

**Order of the
Inter-American Court of Human Rights^{*}
of November 16, 2009
Case of Molina-Theissen v. Guatemala
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on merits passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on May 4, 2004.
2. The Judgment on reparations rendered by the Court on July 3, 2004, whereby it ordered as follows:
 2. the State must find and deliver the mortal remains of Marco Antonio Molina-Theissen to his next of kin [...];
 3. the State must effectively investigate the facts of the instant case, with the aim of identifying, trying, and punishing the direct perpetrators and masterminds of the forced disappearance of Marco Antonio Molina-Theissen, and the result of this process must be made known to the public [...];
 4. the State must publish within three months from the date of notification of the [...] Judgment, at least once, in the *Diario Oficial* and in another newspaper with national circulation, both the Section on Established Facts in Chapter V and operative paragraphs one to five of the Judgment on merits delivered by the Court on May 4, 2004, as well as Chapter VI, entitled Proven Facts, without the footnotes, and operative paragraphs one to eight of the [...] Judgment [on reparations];
 5. the State must carry out, in the presence of its senior authorities, a public act to acknowledge its international responsibility concerning the facts of this case, and to make amends to Marco Antonio Molina-Theissen and his next of kin [...];
 6. the State must designate an existing educational center in Guatemala City with a name that refers to the children who disappeared during the internal armed conflict, and it must place a plaque in memory of Marco Antonio Molina-Theissen at that center [...];
 7. the State must establish a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance [...];
 8. the State must adopt such legislative, administrative, or other measures as may be necessary to establish a genetic information system [...];
 9. the State must pay the total sum of US\$275,400.00 (two hundred and seventy-five thousand four hundred United States dollars), or its equivalent in Guatemalan currency, as compensation for pecuniary damages [...];
 10. the State must pay the total sum of US\$415,000.00 (four hundred and fifteen thousand United States dollars) or its equivalent in Guatemalan currency, as compensation for non-pecuniary damages [...];
 11. the State must pay the total sum of US \$7,600.00 (seven thousand six hundred United States dollars) or its equivalent in Guatemalan currency, which must be given to Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, for costs and expenses of the proceedings at the domestic level and the international proceedings before the inter-American system for the protection of human rights [...]
3. The Court's Order of July 10, 2007, whereby it held as follows:

^{*} Due to *force majeure* reasons, Judge Cecilia Medina-Quiroga, President of the Court, and Judge Leonardo A. Franco did not take part in the deliberations leading to and the signing of this Order. Vice President Diego García-Sayán took over the Presidency pursuant to Article 5(1) of the Rules of Procedure of the Court.

1. That the State ha[d] complied fully with the following operative paragraphs of the judgment on reparations:

a) organization, in the presence of its senior authorities, of a public act to acknowledge its international responsibility in relation to the facts of this case and to make amends to Marco Antonio Molina-Theissen and his next of kin (*fifth operative paragraph of the judgment on reparations*);

b) designation of an existing educational center in the city of Guatemala with a name that refers to the children who disappeared during the domestic armed conflict and placement of a plaque in remembrance of Marco Antonio Molina-Theissen (*sixth operative paragraph of the judgment on reparations*);

c) payment of the amounts established for compensation for pecuniary and non-pecuniary damages (*ninth and tenth operative paragraph of the judgment on reparations*); and

d) payment of the amount established for costs and expenses in the domestic proceedings and in the international proceedings before the inter-American system for the protection of human rights (*eleventh operative paragraph of the judgment on reparations*).

2. That it w[ould] keep open the procedure to monitor the compliance of those aspects pending compliance in the instant case, to wit:

a) finding and delivering the mortal remains of Marco Antonio Molina-Theissen to his next of kin (*second operative paragraph of the judgment on reparations*);

b) investigation into the facts of this case in order to identify, prosecute and punish the masterminds and perpetrators of the forced disappearance of Marco Antonio Molina-Theissen (*third operative paragraph of the judgment on reparations*);

c) establishment of a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance (*seventh operative paragraph of the judgment on reparations*); and

d) adoption of such legislative, administrative or other measures as may be necessary to establish a genetic information system (*eighth operative paragraph of the judgment on reparations*).

4. The Order of the President of the Court (hereinafter, "the President"), whereby she asked the Republic of Guatemala (hereinafter, "the State" or "Guatemala"), the representatives of the victims (hereinafter, "the representatives") and the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") to a private hearing, in order for the Court to obtain information from the State as regards compliance with the Judgment on reparations delivered in the instant case, and for it to receive the observations of the Inter-American Commission and the representatives on the subject.

5. The private hearing held at the seat of the Court on October 1, 2009 from 9:00 a.m. to 10:30 a.m.¹ The State submitted certain documents during the hearing.

