

**Order of the
Inter-American Court of Human Rights
of June 30, 2009
Case of Gutiérrez-Soler v. Colombia
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court") on September 12, 2005, whereby it ordered that:

1. The State must comply with the measures ordered regarding its obligation to investigate the facts reported, as well as to identify, prosecute and punish the perpetrators, under the terms of paragraphs 96 to 100 of the [...] Judgment.

2. The State must provide, free of charge, psychological and psychiatric treatment at the health-care facilities the State may indicate, to María Elena Soler de Gutiérrez, Ricardo Gutiérrez-Soler, Yaqueline Reyes, Luisa Fernanda Gutiérrez-Reyes, Paula Camila Gutiérrez-Reyes, Leonardo Gutiérrez-Rubiano, Leydi Caterin Gutiérrez-Peña, Sulma Tatiana Gutiérrez-Rubiano, Ricardo Alberto Gutiérrez-Rubiano and Carlos Andrés Gutiérrez-Rubiano, under the terms of paragraph 102 of the [...] Judgment. Regarding the medical and psychological treatment of Wilson Gutiérrez-Soler and the psychological care of his son Kevin Daniel Gutiérrez-Niño, the State shall pay Mr. Wilson Gutiérrez-Soler the sum ordered in paragraph 103 to cover the reasonable costs thereof.

3. The State must publish within the term of six months as from the date of notification of the [...] Judgment, at least once, in the Official Gazette and in another national daily newspaper the section of [the] Judgment entitled Proven Facts, without the corresponding footnotes, paragraphs 51 to 59 of the section of said Judgment entitled Merits, as well as the operative paragraphs thereof, under the terms of paragraph 105 of the [...] Judgment.

4. The State must implement in training and update courses addressed to the public officials of the criminal military jurisdiction and law enforcement staff a program aimed at analyzing the case law of the Inter-American System for the Protection of Human Rights, under the terms of paragraphs 106 to 108 of the [...] Judgment.

5. The State must implement a training program on the international standards established by the Istanbul Protocol, under the terms of paragraph 110 of the [...] Judgment.

6. The State must adopt such measures as may be necessary to strengthen existing control mechanisms at State arrest centers, under the terms of paragraph 112 of the [...] Judgment.

7. The State must pay the sums set in paragraphs 76 and 78 of the [...] Judgment as compensation for pecuniary damages, under the terms of paragraphs 70, 118, 119 and 121 to 125 thereof.

8. The State must pay the sums set in paragraph 85 of the [...] Judgment as compensation for non-pecuniary damages, under the terms of paragraphs 70, 118, 119 and 121 to 125 thereof.

9. The State must pay the sum set in paragraph 117 of the [...] Judgment as reimbursement of costs and expenses, under the terms of paragraphs 118 and 120 to 125 thereof.

[...]

2. The Order issued by the Court on January 31, 2008, whereby it declared:

1. That pursuant to the provisions of Considering clauses thirteen, twenty, twenty-four, twenty-eight and thirty-five of [the] Order, the State has fully complied with the following measures as ordered in the operative paragraphs of the Judgment rendered in the instant case:

- a) the publication in the Official Gazette and in another national daily newspaper of the pertinent parts of the Judgment rendered by the Court in the instant case (*third operative paragraph of the Judgment*);
- b) the obligation to pay Wilson Gutiérrez-Soler the sum set by the Court to cover reasonable expenses of his medical and psychological treatment, as well as of the psychological care of his son Kevin Daniel Gutiérrez-Niño (*second operative paragraph of the Judgment*);
- c) implement in training courses addressed to public officials a program aimed at analyzing the case law of the Inter-American System for the Protection of Human Rights (*fourth operative paragraph of the Judgment*);
- d) implement a training program on the international standards established by the Istanbul Protocol (*fifth operative paragraph of the Judgment*);
- e) pay the sums set by the Court as compensation for pecuniary and non-pecuniary damages (*seventh and eighth operative paragraphs of the Judgment*), and
- f) pay the sum set by the Court as reimbursement of costs and expenses (*ninth operative paragraph of the Judgment*).

