

Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala

I. COMPLIANCE AND FOLLOW-UP ADDENDUM¹

A. Facts

May 10, 2018: The State reopened its investigation into acts of sexual violence against thirty-four women committed by civil patrollers during the State's internal armed conflict.² These thirty-four women were victims in fourteen cases before the Court.³ Nine of the women are recognized as victims in *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal*.⁴ At the Public Prosecutor's request, the Criminal Court of First Instance, Drug Trafficking, and Crimes Against the Highest Risk Environment Group A of Guatemala issues arrest warrants for ten former civil patrollers.⁵ Seven of the former patrollers are captured, sentenced, and imprisoned, while the other three escape.⁶

Following the captures, the victims of sexual violence receive numerous death threats, largely from the families of the former

1. Kimberly Elise Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering That," ¶ 7 (March 12, 2019).

3. The fourteen cases are: *Bámaca Velásquez*, *Myrna Mack Chang*, *Maritza Urrutia*, *Plan de Sánchez Massacre*, *Molina Theissen*, *Carpio Nicolle et al.*, *Tiu Tojín*, *Las Dos Erres Massacre*, *Chitay Nech et al.*, *Río Negro Massacres*, *Gudiel Álvarez et al.* (*Diario Militar*), *García and Family*, *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal*, and *Coc Max et al.* (*Massacre of Xaman*).

4. *Id.*

5. *Id.*

6. *Id.*

patrollers.⁷ Due to the pervasiveness of the threats, most of the victims are too afraid to report them to State authorities.⁸

June 18, 2018: Eight women testify before the Unit of Special Cases of the Internal Armed Conflict of the Office of the Prosecutor of Human Rights of the Public Prosecutor's Office ("Unit of Special Cases") that family members of the former patrollers were actively attempting to identify, locate, and harm the victims of sexual violence.⁹

August 3, 2018: A victim submits a complaint pertaining to the death threats to the Municipal Prosecutor's Office of Rabinal.¹⁰

October 3, 2018: A victim submits a complaint pertaining to the death threats to the Unit of Special Cases.¹¹

January 17, 2019: The State presents a proposed amendment to its National Reconciliation Law calling for "generalized amnesty for all cases of grave human rights violations and crimes committed during the internal armed conflict."¹² If the amendment is adopted, it "will not only halt ongoing investigations related to human rights violations, but will even have a retroactive effect, enabling dozens of individuals currently in jail after being convicted for grave human rights violations – including enforced disappearances, summary executions, sexual violence and torture – to be released within 24 hours."¹³

January 22, 2019: The United Nations High Commissioner for Human Rights, Michelle Bacheet, condemns the amendment as a "drastic setback to accountability and the rule of law in Guatemala."¹⁴

7. *Id.*

8. *Id.*

9. Members of Chichupac Village and Neighboring Communities of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment, "Considering That," ¶ 9.

10. *Id.* ¶ 7.

11. *Id.*

12. *Guatemala: Bachelet warns National Reconciliation Law amendment will lead to impunity for grave crimes*, Office of the High Commissioner of Human Rights (Jan. 22, 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24098&LangID=E>>.

13. *Id.*

14. *Id.*

B. Procedural History

1. Before the Court

February 13, 2019: The representatives of the victims in *Chichupac* request the Court hold an emergency hearing and implement provisional measures.¹⁵ Specifically, the representatives request the Court: (1) adopt the measures required to preserve the victims and their families' life and personal integrity; (2) adopt necessary measures to ensure the victims can actively participate in the criminal proceedings relating to the sexual violence committed by the State's military without suffering from harassment, intimidation, threats, gender discrimination, or other forms of violence; and (3) order the State to stop the process amending the National Reconciliation Act.¹⁶

February 22, 2019: The Commission submits a brief stating that provisional measures are necessary to protect the women from the death threats.¹⁷

2. Decision on the Merits

March 12, 2019: The Court noted that in order for it to establish provisional measures: (1) the measures must relate to the purpose of a case; (2) the case is extremely grave or urgent; and (3) the measure is necessary to prevent irreparable damage.¹⁸ The Court determined that the requests to protect the victims of sexual violence as they participate in criminal processes and to order the State to stop the legislative process of amending the National Reconciliation Law related to the purposes of the fourteen cases.¹⁹

In regards to the protection of the victims of sexual violence, the Court acknowledged that the State took effective steps to investigate and punish those responsible for the crimes.²⁰ However, the investigations inspired further risk to the lives and personal integrities of the victims of

15. Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment, "Viewed," ¶ 3.

16. *Id.* "Considering That," ¶ 6.

17. *Id.* "Considering That," ¶ 10.

18. *Id.* "Considering That," ¶¶ 3-4.

19. *Id.* "Considering That," ¶ 15.

20. *Id.* "Considering That," ¶ 18.

sexual violence from the families of the former patrollers.²¹ The Court stated that the victims' failure to report the death threats out of fear or harm was understandable when considering the impunity fostered by the State for decades.²² Although the Court lauded the State's measure of keeping the victims anonymous in the criminal proceedings, it noted that the measure was not sufficiently protecting the victims' lives and personal integrities.²³ Additionally, even though the State adopted protective measures such as sending patrols through the communities to protect the victims of sexual violence, the Court noted that this only contributed to the general safety of the community, and is not tailored to specifically protect the victims.²⁴ Thus, the Court found the death threats were sufficiently grave to warrant provisional measures.²⁵

Next, the Court found the urgency requirement was also met.²⁶ The urgency is compounded by the proposed amendment to the National Reconciliation Law because "it could lead to threats, intimidation, and reprisals against victims, witnesses, judges and prosecutors" who participated in investigating human rights violations and punishing those responsible.²⁷ Furthermore, the victims are suffering psychological damage. For the nine victims from *Chichupac*, the people making the death threats live in the same communities as the victims, making the situation even more dangerous if the amendment is passed.²⁸ Thus, the Court found provisional measures were necessary and ordered the State to implement acts to protect the nine victims from *Chichupac* while they participate in the criminal proceedings against the former patrolmen.²⁹

Turning to the representatives' request to stop the amendment of the National Reconciliation Law, the Court opined that it has consistently determined amnesty laws and similar provisions cannot be utilized to prevent investigation into and punishment of those responsible for human rights violations.³⁰ The Court has also previously indicated that the

21. *Members of Chichupac Village and Neighboring Communities of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment*, "Considering That," ¶ 19.

22. *Id.* "Considering That," ¶ 21.

23. *Id.* "Considering That," ¶ 22.

24. *Id.* "Considering That," ¶ 23.

25. *Id.* "Considering That," ¶ 25.

26. *Id.* "Considering That," ¶ 24.

27. *Members of Chichupac Village and Neighboring Communities of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment*, "Considering That," ¶ 24.

28. *Id.*

29. *Id.* "Considering That," ¶ 25.

30. *Id.* "Considering That," ¶ 31.

National Reconciliation Law cannot grant amnesty to crimes of forced disappearance, torture, and genocide.³¹

The Court found the situation sufficiently grave because the proposed amendment would negatively and irreparably impact the right of access to justice for the victims of the fourteen cases.³² The Court specifically pointed to the amendment's "Statement of Motives," which highlighted several cases of the Court's cases and declared that amnesty would apply to those cases.³³ Finding this disrespectful to the Court, the Court declared that the amendment, if passed, is incompatible with Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, and would therefore violate Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.³⁴

Next, the Court found the urgency requirement is met because the amendment is rapidly advancing through the State's legislative processes.³⁵ Even though the Human Rights Commission of the Congress of the State argued the Amendment should not be approved because it violates the State's international obligations and is contradictory to the Peace Accords, the Congress pushed the amendment forward.³⁶ At the time the Court published its order, the State only needed to hold one more debate before voting on the amendment.³⁷ The Court further determined that the amendment's requirement of releasing all convicted and accused of human rights violations contributes to the urgency of the situation because the constitutionality of the provision cannot be determined by the State's courts before the perpetrators are released.³⁸ Although the State argued that the Public Prosecutor's Office would continue to protect victims and their families if the amendment is passed, the court noted that judicial officials are already attacked and threatened in the State for carrying out criminal proceedings pursuant to the Court's orders.³⁹ Moreover, judicial independence would be harmed because the amendment states that "judicial, ministerial, police or prison" officials

31. *Id.* "Considering That," ¶ 32.

32. *Id.* "Considering That," ¶ 36.

33. *Members of Chichupac Village and Neighboring Communities of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment*, "Considering That," ¶ 36.

34. *Id.* "Considering That," ¶ 37.

35. *Id.* "Considering That," ¶ 41.

36. *Id.* "Considering That," ¶ 42.

37. *Id.* "Considering That," ¶ 41.

38. *Id.* "Considering That," ¶ 43.

39. *Members of Chichupac Village and Neighboring Communities of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment*, "Considering That," ¶¶ 44-45.

who fail to comply with the amendment will be held criminally responsible.⁴⁰

The Court emphasized that if the State fails to comply with the reparations ordered by the court, it will incur international responsibility.⁴¹ If the amendment is approved, the Court will find the State is failing to comply with the Court's orders in the 14 cases.⁴² Thus, the Court found provisional measures are necessary and ordered the State to stop the legislative process of approving the amendment to the National Reconciliation Law.⁴³

3. Partially Dissenting Opinion of Eduardo Vio Grossi

In a separate opinion, Judge Eduardo Vio Grossi argued the Court could not grant provisional measures relating to the protection of the victims of sexual violence.⁴⁴ Because the Court's judgments are final and unappealable, the Court cannot order provisional measures after it has rendered a decision in a contentious case.⁴⁵

In contrast, Judge Vio Grossi concurred that the Court could grant provisional measures relating to the amendment to the National Reconciliation Law because: (1) the State never objected to the provisional measures; (2) the Commission did not object to the provisional measures and submitted a brief in support of the measures, which Judge Vio Grossi interpreted as equivalent to submitting a petition to the Court; and (3) the measure pertained to fourteen cases.⁴⁶ Because the situation is so peculiar, Judge Vio Grossi determined the issue of the amendment to the National Reconciliation Law can be considered a new case before the Court. Thus, provisional measures are permitted.⁴⁷

However, Judge Vio Grossi additionally emphasized that the provisional measure ordered by the Court was still improper.⁴⁸ The amendment does not violate the State's international obligation until it actually becomes law.⁴⁹ The Court deprived the State of the opportunity

40. *Id.* "Considering That," ¶ 46.

41. *Id.* "Considering That," ¶ 49.

42. *Id.* "Considering That," ¶ 50.

43. *Id.* "Considering That," ¶¶ 52, 54.

44. *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment, Partially Dissenting Vote of Judge Eduardo Vio Grossi, Order of the Court, Inter-Am. Ct. H.R., "Origin of Provisional Measures" (March 12, 2019).*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* "The Dissidence in Question."

49. *Id.*

to stop the law itself by intervening.⁵⁰ Instead, the Court should have ordered the State to utilize preventative conventional control, under which the amendment would have to be approved by the Court to become law.⁵¹

50. Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, Molina Theissen, and 12 Other Cases v. Guatemala, Provisional Measures and Monitoring Compliance with Judgment, Partially Dissenting Vote of Judge Eduardo Vio Grossi “The Dissidence in Question.”

51. *Id.*