CONSIDERING:

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

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

¹ In conformity with Article 6(2) of the Rules of Procedure, to hold the hearing the Court used a commission of judges made up of Judge Sergio García-Ramírez, Judge Leonardo A. Franco and Judge Rhadys Abreu-Blondet. The hearing was attended by: a) on behalf of the Inter-American Commission: Lilly Ching; b) on behalf of the victims and the representatives: Lucrecia Molina-Theissen, for the Molina-Theissens, and Marcela Martino, Gisela De León, Annette Martínez, Fátima Mena, Carlos María Pelayo-Moller and Nancy Marín, for *Centro por la Justicia y el Derecho Internacional* [Center for Justice and International Law] (CEJIL), and c) on behalf of the State of Guatemala: Delia Marina Dávila-Salazar, Agent, and María Elena de Jesús Rodríguez-López, Deputy Agent.

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

4. That, given the final and not-subject-to-appeal nature of the Court’s judgments as established in Article 67 of the Convention, said judgments are to be promptly and fully complied with by the State.

5. 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, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by 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 their pre-established international responsibility. That the State Parties’ obligations under the Convention bind all State branches and organs.³

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

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7. That, as regards the obligations to find and deliver the mortal remains of Marco Antonio Molina-Theissen to his next of kin (*second operative paragraph of the Judgment on reparations*), and investigate the facts of the instant case with the aim of identifying, trying, and punishing the direct perpetrators and masterminds of his forced disappearance (*third operative paragraph of the Judgment on reparations*), the State explained that, on December 14, 2006, the bill for the enactment of the *Ley de la Comisión de Búsqueda de Personas Víctimas de la Desaparición Forzada y Otras Formas de Desaparición* [Law on the Search Commission for Victims of Forced Disappearance and other Forms of Disappearance] was submitted to the *Dirección Legislativa* [Lawmaking Division] of the Congress of the Republic of Guatemala. Moreover, it noted that “there has been no progress in fulfilling the investigation in the proceedings intended to establish the criminal liability of those responsible for the disappearance of Marco Antonio Molina-Theissen”.

8. That, in the course of the private hearing (*supra* Having Seen clause No. 5), the representatives noted as follows:

really, as far as we [the representatives] are concerned, hearing the information the State of Guatemala has submitted today is very frustrating. [...] we deeply regret that, today, the

² Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131.

³ 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 the Ituango Massacres v. Colombia. Monitoring Compliance with Judgment*. Order of the Court of July 7, 2009, Considering Clause No. 5, and *Case of Herrera-Ulloa v. Costa Rica. Monitoring Compliance with Judgment*. Order of the Court of July 9, 2009, Considering clause No. 5.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru. Competence. Judgment of September 24, 1999*. Series C No. 54, para. 37; *Cases of the Ituango Massacres. Monitoring Compliance with Judgment, supra* note 3, Considering clause No. 6, and *Case of Herrera-Ulloa V. Costa Rica. Monitoring Compliance with Judgment, supra* note 3, Considering clause No. 6.

State is once again repeating [...] the information that was already submitted during the written proceedings.

[...]

As regards the search for the mortal remains of Marco Antonio Molina and the delivery of such remains to his next of kin, the Court was clear in the order whereby it organized this private hearing that the information the State had submitted thus far could be traced back to a bill dating more than three years back, which had not been ruled upon by even one of the two committees it needs to be approved by in order to be debated by the house in full. The Court asked the State for concrete information regarding which steps had been taken, in addition to said bill that was more than three years old, and the State repeated the same information it had been providing via its written reports, when submitted in proper time. [...]

[...] unfortunately, the State has failed to provide any new information, while once again conditioning the adoption of any sort of measures intended to find the remains of Marco Antonio upon the enactment of a law. This is a law which, in addition, according to its accompanying submission statement, is to govern the search for more than 45 thousand people who disappeared during the armed conflict in Guatemala.

[...]

The same is true of the investigation [...]. In April this year, we asked for a meeting with the attorney from the *Procuraduría de Derechos Humanos* [Office of the Attorney for Human Rights] in charge of the investigation; after the meeting, we reported on the serious status of the investigation, as the attorney [...] personally advised us that he was unable to adequately follow up on the investigation, given the lack of material resources. He is in charge of 100 cases, one of which is the case of Molina-Theissen. He was not even aware of the fact that a judgment had been rendered in that case by the Inter-American Court of Human Rights. Obviously enough, he did not possess updated information on the proceedings, other than the constant time extensions the Supreme Court has granted in an investigation which, as noted by the State itself, has seen no progress whatsoever.

9. That, at the hearing, the Commission noted that five years ago the State acknowledged its responsibility. "However, such acknowledgment is not reflected by, and fails to translate into, serious action proportionate to the harm inflicted, to the seriousness of the violation." It further noted that it was at a loss as to how the enactment of the bill referred to by the State into a law "would produce any specific, concrete result in the case of Marco Antonio." Lastly, it revealed its concern over the State's failure to provide updated information.

10. That, as done by the representatives and the Commission, the Court will also stress the fact that the State has merely repeated the information it had previously submitted, which the Tribunal and its President had found insufficient (*supra* Having Seen clauses Nos. 3 and **¡Error! No se encuentra el origen de la referencia.**). Moreover, the State has made compliance with these orders in the Judgment dependent upon a legislative bill which, for one reason or the next, has failed, while refraining from taking any other type of steps intended to comply with the Court's orders. The information submitted thus far leads to the conclusion that Guatemala has remained completely passive as far as these orders are concerned.

11. That, in its Judgment on reparations (*supra* Having Seen clause No. 2), the Court noted that, in the instant case:

Impunity prevails regarding the direct perpetrators and masterminds responsible for the facts. At the date of this Judgment, more than twenty-two years after the facts in the instant case, those responsible for the forced disappearance of Marco Antonio Molina-Theissen have not been identified, tried, and punished. Therefore, there is a situation of impunity that constitutes a breach of the [...] that is injurious to the victim and to his next of kin, and that fosters chronic recidivism of the human rights violations involved.⁵

12. That this case falls within Guatemala's domestic armed conflict, a conflict that entailed major human, material, institutional and moral costs⁶.

⁵ Cf. *Case of Molina-Theissen v. Guatemala. Reparations and Costs*. Judgment of July 3, 2004. Series C No. 108, para. 79.

⁶ Cf. *Case of Bámaca-Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, paras. 121(b) and 207; *Case of Myrna Mack-Chang v. Guatemala. Merits, Reparations and Costs*.

13. That the Court has held that, “instead of exonerating the State from its obligations to respect and guarantee human rights, this fact [that Guatemala was experiencing a domestic armed conflict] obliged it to act in accordance with such obligations.”⁷

14. That the Tribunal has noted that, in Guatemala, impunity has become a decisive factor that imbues the systematic patterns that made the commission of serious human rights violations during the armed conflict possible.⁸ Specifically, it noted that “the Guatemalan system for the administration of justice resulted ineffective in guaranteeing compliance of the law and protection of the rights of the victims and their next of kin in almost the totality of the violations committed against human rights during that period of time” and that “[t]hus, the lack of investigation into this type of facts constituted a determining factor in the systematic practice of violations against human rights.”⁹

15. That the Court has held that “even today, the courts in Guatemala have been incapable of effectively investigating, prosecuting, trying, and punishing those responsible for human rights violations” and that “[t]he courts have often subordinated their actions to the executive branch or to military influence, ‘applying legal provisions or rules that are contrary to due process or not applying those they should have.’”¹⁰

16. That the tribunal notes that its decisions concerning both the merits of the cases brought before it and compliance with said judgments¹¹ prove that Guatemala has a serious problem regarding the impunity that prevails in said country, specifically in connection with the systematic human rights violations that took place during the armed conflict.

17. That, during the proceedings concerning the merits of the instant case, the State acknowledged its international responsibility for the human rights violations against Marco Antonio Molina-Theissen and his family. The Court noted that such acknowledgment entailed “a positive contribution to the development of these proceedings and to the effectiveness of the principles that underlie the American Convention on Human Rights.”¹²

18. That it is the Court’s view that the State’s acknowledgment of responsibility must translate into the prompt and effective compliance with the orders issued by this Tribunal as measures of reparation. The State must act consistently with its acknowledgment, and it is imperative that – given such acknowledgement, the Court’s Judgment and, most particularly, the duties to respect and guarantee human rights undertaken by the State by way of a sovereign decision upon ratifying the American Convention – it do not fall back into new violations or maintain situations that are incompatible with the Convention, as is the case with impunity. On the contrary, the

Judgment of November 25, 2003. Series C No. 101, paras. 134(8) and 134(10); *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, para. 58(1); *Case of Molina-Theissen v. Guatemala. Merits*. Judgment of May 4, 2004. Series C No. 106, para. 40(6); *Case of the Plan de Sánchez Massacre v. Guatemala. Merits*. Judgment of April 29, 2004. Series C No. 105, para. 42(1), and *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C. No. 190, para. 48.

⁷ Cf. *Case of Bámaca-Velásquez v. Guatemala*, *supra* note 6, para. 207.

⁸ Cf. *Case of Tiu Tojín v. Guatemala*, *supra* note 6, para. 70.

⁹ Cf. *Case of Tiu Tojín v. Guatemala*, *supra* note 6, para. 51.

¹⁰ Cf. *Case of Myrna Mack-Chang v. Guatemala*, *supra* note 6, para. 134(13).

¹¹ Cf. *Case of Myrna Mack-Chang v. Guatemala*, *supra* note 6, paras. 172 and 174; *Case of Tiu Tojín v. Guatemala*, *supra* note 6, para. 70; *Case Carpio-Nicolle et al. v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of July 1, 2009, Considering clause No. 20; *Case of Bámaca-Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of January 27, 2009, Considering clauses Nos. 15 and 16; *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of January 27, 2009, Considering clause No. 37.

¹² Cf. *Case of Molina-Theissen v. Guatemala*, *supra* note 6, para. 46.

State must act consistently with its acknowledgment and in line with its international obligations, and comply with the Judgment rendered against it, providing reparation to the victims in fair proportion to the harm inflicted upon them and taking such measures as may be necessary to prevent similar facts from recurring. It should also be noted that the reparatory contents an acknowledgment may carry for the victims and their next of kin fade away with the lapse of time if the State authorities remain inactive, failing to repair the harm.

19. That, the Judgment on reparations issued in the instant case already established Molina-Theissen's next of kin's need for the State to serve justice, reveal the truth of the facts and find his remains. In this regard, the Judgment echoes the words of Ms. Emma Theissen-Álvarez *Vda. de Molina*, the victim's mother, as follows:

The State will never be able to repair the damage [...], but certain measures may help alleviate her grief, such as: to know the truth about what they did to their son, to do justice, to investigate and find the masterminds and direct perpetrators of the facts.¹³

Likewise, the victim's sister Ms. Ana Lucrecia Molina-Theissen stated, *inter alia*, that:

Impunity continues in this case and in thousands of cases in Guatemala; this is very frustrating, as it means that the grief does not cease. She believes that there must be a change, a punishment, to help bear the grief more easily.

[...]

Identification, trial and punishment of the direct perpetrators and masterminds would in part bring relief to the family, but it will not allow them to recover her brother. Adequate reparation would involve knowing the truth of what happened to Marco Antonio and to recover his remains. She also believes it essential to find out who committed those acts to try and to convict them.¹⁴

Lastly, another one of Marco Antonio's sisters, Ms. Emma Guadalupe Molina-Theissen, stated that:

[s]he realizes that no reparation is complete and true because when they took her brother's life they took her family's life, but she believes that to attenuate what happened, somewhat, it is necessary for the State to reveal to the family what happened, where her brother is, and in this way to attain closure in the grieving process, and at least to feel that her brother's remains will rest in peace. She also demands that justice be done, for those responsible to be punished.¹⁵

20. That the failure to receive justice is one of the main reasons why a victim resorts to the Inter-American system. Likewise, the order to prosecute and punish the perpetrators and find the truth about the facts is one of the essential decisions contained in the judgments of the court, as it entails moral satisfaction for the victims, allows them to emotionally overcome the violations, reestablishes social relations, helps avoid the repetition of the facts, helps eliminate the power the perpetrators might have, and entails Justice being served through the enforcement of the consequences that apply under the law, punishing those who so deserve and providing reparation to those to whom reparation is due.

21. That the Court has held that "[j]udicial proceedings that continue until their closing and that meet their purpose are the clearest indication of 0 tolerance towards human rights violations and contributes to provide reparation to the victims and shows society that justice has been made."¹⁶ Guatemala has failed to provide such proceedings in the instant case. Quite to the contrary, it is still affecting the next of kin of Molina-Theissen. In addition, the State's failure encourages the repetition of the violations, makes impunity even worse, discredits the Rule of Law and entails the failure to comply with international obligations. The considerations in this and previous paragraphs are illustrated by Ms. Ana Lucrecia Molina-Theissen's statements at the private hearing of October 1, 2009 (*supra* Having Seen clause No. 5):

¹³ Cf. *Case of Molina-Theissen v. Guatemala*, *supra* note 5, para. 30(a).

¹⁴ Cf. *Case of Molina-Theissen v. Guatemala*, *supra* note 5, para. 30(b).

¹⁵ Cf. *Case of Molina-Theissen v. Guatemala*, *supra* note 5, para. 30(d).

¹⁶ Cf. *Case of the "Street Children" (Villagrán-Morales)*, *supra* note 11, Considering clause No. 21.

I am perfectly aware of the climate of impunity [in Guatemala] and how there is a judicial entity – and what I am about to say is a strong accusation – that acts in complicity from the top down, subject to very few and brave exceptions. A judicial system that turns a blind eye to a state of affairs that continues to endorse the safety of an Army which, back then, was made up of criminals. And I apologize if my words seem too strong, but I think they are not even enough. For criminals who are peacefully at their homes [...] dying unpunished. [...]

I want a fair trial and I want to see punishment. I want a civilized judicial proceeding. I want a proceeding where everyone in Guatemala, both people and institutions, will come together to put an end to a situation that has destroyed my country and is keeping our nation down [...], dragging along that trail of disrespect, of illegality, of traps, of extermination, of the worst atrocities to be heard of in this small corner of the world that is Central America. If we continue to drag this trail on, then how can we possibly expect to set up a democratic nation that is respectful of human rights over a past which is no past at all, which is very much present. Very much present in the pain and the tragedy that continue to haunt each and every one of the human beings who were lucky or unlucky enough to be born in this country.

I would like for the State to become committed, and for its lady representatives, who I hold in great esteem, to carry my voice, to carry the Court's voice too, and I wish that would help cheer them on to fight for those changes that are necessary in order for it to be possible for them to act more firmly, more emphatically, in the case of my brother and in other cases that we, being the family of a disappeared child, also keep very much in mind.

Specifically, I would like to ask that, in order to search for and locate my brothers' remains, a work team be clearly established to independently investigate, a team that will not depend [...] upon a law, [...] upon a judicial investigation process, to be able to get results in the shortest time possible, about what happened to my brother, [...] where his remains are and, hopefully, to get them back. I would like for that work team to be given sufficient resources and authority for it to be able to ask the Army for the information.

[...]

We would like, and I am ending on this note, we would like to be met with more than just words. They no longer offer us any consolation.

22. That the search for and delivery of the remains and the subsequent investigation into what happened does, in addition to allowing the next of kin of the disappeared victim to get closure and mourn, ease the way towards justice being served. The remains are evidence of what happened and they provide details of the treatment the victim was given, the manner in which he was executed, the *modus operandi* and the efforts made to secure a successful cover-up. Even the site where the remains are found can provide valuable information concerning the perpetrators or the institution they belonged to, particularly where the place concerned is a clandestine cemetery or a burying pit located on state premises.

23. That, in cases such as the instant case, the fulfillment of the obligations to serve justice, uncover the truth and deliver the victim's remains to the next of kin who have searched for them for so long gives meaning to the rest of the measures of reparation and defines the true dimension of the State's commitment towards the international human rights treaty to which it is a party.

24. That, when judgment is passed after the international proceedings come to a close, it is necessary for the State to avoid the recurrence of the conducts that led to the lawsuit. The judgment and the reparations ordered therein should provide a new framework and a new vision that will allow an effective, timely overcoming of the problems detected. It is for this reason that the Court has added to its list of reparations – in the broadest sense of the word – various measures intended to avoid the repetition of the facts that constitute the court-declared violations (guarantees of non-repetition), as well as other domestic-law measures intended to encourage the changes required to bring the domestic law in line with the rules of the American Convention. In this regard, it is essential that all State agencies and institutions cooperate with each other, both by providing information and by taking such steps as may be within each one's purview under the domestic law, to comply with such reparations.

25. That, based on the above, the Tribunal finds it essential for the State to take concrete measures to promptly and fully comply with its obligations to locate the mortal remains of Marco Antonio Molina-Theissen and to investigate the facts of the instant

case, identify and, as the case may be, punish the responsible parties. The State is to submit a schedule listing all steps to be taken, including the potential dates thereof and the institutions or persons in charge of them. In such schedule, the State shall even note the administrative and budgetary steps to be taken prior to any investigative action, and identify the problems detected to investigate the case, as well as a plan to address such difficulties within a defined deadline.

26. That, specifically as regards the finding of the remains, the State is required to try to overcome any obstacles set up by the perpetrators of the forced disappearance, as well as those appearing as a result of the mere lapse of time. For such purpose, it must ensure that those security forces that may have information, the investigators, justice operators and forensic technicians will share information, work in a coordinated manner and follow specific plans of action. Such plans of action are to be included in the schedule referred to in the preceding paragraph.

27. That the Court is aware that the preparation of said schedule is a complex task that calls for cooperation between various state institutions. Accordingly, and assuming that the State will submit all the detailed planning in a clear, exhaustive manner, it is the Tribunal's decision to set a period of four months as from the notification of this Order for the State to do so.

28. That, in order to fulfill this task, the State will have to keep closely in mind the suggestions and requests made by the victims or their representatives, for which purpose it is to keep a smooth flow of communication with them. In this regard, the Court would like to emphasize the fact that, concerning any measure of reparation, including the search for justice, States are not only required to try to ensure that the reparation is effective, but they are also required to make sure that the dignity of those who are the intended beneficiaries of the reparations is safeguarded. States are required to ensure that all steps taken serve their reparatory role and that they do not translate into – or are not perceived by the victims as – the mere fulfillment of State obligations. Compliance with the orders of reparation issued by this court is not a concession made by the State towards the victims; it is a right of the latter that is to be promptly and respectfully satisfied, for which purpose smooth communication between those in charge of complying with the reparations and the beneficiaries of the measures is essential.

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29. That the State reported that *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos* [Presidential Coordination Commission for the Executive's Human Rights Policy] (COPREDEH), the institution which the State Agents in the instant case are members of, "is a member of *Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia* [National Follow-Up and Support Commission for the Strengthening of Justice] (CNSAFJ)," the main function of which consists in "devising and processing such proposals and recommendations as it may deem appropriate for and conducive to the integral improvement of the Justice System in Guatemala," and guaranteeing the "human rights and obligations of all persons."

30. That, according to the information that was submitted to this Tribunal, the instant case is not being considered by CNSAFJ.

31. That the Court finds it essential for the State to have this case incorporated, as soon as possible, into the studies and actions carried out by CNSAFJ.

32. That, with a view to furthering the institutional coordination referred to in the above paragraphs, facilitating the preparation of the schedule required in this Order (*supra* paras. 25 and 26) and moving the investigation of the facts of the instant case and the search for the remains of Molina-Theissen forward, the State shall:

- a) Appoint one CNSAFJ officer who, working together with COPREDEH, shall, within four months following notification of this Order, submit a report

establishing: i) the budget available for the State to handle cases involving human rights violations committed during the armed conflict; ii) whether such budget is sufficient to meet investigation-related needs, particularly those connected to the instant case; and iii) should it be insufficient, the measures required to increase its amount;

- b) Appoint one CNSAFJ officer to establish a schedule to work with the High Courts in order to move forward the cases involving mass, systematic human rights violations. Such officer shall, together with COPREDEH, submit a report on the schedule agreed upon with the High Courts and the methods to be used to achieve the proposed goals;
- c) Appoint an Army military intelligence officer to act as *liaison*, who may be contacted by the Public Prosecutor and the court in charge of the domestic investigations in the instant case, as well as CNSAFJ, COPREDEH, the victims in the instant case or their representatives to ask for information with a view to finding out who the responsible parties are or locating the remains of Molina-Theissen. Within a period of four months, together with COPREDEH, such officer shall submit a report on the methodology and the schedule set to encourage the military's cooperation to move the investigation forward; and
- d) Report on the number of disciplinary, administrative or criminal actions taken pursuant to the Guatemalan laws against any officers who refuse to cooperate to comply with these orders.

33. That the Tribunal would like to clarify that the work of CNSAFJ, COPREDEH and the aforementioned military intelligence *liaison* officer may not be limited to the sending of official communications transcribing these orders; rather, such officers, who shall receive the State's full support, are to create the conditions required for the information sent to CNSAFJ and, subsequently, to this Court, to be accurate, complete, reliable and useful, *i.e.* for it to provide qualitative and quantitative parameters to follow up on compliance with these orders.

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34. That, as regards the publication of the relevant portions of the Judgments on merits and reparations (*fourth operative paragraph of the Judgment on reparations*), in its order of July 10, 2007 (*supra* Having Seen clause No. 3) the Court confirmed that paragraphs 40.7 to 40.19 of the Judgment on merits were not featured in the publications in the *Diario Oficial de Centro América* or in the "El Periódico" newspaper, and it thus asked the State to provide information on the subject.

35. That the State reported that, on February 25, 2008, it had the Judgment published again in the "*Diario de Centroamérica*," "and publication of the Judgment in the newspaper with wider circulation is still pending." The State submitted a copy of the publication.

36. That the representatives provided the Tribunal with a communication from the Molina-Theissens, of July 16, 2008, whereby they stated that:

Our family is satisfied with the publication of paragraphs 40.7 and 40.19 of the [J]udgment in the *Diario Oficial*, which had to be repeated as those paragraphs had not been included in the first publication [...].

Accordingly, we do not find it necessary for a new publication to be made in a paid field, considering how expensive this would be, and we thus expect – as informed to us by COPREDEH this past June – that the money that was to be used for such purpose will instead be used to provide monetary reparation to other families.

37. That the Commission merely "took note" of the statements made by the State and the Molina-Theissens.

38. That, given the above, the Tribunal finds that the State has fully complied with this obligation.

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39. That, as regards the creation of a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance (*seventh operative paragraph of the Judgment on reparations*), the State noted that it has prepared a bill for the amendment of Sections 42 and 64 of the Guatemalan Civil Code, governing absence and presumed death, "that was submitted to the *Programa Nacional de Resarcimiento* [National Redress Program], [the] *Procuraduría General de la Nación* [Public Prosecutor's Office] and the Supreme Court of Justice for them to issue a legal opinion thereon." Moreover, it noted that, on March 10, 2009, "the *Registro Nacional de Personas* [National Civil Registry] filed with the Congress of the Republic of Guatemala a [b]ill to enact [the] '*Ley Temporal Especial para la Reposición de Inscripciones Registrales*' [Special Temporary Law for the Replacement of Registry Records]," intended to "authorize Civil Registrars in each municipality in Guatemala in order that, acting under their strict responsibility and at the request of the interested parties, they may replace any registry records of the marital status and capacity of individuals that have been misplaced, deteriorated or altered."

40. That, at the public hearing (*supra* Having Seen clause No. 5), the representatives noted that:

Throughout the written proceedings, the State has reported on various measures or legislative bills. At first, as was the case with the search for the remains, this was made subject to the creation of a *Comisión Nacional de Búsqueda* [National Search Commission] [...]. It now mentions a bill that has not even been submitted to Congress, and another bill that was submitted earlier this year but bears no connection with the measure of reparation granted by the Court but, rather, relates to the substitution of records that have been destroyed due to different reasons and that are entirely unrelated to the creation of a prompt procedure. Moreover, we are not aware either of the full text of this bill that was allegedly submitted. In this regard, all we can do is express our deep concern over the State's failure to comply, not only with the Judgment, but also with its obligation to timely and fully report on each of the orders.

41. That the Commission made no statements in this regard.

42. That the Court notes that the bill for the amendment of Sections 42 and 64 of the Civil Code has not yet been submitted to the Legislative Branch for debate and subsequent enactment purposes. As to the bill for the "*Ley Temporal Especial para la Reposición de Inscripciones Registrales*," the State has failed to explain how it relates to the measure of reparation ordered by the Court.

43. That, again, as far as this aspect of the Judgment is concerned, it becomes necessary for the State to secure effective coordination between the various State institutions.

44. That, considering the above, this Court finds it essential for the State to submit another schedule detailing the steps to be taken, the dates of such steps and the parties responsible therefor, so that a prompt procedure may soon be created to obtain a declaration of absence and presumed death due to forced disappearance. For such purpose, the State shall appoint a representative of the Legislative Branch who, working together with COPREDEH, shall prepare the aforementioned report.

45. That, in the Order issued by the President on August 17, 2009 (*supra* Having Seen clause No. **¡Error! No se encuentra el origen de la referencia.**), it was confirmed that "according to the information submitted by the State, compliance with this aspect of the Judgment is currently dependent upon the cooperation of the *Comisión Nacional de Búsqueda* and the enactment of the [*Ley de la Comisión de Búsqueda de Personas Víctimas de la Desaparición Forzada y Otras Formas de Desaparición*] [Law on

the Commission for the Search of Victims of Forced Disappearance and other Forms of Disappearance]], which [...] has been under debate for three years now.”

46. That, based on the above, through the Legislative Branch’s representative referred to in paragraph 44 *supra* and COPREDEH, the State shall, within a period of four months following notification of this Order, submit a report on the methodology and the schedule to encourage the debate and enactment of said bill into a law.

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47. That, as regards the adoption of such legislative, administrative or other measures as may be necessary to establish a genetic information system (*eight operative paragraph of the Judgment on reparations*), the State reported that, on April 2009, it signed a renewable four-year Agreement with the *Fundación de Antropología Forense de Guatemala* [Forensic Anthropology Foundation of Guatemala], which institution has the “only Forensic Genetic lab in Guatemala.” It asked that the Court consider this to constitute “progress in complying” with this aspect of the Judgment.

48. That the representatives noted as follows:

We agree with the State that the work performed by the Forensic Anthropology Foundation is essential. However, the agreement the State mentioned is merely a cooperation agreement that does not entail a contribution of funds by the State or any sort of specific action in order for such registry to be an official public registry which the victims may access. This project has been organized by the Forensic Anthropology Foundation, which cooperates with the Public Prosecutor voluntarily. Accordingly, in this regard, we do not believe the State to be taking any specific action to comply with this measure.

49. That the Commission did not express an opinion on the subject.

50. That the Court considers approval of the agreement mentioned by the State to be a relevant aspect to achieve the goals for which this measure of reparation is intended. However, it is a temporary, restricted-reach solution that fails to fulfill the international obligations of the State. The Tribunal notes that this is a fundamental aspect of the Judgment, which, in addition to providing reparation to the Molina-Theissens, is a general measure that will benefit the entire population of Guatemala.

51. That, given the above, acting through the Legislative Branch’s representative referred to in paragraph 44 *supra*, CNSAFJ and COPREDEH, the State shall, within four months following notification of this Order, report on the efforts made and steps taken to create a genetic information system that will be run by the State itself and fully available to justice operators and the victims.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to supervise compliance with its decisions pursuant to the provisions of Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute of the Court, and Article 64 of its Rules of Procedure,¹⁷

DECLARES:

¹⁷ Rules of Procedure approved by the Court in its XLIX Regular Session, held from November 16 through November 25, 2000, as partially amended in its LXXXII Regular Session, held from January 19 through January 31, 2009, pursuant to Articles 71 and 72 thereof.

1. That the State has fully complied with the fourth operative paragraph of the Judgment on reparations, regarding the publication of the relevant sections of the Judgments on merits and on reparations.
2. That it will maintain open the procedure for monitoring compliance with those aspects of the instant case that are still to be complied with, namely:
 - a) finding and delivery of the mortal remains of Marco Antonio Molina-Theissen to his next of kin (*second operative paragraph of the Judgment on reparations*);
 - b) investigation into the facts of this case in order to identify, try and, as the case may be, punish the perpetrators and masterminds of the forced disappearance of Marco Antonio Molina-Theissen (*third operative paragraph of the Judgment on reparations*);
 - c) establishment of a prompt procedure to obtain a declaration of absence and presumption of death due to forced disappearance (*seventh operative paragraph of the Judgment on reparations*); and
 - d) adoption of such legislative, administrative or other measures as may be necessary to establish a genetic information system (*eighth operative paragraph of the judgment on reparations*)

AND DECIDES:

1. To require that the State adopt all the measures necessary to fully and promptly comply with those orders that were issued by the Tribunal in its Judgment on reparations and in the instant Order and are still to be complied with, pursuant to Article 68(1) of the American Convention.
2. To request the State to submit by March 29, 2010 a schedule containing specific, clear and exhaustive information on:
 - a) All steps to be taken to investigate the facts of the instant case, identify and, as the case may be, punish the responsible parties; the possible dates for such steps, and the institutions or persons in charge thereof;
 - b) The specific plans of action, including defined dates, to find the remains of Marco Antonio Molina-Theissen; the authorities or institutions in charge of the search operation and the steps to be taken by each of them, as well as the authorities or institutions from which information is to be sought;
 - c) All administrative and budgetary steps to be taken on a preliminary basis; and
 - d) A plan of action to overcome any difficulty which may be identified to carry out the steps defined in (a), (b), and (c) above, including a defined deadline.
3. To request, in accordance with Considering clauses Nos. 29 to 33 *supra*, that the State:
 - a) Appoint a CNSAFJ officer who, working together with COPREDEH, will, by March 29, 2010, submit a report establishing: i) the budget available for the State to move cases involving human rights violations committed during the armed conflict forward; ii) whether such budget allocation is sufficient to cover investigation-related needs, particularly those connected to the

instant case, and iii) should it be insufficient, the measures required to increase its amount;

- b) Appoint a CNSAFJ officer to establish a schedule to work with the High Courts in order to move forward the cases involving mass, systematic human rights violations. By March 29, 2010, such officer shall, together with COPREDEH, submit a report on the schedule agreed upon with the High Courts and the methods to be used to achieve the proposed goals;
- c) Appoint an Army military intelligence officer to act as *liaison*, who may be contacted by the Public Prosecutor and the court in charge of the domestic investigations, as well as CNSAFJ, COPREDEH, the victims in the instant case or their representatives to ask for information with a view to finding out who the responsible parties are or locating the remains of young boy Molina-Theissen. By March 29, 2010, together with COPREDEH, such officer shall submit a report on the methodology and the schedule set to encourage the military's cooperation in moving the investigations forward.
- d) Report, by March 29, 2010, on the number of disciplinary, administrative or criminal actions taken pursuant to the Guatemalan laws against any officers who refuse to cooperate to comply with these orders.

4. To repeat that the work carried out by CNSAFJ, COPREDEH and the aforementioned military intelligence liaison officer cannot be restricted to sending official communications repeating these orders; such officers, who shall have the State's absolute support, are to create the conditions required in order for the information sent to CNSAFJ and, later on, to this Court, to be precise, complete, reliable and usable or useful, providing qualitative and quantitative parameters to monitor compliance with these orders.

5. To request the State to submit, by March 29, 2010, a schedule providing specific, clear and exhaustive information detailing the steps to be taken, the dates set for such steps and the parties responsible for their execution, so that a prompt procedure may be soon established to obtain a declaration of absence and presumption of death due to forced disappearance. For such purpose, the State shall appoint a representative of the Legislative Branch who, together with COPREDEH, shall prepare the aforementioned report. Moreover, such liaison officer and COPREDEH shall, within the same period, submit a report on the methodology and schedule to encourage the debate and enactment of the *Ley de la Comisión de Búsqueda de Personas Víctimas de la Desaparición Forzada y Otras Formas de Desaparición* [Law on the Commission for Finding Victims of Forced and other Forms of Disappearance].

6. To request that, acting through the Legislative Branch's representative referred to in the preceding operative paragraph, CNSAFJ and COPREDEH, the State shall, by March 29, 2010, submit a report noting, within the four-month period following notification of this Order, the efforts made and steps taken to create a genetic information system that will be run by the State itself and fully available to justice operators and the victims.

7. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit their comments on their aforementioned State reports within such periods as may be set therefor by the Tribunal or its President.

8. To request that the Secretariat of the Court notify this Order to the State of Guatemala, the Inter-American Commission and the representatives of the victims.

Diego García-Sayán
President in exercise

Sergio García-Ramírez

Manuel E. Ventura-Robles

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra-Alessandri
Secretary