2. That it will keep open the proceeding for monitoring compliance with the following obligations pending fulfillment:

- a) comply with the measures ordered regarding the State's obligation to investigate the facts denounced, as well as to identify, prosecute and punish the perpetrators (*first operative paragraph of the Judgment*);
- b) provide, free of charge, psychological and psychiatric treatment, at the health-care facilities the State may indicate (*second operative paragraph of the Judgment*), and
- c) adopt the necessary measures to strengthen existing control mechanisms at the State arrest centers (*sixth operative paragraph of the Judgment*).

3. The brief of August 27, 2008, whereby the Republic of Colombia (hereinafter "the State" or "Colombia") submitted information on the progress in compliance with the measures ordered in the Judgment, in reply to the request made by the Court in its Order of January 31, 2008.

4. The brief of October 31, 2008, whereby the victims' representatives (hereinafter "the representatives") submitted their observations on the State's report.

5. The brief of October 31, 2008, whereby the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted its observations on the State’s report.

6. The Order of the President of the Court of December 3, 2008, whereby she decided to summon the parties to a private hearing in order to receive information on compliance with the Judgment delivered in the instant case.

7. The private hearing held on January 20, 2009 at the seat of the Court.¹ At said hearing, the Vice-President of the Court, Judge Diego García-Sayán, informed the State that it had a thirty-day term, that is, until February 21, 2009, to submit a written report regarding progress in compliance with the measures ordered and with the points that had been the object of the private hearing. Furthermore, he informed the representatives and the Inter-American Commission that they would have an additional term to submit their observations on the State’s report.

8. The brief of March 18, 2009, whereby the State submitted a report in reply to the request made at the end of the private hearing regarding progress in compliance with the Judgment rendered in the instant case.

9. The brief of April 16, 2009, whereby the representatives submitted their observations on the State’s report (*supra* Having Seen clause 8).

10. The brief of June 8, 2009, whereby the Inter-American Commission submitted its observations on the State’s report (*supra* Having Seen clause 8).

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That Colombia has been a State Party to the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”) since July 31, 1973 and accepted the binding jurisdiction of the Court on June 21, 1985.

3. That, pursuant to Article 68(1) of the American Convention, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any

¹ In accordance with Article 6(2) of the existing Rules of Procedure, the Court held a private hearing with a commission of judges made up of: Diego García-Sayán, Vice-President; Manuel Ventura-Robles, Judge, and Margarete May Macaulay, Judge. At said hearing there appeared: a) Juan Pablo Albán, on behalf of the Inter-American Commission; b) Rafael Barrios-Medinvil, from “José Alvear Restrepo” Lawyers’ Association, and Michael Camilleri and Francisco Quintana, from the Center for Justice and International Law (CEJIL), on behalf of the beneficiaries; and c) Carlos Franco, Director of the Human Rights Presidential Program, on behalf of the State; Angela Margarita Rey, Director of the Human Rights and International Humanitarian Law Office of the Ministry of Foreign Affairs; Colonel Efraín Aragón, Coordinator of the National Police Human Rights Office; Juana Acosta-López, Institutional Operative Group Coordinator, Ministry of Foreign Affairs; Natalia Salamanca, Advisor to the Human Rights Office, Ministry of Foreign Affairs; and, Diana Bravo, Advisor to the Human Rights Office, Ministry of Foreign Affairs.

case to which they are parties." For such purpose, States are required to guarantee the implementation of the Court's decisions at the domestic level.²

4. That, given the final and non-subject-to-appeal nature of the Court's judgments, as established in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of the States, as supported by international case law, under which States are required to comply with the international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their domestic laws to escape their pre-established international responsibility.³ The treaty obligations of States Parties are binding on all State powers and organs.⁴

6. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure their effects (*effet utile*) at the domestic law level. This principle applies not only in connection with the substantive provisions of human rights treaties (i.e. those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.⁵

7. That the States Parties to the Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations established by the Court. In this sense, Colombia must adopt all the necessary measures to comply effectively to what was established by the Court on the Judgment of September 12, 2005. This obligation includes the State's duty to report on the measures adopted to comply with the decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the manner in which it is complying with each of the

² Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 29, 2009, Considering clause 3, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 28, 2009, Considering clause 3.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Law in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94* of December 9, 1994. Series A No. 14, para. 35; *Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador, supra* note 2, Considering clause 5, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru, supra* note 2, Considering clause 5.

