the disappeared victims refers to the one the victim had when the forced disappearance started. Therefore, the Court notes that the phrase “at the time of death” in subparagraph (b) of paragraph 364 of the Judgment, contains a material omission, because it does not specify that, with regard to the disappeared victims, the fifty percent (50%) of the compensation must be paid to the person who was the spouse or permanent companion of the victim at the start of their forced disappearance. In application of Article 76 of the Rules of Procedure and taking into account the provisions of paragraph 26 *supra*, the Court finds it pertinent to rectify this material error in the Judgment. In addition, the Court notes that, the dates established in this regard in the proven facts of the Judgment should be taken as the date of the start of the forced disappearance of the 26 disappeared victims.

66. The Court notes that the State argued that “Guatemalan law establishes the procedure to determine the date of death of a disappeared person” and, therefore, regardless of the Court’s interpretation, the State “can only take into account the decision of the judge who declares the presumed death of each person” (*supra* para. 29). In this regard, the Court reiterates that all aspects of the obligation to provide reparation are regulated by international law and, therefore, cannot be modified or disregarded by the State invoking its domestic law (*supra* para. 61).

#### *B.4) Application of subparagraph (d) of paragraph 364 of the Judgment*

67. The Court observes that the representatives inquired about the method for distributing the compensation of the disappeared victims, if it had to be delivered to the parents or siblings of these victims. In this regard, the Court considers that, from reading paragraph (d) of the said paragraph 364, it is clear that, if the compensation established in favor of the victims recorded in the *Diario Militar* must be delivered to their parents, it must be divided in equal parts between the two parents. Also, pursuant to its case law, the Court interprets that if one of the parents is deceased, the total compensation must be paid to the surviving parent.<sup>31</sup> In the absence of both parents, the third scenario established in paragraph 364 of the Judgment is applied, whereby the compensation established in favor of the victim recorded in the *Diario Militar* is paid to his or her siblings in equal shares (*supra* para. 35).

#### *B.5) Scope and application of subparagraph (e) of paragraph 364 of the Judgment*

68. The Court also observes that the representatives posed specific questions about the eventual application of subparagraph (e) of paragraph 364 of the Judgment. In particular, they

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<sup>30</sup> Cf. *Case of Gudiel Álvarez (“Diario Militar”) v. Guatemala*, *supra*, paras. 206 and 207, citing: *Case of Tiu Tojin v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 84; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 82, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 113

<sup>31</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 148 (b); *Case of the 19 Tradesmen v. Colombia*, *supra*, para. 230 (c), and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 237(c).

asked whether the reference to domestic inheritance laws in this scenario “means that, for the purposes of the distribution of the payment, the criteria established in Guatemala’s civil laws should be used or whether an inheritance proceeding should be initiated in keeping with those laws” (*supra* para. 27). This Court reiterates that the application of domestic inheritance laws to the distribution of the compensation for the victims recorded in the *Diario Militar* is the final alternative after exhausting the other scenarios established in that paragraph (*supra* para. 35). Nevertheless, the Court notes that the reference to domestic law in subparagraph (e) of paragraph 364 does not limit its application to the distribution criteria of domestic inheritance law, but rather relates to the fact that the compensation should be distributed in accordance with this branch of domestic law, which includes all formal and procedural requirements. Therefore, notwithstanding the considerations in paragraphs 57, 58 and 61 *supra*, in the cases where this scenario must be applied, the relevant requirements of domestic law must be met, as this Court has established in other cases.<sup>32</sup>

## V OPERATIVE PARAGRAPHS

69. Therefore,

### THE COURT

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Rules of Procedure,

### DECIDES:

Unanimously,

1. To declare that the brief of the State of March 5, 2013, and similar arguments included in the State’s brief of April 30, 2013, do not constitute a request for interpretation, or have an impact on the final and non-appealable nature of the Judgment in this case under Article 67 of the American Convention.
2. To declare admissible the request for interpretation of the Judgment on merits, reparations and costs in the case of *Gudiel Álvarez et al. (Diario Militar) v. Guatemala* filed by the representatives of the victims.
3. To rectify the material errors contained in paragraphs 367 and 388 of the Judgment, regarding the time frame for complying with the pecuniary obligations ordered in the Judgment, as well as in subparagraph (b) of paragraph 364, and in paragraph 375 regarding the beneficiaries and the method of distributing the compensation established in the Judgment, so that they reflect the rectifications made in paragraphs 24 to 26, 48 to 51 and 65.
4. To clarify, by interpretation, the meaning and scope of the provisions of paragraphs 364, 375 and 385 of the Judgment, regarding the distribution criteria and beneficiaries of the compensation established in the Judgment, in the terms of paragraphs 31 to 51, 53 to 62, 65, 67 and 68 of this Judgment of interpretation.

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<sup>32</sup> Cf. *Case of Bueno Alves v. Argentina. Monitoring compliance with judgment*. Order of the Court of July 5, 2011, sixteenth considering paragraph; *Case of the Pueblo Bello Massacre v. Colombia. Interpretation of the judgment on merits, reparations and costs*, *supra*, para. 34, and *Case of the Las Dos Erres Massacre v. Guatemala. Monitoring compliance with judgment*. Order of the Court of September 4, 2012, twenty-fourth considering paragraph.

5. To require the Secretariat of the Court to notify this Judgment to the Republic of Guatemala, the representatives of the victims, and the Inter-American Commission on Human Rights.

Done, at San José, Costa Rica, on August 19, 2013, in the Spanish and English languages, the Spanish version being authentic.

Diego García-Sayán  
President

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary