

**Order of the  
Inter-American Court of Human Rights  
of July 7, 2009  
Case of the Ituango Massacres 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", "the Inter-American Court" or the "Tribunal") on July 1, 2006, whereby the Tribunal decided that the State of Colombia (hereinafter, the "State", the "Colombian State" or "Colombia") must:

[...]

15. [...] take the necessary measures to provide justice in [...] case [;]

16. [...] provide, free of charge, and through the national health services, the appropriate treatment required by the next of kin of the victims executed in this case[;]

17. [...] take the necessary measures to guarantee safe conditions for the former inhabitants of El Aro and La Granja, who were forced to displace, to return to El Aro or La Granja, as applicable and if they so desire, in the terms of paragraph 404 [of the] Judgment [;]

18. [...] organize a public act to acknowledge international responsibility for the facts of this case, in the presence of senior authorities, in the terms of paragraphs 405 and 406 of th[e] Judgment [;]

19. [...] implement a housing program, to provide appropriate housing to the surviving victims who lost their homes and who require this, in the terms of paragraph 407 of th[e] judgment [;]

20. [...] erect a plaque in an appropriate public place in La Granja and in El Aro, so that the new generations know about the events that took place in this case. The foregoing in the terms of paragraph 408 of [the] Judgment [;]

21. [...] implement, within a reasonable time, permanent training programs on human rights and international humanitarian law for the Colombian Armed Forces, in the terms of paragraph 409 of th[e] judgment;

22. [...]publish once, within six months, in the official gazette and in another newspaper with national circulation, the chapter on the proven facts in th[e] judgment, without the corresponding footnotes, and the operative paragraphs of the judgment, in the terms of paragraph 410 [t]hereof;

23. [...] pay the persons indicated in Appendixes I and III of th[e] judgment, within one year, in compensation for pecuniary damage, the amounts established in paragraph 379 and in Appendixes I and III of th[e] judgment, in the terms of paragraphs 358, 359, 363, 364, 376, 377, 417 and 420 to 424 thereof[;]

24. [...] pay the persons indicated in Appendixes I, II and III of th[e] judgment, within one year, in compensation for non-pecuniary damage, the amounts established in paragraph 390 and in Appendixes I, II and III of this judgment, in the terms of paragraphs 358, 359, 363, 364, 376, 377, 390, 417 and 420 to 424 hereof[, and]

25. [...] pay, within one year, for the costs and expenses arising in the domestic sphere and in the international proceedings before the Inter-American system for the protection of human rights, the amounts established in paragraph 416 of the [...] judgment, which must be delivered, as applicable, to the *Grupo Interdisciplinario de Derechos Humanos* and the *Comisión Colombiana de Juristas*, in the terms of paragraphs 416, 417 and 419 to 421 of the [...] Judgment.  
[...]

2. The briefs of January 16 and August 27, 2007, November 14, 2008 and April 23, 2009, by means of which the State informed on the status of compliance with the Judgment

3. The briefs of July 4 and 7, 2008, March 11, and May 5 and 12, 2009, by means of which the victims' representatives (hereinafter, the "representatives") forwarded their observations in relation to the compliance with the Judgment.

4. The briefs of September 8, 2008 and March 12, 2009 by means of which the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") presented the observations to the State's information about the compliance with the Judgment.

5. The briefs of December 9, 2007, by means of which Messr. Joaquin Emilio Gallo Machado requested the Tribunal to clarify "whether the minor Johocio Alexis Beoya García is entitled to the compensation that would have corresponded to his mother [Libia Eugenia García Arboleda, in turn, daughter of Mrs. María Graciela Arboleda Rodríguez]", in relation to the compliance with the Judgment.

6. The brief of November 26, 2008 by which Messr. Marcelino Barrera Sucerquia and Mrs. Marta Marnely Barrera P. transmitted copies of two "Certification records" and one "Record of Statement", respectively, addressed to the State, regarding the compensations ordered in their favor in the Judgment

7. The briefs of June 17 and 20, July 14 and 25, August 11 and November 7, 2008 and February 9, 2009 by means of which Mrs. Rosa María Posada George and Messr. Marco Aurelio Aleiza Posada referred to the delivery of the compensations ordered in their favor, as well as the compensation ordered in favor of the minor José Leonel Aleiza Posada.

### **Considering:**

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Colombia has been a State Party to the American Convention (hereinafter, the "American Convention") since July 31, 1973, and that it accepted the binding jurisdiction of the Court on June 21, 1985.

3. That Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level<sup>1</sup>.

<sup>1</sup> Cf. *Case of Baena Ricardo et al v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Gómez Palomino v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 1, 2009, Considering clause three; and *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of May 20, 2009, Considering Clause three.

4. That, in consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their 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 municipal laws to escape from their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.<sup>2</sup>

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. 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 intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.<sup>3</sup>

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. This obligation includes the State's duty to report on the measures adopted to comply with such decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the whole status of compliance in this case.<sup>4</sup>

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8. That as to the obligation to take the necessary measures to provide justice in this case, the State informed that the current criminal proceedings have a constant procedural activity and that they have shown some results as to the formally inclusion of possible perpetrators to the case. As to the specific progress of the investigations in the Human Rights Unit regarding the case of La Granja, the State informed, *inter alia*, that after the Judgment, the Human Rights Unit brought charges and issued an order to be held in preventive detention against a paramilitary officer; a third person was formally included in the investigation of this case and by means of court record of December 5, 2007, the

<sup>2</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 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 Gómez Palomino*, *supra* note 1, Considering clause 5; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of June 8, 2009, Considering Clause fourth.

<sup>3</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 30; *Case of Gómez Palomino*, *supra* note 1, Considering clause six; and *Case of the Sawhoyamaya Indigenous Community*, *supra* note 1; Considering clause six.

<sup>4</sup> Cf. *Case of the "Five Pensioners" v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause five; *Case of Gómez Palomino*, *supra* note 1, Considering clause seven; and *Case of Herrera Ulloa v. Costa Rica. Monitoring Compliance with Judgment* Order of the President of the Inter-American Court of Human Rights of June 2, 2009, Considering Clause six.

Supreme Court of Justice admitted the appeal for review filed by the Attorney General's Office regarding the proceeding conducted against the Police Commander in Ituango. Likewise, as to the progress in the investigations of the Human Rights Unit regarding the case of El Aro, it informed that charges were brought against two members of the law enforcement personnel on January 31, 2007 and that on February 5, 2008, two paramilitary officers were included in the investigation. As to the murder of the confessed paramilitary officer, Francisco Enrique Villalba Hernández, the State indicated that it was conducting an investigation into the matter and that at the moment of his death, he was under home detention since it was not possible to provide the medical treatment he needed in the penitentiary center. Moreover, it pointed out that even though there was a protection program for witnesses, victims and interveners in criminal proceedings before the Attorney General's Office, none of the people included in the investigations into the facts of La Granja and El Aro had requested protection.

9. That as to this measure, the representatives pointed out that "the State is not acting with due diligence to satisfy the justice expectations of the victims' next-of-kin". They noted that "[only] one of the 18 people marked [as perpetrators and accomplices of the massacres of El Aro and La Granja] [...] had been formally joined to the proceedings due to the preliminary interview rendered by one of the highest-paramilitary chiefs" within the process of the Justice and Peace Act. According to the representatives, this "demonstrates, one more time, the inefficacy of the criminal proceedings in these cases and therefore, the impunity surrounding the facts". In addition, they indicated that Act 975 establishes obstacles for the participation of the victims' next-of-kin in the Justice and Peace process, which constitutes an obstacle *de jure* for the compliance with the Judgment of the Court. The representatives also noted that in May 2008, the State extradited 14 paramilitary chiefs to the United States of America, including Salvatore Mancuso, "which created an obstacle for the victims to have access to the proceedings conducted by the State, [depriving them] of the possibility to require the complete confession" of the facts. Finally, the representatives pointed out that on April 22, 2009 "the confessed paramilitary officer, Francisco Enrique Villalba Hernández, was murdered" and that he would have rendered statements about the fact that high-ranking state officers allegedly knew about the planning of the massacre of El Aro and the murder of the human rights defender, Jesús María Valle Jaramillo. The representatives considered that "the murder of Francisco Villalba constitutes an additional obstacle to the criminal investigations that are being conducted for the murder of Jesús María Valle [Jaramillo] and the massacre of El Aro". Therefore, they requested the Tribunal to order the State to provide information on the measures adopted to "protect the victims, the next-of-kin, the witnesses and each one of the parties to the proceeding that participate in the [criminal investigations of the instant case]".

10. That the Commission considered that "the State has [not] submit[ed] sufficient information to determine the progress made in complying with this measure of reparation" and that "the brief information provided for by the State is outdated; that it does not indicate the procedural situation of the accused, [the] stage of the proceedings, the actions taken within the framework of these investigations or [the] probable date of the trial, for example".

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11. That before entering into the analysis of the foregoing, the Court needs to decide on the State's request as to the publication of the information presented in relation to the investigations. In its report of November 14, 2008, the State requested the Tribunal "not to include the information subjected to confidentiality of legal proceedings in any public

document, inasmuch as the investigation could be jeopardized". In this respect, the State referred to the arguments presented within the framework of the procedure to monitor compliance with other judgments delivered by this Tribunal.

12. That this Tribunal is aware of the risk implied in making public certain information related to the internal investigations, regarding the effectiveness of the investigation in itself as well as the people involved or interested in the investigation. Nevertheless, during the procedure to monitor compliance with the Judgment, the role of the Tribunal is no longer to determine the facts of the case and the possible international responsibility of the State, but to verify only the compliance with the obligations stipulated in the ruling by the responsible state. Therefore, the Court needs to have the necessary information, which must be provided by the State, the Commission and the victims or their representatives. In this sense, the General Assembly to the OAS repeated that, "in order for the Tribunal to fully meet its obligation to report to the General Assembly on compliance with its judgments, the States Parties [to the Convention] need to provide, in time fashion, the information requested [by the Court].<sup>5</sup> In this way, for the sake of complying with its role in monitoring compliance with the measures of reparation regarding the violations committed to the detriment of the victims and in the presence of both parties to an action, in each case, the Court shall assess the need, convenience or relevance of maintaining the confidentiality of the information furnished in relation to its use in the order, but not in relation to the parties' access to it.

13. That in the instant case, Colombia has submitted certain information related to the investigations, which has been transmitted and learnt by the representatives and the Commission, but the State requests the Tribunal not to publish such information in the monitoring compliance orders. The Court shall take into account all the information provided and shall include in this Order only the essential part of such information, in order to determine the effectiveness of the investigations into the facts of this case, in the current context of the investigations into serious human rights violations in Colombia. The Court has pointed out, as in previous cases, that it is not a criminal court, which can analyze the criminal responsibility of individuals,<sup>6</sup> and therefore, the Court shall not analyze, in this stage, all the dimensions of the investigations and internal proceedings, but only its effectiveness based on what was established in the Judgment.

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14. That the Court determined in the Judgment that in order to comply with the obligation to investigate and punish the responsible for the serious human rights violations in this case, Colombia must: (a) remove all the obstacles, *de facto* and *de jure*, that maintain impunity; (b) use all available means to expedite the investigation and judicial proceedings, and (c) grant guarantees of adequate safety to the victims, investigators, witnesses, human rights defenders, judicial employees, prosecutors and other agents of

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<sup>5</sup> OAS General Assembly. AG/RES Resolution. 2292 (XXXVII-O/07) adopted at the fourth plenary session, held on June 5, 2007, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights".

<sup>6</sup> *Cf.* Case of Velásquez Rodríguez. Merits. Judgment of July 29, 1988. Series C N° 4, para. 134; *Case of Miguel Castro-Castro Prison v. Perú. Interpretation of the Judgment on the Merits, Reparations and Costs.* Judgment of August 2, 2008. Series C N° 181; para. 40; *Case of Yvon Neptune v. Haití.* Merits, Reparations and Costs. Judgment of May 6, 2008. Series C N° 180, para. 37.

justice, as well as the former and current inhabitants of Ituango<sup>7</sup>. Moreover, when necessary, it is important to expose the existence of complex criminal structures and their connections which made the violations possible<sup>8</sup>.

15. That the Court also determined that the State did not guarantee prompt justice to the victims, inasmuch as most of the responsible have not been included in the investigations or have not been identified or accused despite the fact that the incidents of this case were committed by a group of approximately 30 armed men with the knowledge, tolerance and consent of the Colombian Army. Even, most of the people who have been sentenced to serve a prison term have not been detained.<sup>9</sup>

16. That the information forwarded to the Tribunal does not allow verifying the existence of a significant progress as to the compliance with this measure of reparation. Of the eight people on whom the State has provided information during the procedure to monitoring compliance with the Judgment, six were already joined to the proceedings of this case on the date this Order is issued by the Tribunal.<sup>10</sup> Furthermore, the information forwarded by the State regarding this measure of compliance refers to the proceedings conducted between the year 2006 and February 2008. Therefore, the Tribunal has no information on the records of pleadings of the last 15 months within the proceedings conducted or the measures adopted to speed up the investigation and the judicial process and remove all obstacles, *de facto* and *de jure*, that maintain impunity. The foregoing means that after 11 and 12 years of the massacres of La Granja and El Aro, respectively, the violations so declared in the case at hand are still in the same condition of impunity that they were at the moment of the delivery of the Judgment, almost three years ago.<sup>11</sup>

17. That the murder of Mr. Francisco Enrique Villalba Hernández, a paramilitary officer who had acknowledged his participation in the case and was under home detention in the custody of the State, excluded the possibility that Mr. Villalba provide further information on other perpetrators who participated in the massacres of Ituango, eliminating in this way a possible source of evidence for pending criminal proceedings. In this connection, the Tribunal pointed out (*supra* Considering clause 14) that the State must offer protection to witnesses in cases of serious human rights violations. Mr. Villalba, due to his participation in the facts, was a witness to the case and was under home detention on the date of his murder, that is to say, under the protection of the State. In this sense, the Tribunal recalls that the State must adopt the measures necessary to protect other witnesses, justice administrators, victims and their next-of-kin that so require to guarantee that the investigations in the instant case are not being obstructed.

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<sup>7</sup> Cf. *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C N° 148, para. 400.

<sup>8</sup> Cf. *Case of La Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C N° 163, para 194; and *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C N° 192, para. 101.

<sup>9</sup> Cf. *Case of Ituango Massacres*, *supra* note 7, para. 125(94); 303-307; 310-312; 321; 323 and 325. Specifically, on July 8, 2005, the First Criminal Court of the Antioquia Specialized Circuit sentenced Orlando de Jesús Mazo, a civilian, to 12 years' imprisonment for the crime of conspiracy to commit a crime, terrorism and extortion; Gilberto Antonio Tamayo Rengifo, a civilian, to 12 years' imprisonment for the crimes of terrorism and extortion; Carlos Antonio Carvajal Jaramillo, a civilian, to 72 months' imprisonment charged with conspiracy to commit a crime and extortion; and Jorge Alexander Sánchez Castro, Army Captain, to 31 years' imprisonment for aggravated murder and conspiracy to commit a crime .

<sup>10</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 303-307 and 311-312.

<sup>11</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 309, 321 and 325.

18. That, according to the representatives, Act 975 (Justice and Peace Act) does not entitle the victims' legal representatives to interrogate the people subjected to such act or to request complete copies of the preliminary interviews or produce evidence in the proceeding. Moreover, they indicated that the extradition to the United States of America of 14 paramilitary chiefs have prevented the victims from having access to the proceedings and requiring a complete confession of the facts.

19. As to Act 975, the Court recalls what it has held in previous cases in that respect, in the sense that "officers and state authorities are bound to respect the provisions in force within the domestic legal system and guarantee that its application is in line with the American Convention."<sup>12</sup> Furthermore, the Tribunal recalls what it has pointed out in its usual practice, as well as in the Judgment, in the sense that no law or provision of domestic legislation can prevent a State from complying with the obligation to investigate and punish those responsible for serious human rights violations.<sup>13</sup> In addition, even though in other cases, this Tribunal has acknowledged the relevance of the legal precept of extradition as an important instrument for the criminal prosecution of cases involving serious human rights violations,<sup>14</sup> said precept cannot be held as a means to favor, seek or ensure impunity in said cases.

20. That the Tribunal considers it is essential for the State to submit updated, detailed and complete information on the measures adopted and the progress made in the corresponding proceedings in order to, within a reasonable term, identify, prosecute and punish, if applicable, the responsible. Likewise, the State must present information regarding the access of the victims and their next-of-kin to said proceedings. The State must report, also, on the actions taken to protect, where applicable, those people linked to the proceedings conducted in order to do justice for the massacres of El Aro and La Granja.

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21. That as to the obligation of the State to provide, free of charge, and through the national health services, the appropriate treatment required by the next-of-kin of the victims executed in this case, the State informed that it is making the necessary arrangements to carry out "the screening tests of the beneficiaries through a private entity, in compliance with what has been agreed upon with the petitioners in the meeting of June 12, 2007". After the diagnosis stage, it falls upon the State to provide the treatment required. To that end, the State pointed out that in December 2007, an agreement was entered into with the United States Development Program (UNDP) in order to locate and identify the victims' next-of-kin, make the assessment and the corresponding medical and psychological diagnosis by means of processes of psychosocial intervention and provide recommendations regarding the treatment required. In the month of October 2008, the *Corporación Vinculos*, a private entity specialized in treating victims of human rights violations, was hired to make the diagnosis of the victims' next-of-kin. Hence, the State informed that "it was waiting to have, by the end of December [2008] the first diagnosis

<sup>12</sup> Cf. *Case of Almonacid Arellano et al v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C N° 154, para. 124; *Case of Heliodoro Portugal v. Panamá*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C N° 186, para. 180; *Case of Fermín Ramírez v. Guatemala and Case of Raxcacó Reyes v. Guatemala*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of May 9, 2008, Considering Clause 63.

<sup>13</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 402.

<sup>14</sup> Cf. *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006, Serie C No. 153, paras. 130-132; and *Case of La Cantuta v. Perú*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C N. 162, paras. 159-160.

report, which [would] allow determining the needs of the victims' next-of-kin and continuing, in a reliable way, with the treatment stage". In addition, the State informed that it had held several meetings with the representatives in order to agree on the details of the diagnosis stage.

22. That the representatives stated that "[in] the year 2008, an agreement process [has begun] in order to comply with this measure, to which the [UNDP] was linked and during which an assessment of the situation of the beneficiaries of the measure was made, in the months of November and December 2008". In addition, the representatives informed that on February 17, 18 and 19, 2008, a seminar on the "reparation by means of medical and psychological treatments from a psychosocial viewpoint in relation to the compliance with the judgments of the Inter-American Court" was conducted. In such seminar, it was agreed "that, provisionally, the entities in charge of making the initial diagnosis should provide the basic psychological and medical treatment to the beneficiaries of the measures, which is ineffectual since such entities have not been hired by the State to play that role". According to the representatives, up to date "no progress has been made in relation to this measure". Moreover, they pointed out that the victims considered it was offensive that state authorities had left the seminar precisely when the victims' direct participation was planned.

23. That the Commission "t[ook] note of the efforts made by the Colombian State in preparing the diagnosis report" but it indicated that "it is waiting for information on the specific actions in relation to the effective administration of the medical treatment ordered by the Court as soon as possible".

24. That this measure of reparation ordered by the Tribunal (*supra* Having Seen clause 1.16) seeks to reduce the physical and psychological sufferings of all the next -of kin -of the executed victims by providing collective, family and individual treatments taking into account the specific circumstances and needs of each person. In such regard, the State must provide, free of charge, the appropriate treatment for such people, once they have expressed their consent, and for the time necessary, including medication.<sup>15</sup>

25. That the Court notes and values that the State has adopted certain measures tending to comply with this obligation. In particular, the Tribunal acknowledges that the State has come to an agreement with the UNDP to make a diagnosis of the situation of the families that are beneficiaries of the measure, as well as of the beneficiaries of the reparations ordered in other judgments delivered by this Tribunal. In this sense, the Court emphasizes that, in the months of November and December, 2008, a diagnosis of the treatment required by the beneficiaries was made. The foregoing constitutes a specific step towards the provision of treatments considering the specific circumstances and needs of each person, in accordance with the terms of the Judgment.<sup>16</sup>

26. That, in spite of the diagnosis and that three years have passed since the notice of the Judgment, the State has not informed on the measures adopted to effectively provide the treatment required by the beneficiaries. As a result, the Court hopes for the State to adopt the remaining measures in order to implement the treatment program so required and include the victims who have still not been evaluated, in the treatment plans. In this sense, the State must furnish specific and detailed information on the appropriate treatment

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<sup>15</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 403

<sup>16</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 403

and the provision of services and medicines for the next of kin of the victims who were executed in the case.<sup>17</sup>

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27. That as to the obligation to take the necessary measures to guarantee safe conditions for the former inhabitants of El Aro and La Granja, who were forced to displace, to return to El Aro or La Granja, the State informed that "the petitioners stated that the victims' next-of-kin do not wish to return to Ituango", but they wish to obtain socioeconomic aid and access to housing subsidies. As a consequence, "the State is searching and studying the legal mechanism necessary to grant this subsidy to the displaced people in the most responsive way". In addition, the State pointed out that "in Colombia, the return and relocation process is organized through the Departamental and Municipal Committees on the Assistance of Displaced People. Therefore, in this case, the municipal committee of Ituango and the departamental committee of Antioquia shall be activated in order to learn about the current situation of this region and proceed to take the necessary measures to assist the people displaced by these massacres". In addition, considering that the petitioners informed the State that they do only represent and are in contact with 270 of the 702 people included in the Judgment of the Inter-American Court as victims of the violations of Article 22 of the Convention, "the State [shall] engage in activities in order to locate the people included in Appendice IV of the Judgment to provide them with the assistance they need in their condition of displaced people". Furthermore, it was informed that "the State is evaluating the lists presented by the representatives of the victims included in the census conducted in Valdivia, [insofar] as the census contain a greater number of people [than] Appendice IV of the Judgment, where the [...] Court identified the beneficiaries of this measure of reparation. In this sense, [even though] the State follows a complete public policy to assist displaced people, to which all displaced persons may have access, [it considered that the assessment of the] compliance with this measure of reparation [...] should be limited to the people identified in the Judgment [...]". Likewise, the State informed that in the areas of La Granja and El Aro "there have been no threats or violent acts in view of the fact that most of the displacements are the result of incursions made by Self-Defense groups (*Autodefensas*), who no longer commit crimes in the region". In this sense, it pointed out that "for the time being, there [is] no other risk factor for displacements of peasants, since the Army is continuously present [in the zone]".

28. That the representatives informed that "the Colombian State has not fully complied with this measure in view of the fact that almost three years have passed since this Judgment was notified and no action leading to comply with the measure of reparation has been taken". They mainly indicated that "the State did not comply with the commitment to activate the Municipal Committee on Assistance to the Displaced People". In this sense, they mentioned that "the decision of not returning [...] is based on [...] the current situation existing in the area that forbids it, since there still persists violence deriving from the conflict over the territory between paramilitary and drug-trafficking groups, sprayings with glyphosate that affected the legal crops and the health of people and the extra-legal executions by law enforcement personnel [coupled] with the difficult economic situation in which the dwellers of the municipality of Ituango live and the neighboring municipality of Valdivia and the lack of measures to make the returning conditions favorable". Furthermore, the representatives informed that they provided the State with a list of the people that form part of Appendix IV of the Judgment of the Court, "mentioning the composition of the family groups, the identification numbers of the people and the place they would be interested in

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<sup>17</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 417.

should they have a housing subsidy as part of the economic reparation". Moreover, even though the State indicated that it was not a requirement for the beneficiaries of this measure to be registered in the *Oficina Presidencial para la Acción Social* to have access to these legal benefits, said entity stated on June 18, 2008 "that the people who were not included in the registry [of displaced population] shall have to render a displacement statement as a mere formality and [in 15 days] they would be registered [...] in the municipality of Valdivia, [which] never happened". The representatives further indicated that on "February 16, 2009 and considering the non-compliance with all the commitments undertaken in this regard, [...] they requested a meeting of compliance with *Acción Social, Fonvivienda* and the Environment, Housing and Territorial Development Ministry, entities that, according to the domestic legislation, are bound to assist the displaced population"; but such meeting has not been convened up to this date. Likewise, "a specific proposal was sent [to conduct] the corresponding registration of all the people that form part of Appendice IV of the Judgment of the Court in the registry of displaced population" and to "require *Fonvivienda* to issue a special Order in order to grant the housing subsidies to the family groups that form part of such appendice". The representatives have received no answer in that regard.

29. That the Commission noted that the problem of displacement "maintains the victims in a condition of extreme vulnerability" and that "the safety is a necessary element for [their] return". Furthermore, it expressed that "should there be no safety conditions for their return - or until they exist - the Court determined the possibility for the victims to be relocated in the place they so wish". Finally, it pointed out that "the organization of the Municipal Committee, at the earliest possible date, is essential".

30. That in this respect, the Tribunal notes that this measure of reparation comprises two obligations: the obligation to guarantee the security of those surviving victims that decide to return to the municipality of Ituango. If it is not possible to create such security conditions, to be able to count on the necessary and sufficient resources to ensure that the victims of forced displacement mentioned in Appendice IV of the Judgment may resettle in similar conditions to those they had before these events, in a place they freely and voluntarily choose.<sup>18</sup>

31. That even though the State and the representatives expressed dissenting opinions as to the current situation of security in the municipality of Ituango, they both pointed out that the victims of forced displacement do not wish to return to municipal districts (*corregimientos*). Therefore, both parties are of the idea that, in compliance with the Judgment, the State provides said victims with socioeconomic support and access to housing subsidies. Moreover, according to the last piece of information forwarded in this regard, the representatives are waiting for the establishment of the Municipal Committee of Ituango and the Departamental Committee of Antioquia in order to provide the assistance so required to the displaced population and they are also looking forward to have a meeting with the state entities in charge of helping the displaced population in order to evaluate the proposal to grant such housing subsidies to the people indicated in Appendice IV of the Judgment. In this regard, considering the fact that the State as well as the representatives have requested permission from the Tribunal to comply with this measure of reparation by means of socioeconomic aid and access to housing subsidies, the Court deems it is convenient to allow it, as long as the beneficiaries of the reparation ordered have agreed on that proposal.

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<sup>18</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 404.

32. That, more than three years have passed since this Judgment was notified and more than thirteen and eleven years since the victims were displaced from the districts of La Granja and El Aro, respectively. Due to the time passed and considering the effects that forced displacement causes on the victims and the situation of risk and vulnerability to which they are exposed,<sup>19</sup> this measure of reparation must be complied with as soon as possible. Therefore, the Court urges the State to coordinate with the victims and their representatives, the meetings and measures necessary to guarantee the security of those surviving victims that decide to return to the municipality of Ituango. If it is not possible to create such conditions, to provide the necessary and sufficient resources to ensure that the victims of forced displacement mentioned in Appendice IV of the Judgment may resettle in similar conditions to those they had before these events, in a place they freely and voluntarily choose. In turn, the State may provide the victims with socioeconomic aid and access to housing subsidies as long as the victims give their express consent to it. The Court requests the parties to submit complete and updated information in this regard.

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33. That as to the obligation to organize a public act to acknowledge international responsibility for the facts of this case, in the presence of senior authorities, Colombia indicated that, in spite of the representatives' request to have the President of the Republic preside said act, this shall not be possible "due to the busy agenda" but the State "is willing to listen to other suggestions of the petitioners about whom should preside the act". According to the State, "the petitioners refused to make a proposal in that sense". Besides, the State mentioned that, according to the case-law of the Court, this type of acts must not be presided over by the President or Vice-President of the Republic to comply with the effect of reparation. Consequently, it was agreed that "the State shall decide on this issue and present a document to the petitioners containing a proposal to discuss the organization of the act". "In the meeting conducted on June 18, 2008, the [...] representatives stated that they requested the State to postpone the compliance with this measure of reparation since they considered it was conditional upon the previous compliance with other measures". Before this request, the State argued that the act should be organized as soon as possible, considering "the availability of the high-ranking officer that would preside over it and the expiration of the term established in the Judgment". Nevertheless, the representatives were requested "to send a communication, signed by the victims' next-of-kin (at least, the majority of them) where they should state their agreement to postpone the organization of the act of public apology". The victims' representatives have never sent the document requested to the State; therefore, the State requested the Court authorization to "organize the public act of acknowledgment of responsibility as soon as possible and under the conditions established by the Tribunal" and "to urge the victims' representatives on to agree on the details of the act and allow the participation of the victims' next-of-kin".

34. That the representatives informed that in November, 2006 they communicated to the State the minimum conditions they considered were necessary to organize the public act of acknowledgment of international responsibility. According to the representatives, the acknowledgment of responsibility "must be made by the President [of the Republic, considering that he was the Governor of the Department of Antioquia at the time the facts occurred]; otherwise, by the Vice-President of the Republic". Furthermore, the representatives have explained to the State that before the denial of these authorities to preside over the act of acknowledgment, and considering the delay in the compliance with almost the entire provisions of the Judgment of the Court, they consider that "the

<sup>19</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 125(106).

organization of an act, which entails no true commitment or intention to offer an apology to the victims, is out of context for them"; therefore, the act should not be carried out until the State complies with "most part of the measures ordered by the Tribunal" and shows "its true wish that similar events do not happen again". Lastly, the representatives requested the Court to "authorize [the] request to postpone the act, so that the act is organized with the prior consent of the victims, their next-of-kin and the representatives".

35. That the Commission expressed its hope that it would be possible to agree "as soon as possible, on the details necessary to carry out the public act of acknowledgment of responsibility". Furthermore, it considered "it was necessary to take into account the wishes and expectations of the injured party regarding the organization of the act, inasmuch as this act must be aimed at making amends for the victims and their next-of-kin so that it [...] complies with the spirit of the reparation that led to it".

36. That according to the statements made by the parties and despite the efforts pointed out by the State to comply with this obligation, the Court verifies that the public act of acknowledgment of international responsibility for the facts of the case has still not been organized, in accordance with what was set forth in the Judgment. This is due, in part, to the impossibility to come to an agreement with the parties as to the high-ranking authorities that should preside over said act. In this regard, the Court considers it is pertinent to emphasize that paragraph 406 of the Judgment indicates that the State must organize a public act of international responsibility, in the "presence of senior authorities", which does not necessarily requires the presence of the President or Vice-President of the Republic. Moreover, the Tribunal considers that the compliance with this obligation constitutes an autonomous duty of the State, which is not conditional upon the compliance with the other measures of reparation ordered in the Judgment. Therefore, considering the real symbolic value of said act as a measure of satisfaction and guarantee of non-repetition of facts such as those of this case, the State must "acknowledge publicly, in the presence of senior authorities, its international responsibility for the facts of the massacres in El Aro and La Granja, and apologize to the next of kin of the persons disappeared and deprived of their life, for failing to comply with its obligations to guarantee the rights to personal liberty, humane treatment and life of those persons, as a result of the State's failure to comply with its obligations of prevention, protection and investigation, and also for the violation of their rights of access to justice, judicial protection and judicial guarantees committed to their detriment" according to what was established in the Judgment,<sup>20</sup> and must inform the Court in that regard.

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37. That as to the obligation to implement a housing program, to provide appropriate housing to the surviving victims who lost their homes and who require this, within the term of five years as of notice of the Judgment, the State informed that "it is not within its capabilities to build houses, [but that] it agreed with the victims' representatives that compliance with this measure of reparation shall be done by means of money substitutes, with which the people shall be able to have a home with the characteristics and in the place they wish. In view of this agreement, the *Grupo Interdisciplinario* submitted a proposal to the State in order to determine the amount of money that shall deliver to each beneficiary of this measure of reparation", which was accepted by the State. According to the State, the representatives proposed to "quantify in 135 legal minimum wages per month, the amount each person shall receive to purchase a house. This is the value established by Decree 4466

<sup>20</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 406.

of 2007 for a public housing. For the year 2008, the legal minimum wage per month in Colombia [was] of \$461.500,00 *pesos*, equivalent to [\$US] 200 dollars, approximately". "The State made use, within the budget in force in the year 2008, of the appropriate amount to comply with this measure of reparation". Nevertheless, it requested this Tribunal "to ratify the agreement entered into between the parties and order the State to comply with this measure of reparation by means of monetary substitutes equivalent to 135 current legal minimum wages per month".

38. That the representatives indicated that, "prior consultation with the victims, they made a proposal to the State in order to deliver to each beneficiary an amount of money for the purchase of a new or used housing, in the place chosen by them, which would be equivalent to 135 current legal minimum wages per month, maximum value of public housing according to the Colombian legislation. The representatives indicated that the State orally informed them that it accepted the proposal and therefore, they requested the Court to "ratify the agreement entered into".

39. That, the Commission indicated that "it notes with great pleasure the information presented by the State in relation to the substantial progress made in the compliance with this measure of reparation and that it hopes the beneficiaries may have an adequate housing within a short term".

40. That the Court notes and values that the State has adopted certain measures leading to the compliance with this obligation; specifically, the acceptance of the proposal made by the representatives as to its fulfillment by means of the delivery to each beneficiary of a sum of money equivalent to 135 current legal minimum wages per month for the purchase of a house. In view of the fact that the parties requested the Court to ratify said agreement, the Tribunal considers it is appropriate to do so as long as the victims give their express consent to it, in order to comply with the purpose of the reparation ordered in the Judgment. The State shall inform on the measures adopted in terms of said agreement, which shall be executed in the term established in the Judgment for the compliance with this obligation.

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41. That as to the obligation to erect a plaque in an appropriate public place in La Granja and in El Aro, the State pointed out that "in order to be able to approve the fulfillment of this measure, it was necessary to have a proposal from the victims' next-of-kin in order to quantify it". According to the State, on June 18, 2008 the representatives were formally requested to forward a proposal as to the material, size and text of the plaque, prior consultation with the victims' next-of-kin. On April 23, 2009 the State forwarded the Tribunal the copy of a brief addressed to the representatives of the victims and their next-of-kin in which the State accepted the proposal and sent a counter proposal regarding the text of the plaques, for their consideration.

42. That the representatives did not refer to the proposal requested by the State, but they limited to note that the Superior Council of Judicature would be responsible for the compliance with this obligation.

43. That the Commission does not have information from the representatives as to the proposal that the State allegedly requested them, but "hopes the State overcome the obstacles as soon as possible in order to comply with this aspect of the Judgment and informs about it".

44. That the Court notes that there has been a delay in the compliance with this obligation since the term fixed to such end was of one year as of notice of the Judgment of July 28, 2006. Nevertheless, the Tribunal acknowledges the efforts made by the State to coordinate with the representatives the compliance with this measure of reparation and observes that the State has made a counter proposal regarding the text of the corresponding plaques, which shall be assessed by the representatives. In this sense, the representatives shall have to answer such counter proposal of the State, as soon as practicable; otherwise, such counter proposal would be deemed approved and the State shall proceed to put up the plaque in the way suggested. Moreover, taking into account that the State should have complied with this obligation on July 28, 2007, the Court considers that such obligation should be fulfilled within the maximum term of three months as of notice of this Order, in view of the real symbolic value of it.

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45. That regarding the duty to implement, within a reasonable time, permanent training programs on human rights and international humanitarian law for the Colombian Armed Forces, the State indicated in its report of August 27, 2007 that "it [was] preparing a complete and detailed report on the issue to inform [...] the Tribunal on the compliance with this and other judgments of the Inter-American Court".

46. That, the representatives pointed out on July 4, 2008, that "no progress has been made regarding this measure" and that in the meeting held in November 2006, they expressed to the State "their interest in participating in training programs on human rights and international humanitarian law for the law enforcement personnel".

47. That on March 12, 2009, the Commission noted "with concern that [...] the State has not presented information [on] this measure of reparation and hopes it properly informs [about it], considering that the training programs on human rights for the Armed Forces constitute an essential element in the prevention of human rights violations".

48. That even though the State has not presented updated information in that regard within the procedure to monitor compliance with the Judgment in the case at hand, the Tribunal is aware of the fact that the State informed, at the private hearing held on January 19, 2009 on the compliance with the Judgment of the Court in the case of *the Mapiripán Massacre V. Colombia*, that a cooperation agreement was entered into with the United Nations Office of the High Commissioner for Human Rights and that three international consultants were hired to conduct a study on the training of the Colombian Armed Forces. In this sense, it informed that in the year 2006, the experts visited a large number of military and police units and verified, in the report, the broad dissemination of human rights and international humanitarian law issues and they determined that there was a training program implemented together with the universities. Nevertheless, they found that the Armed Forces, the Police and the high command acknowledge that there was a problem in connection with human rights. Moreover, the State pointed out that it conducted a study on the perception of human Rights in these bodies, which also evidenced some deficiencies. These elements were good for the Ministry of Defense to design a "Comprehensive Policy on Human Rights and International Humanitarian Law" in January 2008, including the education and training as one of the five action points. The State explained, in detail, the activities to be carried out to shape the training and emphasized the impact that this state policy had on human rights issues, claiming, as way of example, that the Attorney General's Office received considerably less complaints in the last year. Moreover, it informed that an

office of human rights was created within the Army in order to ensure that this policy is internalized and it also mentioned that a cooperation agreement was entered into with the Inter-American Institute of Human Rights to oversight the progress in this respect. The State delivered, during said hearing, an exhaustive report on these programs and requested the Court to declare the compliance with this measure of reparation.

49. That even though the information described in the foregoing considering clause was not submitted during the procedure to monitor compliance with the instant Judgment, the Court notes that the obligation ordered in the case of the Mapiripán Massacre is identical to the one ordered in the case of the Ituango Massacres, since in both judgment, the State was ordered to "implement, within a reasonable time, permanent training programs on human rights and international humanitarian law for the Colombian Armed Forces". Therefore, based on the principle of procedural economy, the Tribunal considers useful to admit such information into the body of evidence, taking into account that the Commission as well as some of the representatives have had the opportunity to present observations in that respect in the proceedings in which such information was forwarded by the State. Besides, the Tribunal notes that the compliance with this measure of reparation does not only correspond to an individual obligation towards the victims of the case at hand, but it also consist in actions and measures that the State must implement at the institutional level, in order to prevent that similar facts may happen again in the future.

50. That in the Order issued by this Tribunal on July 6, 2009 on the compliance with the Judgment in the case of the Mapiripán Massacre, the Court determined that the human rights education within the Armed Forces is essential to provide guarantees of non-repetition of facts such as the ones that occurred in that case and in the instant case. Therefore, the Court positively valued the progress mentioned by the State at the hearing held in said case and considered that the State complied with this measure of reparation, as to the design and implementation of the human rights and international humanitarian law training programs, considering that those are permanent programs. As a consequence, taking into account that it is the same measure of reparation that is being analyzed and based on the reasons above mentioned, the Tribunal considers that the State has complied with the terms of operative paragraph 21 of the Judgment.

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51. That as to the obligation to publish once, in the Official Gazette and in another newspaper with national circulation, the chapter on the proven facts in this judgment and the operative paragraphs of the Judgment, the State pointed out that, in accordance with what was agreed on in the meeting held on June 18, 2008 with the representatives, the pertinent parts of the Judgment were published on October [sic] 13, 2008. This publication was made on a Sunday to guarantee the massive dissemination in the newspaper with national circulation called "El Espectador" and had the following characteristics: (a) additional offspring to the newspaper; (b) images provided for by the next-of-kin; (c) layout to make it more appealing to the reader and (d) font Arial, size 12. In addition, the State contested the information forwarded by the victims' representatives in their observations to the first report on compliance. In this sense, it indicated that "[...] it never limited the number of pages in which the publication should be made. [On the contrary, the publication] was made taking into account the claims of the representatives and with their total consent".

52. That in this regard, the representatives considered, in the observations forwarded on July 4, 2008, that is to say, after the meeting convened by the State but before the alleged

publication of the Judgment, that "in order for such measure [to be] really effective, the parts should be published in a font size and in the layout for the average citizen to be able to read it". They further asserted that "The State h [ad] determined a number of pages to be published, regardless of the space the texts ordered by the Court [could occupy]". The representatives did not refer to this measure of reparation in the observations of May 12, 2009, that is, after the alleged publication in the newspaper "El Espectador" in the month of October 2008.

53. That regarding the publication, the Commission "noted with great pleasure that said publication has been made under the conditions mentioned, promoting its impact within the population". Nevertheless, it also observed "that the State has made no reference to the publication of the Judgment in the Official Gazette and therefore it waits for such information".

54. That in the court records there is a copy of the publication dated Sunday, October 12, 2008 which complies with the requirements ordered in the Judgment. Even though the representatives did not present observations in that respect, the Commission considered that said publication confirms the compliance by the State with its obligation to publish the pertinent parts of the Judgment in a newspaper of national circulation. Nevertheless, the State has not referred to the publication of the Judgment in the Official Gazette. Therefore, this Tribunal deems that the State has partially complied with this obligation, inasmuch as it made the pertinent publication in a newspaper of national circulation and waits for information regarding the corresponding publication in the Official Gazette.

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55. That as to the obligation to pay the persons indicated in Appendixes I, II and III of the Judgment, within one year, in compensation for pecuniary and non-pecuniary damage and reimburse the costs and expenses to the representatives, the State pointed out that "by means of Resolution 5898 of December 28, 2007 the Ministry of National Defense complied with this measure of reparation [...]". Furthermore, it indicated that "by means of Resolution N° 2088 of May 27, 2008 of the Ministry of Defense, it was ordered the rectification of some mistakes of the first resolution of payment". The State emphasized that the payments corresponding to the minors "were made according to the terms stipulated [in] the Judgment". Moreover, the State pointed out that paragraph 358 of the Judgment presented some problems for the State, since it allowed new relatives of the victims to show up, after having distributed the corresponding compensations. However, it indicated that said problem was solved in the practice.

56. That the representatives pointed out that, by means of Resolution 5898 of December 28, 2007, "it was ordered the payment of the compensations corresponding to the beneficiaries of legal age, but no payment was ordered for the minors or the constitution of a trust [in their favor]". Said "resolution included most of the beneficiaries, but not all of them". They indicated that, "a petition was filed with the Ministry of Defense on [January 10] 2008 in order to look for an answer to the situation of the minors and those who only received a partial payment". According to their the last observations of May 12, 2009, by means of Resolution 5898 of December 28, 2007, the State complied with "most of [the] payment of the compensations ordered by the Court" and "by means of Resolution 2088 of [May 27], 2008, it was ordered a deposit [...] in favor of some elderly people who died or due to different circumstances, did not show up to collect the payment[,], as well as in favor of the minors". They indicated that on "February 22 [2008], it was made the payment [corresponding to the compensations for pecuniary and no—pecuniary damage, as well as

the reimbursement of costs and expenses] by means of a deposit in the banking current account of the representatives". They stated, however, that "between the date of the Judgment of the Court and the date the payment was made, there was a devaluation of the dollar, in which the Colombian pesos depreciated from \$2.579 to \$1.895 to the dollar, representing for the beneficiaries [...] a decrease of \$68.400 [Colombian pesos] for each 100 dollars [ordered in the Judgment]". Furthermore, the representatives indicated that "the State has seriously failed to comply with the terms established regarding the compensation of minors", in view of the fact that "the compensations [owed to them] were not deposited in a [t]rust fund, as ordered by the Court [in its] Judgment, but in a current account under the name [...] of the Ministry of Defense and the corresponding minor".

57. That, in this regard, the Commission indicated that "it positively notes the progress made [by the State] as well as the fact that the discussion about the beneficiaries has been solved in the practice". Nevertheless, "it considers it is appropriate for the Court to request the State and the representatives to make the necessary clarifications to verify compliance with this measure of reparation", given the fact that some beneficiaries "expressed having doubts or pointed out some mistakes in relation to the payments mentioned by the State".

58. That in the Judgment it was ordered the State to pay the compensations for pecuniary and non-pecuniary damage, as well as the costs and expenses arising in the domestic sphere and in the international proceedings within the term of one year as of notice of the Judgment of July 28, 2006.<sup>21</sup> These payments should be made in United States dollars or the equivalent amount in national currency, using the exchange rate between the two currencies in force on the New York, United States of America, market the day prior to payment to make the respective calculation.<sup>22</sup> The Judgment also established the State's obligation to shall pay interest on the amount owed, should it fall into arrears,<sup>23</sup> even on the amounts it should have deposited in solvent Colombian institutions in favor of the minors.<sup>24</sup>

59. That, in the court files there appear Resolutions 5898 and 2088 of December 28, 2007 and May 27, 2008, respectively, but there is no resolution allegedly issued on May 19, 2008 directly related to the compliance with this measure. Nevertheless, it spring from the resolutions on record, the following: first, that the State ordered the payments for pecuniary and non-pecuniary damages, as well as the reimbursement of costs and expenses, according to the terms of the Judgment; second, that when calculating the corresponding amounts, the State deducted all those amounts that have been already delivered to some beneficiaries in the conciliation hearings held between the State and the victims before the administrative jurisdiction, pursuant to the terms of the Judgment;<sup>25</sup> third, that it took into account the interest on arrears owed to the beneficiaries; fourth, that it was ordered to apply the exchange rate in force on market the day prior to make the respective payment; fifth, that it was ordered that the amounts corresponding to those beneficiaries of legal age be directly distributed to the legal representatives so that they could distribute them to the beneficiaries and sixth, that it was established that the amount corresponding to minors be deposited in a solvent Colombian banking institution, according to the terms of the Judgment.

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<sup>21</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 417.

<sup>22</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 420.

<sup>23</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 424.

<sup>24</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 422.

<sup>25</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 125(101) and 364.

60. That even though the State did not present any receipts of the payments made, the representatives indicated that they effectively received the amounts that, to such end, were ordered in said resolutions. The representatives did not question the amounts ordered by the State, apart from observing that there was a devaluation of the dollar between the date of the Judgment and the date of the effective payment, which does not constitute non-compliance on the part of the State to make the corresponding payments. Nevertheless, it is not possible to conclude from the observations presented by the representatives that all the beneficiaries indicated in the Judgment received the corresponding compensation. When referring to the compliance with this measure, the representatives used expressions that suggest that the State did not deposit an amount in favor of some beneficiaries. For example, in the last observations forwarded to the Tribunal regarding this aspect, the representatives indicated that by means of the Resolution 5898 of December 28, 2007, the State complied with "most of the payment of the compensations ordered by the Court" and that "by means of Resolution 2088 of May [27] 2008, it was ordered a deposit [...] in favor of some people". The lack of accuracy regarding which people received or which did not receive the corresponding compensation prevents the Tribunal from declaring the full compliance with this obligation. For this reason, it deems pertinent to request the parties to submit detailed information in this regard (*infra* Considering clauses 61 to 64, 67 and 71 and Operative Paragraph 2).

61. That after examining the documentation forwarded to the Tribunal it is possible to verify that some of the victims and beneficiaries mentioned in the Judgment have been apparently excluded from Resolutions 5898 and 2088; therefore it is impossible to know whether they received the corresponding compensations. Nevertheless, considering there are only two relevant resolutions and that the observations submitted by the representatives are not accurate and do not refer to each and every one of the beneficiaries, the Tribunal cannot be certain about the people who were compensated or about the amounts effectively delivered. Therefore, the Court deems pertinent to request the parties to submit detailed information in this regard (*infra* Operative Paragraph 2 and 3).

62. That even though the Judgment indicated that within the 24 months following notification of this judgment, people different from the ones mentioned in the Judgment may prove their condition as beneficiaries of the reparations,<sup>26</sup> no sufficient evidence has been tendered to the court file for this Tribunal to determine whether this is the reason why resolutions 5898 and 2088 also ordered payments in favor of people that were not identified in the Judgment. Hence, it seems necessary to request thorough and detailed information in this regard (*infra* Operative Paragraph 2).

63. That, in this sense, some of the victims and beneficiaries have directly expressed certain doubts to the Tribunal in relation to the payments that correspond to them in view of the Judgment (*supra* Having Seen clauses 5, 6 and 7). In this sense, Mrs. Marta Marlene Barrera Pino submitted to the Tribunal a copy of a "Record of Statement" addressed to the State, by means of which she indicated that after almost eleven years she has "not received the compensation for the loss suffered" due to the armed incursion in El Aro and requested the Court the "full restitution". In this regard, it is uncertain for the Tribunal whether the State or the representatives have answered such queries. Even though Mrs. Marleny Barrera Pino is not mentioned as beneficiary of the reparations ordered in the Judgment, the Tribunal notes that Mrs. Barrera Pino could have proved her condition as beneficiary of the reparations within 24 months of notification of this Judgment (*supra* Considering Clause

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<sup>26</sup> Cf. Case of the Ituango Massacres, *supra* note 7, para. 358.

62)<sup>27</sup>. However, the Tribunal does not have sufficient information to make such determination. Therefore, the Court deems pertinent to request the parties to submit detailed information in this regard (*infra* Operative Paragraph 2 and 3).

64. That, likewise, according to the court file, Messr. José Marcelino Barrera Sucerquia addressed a "Certification Record" to the State, with a copy to the Tribunal, by means of which he indicated that in March 2008 he received, "as compensation" for the damage suffered in El Aro, the amount of \$20.000.000 (twenty million of Colombian pesos), but he expressed that such amount does not correspond to the amount of \$32.000.000 (thirty two million of Colombian pesos) agreed on "in the record of delivery sent to him by the National Ministry", which he did not consider to be correct either; therefore, he requested a clarification as to this discrepancy. In this regard, it is uncertain for the Tribunal whether the State or the representatives have answered such queries. Furthermore, even though in the Judgment it was determined that Messr. Barrera Sucerquia should receive US\$ 14.000,00 (fourteen thousand dollars of the United States of America) as compensation, the Tribunal repeats that there is no sufficient evidence to determine whether the beneficiary effectively received the amount that corresponded to him; and therefore it deems pertinent to request further information in this regard (*infra* Operative Paragraph 2 and 3).

65. That, on several occasions, Mrs. Rosa María Posada George and her son, Marco Aurelio Areiza Posada, expressed in writing to this Tribunal their concern about the amounts the representatives delivered to them as compensations ordered in the Judgment in their favor and in favor of the other son, José Leonel Areiza Posada. Hence, they expressed their concern about not knowing whether the amount they received correspond to the total compensation that the Court ordered in their favor and they indicated that they did not understand why the legal representatives deducted certain sums from their payments. Moreover, they pointed out that Mrs. Posada is unaware of the content of certain documents that the representatives asked her to sign, since she is illiterate. In this regard, the representatives informed that the doubts of Mrs. Posada deal with, first, the payments ordered in favor of her two sons as the result of the agreement reached at the administrative jurisdiction and second, the payments ordered by this Court in the Judgment. Regarding the first aspect, they presented evidence that confirms that the *Grupo Interdisciplinario por los Derechos Humanos* delivered to Mrs. Posada what was ordered in favor of her two sons in the domestic proceeding and pointed out that they are not familiar with the amount and details related to any deduction that said lawyer would have made as fees. Regarding the second aspect, the representatives indicated that they deducted from the amount that corresponded to said people a 30% as legal fees, as permitted by the domestic legislation.

66. That, in relation to what was mentioned above, the Tribunal considers that it is not competent to solve a dispute of such a nature between private individuals, since at this stage of the procedure to monitor compliance with the Judgment, the Inter-American Court only has to determine whether the Colombian State complied with the terms of such Judgment. The powers of the Court are limited to the enforcement and interpretation of the American Convention —an instrument that exclusively deals with the rights and obligations of the States, not individuals.<sup>28</sup> Therefore, any dispute related to attorney fee agreement

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<sup>27</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 358.

<sup>28</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C N° 146, para. 136; and *Case of Gómez-Paquiyaury Brothers v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006; Considering Clause 16.

between the representatives and the beneficiaries must be solved by means of the corresponding mechanisms of the domestic law.

67. That even though any disputes related to the payment of fees to the representatives should be settled within the domestic sphere, it falls upon the Tribunal to resolve whether the beneficiaries have or have not received the sums ordered in the Judgment. Moreover, the Tribunal shares the doubts expressed in relation to the payments that the representatives delivered to the beneficiaries in compliance with the terms of the Judgment. Even though the State ordered, to such end, a specific amount in favor of those people within the total amount it delivered to the representatives so that they distribute it among the beneficiaries, no item of evidence has been tendered regarding the quantities the representatives effectively distributed and the criteria they used to do that. The Tribunal takes notes that in the specific case of Mrs. Posada and her two sons, the representatives forwarded a copy of the checks delivered to them as a result of the conciliation hearing held in the administrative jurisdiction. Nevertheless, the Court does not have similar evidence that would allow proving the amounts and criteria used in the distribution of the corresponding payments pursuant to the terms of the Judgment of this Court. Therefore, the Tribunal is not able to determine whether this obligation has been complied with. Consequently, the Court deems it is pertinent to require detailed information in this regard (*infra* Operative Paragraph 2 and 3).

68. That the representatives requested clarification "on the procedure that [needs to be] followed in the [distribution] of the compensatory amounts that correspond to the beneficiaries of Messr. Alberto Correa", given the fact that "the brothers and grandchildren of Mrs. Mercedes Barrera [, who was Messr. Correa's wife], had claimed the payment of the compensation ordered for the [dead] victim, at the same time that the only relative alive [of Messr. Correa], Mrs. Silvia Correa, aunt and foster mother, did it". As to said requests, the Court acknowledges that the Judgment does not contemplate the specific method to distribute such compensation. Therefore, the Tribunal recalls what it has decided on previous cases,<sup>29</sup> in the sense that, should any of the victims die before the pertinent compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation.

69. That according to paragraph 422 of the Judgment,<sup>30</sup> the State should have deposited the amounts corresponding to the compensations ordered in favor of the minors "in a solvent Colombian banking institution [...], within the term of one year, in the most favorable financial conditions permitted by law and banking practice, until the beneficiaries come of age". It may be withdrawn by any of them when "they come of age or previously, if this is in the best interests of the child, as established by a decision of a competent judicial authority". Even though the representatives requested the Tribunal to order the State to deposit such amounts in a trust fund, the Court notes that the Judgment did not specify the type of account or institution in which such amounts should have been deposited. Therefore, the State is not necessarily bound to constitute a trust fund; its obligation consists in making a deposit and maintaining the amounts owed in a Colombian institution under the terms mentioned herein. As a consequence, given the fact that the State deposited the respective amounts in banking current accounts under the name of the Ministry of Defense and of the corresponding minor, the Tribunal considers that the State may continue

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<sup>29</sup> Cf. *Case of Garrido and Baigorria v. Argentina*. Reparations and Costs. Judgment of August 27, 1998. Series C N° 39, para. 86; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009; Series C No. 196, para. 221; *Case of Valle Jaramillo et al.*, *supra* note 8 para. 245.

<sup>30</sup> Cf. *Case of the Ituango Massacres*, *supra* note 7, para. 422.

complying with this aspect of the Judgment as already mentioned, as long as the minors are able to withdraw the amounts they are entitled to, pursuant to the conditions established in paragraph 422 of the Judgment. Furthermore, it is important to point out that the State should inform and be aware of the date on which the corresponding minor becomes of age. In this regard, it seems pertinent to recall such paragraph, in the sense that “[i]f the compensation has not been claimed 10 years after each child has come of age, it shall revert to the State with the accrued interest”.

70. That the apparent dispute regarding paragraph 358 of the Judgment has been solved at the domestic level and therefore, it is irrelevant to issue a ruling in that regard in the instant case.

71. That based on the foregoing, the Court considers that the State has partially complied with its obligation to pay the compensations to the people mentioned in Appendixes I, II and III of the Judgment for pecuniary and non-pecuniary damage. In order to be able to confirm full compliance with this obligation, the Tribunal requests the parties to present thorough, detailed and specific information on this matter (*infra* Operative Paragraph 2 and 3).

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72. That as to the reimbursement of the costs and expenses, the State pointed out that it ordered such payment by means of Resolutions 5898 and 2088. In addition, the representatives did not specifically refer to the compliance with this obligation, but they limited to mention that they received the total amount that the State ordered in such resolutions. In this regard, it spring from Resolution 2088 that the State ordered the payment of \$33.817.397, 88 Colombian pesos (approximately, US\$ 17.000,00 dollars of the United States of America) in favor of the *Grupo Interdisciplinario por los Derechos Humanos* and \$18.035.945, 53 Colombian pesos (approximately US\$ 9.000,00 dollars of the United States of America) in favor of the *Comisión Colombiana de Juristas*, as costs and expenses. Such sums include the accrued interest. Therefore, the Tribunal considers that the State has complied with this aspect of the Judgment.

**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), 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) of its Statute and 30(2) of its Rules of Procedure,

**Declares:**

1. That in accordance with Considering clauses 50, 54 and 72 of this Order, the State has complied with the following obligations:

- a) Implement, within a reasonable time, permanent training programs on human rights and international humanitarian law for the Colombian Armed Forces [*operative paragraph twenty-one of the Judgment*];
  - b) Publish once, in the official gazette and in another newspaper with national circulation, the chapter on the proven facts in the Judgment, without the corresponding footnotes, and the operative paragraphs of the Judgment (*operative paragraph twenty-two of the Judgment*); and
  - c) Pay the amounts ordered as reimbursements of costs and expenses arising in the domestic sphere and in the international proceedings before the Inter-American System for the protection of human rights (*operative paragraph twenty-five of the Judgment*).
2. That in accordance with Considering clause 71 of this Order, the State has partially complied with the obligation to: pay the persons indicated in Appendixes I, II and III of the Judgment, the compensations for pecuniary and non-pecuniary damage (*operative paragraphs twenty-three and twenty-four of the Judgment*);
3. That in accordance with Considering clauses 16, 20, 26, 32, 36, 40, 44, 54 and 71 of this Order, the following obligations are pending compliance:
- a) Take the necessary measures to provide justice in this case (*operative paragraph fifteen of the Judgment*);
  - b) Provide, free of charge, and through the national health services, the appropriate treatment required by the next of kin of the victims executed in this case (*operative paragraph sixteen of the Judgment*);
  - c) Take the necessary measures to guarantee safe conditions for the former inhabitants of El Aro and La Granja, who were forced to displace, to return to El Aro or La Granja, as applicable and if they so desire [*operative paragraph seventeen of the Judgment*];
  - d) Organize a public act to acknowledge international responsibility for the facts of this case in the presence of senior authorities (*operative paragraph eighteen of the Judgment*);
  - e) Implement a housing program, to provide appropriate housing to the surviving victims who lost their homes and who require this [*operative paragraph nineteen of the Judgment*];

- f) Erect a plaque in an appropriate public place in La Granja and in El Aro, so that the new generations know about the events that took place in this case (*operative paragraph twenty of the Judgment*);
- g) Publish once, in the Official Gazette, the chapter on the proven facts in this judgment, without the corresponding footnotes and the operative paragraphs of the Judgment (*operative paragraph twenty-two of the Judgment*), and
- h) Pay the persons indicated in Appendixes I, II and III of the Judgment, the compensations for pecuniary and non-pecuniary damage (*operative paragraphs twenty-three and twenty-four of the Judgment*);
4. That it will keep open the instant procedure to monitor compliance until full compliance with the obligations established in the foregoing declaratory paragraph.

#### **And Decides:**

1. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the merits, reparations and costs delivered by the Court on July 1, 2006 according to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter- American Court of Human Rights, no later than October 1, 2009, a report specifying all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, as spelled out in the Considering clauses 16, 20, 26, 32, 36, 40, 44, 54 and 71 and the declarative paragraph three of this Order. Specifically, in relation to the amounts paid in compensation for pecuniary and non-pecuniary damage, the State shall: (a) submit all the resolutions issued within the domestic sphere related to this obligation, which have not been already presented to the Tribunal; Resolution N° 1946 of May 19, 2008 in particular; (b) explain if applicable, why such resolutions do not include certain people mentioned in Appendixes I, II and III of the Judgment; (c) explain, if applicable, why such resolutions include people who were not mentioned in Appendixes I, II and III of the Judgment; (d) indicate the currency exchange rate the State effectively applied to make the payments, (e) indicate the persons that appeared before the competent authorities of the State, within the 24 months of the notification of the Judgment, according to the terms of paragraph 358 of the Judgment, and (f) produce evidence to confirm that the State effectively deposited the corresponding amounts, as well as indicate the date the payments were made.
3. To call upon the representatives and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report. Upon making such observations, the representatives shall also: (a)

produce evidence that confirms that the State deposited the corresponding payments, as well as indicate the date such payments were made; (b) indicate the total amount deposited by the State and the way in which the representatives distributed such amount; (c) tender evidence that confirms that each one of the people mentioned in Appendices I, II and III of the Judgment received the amounts ordered in the Judgment and (c) if the amounts delivered were different from those amounts ordered in the Judgment, indicate the reason of each case.

4. To continue monitoring the aspects of the Judgment on merits, reparations and costs of July 1, 2006 that are still pending compliance.

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

Cecilia Medina Quiroga  
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. 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