⁴ Cf. *Case of Castillo-Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*, November 17, 1999. Series C No. 59, Considering clause 3; *Case of Suárez- Rosero v. Ecuador. Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador, supra* note 2, Considering clause 5, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru supra* note 2, Considering clause 5.

⁵ Cf. *Case of Ivcher-Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador, supra* note 1, Considering clause 6, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru, supra* note 2, Considering clause 6.

obligations ordered by the latter is essential to assess the progress made in compliance with the Judgment as a whole.

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8. That regarding its obligation to investigate the facts reported, as well as to identify, prosecute and punish the perpetrators (*first operative paragraph of the Judgment of September 12, 2005*), the State requested the Court to “[...] declare that Colombia is complying with [this] reparation measure” and to acknowledge that relevant steps have been taken with a view to investigating, prosecuting and, if applicable, punishing those responsible for such facts. In this regard, it informed on the order issued by the Supreme Court of Justice on September 7, 2008, wherein it found the appeal for review to be admissible and annulled all the steps and procedures ordered by the Military Criminal Courts, wherefore “[...] the decision [rendered in favor of the defendant Luis Gonzaga Enciso-Barón] ceased to be deemed *res judicata* and, consequently, the proceeding was reopened to be heard again in full compliance with judicial guarantees [...].” Regarding the possibility to bring an action for review against the decision precluding the investigation adopted by the Public Prosecutor’s Office regarding the other defendant, Ricardo Dalel-Barón, the State informed at the hearing that the Prosecutor’s Office was “planning to file” such an action.

9. That regarding the foregoing the representatives pointed out that they appreciated the decision adopted by the Supreme Court as regards the appeal for review, but they expressed “[...] their concern and confusion regarding the decision of the State to file an action for review only regarding one of the perpetrators of the torture inflicted to [Mr.] Gutiérrez-Soler [...]. [T]hough at the hearing the State [...] alleged that ‘the Prosecutor’s Office is planning to file another action for review regarding Mr. Dalel-Barón, in its brief [...] it did not offer much information in relation thereto.’ They further pointed out that “[...] besides pointing out at the hearing that the Prosecutor [...] had a ‘working plan,’ the State in its brief did not refer to the specific steps taken by the Public Prosecutor’s Office following the Judgment rendered by the Supreme Court in order to prosecute and punish Colonel Enciso-Barón.” Furthermore, they expressed their concern for the eventual conclusion of the proceeding as a result of the application of the statute of limitations, based on two prior cases submitted to the Inter-American System in which Colombian judges applied the statute of limitations. Finally, the representatives informed that “[...] on March 9, the National Human Rights Unit Fifty-third Public Prosecutor’s Office which is conducting the criminal investigation refrained from issuing an arrest warrant against Mr. Enciso-Barón[, which] is not consistent with the ample evidence produced in the case, limits the progress achieved by the judiciary, and constitutes a situation of risk for the victims, witnesses and the integrity of the criminal proceedings.” For these reasons, the representatives consider that compliance with this obligation by the State is still pending.

10. That the Commission “assesses positively the steps taken by the State in order to overcome the existing hindrances to prosecuting Mr. Enciso-Barón [...] and] expects that the State acts in a similar way regarding Mr. Dalel-Barón, alleged co-perpetrator of the torture inflicted to [Mr. Gutiérrez-Soler] [...].”

11. That the Supreme Court of Justice of Colombia found the appeal for review to be admissible regarding the defendant Luis Gonzaga-Enciso-Barón. In this regard,

the Supreme Court of Justice, *inter alia*, pointed out that the domestic court adopted such decision in accordance with its domestic legislation,⁶ which establishes that for this remedy to be admitted “[...] it is not necessary that a new fact be proven or new evidence be submitted [where] an international body recognized by Colombia verified the evident non-compliance by the State of its obligation to conduct a of the rules of international humanitarian law has been committed [...].” Furthermore, the Supreme Court assessed positively the “binding” and “intangible” nature of the decisions adopted by the Inter-American Court of Human Rights, whereby it considered that “[...] what is unquestionable, what is to be complied with and may not be challenged is the order [that] the competent authority effectively investigate the facts so that those responsible for them may be identified, prosecuted and punished.” Regarding the application of the statute of limitations to the criminal proceedings, it pointed out that in cases “[...] of torture, the conclusion of the proceedings is not subject to the standard rules but to the provisions of international instruments on human rights and the case law of international bodies for the protection of human rights [...].” It further pointed out that “pursuant [to the Judgment on the merits, reparations and costs rendered by the Inter-American Court of Human Rights on September 12, 2005, it is] unquestionable that the domestic proceedings in which the pertinent international rules are not complied with, particularly the provisions of the Inter-Americ[an] Convention, may not be deemed to be valid and, as pointed out by [the Inter-American Court], it is neither admissible nor relevant ‘to apply institutions such as amnesty, pardon, statutes of limitations or other measures designed to eliminate responsibility.’⁷

