

GOVERNMENTAL AGREEMENT 539-2013

Guatemala, 27 December 2013

THE PRESIDENT OF THE REPUBLIC CONSIDERING

That through Governmental Agreement No. 258-2003 dated 7 May 2003, the National Reparations Programme and the National Reparations Commission were created as the entity responsible for the direction, coordination and execution of that Programme.

CONSIDERING

That as a result of the commitment assumed in the Peace Accords, the State of Guatemala must effectively guarantee the right of the victims and their families to be compensated for the human rights violations committed during the internal armed conflict, and thus contribute to national reconciliation so that peace in Guatemala is firm and lasting.

CONSIDERING

That in order for the State of Guatemala to be able to fulfil its assumed responsibilities in a direct and dynamic manner, it is considered necessary to reform the structure and functioning of the National Reparations Programme, as well as the integration and functions of the National Reparations Commission, without losing the philosophy, principles and objectives established in favour of the victims and their respective families.

NOW:

In the exercise of the functions conferred by Article 183 e) of the Political Constitution of the Republic; and based on the provisions of Articles 5 and 6 of Decree Number 114-97 of the Congress of the Republic, Law of the Executive Branch.

AGREEMENT:

The following:

AMENDMENTS TO GOVERNMENT AGREEMENT NO. 258-2003 DATED MAY 7, 2003.

ARTICLE 1.

Article 1 is amended as follows:

"ARTICLE 1. The National Reparation Program. The National Reparation Program, which in the course of this Governmental Agreement may be referred to indistinctly as the Reparation Program or the PNR, has as its specific purpose the individual and/or collective reparation of the victims of human rights violations committed during the internal armed confrontation. The PNR will be valid until December 31, 2023, which may be extended in accordance with the evaluation carried out for this purpose.

ARTICLE 2.

Article 2 is amended as follows:

"Principles and priorities of reparation: The criteria and measures of reparation applied in the process of qualifying beneficiaries of the NRP shall be based on the principles of equity, justice, celerity, accessibility, free of charge, simplicity, impartiality, integrity, effectiveness, multilingualism, publicity, orality, consultation, inclusion, social participation, and respect for the cultural identity of the victims.

Unofficial translation

The criteria for prioritizing individual beneficiaries will take into account the seriousness of the violations, their socioeconomic condition and social vulnerability, with special attention to widows, orphans, the disabled, older adults and minors. The criterion for prioritizing collective beneficiaries shall take into account the seriousness of the violations, the socioeconomic condition and vulnerability of the communities, organized groups of victims and indigenous peoples affected by human rights violations during the internal armed conflict.

ARTICLE 3.

Article 2 BIS is added, with the following text:

"ARTICLE 2 BIS - Reparation. The violations of human rights contained in the international human rights instruments recognized and ratified by the State of Guatemala, committed during the internal armed confrontation, shall be compensated.

The actions that generated the human rights violations will be considered exclusively for the purposes of the reparation policy and the comprehensive measures to be promoted.

Reparation for human rights violations will be without prejudice to the appropriate criminal prosecution when the facts that motivated the violations constitute a crime, such as torture, forced disappearance, extrajudicial execution and sexual violation. The displacement of persons, forced recruitment of minors and violations of children's rights are considered serious violations.

In order to implement compensation for victims of human rights violations, the PNR will promote, in a comprehensive manner, the following measures:

1. Dignification of victims through actions in support of exhumations, burials and measures of truth and memory.
2. Cultural reparation.
3. Psychosocial Reparation and Rehabilitation
4. Material restitution of housing, land, legal certainty of land and productive investment.
5. Economic compensation."

ARTICLE 4.

Article 2 TER is added, with the following text:

"ARTICLE 2 TER. Quantification of economic compensation. The amounts of the economic compensation shall be determined by the National Compensation Commission in accordance with the prioritization criteria established in this agreement. In cases in which the amount of the economic compensation is fixed by means of a final judicial sentence, the National Compensation Commission shall apply the fulfillment of the respective sentence. The National Compensation Commission shall determine friendly settlement mechanisms in those cases in which there is a petitioner's request".

ARTICLE 5.

Unofficial translation

Article 4 is amended as follows:

"ARTICLE 4. Integration of the Commission. The National Compensation Commission shall be composed of five members, as follows:

- a) A delegate of the President of the Republic who shall preside.
- b) The Minister of Public Finance.
- c) The Secretary of Planning and Programming of the Presidency -SEGEPLAN-.
- d) The Secretary of Peace of the Presidency -SEPAZ-.
- e) The President of the Presidential Commission for Coordinating Executive Policy on Human Rights -COPREDEH-.

The incumbent members may delegate their representation to officials in charge of Vice-Ministers, Directors or Undersecretaries".

ARTICLE 6.

Article 4 Bis is amended as follows:

"ARTICLE 4 Bis. Consultative Council. The National Compensation Commission shall convene the organizations, committees and/or associations of victims with national representation at least four times a year, who shall designate their respective representatives, to inform, follow up and evaluate the Institutional Strategic Plan, the Annual Operational Plan and the budgetary regime and its execution. Through the Presidency of the National Compensation Commission, extraordinary summons may be made to deal with urgent matters.

The National Reparation Commission shall evaluate the proposals arising from this type of call, which may be incorporated into the management of the public policy of reparation.

ARTICLE 7.

Article 5 is amended, which remains so:

"Functions of the Commission. The functions of the National Compensation Commission are as follows:

- a) Define the national policy of the PNR.
- b) Establish the amounts of the economic compensation in accordance with the provisions of article 2 Ter of this agreement and ensure full compliance with the individual and/or collective compensation of the victims of human rights violations committed during the internal armed confrontation.
- c) Establish mechanisms for dialogue and friendly settlement with the beneficiaries of reparations.
- d) Approve its internal regulations, as well as the PNR regulations, manuals, instructions and procedures presented by the Executive Directorate.
- e) Convene victim organizations, committees or associations to promote information and consultation processes.

- f) Consult with communities and organizations of victims, indigenous peoples and human rights, the reparation measures to be implemented.
- g) Approve the annual programmes of the PNR and their financial, budgetary and administrative requirements.
- h) Resolve cases and situations not provided for in this Agreement, in accordance with laws, regulations and other legal provisions, unless the nature of the case, the situation or legal imperative requires recourse to other bodies, authorities or procedures.
- i) Request the necessary reports on the financial execution and progress of the Program from the Executive Direction.
- j) Delegate to the President of the National Compensation Commission the approval, resolution and granting of compensation measures in accordance with the provisions of this governmental agreement.
- k) The other functions that contribute to the better development of the PNR".

ARTICLE 8.

Article 6 is amended, which remains so:

"ARTICLE 6. The President of the Commission. The President of the Commission has, among others, the following attributions:

- a) To preside over the sessions of the Commission.
- b) To legally represent the Commission.
- c) To oversee the effective development and fulfillment of the National Compensation Program and to keep the Commission, as well as the President of the Republic, duly informed thereof.
- d) Issuing, in representation of the National Compensation Commission, the resolutions that are considered to be necessary to properly carry out the public policy of redress."

ARTICLE 9.

Article 7 is amended as follows:

"ARTICLE 7. Of the Executive Direction and its functions. The Executive Directorate is created, whose head shall be appointed by the National Compensation Commission, which shall have recognized managerial experience in public policies and programs. The basic functions of the Executive Directorate are as follows

- a) Implement the national PNR policy defined by the National Compensation Commission.
- b) Efficiently manage the resources of the PNR, effectively carrying out the executive and technical activities that demand individual and/or collective compensation for victims of

human rights violations committed during the internal armed confrontation, based on the guidelines and resolutions issued by the National Compensation Commission.

- c) Submit proposals for PNR regulations, manuals, instructions and procedures to the National Reparations Commission.
- d) Ensure compliance with PNR regulations, manuals, instructions and procedures, as well as timely and effective implementation of the components of the Programme, especially those related to the qualification of victims.
- e) Submit to the National Compensation Commission the annual PNR programs and their financial, budgetary and administrative requirements.
- f) Submit to the CNR annual reports and those required, on the financial execution and progress of the Program.
- g) Design and implement the administrative and functional structure of the Program at the central, regional and departmental levels.
- h) The Executive Director shall perform the functions of Secretary (a) of the National Compensation Commission, participating in the sessions of the CNR with voice but without vote.
- i) Coordinate the activities of the National Reparations Programme with governmental and non-governmental bodies, as well as with the Advisory Council, the International Community and the Inter-American and United Nations Human Rights Systems, in accordance with the Commission's guidelines.
- j) Prepare and propose projects for the application of reparation measures for approval and granting by the President of the National Commission for Reparation.
- k) Other functions that contribute to compliance with the provisions of this agreement for the better progress and development of the Program, and those assigned to it by the National Compensation Commission.

ARTICLE 10.

Article 9 is amended, which remains so:

"ARTICLE 9. Resource management. In resource management, at least ninety percent.

(90%) of the amount allocated to the National Compensation Program in the General Budget of Income and Expenditure of the State, shall be allocated exclusively to own compensation actions, and the rest to operation. The Commission is empowered to adopt the financial administration mechanisms it deems appropriate in accordance with the Law on the matter.

ARTICLE 11.

Article 12 is reformed, which remains so:

"ARTICLE 12. Allocation of Resources. The Ministry of Public Finance, as of the effective date of this agreement, shall make the corresponding budgetary provisions in the General

Budget of Income and Expenditure of the State, as well as the corresponding budgetary provisions for subsequent years, in order to ensure the assignment of financial resources so that the National Compensation Program may continue to operate, in accordance with the provisions of this Agreement. Said allocation shall be subject to the financial availability of the State.

ARTICLE 12.

By virtue of what is established in this Agreement, Governmental Agreement Number 258-2003 dated May 7, 2003, shall be in force until December 31, 2023.

ARTICLE 13. Validity.

The present agreement shall become effective on the day following its publication in the Diario de Centro América.

COMMUNICATE

OTTO FERNANDO PÉREZ MOLINA

HÉCTOR MAURICIO LÓPEZ BONILLA MINISTER OF THE INTERIOR

MARÍA CASTRO VICE-MINISTER OF PUBLIC FINANCE IN CHARGE OF THE OFFICE

LIC. GUSTAVO ADOLFO MARTÍNEZ LUNA SECRETARY GENERAL OF THE PRESIDENCY OF THE REPUBLIC