

National Compensation Program - Governmental Agreement 258-2003

8 May 2003

CONSIDERING

That the State of Guatemala is organized to protect the person and the family and its supreme goal is the realization of the common good, so it has the duty to guarantee to the inhabitants of the Republic, life, liberty, justice, security, peace and the integral development of the person.

CONSIDERING

That it is a commitment assumed by the State of Guatemala in the Peace Accords, to develop a National Reparation Program, whose specific purpose is the reparation of damages caused by human rights violations during the internal armed confrontation that ended on December 29, 1996, and thus contribute to national reconciliation, through the construction of a culture of concord and mutual respect, so that peace in Guatemala is firm and lasting.

CONSIDERING

That the Comprehensive Agreement on Human Rights recognizes that it is a humanitarian duty to compensate and/or assist victims of human rights violations and that the Commission for Historical Clarification recommended to the State the creation of a National Reparations Programme as well as the allocation of the necessary financial resources for the fulfilment of its objectives.

CONSIDERING

That in order to achieve such purposes, both the Government of the Republic and various sectors of civil society have agreed on the need to institutionalize the administrative entity that will allow the development of the National Settlement Program, based on the contents of the agreement reached on November 5, 2002 between the Government of the Republic and the member organizations of the Multi-institutional Instance for Peace and Concord.

NOW THEREFORE

In exercise of the functions conferred by article 183, literal e) of the Political Constitution of the Republic; articles 2 and 5 of Decree 114-97 of the Congress of the Republic (Law of the Executive Branch) and its amendments,

AGREEMENT

Article 1, according to Governmental Agreement No. 188-2004, is amended to read as follows:

Article 1. Creation of the Programme. The National Reparation Programme is hereby established, which in the course of the present Government Agreement may be referred to indistinctly as the Reparation Programme or the PNR, the specific purpose of which shall be the individual and/or collective reparation of civilian victims of human rights violations and crimes against humanity committed during the internal armed conflict. The PNR will have a validity of no less than thirteen years with the possibility of being extended when the corresponding evaluation is carried out.

Article 2 is amended, according to Governmental Agreement No. 619-2005, which it's like this:

Article 2. Principles, measures and criteria for redress: The criteria and measures for redress 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, advertising, orality, consultation, inclusion, social participation and respect for the cultural identity of the victims. The criterion of prioritization

of individual beneficiaries will take into account the seriousness of the violations, their socioeconomic status and social vulnerability, with special attention to widows, orphans, disabled persons, older adults and minors. The criterion of prioritizing collective beneficiaries will take into account the seriousness of the violations, the socio-economic status and vulnerability of the communities, organized groups of victims and indigenous peoples affected by human rights violations and crimes against humanity.

Human rights violations and crimes against humanity to be compensated are:

- a. Forced Disappearance
- b. Extrajudicial Execution
- c. Physical and psychological torture
- d. Forced Displacement
- e. Forced recruitment of minors
- f. Sexual violence and rape
- g. Violations against children
- h. Massacres
- i. Other violations not contemplated above, which will be known and resolved by the CNR.

For the purposes of defining and interpreting the figures described, account must be taken of existing domestic legislation, international conventions, whether general or particular, which establish rules expressly recognized by the State of Guatemala; international custom as evidence of a practice generally accepted as law; general principles of law recognized by nations; reports of conventional and extra-conventional mechanisms for the protection of human rights recognized by the State of Guatemala; and reports issued by both the Commission for Historical Clarification and the United Nations System.

To implement redress for victims of human rights violations, the PNR can do so by resorting to the following measures:

1. Dignification of victims
2. Cultural redress
3. Psychosocial Repair and Rehabilitation
4. Material Restitution
5. Economic redress.

Article 3 of Governmental Agreement No. 619-2005 is amended to read as follows:

Article 3. Program Structure.

The National Reparations Commission is created as the entity responsible for the coordination, supervision and monitoring of the National Reparations Programme, which may be referred to indistinctly as the Commission or the CNR. The National Compensation Program will have an Executive Directorate that will be in charge of executing it in accordance with its guidelines, provisions and resolutions of the CNR.

Article 4 is amended according to Governmental Agreement No. 619-2005.

it's like this:

Article 4. Integration of the Commission. The National Compensation Commission will be composed of five members, as follows: a) A delegate of the President of the Republic who will preside over it. b) The Minister of Public Finance. c) The Secretary of Planning and Programming of the Presidency -SEGLEPLAN-. d) The Secretary of Peace of the Presidency -SEPAZ-. e) The President of the Presidential Commission for Coordinating the Executive's Policy on Human Rights -COPREDEH-. The foregoing officials shall discharge their responsibilities as incumbents and may delegate their respective representations to an alternate, who shall not be below the rank of Director-General.

Article 4 BIS is added, according to Governmental Agreement No. 619-2005:

Article 4 BIS Advisory Board. The Consultative Council of Victim Organizations is established as the Commission's consultative body with five members, including representatives of women victims, indigenous peoples and human rights organizations, who will be appointed through a governmental agreement within thirty days of the date of publication of this agreement. The members of this Council may participate in the meetings of the Commission with the right to speak but not to vote.

Article 5 is amended according to Governmental Agreement No. 619-2005.

it's like this:

Functions of the Commission: The functions of the National Compensation Commission are:

- a) Define the national PNR policy.
- (b) Ensure individual and/or collective compensation for civilian victims of human rights violations and crimes against humanity committed during the internal armed conflict.
- c) Approve the regulations, manuals, instructions and procedures of the PNR, presented by the Executive Direction.
- (d) Consult with victims', indigenous peoples' and human rights communities and organizations on the compensation measures to be implemented, through the PNR Consultative Council.
- e) Approve the annual programmes of the PNR and their financial, budgetary and administrative requirements.
- f) 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 instances, authorities or procedures.
- g) To request the necessary reports on the financial execution and on the progress of the programme, to the Executive Direction.
- h) The other functions that contribute to the better development of the PNR.

The National Compensation Commission shall draw up its internal rules of procedure within thirty days following the date of its first integration.

Article 6. The President of the Commission. The President of the Commission has the following powers, among others:

- (a) Chair the meetings of the Commission
- (b) Legally represent the Commission
- (c) To ensure the effective development and implementation of the National Compensation Programme and to keep the Commission and the President of the Republic duly informed thereof.

Article 7 is amended according to Governmental Agreement No. 619-2005.

it's like this:

Article 7. Executive Direction and its functions. The Executive Directorate is created, the head of which will be appointed by the National Compensation Commission, which must have recognized managerial experience in public policies and programs. The basic functions of the Executive Directorate are:

- a) Implement the national PNR policy defined by the National Compensation Commission.
- b) Efficiently administer the resources of the PNR, effectively carrying out the executive and technical activities that demand individual and/or collective compensation for civilian victims of human rights violations and crimes against humanity committed during the internal armed conflict, based on the guidelines and resolutions issued by the National Compensation Commission.
- c) Submit to the National Compensation Commission the proposed PNR regulations, manuals, instructions and procedures.

- (d) Ensuring 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 programmes of the NRP and their financial, budgetary and administrative requirements.
- f) Submit to the CNR annual reports and such other reports as may be required on the financial execution and progress of the Programme.
- (g) Design and implement the administrative and functional structure of the Programme 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) To 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) Other attributions that contribute to the fulfillment of the dispositions of the present agreement for the better march and development of the Program and those that the National Commission of Reparation assigns it.

Article 8. Resources of the Program. For the effective realization of its purposes, the (National) Compensation Program will have resources from the following sources:

- (a) The annual allocation appropriated for that purpose in the State's General Budget of Revenue and Expenditure
- (b) Economic, financial and technical contributions from national and international cooperation entities, institutions and organizations.
- c) Donations, inheritances and legacies.

Article 9 is amended, according to Governmental Agreement No. 188-2004, which it's like this:

Article 9. Resource management. Except for the first year, which shall be used to structure the Program administratively and functionally, during the remaining twelve years at least ninety percent (90%) of the amount assigned to the Program in the General Budget of Income and Expenditure of the State, shall be used exclusively for compensation actions, and the rest for operation. The committee is empowered to adopt the financial management mechanisms it deems appropriate:

- (a) Institutional budget;
- (b) establishment of trusts;
- (c) both.

Article 10. Inspection. The income and expenses of the National Compensation Program shall be subject to oversight by the Comptroller General of the Nation.

Preparation and implementation of the Programme. The National Compensation Programme, with regard to the preparation of its administrative and functional structure, will begin its actions in the course of 2003 and will continue the following year with everything related to its substantive phase.

Article 12. Allocation of resources. The Ministry of Public Finance will make the financial allocations during the year 2003, as well as the corresponding budgetary forecasts in the subsequent years of the National Compensation Program, on the basis of the contents of the agreement reached on November 5, 2002.

Period for the integration of the Commission. The Commission shall be integrated within fifteen days following the publication of this agreement in the Diario de Centro América, the

official organ of the State. In the case of the Chairman of the Commission, his appointment shall become effective eight days after the said publication.

Article 14. Repeal. Governmental Agreement 235-2003 of 9 April 2003 is hereby repealed.

Article 15. Validity. This agreement shall enter into force on the day following its publication in the Diario de Centro América, the official organ of the State, which shall end on the thirty-first day of December of the year two thousand and thirteen.

COMMUNICATE

ALFONSO PORTILLO

JOSÉ ADOLFO REYES CALDERÓN

Minister for the Interior EDUARDO WEYMAN Minister for Public Finance

HUGO RACIAL MÉNDEZ RODRÍGUEZ

Assistant Secretary-General of the

Presidency of the Republic

Head of Office (E428-2003)-8-May