12. That the Court positively assesses the decision adopted by the Supreme Court of Justice of Colombia, as it is an important step towards fulfilling the obligation to investigate, prosecute and, if applicable, punish those responsible for the facts described in the instant case.

13. That from the Judgment rendered by the Court in the instant case (*supra* Having Seen clause 1) it results that as a consequence of the illegal arrest and torture inflicted to Wilson Gutiérrez-Soler two investigations were started which concluded with decisions in favor of the defendant; one of these actions was started before the military criminal courts against Colonel Enciso-Barón and the other before the ordinary criminal courts against Ricardo Dalel-Barón. In this regard, in the above-mentioned Judgment the Court in paragraph 98 established that from the proven facts it resulted “that the proceedings started in connection with the instant case before the domestic courts were vitiated by the [non-adherence to the rules regarding due process of law],” wherefore they constituted “fraudulent *res judicata*.” In this regard, the Court highlights the willingness shown by the State to file another action for review in relation to the proceedings started before the ordinary courts.

⁶ Paragraph 4 of Article 192 of the Criminal Procedural Code, Act No. 906 of 2004, Published in Official Gazette No. 45.657 on August 31, 2004, in its pertinent part, sets forth that: “4. Where after an acquittal in proceedings started for violations of human rights or serious breaches of the rules of international humanitarian law, a decision adopted by an international body for the protection of human rights whose binding jurisdiction has been recognized and accepted by the State of Colombia determines a blatant non-performance of the obligation of the State to conduct a serious and impartial investigation into such violations, it will neither be necessary to prove the existence of a new fact nor to submit evidence which had not been submitted at the investigation stage.”

⁷ *Cf.* Supreme Court of Justice of Colombia. Criminal Appellate Court. Appeal for Review. Reporting Judge Jorge Luis Quintero-Milanés. Admitted by means of record No. 267, of September 17, 2008. Bogota. (Record on Monitoring Compliance with Judgment, Volume II, folios 355 to 396).

14. That it is necessary that the State continue informing on the progress of the proceedings started in connection with the facts described in the instant case, as well as on the second appeal for review to be filed in order to investigate and prosecute as soon as possible all those allegedly responsible for said facts.

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15. That regarding the obligation to provide, free of charge, psychological and psychiatric treatment at the health-care facilities the State may indicate (*second operative paragraph of the Judgment rendered on September 12, 2005*), in its Order of January 31, 2008 the Court determined that "as long as some of the beneficiaries are living abroad, the State will not be able to provide psychological [...] treatment under the terms ordered in connection therewith."

16. That regarding the victims who reside in Colombia, the State pointed out that this obligation had not been complied with as said beneficiaries had expressed their wish to consult Wilson Gutiérrez-Soler before undergoing diagnosis procedures, evaluation and treatment. In this regard, the State expressed that it was ready to provide diagnosis, evaluation and treatment "[...] the moment the relatives so require and at the time th[ey] dee[m] convenient."

17. That the representatives acknowledged the flexibility and willingness of the State to comply with the above obligation, despite the delays that took place and the difficulties encountered, and bound themselves to cooperate in order to generate greater confidence in the victims so that they may receive the above-mentioned treatment. Furthermore, they expressed their considerations regarding the need that treatment be offered immediately after the diagnosis has been established and that both diagnosis and treatment are provided at the same health-care institution.

18. That the Commission pointed out that it "took cognizance of the information provided by the representatives and expects diagnosis procedures to conclude as soon as possible in order to start treatment, taking into consideration the importance this reparation measure has for the victims."

