

Tiu Tojín v. Guatemala

ABSTRACT¹

On August 29, 1990, María Tiu Tojín and her one-month old daughter, Josefa, were detained by officers of the Guatemalan army and members of the Civil Self-Defense Patrols. Up to the date of the judgment, the State had not complied with its duty to investigate the facts or the whereabouts of Mrs. Tiu Tojín and her daughter. The Court found that the State violated the American Convention on Human Rights. This case reflects the abuses committed during the internal armed conflict in Guatemala by the military forces against the Mayan indigenous people and the communities of populations in resistance.

I. FACTS

A. Chronology of Events

1982: During an internal armed conflict that has lasted for twenty years, General Efraín Ríos Montt's military regime organizes *Patrullas de Autodefensa Civil* (Civil Defense Patrols, or "PACs") to stop the guerrilla movement.² Some of the tactics used by the PACs include relocating indigenous groups and destroying all "suspicious" persons and communities.³

Among those targeted by the PACs are Mayan indigenous communities.⁴ These communities include members of organizations dedicated to advancing the rights of indigenous communities and the CPR which consists of groups of uprooted families who resisted the control of the Guatemalan Army and were forced to into hiding.⁵ One of

1. Shirinnaz Zekavati, Author; Elise Cossart-Daly, Grace Kim, and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Tiu Tojín v. Guatemala*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.686, ¶ 71 (July 28, 2007); *Tiu Tojín v. Guatemala*, Report on Merits, Inter-Am. Comm'n H.R., Case No. 10.553, ¶ 1 (Oct. 16, 1996).

3. *Tiu Tojín v. Guatemala*, Report on Merits, Inter-Am. Comm'n H.R., Case No. 10.553, ¶ 1 (Oct. 16, 1996).

4. *Tiu Tojín v. Guatemala*, Petition to the Court, ¶ 6.

5. *Id.* ¶ 6 n.3.

these organizations is known as, the “Runujel Junam” Council of Ethnic Communities (CERJ), which urges nonparticipation in the PACs and oppose the militarized nature of Guatemalan society.⁶

September 1989: María Mejía Tiu Tojín who is Ms. María Tiu Tojín’s sister and a member of CERJ,⁷ decides to protest the compulsory service in patrols.⁸ Therefore, María Mejía Tiu Tojín’s family quit their patrol activities.⁹ From this moment, the military commissioners and patrollers begin to harass, publicly threaten and accuse her family of being part of the guerrilla movement.¹⁰ Other CERJ members and their families also endure threats, intimidation, assassinations, and forced disappearances by members of the armed forces, military commissioners, and the PACs.¹¹

March 17, 1990: The PACs murder María Mejía Tiu Tojín.¹²

August 29, 1990: The PACs arrive at Santa Clara, a municipality of Chapul in the department of El Quiché.¹³ The locals in this area are members of La Sierra, a community of people who have sought refuge in the mountains.¹⁴ The Guatemalan Army and the PACs accuse the locals of being a part of the guerrilla movement.¹⁵ Subsequently, they burn cornfields and houses, kill animals and destroy people’s food supplies.¹⁶

On that day, the PACs also detain eighty-six people including Ms. Tiu Tojín and her one-month-old daughter Josefa Tiu Tojín.¹⁷ The PACs take them to the military base at Santa María Nebaj.¹⁸ This is the last time anyone ever sees Ms. Tiu Tojín and Josefa.¹⁹

August 30, 1990: The members of the PAC take the detainees at the

6. *Id.* ¶ 80.

7. *Id.* ¶ 81.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* ¶ 84.

12. *Id.* ¶ 81(d).

13. *Id.* ¶ 92.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* ¶ 93.

military base to a camp, which is run by the Special Commission for Repatriated Persons (CEAR), in Xemamatze while separating Ms. Tiu Tojín and Josefa from the other detainees, supposedly taking them to a military base in Amacchel.²⁰ Ms. Tiu Tojín and Josefa never arrive at the camp.²¹

Within a few weeks, Ms. Tiu Tojín and Josefa's family and the CERJ begin filing writs of *habeas corpus*. Over the course of eighteen years, their case receives attention by each of the following courts: Justice of the Peace of the Second First Instance Criminal Court of First Instance of El Quiché; President of Supreme Court; Deputy Special Prosecutor of Auxiliary Human Rights Ombudsman; Office of the Judge Advocate of Military District No. 20 of El Quiché; Military Court of the Forth Infantry Brigade of Cuyotenengo; First Instance Court for Criminal, Narcotics, and Environmental Offenses of the Department of the Quiché.

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

October 14, 1990: The CERJ files a petition with the Second First Instance Criminal Court of Santa Cruz del Quiché on behalf of Ms. Tiu Tojín and Josefa seeking a writ of *habeas corpus*.²² Juan Tum Mejía presents a writ of *habeas corpus* on behalf of Ms. Tiu Tojín and Josefa before judge of Paz the Second First Instance Criminal Court of El Quiché.²³

October 15, 1990: The CERJ files other writs of *habeas corpus* with the Deputy Special Prosecutor of Auxiliary Human Rights Ombudsman and the president of the Supreme Court on behalf of Ms. Tiu Tojín and Josefa.²⁴

20. *Id.*

21. *Id.*

22. *Id.* ¶ 99.

23. Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 190, ¶ 43 (Nov. 26, 2008).

24. *Id.*

October 17, 1990: The Guatemalan Human Rights Commission files a complaint on behalf of Ms. Tiu Tojín and Josefa to the Inter-American Commission on Human Rights (Commission).²⁵

November 4, 1990: Victoriana Tiu Tojín, Ms. Tiu Tojín's sister, files a *habeas corpus* on behalf of Ms. Tiu Tojín and Josefa, with the Judge of Paz in the Second First Instance Criminal Court of El Quiché.²⁶

November 20, 1990: Victoriana Tiu Tojín submits a brief to the Deputy Special Prosecutor of Auxiliary Human Rights Ombudsman on behalf of Ms. Tiu Tojín and Josefa.²⁷

December 20, 1990: The Second First Instance Criminal Court of El Quiché declares the writs of *habeas corpus* filed by Juan Tum Mejía on October 14, 1990 and by Victoriana Tiu Tojín on November 4, 1990 inadmissible.²⁸

January 30, 1991: The Second First Instance Criminal Court of El Quiché disqualifies itself from continuing to hear the *habeas corpus* petitions presented by the CERJ and forwards the actions to the military justice system.²⁹

February 6, 1991: The Office of the Judge Advocate of Military District No. 20 of El Quiché initiates an inquiry into the abduction of Ms. Tiu Tojín and Josefa based on the case referred to it by the Second First Instance Criminal Court of El Quiché.³⁰ As a result, Infantry Reserve Lieutenant Alexander West Quinteros is charged.³¹

May 15, 1991: Infantry Reserve Lieutenant Alexander West Quinteros, who was charged in the case referred by the Second Court of First

25. *Id.*, ¶ 13.

26. Tiu Tojín v. Guatemala, Petition to the Court, ¶ 100.

27. *Id.*, ¶ 101.

28. Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, ¶ 44; Tiu Tojín v. Guatemala, Petition to the Court, ¶ 100. The petition to the court indicates the date for this dismissal to be January 30, 1991 which is inconsistent with what the Court decision indicates as December 20, 1990.

29. Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, ¶ 45.

30. *Id.*, ¶ 103.

31. Tiu Tojín v. Guatemala, Petition to the Court, ¶ 103.

Instance of El Quiché, is released.³²

May 24, 1991: Though the Public Prosecutor's Office asks the CEAR to send a copy of the list of displaced persons received at the CEAR camp on September 9, 1990 to the Office of the Judge Advocate and to take oral testimony from all of them, none of these individuals are summoned and the proceedings do not go forward.³³

August 24, 1993: The Center for Human Rights Legal Action becomes a petitioner in the case.³⁴

October 18, 2004: The Commission approves Admissibility and Merits Report No. 71/04.³⁵ The Commission finds that the State violated Article 4 (Right to Life), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights (American Convention), to the detriment of Ms. Tiu Tojín and Josefa by failing to create the conditions necessary to ensure the right to life, failing to prevent violations of the right to life and to prevent the forced disappearance of Ms. Tiu Tojín and Josefa.³⁶

Because of the cruel, inhuman and degrading punishment suffered by Ms. Tiu Tojín and Josefa, and because of the suffering of Victoriana Tiu Tojín that was caused by their forced disappearance, the Commission finds that the State violated Article 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of Ms. Tiu Tojín, Josefa, and Victoriana Tiu Tojín.³⁷

The Commission finds the violation of Article 7 (Right to Personal Liberty), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, because of the arbitrary detention and forced disappearance of Ms. Tiu Tojín and Josefa.³⁸ The Commission also determines that the State violated Article 19 (Rights of the Child), in relation to Article 1(1) (Obligation to Respect Rights), to the detriment of Josefa Tiu Tojín because it failed to take special measures to prevent Josefa from becoming a victim of human rights violations.³⁹

32. *Id.*

33. *Id.*

34. *Id.* ¶ 18.

35. *Id.* ¶ 26.

36. *Id.* ¶ 167.

37. *Id.* ¶ 26(b).

38. *Id.* ¶ 26(a).

39. *Id.* ¶ 211.

Because the State failed to effectively resolve the *habeas corpus* petitions, conduct a thorough investigation of arbitrary detention and the forced disappearance of Ms. Tiu Tojín and Josefa, or identify and punish those responsible, the Commission concludes that the State violated Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.⁴⁰

The Commission also finds the violation of Article 1(b) (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Ms.

Tiu Tojín, Josefa, their family, and Guatemalan society as a whole.⁴¹

August 8, 2005: The State and Ms. Tiu Tojín and Josefa's next of kin reach an agreement on reparations and the fulfillment of the Commission's recommendations.⁴² The State also agrees to comply with the following measures of redress by the second quarter of 2006:⁴³

Stage a public apology ceremony and deliver an apology letter to the victims' next of kin.⁴⁴

Conduct an immediate, impartial and effective investigation establishing the identity of those responsible for the human rights violations committed against the victims and carry out criminal proceedings against them if appropriate.⁴⁵

Report to the petitioners and the Commission the progress of the investigation of the Public Prosecutor's Office that relates to finding the material facts regarding the victims' forced disappearance.⁴⁶

Pay compensation to the victims' next of kin in the amount of GTQ 2,000,000.00 paid out in two equal tranches of GTQ 1,000,000.00, which should be disbursed in the first and second quarter of 2006.⁴⁷

Coordinate with the Guatemalan Forensic Anthropology Foundation to locate and identify the remains of the victims and deliver their remains to their family.⁴⁸ This commitment will be satisfied when the state has shown that they have exhausted all possible ways of

40. *Id.* ¶ 26(e).

41. *Id.*

42. *Id.* ¶ 48.

43. *Id.* ¶ 49.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

locating the remains.⁴⁹

Include the present case in the National Search Plan for disappeared persons once it is implemented.⁵⁰

Build a monument depicting a mother holding an infant in her arms and place a commemorative plaque on the monument whose text must be negotiated between the parties.⁵¹ Also, both parties must agree on the monument's location and the placement of the plaque.⁵²

Work up a proposal with the National Compensation Program to declare August 25th as the "National Day to Honor Child Victims of the Internal Armed Conflict."⁵³

Pay the expenses and costs that the victims' family had incurred, including the expenses of their representatives.⁵⁴

September 8, 2006: The Vice-President of the Republic, Eduardo Stein, issues an apology and acknowledges the State's responsibility for the offenses that occurred during the armed conflict.⁵⁵ He delivers a letter of apology to Ms. Tiu Tojín and Josefa's next of kin and affirms the State's intention to comply with the Commissions' recommendations.⁵⁶

The State constructs a monument in memory of Ms. Tiu Tojín and Josefa.⁵⁷ The monument is built in the cemetery of Parraxtut, in the municipality of Sacapulas, El Quiché, upon the representatives' request.⁵⁸ The monument shows a mother holding a child in her arms and has a commemorative plaque, the text having been agreed upon by the next of kin.⁵⁹

December 2005: The State makes a compensation payment of GTQ 2000,000.00.⁶⁰ This amount is distributed equally to six next of kin: Josefa Tojín Imul, Victoriana Tiu Tojín, Rosa Tiu Tojín, Pedro Tiu Tojín, Manuel Tiu Tojín and Juana Tiu Tojín.⁶¹ The State also makes an

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Tiu Tojín v. Guatemala, Merits, Reparations, and Costs*, ¶ 16.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* This amount is equal to \$260,000.00.

61. *Id.* Josefa Tojín Imul is Ms. Tiu Tojín's mother. Rosa Tiu Tojín, Pedro Tiu Tojín, Manuel Tiu Tojín, and Juana Tiu Tojín are all siblings of Ms. Tiu Tojín.

additional payment of \$1,219.82 to the representatives for expenses and costs incurred during the proceedings before the Commission.⁶²

The State later acknowledges its international responsibility for infringing Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, to the detriment of Ms. Tiu Tojín; Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 19 (Rights of the Child), 25 (Right to Judicial Protection), to the detriment of Josefa Tiu TojÍ; and Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), to the detriment of their next of kin, in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention and Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance or Persons.⁶³

B. Before the Court

July 28, 2007: The Commission submits the case to the Court after the State failed to fully adopt its recommendations.⁶⁴

June 10, 2008: The Military Court of the Fourth Infantry Brigade of Cuyotenengo, Department of Suchitepéquez issues a ruling on the investigation on the whereabouts of Ms. Tiu Tojín and Josefa and declines its jurisdiction to continue with the investigation process.⁶⁵

It orders that the investigation processes be moved to the Court of the First Instance for Criminal, Narcotics and Environmental offenses of department of El Quiché.⁶⁶

The State appoints Álvaro Castellanos Howell as Judge *ad hoc*.⁶⁷

1. Violations Alleged by Commission⁶⁸

To the detriment of Ms. Tiu Tojín and Josefa Tiu Tojín:

62. *Id.*

63. *Id.* ¶ 18.

64. *Id.* ¶ 1.

65. *Id.* ¶ 47.

66. *Id.* ¶ 47.

67. *Id.* ¶ 1. The Court's decision on the Merits does not indicate the date of appointment.

68. *Id.* ¶ 2.

Article 4 (Right to Life)
Article 5 (Right to Humane Treatment)
Article 7 (Right to Personal Liberty)
Article 8 (Right to a Fair Trial)
Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearances of People.

To the detriment of Josefa Tiu Tojín:

Article 19 (Rights of the Child)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the next of kin of Ms. Tiu Tojín and Josefa Tiu Tojín:

Article 5 (Right to Humane Treatment)
Article 8 (Right to a Fair Trial)
Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶⁹

Same Violations Alleged by the Commission.

III. MERITS

A. *Composition of the Court*

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice-President

69. *Id.* ¶ 4. (Messrs. Mario Minera and Angélica González of the Center for Legal Action of Human Rights served as representatives of the alleged victims Mária Tiu Tojín and Josefa Tiu Tojín).

Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Álvaro Castellanos Howell, Judge *ad hoc*
Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

November 26, 2008: The Court issues its Judgment on Merits, Reparations, and Costs.⁷⁰

The Court found unanimously that Guatemala had violated:

Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, and Article 1 of the Inter-American Convention on Forced Disappearance, to the detriment of Ms. Tiu Tojín;

Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 19 (Rights of the Child) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, and Article 1 of the Inter-American Convention on Forced Disappearance, to the detriment of Josefa Tiu Tojín;

Article 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of Victoriana Tiu Tojín;

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of Josefa Tojín Imul, Rosa Tiu Tojín, Pedro Tiu Tojín, Manuel Tiu Tojín, and Juana Tiu Tojín, all next of kin of Ms. Tiu Tojín and Josefa Tiu Tojín;⁷¹ all because:

70. *Id.* ¶ 1.

71. *Id.* ¶ 23.

Articles II and III of Inter-American Convention on the Forced Disappearance of Persons state that forced disappearance occurs when the State deprives a person of her freedom and subsequently refuses to acknowledge the deprivation of the freedom of the person or to disclose her whereabouts.⁷² Furthermore, the Court in its past judgments has held that the forced disappearance of persons is a crime that has a continuous or permanent nature.⁷³ The Court has also held that the forced disappearance of persons comprises multiple offenses, because, in addition to arbitrary deprivation of freedom, forced disappearance places the personal integrity, safety and life of the detainee in danger.⁷⁴

The Court has established that the forced disappearance of persons is a grave violation of human rights because of the particular rights violated.⁷⁵ The practice of forced disappearance results in a gross abandonment of the basic principles of the Inter-American system.⁷⁶ Here, the forced disappearance of Ms. Tiu Tojín and Josefa Tiu Tojín was part of a massive and systematic violation of human rights, which happened during the internal armed conflict in detriment of some groups in Guatemala.⁷⁷ The forced disappearance of Ms. Tiu Tojín and Josefa had particular consequences due to the State's obligation to guarantee the human rights protected under the American Convention.⁷⁸ Furthermore, the State's duty to prohibit forced disappearance of persons and to investigate the corresponding facts when a forced disappearance occurs has the nature of *jus cogens*.⁷⁹ Therefore, the practice of forced disappearance constitutes a crime against humanity and is followed by consequences established in international law.⁸⁰

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge *ad hoc* Álvaro Castellanos Howell

In a separate opinion, Judge Álvaro Castellanos Howell discussed

72. *Id.* ¶ 52.

73. *Id.*

74. *Id.*

75. *Id.* ¶ 53.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* ¶ 91.

80. *Id.*

the continuance of hearing the case, the evidentiary value of reports from the Historical Clarification Commission “CEH” and the Inter-Diocese Project for the Recovery of Historical Memory “REMHI”, the lack of Military Court Jurisdiction, and the nature of *jus cogens*.⁸¹

First, Judge Castellanos Howell praised the State’s acknowledgment of international responsibility.⁸² He stated, however, that there is still a denial of justice in this case because the planners and perpetrators of the crime have not been held legally responsible to this day.⁸³ Therefore, the Court was correct in emphasizing on investigation of the facts of the forced disappearance of Ms. Tiu Tojín and Josefa since the right to know the truth behind the victims’ force disappearance is included in the rights of the victims and their next of kin.⁸⁴

Second, Judge Castellanos Howell discussed the evidentiary appropriateness of the CEH and REMHI reports.⁸⁵ Both the State’s national courts and the Inter-American Court have used the CEH and REMHI reports as evidence.⁸⁶ Judge Castellanos Howell also stated that there must be no doubt in the Court’s Judgment regarding valuing the use of CEH and REMHI reports as evidence.⁸⁷

Third, the case remained in the investigation phase with no progress for sixteen years.⁸⁸ Judge Castellanos Howell stated this case must serve as a reference for the Supreme Court of Justice in that the military jurisdiction should be applied only to the members of the armed institution, who have committed crimes of a military order that had an impact on the army.⁸⁹

Lastly, the Court’s Judgment referred to the definition of *jus cogens*.⁹⁰ The Court was correct in saying that the systematic practice of the forced disappearance of people was a crime against humanity and had a continuous nature.⁹¹ Therefore, the prohibition of the forced disappearance of persons, the duty to investigate the facts, and punish

81. Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, Concurring Opinion of Judge Ad-Hoc Álvaro Castellanos Howell, Inter-Am. Ct. H.R. (Ser. C), No 190, ¶ 3-4, 6, 10 (Nov. 26, 2008). CEH stands for Comisión para el Esclarecimiento Histórico. REMHI stands for Proyecto Interdiocesano de Recuperación de la Memoria Histórica.

82. *Id.* ¶ 3.

83. *Id.*

84. *Id.*

85. *Id.* ¶ 4.

86. *Id.*

87. *Id.*

88. *Id.* ¶ 7.

89. *Id.* ¶ 8.

90. *Id.* ¶ 10.

91. *Id.*

those who were responsible had the nature of *jus cogens*.⁹²

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself should be considered as a form of reparation.⁹³

2. Obligation to Investigate the Facts of the Case and Identify, Prosecute and Punish Those Responsible

The Court stated that it is imperative for the State to exhaust all the procedures necessary to ensure the effective compliance with the order of investigating, prosecuting, punishing those responsible and guaranteeing the victims' right to a fair trial within a reasonable time.⁹⁴ The Court also ordered that the result of the proceedings be made public.⁹⁵

With regard to the State's obligation to investigate, the Court ordered that the State must make sure that the investigations would be carried out with due diligence, by ensuring that the authorities in charge of investigating have the logistic and scientific resources necessary.⁹⁶ The State authorities cannot justify not providing the information required by labeling the information as confidential.⁹⁷ The State must guarantee that the investigators take into account the complexity and the contexts of the facts and the pattern that explains their commission.⁹⁸

The Court ordered that with respect to granting the victims their right to a fair trial and ensuring the investigation of the facts with due diligence, the Court must make sure that the next of kin both understand the legal proceedings and are well-understood during the legal

92. *Id.*

93. Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, ¶ 65.

94. *Id.* ¶ 72.

95. *Id.*

96. *Id.* ¶ 77.

97. *Id.*

98. *Id.* ¶ 78.

proceedings.⁹⁹ Therefore, the State must provide them with interpreters or other effective means.¹⁰⁰ Furthermore, the State must ensure that the next of kin do not need to make excessive efforts to access the centers that are in charge of the investigations of the case.¹⁰¹

3. Search for Ms. Tiu Tojín and Josefa Tiu Tojín

The Court ordered that the State must immediately proceed with the search and whereabouts of the remains of Ms. Tiu Tojín and Josefa, specifically in the place that they were last seen alive or other places where there may be evidence of their location.¹⁰²

4. Publication of the Judgment

The Court ordered the State to publish Chapters I, IV, and VI and the paragraphs 67-120 from Chapter VII of the Judgment in its Official Gazette and in another wide national circulation.¹⁰³

The Court also took into account the Commission's request that the State make public Chapters I, IV, and VI and paragraphs 67 through 120 of Chapter VII of the present Judgment by the use of a radio station with ample coverage in El Quiché.¹⁰⁴ The radio broadcast must be done both in Spanish and in the Maya K'iché language.¹⁰⁵ Furthermore, the radio broadcast must be done on a Sunday at least four times with a four-week interval between each broadcasting.¹⁰⁶

5. Rehabilitation

The Court stated that the rehabilitation of the next of kin was already compensated for through the payment of pecuniary damages.¹⁰⁷

6. Guarantees of Non-Repetition

The Court stated that military criminal jurisdictions must only try

99. *Id.* ¶ 100.

100. *Id.*

101. *Id.*

102. *Id.* ¶ 103.

103. *Id.* ¶ 106.

104. *Id.* ¶ 108.

105. *Id.*

106. *Id.*

107. *Id.* ¶ 111.

soldiers for committing crimes that endanger jurisdictional rights of the military order.¹⁰⁸ The acknowledgment of responsibility for the present case, and the fact that on June 10, 2008, the Military Court transferred the case to the First Instance Court for Criminal, Narcotics, and Environmental Offenses of the Department of El Quiché,¹⁰⁹ reflected the State's understanding of the limited scope of the military criminal jurisdiction.¹¹⁰ The Court chose not to refer to the other guarantees of non-repetition requested by the Commission.¹¹¹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court recognized the payment of compensation already made by the State to the next of kin based on the agreement signed by the parties.¹¹² The Court stated that the amount agreed on represents the will of the parties and was fair.¹¹³ The State had indicated that the compensation it had delivered to the next of kin included pecuniary damages of GTQ 525,000.¹¹⁴ The Court considered this amount adequate.¹¹⁵

2. Non-Pecuniary Damages

The Court recognized the payment of compensation already made by the State to the next of kin based on the agreement signed by the parties.¹¹⁶ The State indicated that the compensation it had paid to the next of kin included GTQ 1,475,000 for moral damages consisting of future medical and psychological expenses.¹¹⁷ The Court considered this amount fair and adequate.¹¹⁸

108. *Id.* ¶ 118.

109. *Id.*

110. *Id.* ¶ 120.

111. *Id.* ¶ 121.

112. *Id.* ¶ 66.

113. *Id.*

114. *Id.* ¶ 110.

115. *Id.* ¶ 66.

116. *Id.*

117. *Id.* ¶ 110.

118. *Id.* ¶ 66.

3. Costs and Expenses

The Court awarded US \$3,500 to Victoriana Tiu Tojín for costs and expenses, which she may distribute the amount to appropriate parties, and US \$6,000 for any future expenses that the victims may incur at the domestic level or the supervision of the compliance of the judgment.¹¹⁹

The Court also indicated that the reimbursement of costs and expenses should be made directly to Victoriana Tiu Tojín, and if she passes away prior to the reimbursement, the payment should be delivered to her successors according to applicable domestic law.¹²⁰ Furthermore, if she is unable to receive the payment within one year of the notification of the judgment specified, the State must deposit the amount in an account or deposit certificate in favor of the beneficiary in a Guatemalan bank.¹²¹ If the amount has not been claimed within ten years, the amount should revert to the State with the accrued interest.¹²² If the State falls behind on making the payment, the State must pay interest on the amount owed according to the banking interest rate in Guatemala.¹²³

4. Total Compensation (including Costs and Expenses ordered):

GTQ 2,000,000
or US \$9,500

C. Deadlines

The State must comply with the Court's order to publish pertinent parts of the Judgment in the Official Gazette and another newspaper of wide national circulation within six months from the notification of the judgment.¹²⁴

The State must comply with the Court's request to broadcast the pertinent parts of the judgment in a radio with ample coverage in El Quiché within one year of the notification of the judgment.¹²⁵

119. *Id.* ¶ 129.

120. *Id.* ¶ 130.

121. *Id.* ¶ 132.

122. *Id.*

123. *Id.* ¶ 134.

124. *Id.* ¶ 106.

125. *Id.* ¶ 108.

The State must pay costs and expenses within one year of the judgment.¹²⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

May 16, 2001: With regard to the Court's order to investigate the acts that led to the violations, and to identify and prosecute those who were responsible for the violations, the State indicated that the case was in a confidential investigation phase, which was in conformity with Article 314 of the Code of Civil Procedure.¹²⁷ The State did not provide any further information regarding its investigation process.¹²⁸

The Court reiterated parts of its judgment and emphasized on the State's obligation to prevent and combat impunity.¹²⁹ The State should have taken measures to ensure prompt and effective compliance with the Court's judgment.¹³⁰ Furthermore, the Court requested that the State present a complete, detailed and updated report on its investigation procedures.¹³¹ The Court also ordered the State to submit a copy of the main documents regarding the procedural steps to the Court.¹³²

With respect to the Court's order to locate Ms. Tiu Tojín and Josefa Tiu Tojín, the State reported that Initiative Number 3590 (Law on the Commission for the Search of Victims of Forced Disappearance and Other Missing Persons) was making its way through the State's Congress.¹³³ The State also indicated that it has planned to look into creating a committee called "Temporary Committee for the Search for Persons Missing during Internal Armed Conflict."¹³⁴ The State referred to the discussions between the government, civil society, and the International Committee of the Red Cross regarding a proposal that

126. *Id.* ¶ 129.

127. Tiu Tojín v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen," ¶ 6 (May 16, 2011), available at http://www.corteidh.or.cr/docs/supervisiones/tiu_tojin_16_05_11_ing.pdf.

128. *Id.* ¶ 8.

129. *Id.* ¶ 10.

130. *Id.*

131. *Id.* ¶ 12.

132. *Id.*

133. *Id.* ¶ 13.

134. *Id.*

sought to accomplish several goals including: a unified registry of missing persons; a plan to exhume the victims' remains and deliver them to their families; the creation of a national communication policy for all families who were currently searching for a missing family member; the implementation of a permanent psychological support system; the identification and participation of competent State authorities to carry out investigations of a person's disappearance; the integration of the information and experience of all civil society organizations that have worked on this issue; and the creation of a budget for its functioning.¹³⁵

The Court deemed the State's initiatives valuable, but felt that taking measures to search and locate the mortal remains of Ms. Tiu Tojín and Josefa was crucial.¹³⁶ The Court requested that the State submit a schedule for its future efforts to search, locate and identify the remains of Ms. Tiu Tojín and Josefa.¹³⁷ This schedule must indicate the possible dates and the persons or institutions in charge of the investigations.¹³⁸

March 3, 2009: The State published the Court's Judgment on Merits, Reparations, and Costs in the Official Gazette.¹³⁹

March 31, 2009: The pertinent parts of the Court's judgment were published in *El Periódico*, a major Guatemalan newspaper.¹⁴⁰

October 11, 2009: The judgment was broadcast in Spanish on Radio Quiché from 11:00 a.m. to 11:45 a.m.¹⁴¹

October 18, 2009: The judgment was broadcast in Spanish on Radio Quiché 90.7 FM from 11:00 a.m. to 11:45 a.m.¹⁴²

December 22, 2009: The State paid US \$9,500 to Victoriana Tiu Tojín for cost and expenses.¹⁴³ The State also presented a copy of the

135. *Id.*

136. *Id.* ¶ 17.

137. *Id.*

138. *Id.*

139. *Id.* ¶ 21.

140. *Id.*

141. *Id.* ¶ 22.

142. *Id.*

143. *Id.* ¶ 26.

Judgment Compliance Settlement of November 26, 2008.¹⁴⁴

June 27, 2010: The judgment was translated into K'iche' language by the Academy of Mayan Language.¹⁴⁵ This translation of the judgment was broadcast on Radio Quiché 90.7 FM from 3:00 p.m. to 4:00 p.m.¹⁴⁶ This radio had coverage in all municipal areas in the Department of Quiché, Baja Verapaz, Sololá, Guatemala, Totonicapán, Huehuetenango, Chimaltenango and San Marcos.¹⁴⁷ The State submitted a CD and a certificate for this broadcast.¹⁴⁸

July 4, 2010: Once again, the translation of the judgment was broadcast on Radio Quiché 90.7 FM from 3:00 p.m. to 4:00 p.m.¹⁴⁹ The State submitted a CD and a certificate for this broadcast.¹⁵⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(Ser. C\), No 190 \(Nov. 26, 2008\).](#)

[Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, Concurring Opinion of Judge Ad-Hoc Álvaro Castellanos Howell, Inter-Am. Ct. H.R. \(Ser. C\), No 190 \(Nov. 26, 2008\).](#)

3. Provisional Measures

[None]

144. *Id.*

145. *Id.* ¶ 22.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

4. Compliance Monitoring

[Tiu Tojin v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 16, 2011\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Tiu Tojin v. Guatemala, Petition No. 10.686, Inter-Am. Comm'n H.R. (April 12, 1990).

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

Tiu Tojin v. Guatemala, Report on Merits, Report No. 71/04, Inter-Am. Comm'n H.R., Case No. 10.686 (Oct. 18, 2004).

5. Application to the Court

[Tiu Tojin v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.686 \(Jul. 28, 2007\).](#)

VIII. BIBLIOGRAPHY

Guatemala: "Disappearance" of Maria Tiu Tojin and her One-Month Old Daughter, Maria Josepha Tiu Tojin, AMNESTY INT'L (Nov. 1, 1990), <http://www.amnesty.org/fr/library/info/AMR34/070/1990/>.

2014]

Tiu Tojín v. Guatemala

2209

JOE M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* 306, 325 (2nd ed. 2013).