

Inter-American Court of Human Rights
Case of the Plan de Sánchez Massacre v. Guatemala
Judgment of November 19, 2004
(Reparations)

In the *Case of the Plan de Sánchez Massacre*,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges:

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge, and
Alejandro Sánchez Garrido, Judge *ad hoc*,

also present,

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

in accordance with Articles 29, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), and Article 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), delivers this judgment.

I
INTRODUCTION OF THE CASE

1. On July 31, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application against the State of Guatemala (hereinafter "the State" or "Guatemala"), before the Inter-American Court, originating from petition No. 11,763, received by the Secretariat of the Commission on October 25, 1996.

2. The Commission submitted the application, based on Article 61 of the American Convention, for the Court to "declare that the State was internationally responsible [...] for violations to the rights to humane treatment, judicial protection, a fair trial, [...] equal protection, freedom of conscience and religion, and [...] property, in relation to the obligation to respect rights, which are embodied in Articles 5, 8, 25, 24, 12, 21 and 1[(1)] of the American Convention." In the

Arguments of the State

79. The State indicated that:

- a) It cannot deny the need to compensate the “non-pecuniary” and pecuniary damage caused to the victims and next of kin of the Plan de Sánchez village, which are irreparable;
- b) The process of paying financial reparation should begin in 2005, so that it is duly programmed and planned in the 2005 General Budget of Income and Expenditure of the Nation. In complying with this process, the magnitude of the needs and rights that the State must guarantee to all its inhabitants must be taken into account, and also the criteria established by the Court, in the sense that the amount of the reparations should not make the victims or their successors either richer or poorer; and
- c) The financial reparations decided must be executed within the framework of the National Compensation Program, in accordance with the rules of domestic legislation. Article 1 of Government Agreement No. 258-2003 of the President of the Republic, published in the official gazette on May 8, 2003, stipulates that the specific purpose of the program is “to compensate the victims of human rights violations that took place during the internal armed conflict.” It has also been established that the beneficiaries of the program include those resulting from cases that were submitted to the Inter-American Commission prior to the plan, and that are pending a ruling.

Considerations of the Court

80. Non-pecuniary damage can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victims. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of restoring the memory of the victims, acknowledging their dignity, and consoling their next of kin. The first aspect of reparation for non-pecuniary damage will be considered in this section and the second in section (D) of this chapter.²⁵⁷

81. International case law has established repeatedly that the judgment constitutes, *per se*, a form of reparation.²⁵⁸ However, in the judgment on merits delivered on April 29, 2004, this Court established that events such as those of the instant case, “which gravely affected the identity and values of the members of the Maya-Achí people, and which took place in the context of a pattern of massacres,

²⁵⁷ Cf. *Case of Tibi*, *supra* note 3, para. 242; *Case of the “Juvenile Reeducation Institute”*, *supra* note 3, para. 295, and *Case of Ricardo Canese*, *supra* note 3, para. 204.

²⁵⁸ Cf. *Case of Tibi*, *supra* note 3, para. 243; *Case of the “Juvenile Reeducation Institute”*, *supra* note 3, para. 299, and *Case of Ricardo Canese*, *supra* note 3, para. 205.

had an aggravated impact that entails the State's international responsibility,²⁵⁹ and it takes this into account when deciding reparations.

82. The CEH Report established that:

During the armed conflict, events took place that impaired the existence of the Mayan people owing to the attacks on their integrity and identity. The violations had a cumulative effect. For example, the deprivation of certain economic activities or the dispossession of land affected not only the food supply and the physical conditions of subsistence, but also the cultural references which underlie the collective identity, the accumulated knowledge and techniques, the system of social relations and family relationships, the sacred conception of the land, the religious rites of reciprocity and *payment* to nature. And vice versa: the violation of the cultural rights, the repression of the culture and the symbols of identity, the prohibition to perform religious rites or ceremonies, impeded the reproduction of social relations, the formation of family relationships, the facilitation of financial practices, and fragmented the sense of belonging to a group.²⁶⁰

83. Indeed, owing to the gravity of the facts of the instant case and the situation of impunity in which they remain, the intensity of the suffering caused to the victims, the alterations in their living conditions, and the other consequences of a non-material or non-pecuniary nature, the Court considers it necessary to order the payment of compensation for non-pecuniary damage, in fairness.²⁶¹

84. When assessing the non-pecuniary damage caused in the case *sub judice*, the Court has taken into consideration the words of Benjamín Manuel Jerónimo and Eulalio Grave Ramírez in their statements made before notary public (*supra* para. 32(a) and 32(b)), and of Juan Manuel Jerónimo, Buenaventura Manuel Jerónimo and Narcisa Corazón Jerónimo in their testimonies given before this Court during the public hearing (*supra* para. 38(a), 38(b) and 38(c)), when they said that the damage caused to them was representative of that caused to the other victims, most of whom belong to the Maya-Achí people. The Court has also taken into account the words of Luis Rodolfo Ramírez García and José Fernando Moscoso in their statements before notary public (*supra* para. 32(c) and 32(d)), and the expert reports of Augusto Willemsen-Díaz and Nieves Gómez Dupuis (*supra* para. 38(d) and 38(e)), given before this Court during the public hearing.

85. The Court observes that, in the instant case, the victims belonging to the Mayan indigenous people, of the Achí linguistic community, possess their own traditional authorities and forms of community organization, centered on consensus and respect. They have their own social, economic and cultural structures. For the members of these communities, harmony with the environment is expressed by their spiritual relationship with the land, the way they manage their resources and a profound respect for nature. Traditions, rites and customs have an essential place in their community life. Their spirituality is reflected in the close relationship between the living and the dead, and is expressed, based on burial rites, as a form of permanent contact and solidarity with their ancestors. The transmission of culture and knowledge is one of the roles assigned to the elders and the women.

²⁵⁹ Case of the Plan de Sánchez Massacre, *supra* note 17, para. 51.

²⁶⁰ CEH Report, *supra* note 238, tome III, p. 181, paras. 2887 and 2888.

²⁶¹ *Case of Tibi*, *supra* note 3, para. 243; *Case of the "Juvenile Reeducation Institute"*, *supra* note 3, para. 299, and *Case of Ricardo Canese*, *supra* note 3, para. 205.