19. That the Court highlights the willingness of the State to comply with this measure "[...]the moment the relatives so require and at the time they deem convenient." Notwithstanding, it reiterates that for this diagnosis, evaluation and psychological and psychiatric treatment to be effective, not only is the good will of the State indispensable, but also the effective participation of the victims. Therefore, it is necessary that the representatives take forthwith all necessary steps so that the State may comply with this obligation.

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20. That regarding the obligation to adopt the necessary measures to strengthen existing control mechanisms at the State arrest centers (*sixth operative paragraph of the Judgment rendered on September 12, 2005*), the State informed about the adoption of a number of measures, to wit: i) the enforcement of Act No. 906 of the Criminal Procedural Code in effect since 2008, which sets forth a system which is

more supportive of the protection of human rights mainly as regards provisional arrest, as well as judicial control procedures (appearance of the arrested person before the competent judge within 36 hours) and the impossibility to hold him in places other than the Immediate Reaction Units [*Unidades de Reacción Inmediata*, URI] which depend on the General Prosecutor's Office; ii) the enforcement of thirteen guidelines since 2006, as well as of other documents for the internal dissemination among public officials, which contain "[...] precise instructions to the members of the armed and national police forces aimed at guaranteeing the transparency of procedures regarding deprivation of liberty [...];"⁸ iii) the implementation since 2006, "[o]f a plan for the prevention of alleged violations of human rights and of the rules of international humanitarian law[.] which implies preventive training actions and academic investigation activities based on the analysis of decisions and judgments [...];" iv) an "interlocutory process" among the National Police, non-government organizations for the protection of human rights, trade unions, and social organizations, and v) the delivery of the "[...] police procedural manual which standardizes all activities, duties, searches, risks and preventive actions regarding each procedure adopted by the national police [...] and which establishes in a detailed and precise manner [the] scope of action for those carrying them out."

21. That regarding the foregoing the representatives considered that "[...] the information provided by the State so far does not allow concluding that [...] it has fully complied with this guarantee of non-repetition, taking into consideration [...] the

⁸ Cf. Guideline No. 06 of April 6, 2006 issued by the National Defense Ministry (Instructions to support investigations regarding the forced disappearance of persons and the execution of the urgent search mechanism, as well as to prevent the crime of forced disappearance of persons), which contains directions, *inter alia*, to secure that there is a record of the persons apprehended and arrested always available for the public and that the necessary measures are taken to prevent it from being altered; Guideline No. 10 of June 6, 2007 issued by the National Defense Ministry (Reiteration of obligations for authorities tasked with enforcing the law and preventing the homicide of protected persons), which sets forth, *inter alia*, that arrested persons must be brought before the competent authorities within the legal terms and that the immediate access of ICRC delegates must be allowed to the places where arrested persons are held so that their situation may be verified; Official Letter No. 30317 of February 2, 2007 (Right to liberty and personal safety, deprivation of liberty and treatment of apprehended persons) issued by the Armed Forces Joint General Staff, which clarifies essential concepts related to the right to personal liberty and the only circumstances in which said right may be restricted, among others; Permanent Guideline issued by the Armed Forces General Command No. 6052 of July 24, 2007, which sends the instructions contained in Guideline 10 of 2007 to all military units; Circular Letter No. 2190 of February 25, 2008, issued by the Armed Forces General Command, whereby instructions are given to the Military Forces to comply with the Agreement reached by the National Government and the ICRC; Official Letter No. 3567 of March 14, 2008, issued by the Armed Forces General Command, whereby instructions are given to the Military Forces to comply with Circular Letter No. 2190; Set of Instructions 007 of February 13, 2006, issued by the National Police General Director and addressed to the Police for the adaptation and improvement of places for detained persons; Set of Instructions 096 of September 21, 2006, issued by the National Police General Director and addressed to the Police, listing a number of actions aimed at preventing the violation of the rights of detained or arrested persons; Set of Instructions 018 of July 26, 2007, issued by the National Police Operative Director, which reiterates instructions to the Police aimed at preventing the violation of the rights of apprehended persons; Set of Instructions 006 of January 21, 2008, issued by the National Police General Director, which provides for compliance with instructions aimed at apprehending persons in a limited and proper manner; Set of Instructions 009 of January 30, 2008, issued by the National Police General Director, whereby Set of Instructions 006 of 2008 is amended and updated; Set of Instructions 040 of June 20, 2008, issued by the National Police General Director, whereby the scope and circumstances under which intoxicated persons may be provisionally arrested are reiterated; Set of Instructions 045 of June 27, 2008, issued by the National Police General Director, which sets forth further protection measures regarding provisional arrest; and the National Police Manual of Procedures for the Control of Crimes and Misdemeanors, which sets forth the activities, duties, searches, risks and preventive actions to be taken in relation to each procedure adopted by the police in the case of deprivation of liberty.

specific requirements set forth in paragraph 112 of the Judgment.” They focused their concern particularly on provisional arrest centers which “should be controlled as rigorously as those arrest centers managed by the National Penitentiary Institute [*Instituto Nacional Penitenciario y Carcelario*, INPEC].” They pointed out that the source of most information provided by the State is INPEC, whose competence is limited regarding provisional arrest centers such as police stations and army battalions, among other places “[...] where most alleged incidents of torture or [...] cruel, inhuman or degrading treatment are reported to take place[...].”

22. That regarding the foregoing the Commission argued that “control mechanisms must be applied to any center or place where persons deprived of their liberty are held, regardless of whether they are provisional arrest centers, prisons or penitentiaries.” It further stated that no sufficient information h[ad] been submitted which allowed assessing compliance with this reparation measure.”

23. That in paragraph 112 of the Judgment on the merits, reparations and costs of September 12, 2005, the Court ordered that Colombia was to implement control mechanisms in arrest centers. In this regard the Court ordered

“[...] that Colombia must adopt the necessary measures to strengthen existing control mechanisms in state arrest centers, for the purpose of guaranteeing adequate arrest conditions and respect for the due process of law. Such control mechanisms must include, *inter alia*: a) medical examinations of every arrestee or convict, according to standard medical practice. Specifically, examinations shall be conducted under medical control, in private and never in the presence of security staff or other government officials. Such examinations shall be conducted as promptly as possible after the admission of the arrested or imprisoned person to the place of arrest or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary; b) regular psychological assessments of staff in charge of the custody of persons arrested, in order to ensure their appropriate mental health condition; and c) frequent access to such centers for staff of the appropriate human rights surveillance and protection organizations.”

24. That the measures adopted and informed by the State at the private hearing (*supra* Considering clause 20) are additional to the measures formerly informed to the Court regarding the National Police and the General Prosecutor’s Office provisional arrest centers: “[...] upon admission of an arrestee, various control measures are adopted, among which is a medical check-up to assess the physical and mental health of the arrested person. During detention, the arrested person may make telephone calls and get in contact with his next of kin and legal counsels within the scope established by law. As regards provisional arrest places managed by the Public Force, the Ministry of Defense issued Guideline No. 10 of June 6, 2007 [...] [which] sets forth, among oth[e]r things that: the person arrested must be brought before the competent authorities within the term fixed by the law and that an official and public record of the persons arrested must be kept, giving details about the date and time of admission, reason, condition, and authority before which the arrested person has been brough[t].”

25. That the Court highlights and assesses positively the efforts made by the State regarding the foregoing, as they show its partial compliance with this reparation measure regarding permanent arrest centers, which depend on and are managed by the National Penitentiary Institute (INPEC). The Court considers that the advances achieved in connection with the regulations regarding the mechanisms for the control and treatment of persons deprived of their liberty and kept under the

custody of the State are to be preserved and strengthened as a way of guaranteeing that events such as the ones described in the instant case will not happen again.

26. That taking into consideration what has been informed and after assessing the steps informed by the State in order to comply with this obligation, the Court deems that the information submitted does not specifically refer to the control mechanisms implemented at provisional arrest centers, as ordered by the Court in paragraph 112 of the Judgment (*supra* Considering clause 24). In this regard, it considers that the efforts made in order to ensure a strict control in the treatment of detainees at provisional arrest centers must include a medical and psychological check-up, procedures to periodically evaluate the psychological condition of the officials tasked with providing treatment to detained persons at provisional arrest centers and the access to those arrest centers of officials from the appropriate control or protection bodies, matters regarding which the State has not submitted sufficient information which allows assessing compliance with this measure.

27. That the Court has verified the partial compliance with this reparation measure (*supra* Considering clause 24). Notwithstanding, it is necessary that the State inform the Court on the adoption of all necessary measures to strengthen the control mechanisms existing at State provisional arrest centers, in accordance with the measures ordered in the Judgment delivered in the instant case and in the above-mentioned Considering clause.

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28. That the State, together with the report of March 18, 2009, forwarded the agreement reached at the meeting with the victims' representatives in the instant case. In such agreement, the parties, among other things, bound themselves: a) "to carry out a joint activity to raise the awareness of judges on the decisions of the Supreme Court of Justice, the Superior Council of the Judicature [*Consejo Superior de la Judicatura*] and the State Council [*Consejo de Estado*] regarding the protection of the victims of human rights violations, [in order to] prevent unfavorable decisions from lower judges who are not cognizant of the case law of [the Inter-American Court]," and b) "to agree on a text on the facts and judgment rendered in the instant case and adopt all necessary steps to publicize the latter by different means (web pages of different institutions and of the victims' representatives), so that it be widely disseminated," and they agreed that c) "the victims' representatives will contact Wilson Gutiérrez-Soler's next of kin and try to raise their awareness so that they participate in the relevant process of diagnosis and subsequent treatment."

29. The representatives, in their brief of April 16, 2009, pointed out that they "ratif[ied] the above-mentioned agreements."

30. That the Commission pointed out that "it had taken cognizance that the parties have agreed on measures aimed at guaranteeing the dissemination and knowledge of the Judgment [...] and expects that the State submit up-to-date information regarding the progress in adopting such measures in its next report."

Furthermore, it pointed out that regarding the first point of the agreement it “would await[t] detailed information which allowed determining the impact of this activity.”

31. That the Court appreciates the efforts towards reaching an agreement made by the parties with a view to making effective the reparation measures ordered by the Court in the Judgment rendered in the instant case. The parties’ attitude reflects their commitment to prevent the occurrence in the future of events, which entail violations of human rights. Notwithstanding, though the Court appreciates the information submitted and the agreement reached, it reiterates that some of the matters referred to in said agreement have been examined and determined by the Court (*supra* Having Seen clause 2), and that, particularly, some of them refer to the publication of the Judgment on the merits, reparations and costs and to the training of public officials, measures which have already been declared to have been complied with. Accordingly, the Court in future will only supervise the points pending compliance (*supra* Having Seen clause 2 and *infra* Declarative paragraph 1).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, 25(1) of its Statute, and 63(4) of its Rules of Procedure,

DECLARES:

1. That pursuant to the terms of Considering clause 27 of this Order, the State has partially complied with the obligation to adopt the necessary measures to strengthen the control mechanisms existing at State arrest centers (*sixth operative paragraph of the Judgment*).

2. That pursuant to the terms of Considering clauses 14, 19 and 27 of this Order, the following obligations are pending fulfillment:

a) to comply with the measures ordered regarding the obligation to investigate the facts reported, as well as to identify, prosecute and punish the perpetrators (*first operative paragraph of the Judgment*);

b) to provide, free of charge, psychological and psychiatric treatment at the health-care facilities the State may indicate (*second operative paragraph of the Judgment*), and

c) to adopt the necessary measures to strengthen existing mechanism controls at State arrest centers (*sixth operative paragraph of the Judgment*).

3. That it will keep open the proceeding for monitoring compliance with judgment until all the obligations referred to in the foregoing paragraph have been fulfilled.

AND DECIDES:

1. To call upon the State of Colombia to adopt such measures as may be necessary to fully and promptly comply with all measures pending fulfillment as ordered by the Court in the Judgment on the merits, reparations and costs of September 12, 2005, under the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State of Colombia to submit a report to the Inter-American Court of Human Rights no later than October 23, 2009, specifying all the measures adopted to comply with the reparations ordered by the Court which are pending fulfillment, under the terms of Considering clauses 14, 19 and 27, and of the foregoing paragraphs 1 and 2 hereof.

3. To request the Inter-American Commission on Human Rights and the victims' representatives to submit their observation on the report of the State referred to in the foregoing operative paragraph, within the terms of four and six weeks, respectively, as from the date such report has been received.

4. To continue monitoring compliance with the obligations pending fulfillment of the Judgment on the merits, reparations and costs of September 12, 2005.

5. To request the Secretariat of the Court to notify this Order to the State of Colombia, to the Inter-American Commission on Human Rights, and to the victims' representatives.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary