

**Order of the
Inter-American Court of Human Rights
of July 9, 2009
Case of the Pueblo Bello Massacre v. Colombia
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on Merits, Reparations, and Costs issued on January 31, 2006 (hereinafter "the Judgment") by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") notified in its totality to the Republic of Colombia (hereinafter "the State" or "Colombia") on February 27, 2006, through which the Tribunal decided that:

[...]

7. The State must take forthwith the necessary measures to activate and complete effectively, within a reasonable time, the investigation to determine the responsibility of all the participants in the massacre, as well as that of those responsible, by act or omission, for the failure to comply with the State's obligation to guarantee the violated rights, in the terms of paragraphs 265 to 268 and 287 of [the] judgment.

8. The State must adopt the pertinent measures to ensure that the human rights violations committed are effectively investigated in proceedings that guarantee judicial rights, in order to avoid the repetition of such grave facts as those that occurred in the Pueblo Bello massacre. Every six months, the State must inform the Court about the measures adopted and results achieved, in the terms of paragraphs 269 and 287 of [the] judgment.

9. The State must adopt forthwith the pertinent measures to seek and identify the disappeared victims and return their mortal remains to their next of kin and also pay their burial expenses, within a reasonable time. To this end, it must complete the actions undertaken to recover the remains of the persons disappeared, as well as any others that are necessary and, to this end, it must use all possible technical and scientific measures, taking into account the pertinent international norms, in the terms of paragraphs 270 to 273 and 287 of [the] judgment.

10. The State must guarantee that, irrespective of the actions indicated in the preceding operative paragraph, the respective official entities use these international norms as part of their equipment in the search for and identification of persons disappeared or deprived of life, in the terms of paragraphs 270 and 271 of [the] judgment.

11. The State must provide medical and psychological care, as applicable, to all the next of kin of the 37 persons disappeared and the six deprived of life who require this, as of notification of the [...] judgment to those who have already been identified and, as of the time when they are identified, in the case of those who have not yet been identified, and for the time necessary, in the terms of paragraphs 274 and 287 of [the] judgment.

12. The State must take the necessary measures to guarantee security conditions so that the next of kin of the persons disappeared and deprived of life, and other former inhabitants of Pueblo Bello who have been displaced, can return there, if they so wish, in the terms of paragraphs 275, 276 and 287 of [the] judgment.

13. The State must organize, within one year of notification of the [...] judgment, a public act of apology and acknowledgment of international responsibility, with the presence of high-ranking State authorities, concerning the violations declared herein and in reparation to the persons disappeared, deprived of life, and their next of kin, because it failed to comply with its obligation to guarantee the rights to life, humane treatment and personal liberty of those persons, as a result of its failure to comply with its prevention, protection and investigation obligations, and also due to the violation of the rights of access to justice, judicial protection and judicial guarantee committed to their detriment, in the terms of paragraphs 277 and 286 of the [...] judgment.

14. The State must erect, within one year of notification of [the] judgment, an appropriate and proper monument recalling the facts of the Pueblo Bello massacre, in the terms of paragraphs 278 and 286 of [the] judgment.

15. The State must publish once, within six months of notification of the [...] judgment, in the official gazette and in another daily newspaper with national circulation, the section of [the] judgment entitled Proven Facts, without the corresponding footnotes, and also these operative paragraphs, in the terms of paragraphs 279 and 286 of [the] judgment.

16. The State must pay the amounts established for pecuniary damage in Appendix I of the [...] judgment to the next of kin of the persons disappeared and deprived of life, in the terms of paragraphs 234 to 241, 246 to 251, 286, 288 and 290 to 294 hereof.

17. The State must pay the amounts established for non-pecuniary damage in Appendix II of the [...] judgment to the next of kin of the persons disappeared and deprived of life, in the terms of paragraphs 234 to 241, 254 to 259, 286, 288 and 290 to 294 hereof.

18. The State must pay the amounts established for costs and expenses, in the terms of paragraphs 283 to 286, 289, 291 and 294 of the [...] judgment.

19. The Court shall monitor full compliance with [the] judgment and shall consider the case closed when the State has executed its operative paragraphs. Within a year of notification of [the] judgment, the State must send the Court a report on the measures adopted to comply with it, in the terms of paragraph 295 thereof.

2. The Judgment of interpretation issued on November 25, 2006 by the Court,¹ which was notified in its totality to the State on December 11, 2006.

3. The brief of January 16, 2007, through which the State presented some general observations regarding the settlement of the compensations ordered in the sixteenth and seventeenth operative paragraphs of the Judgment.

4. The notes of the Secretariat of the Court (hereinafter "the Secretariat) of March 6 and 27, and April 18, 2007, through which it informed the State that the term to present its first report on the measures ordered to comply with the Judgment had expired on February 27, 2006, pursuant with that stated in the nineteenth operative paragraph thereof. Since it had not been received, following the instructions of the then President of the Court, it was reiterated to the State that it should present it as soon as possible.

5. The briefs of May 3 and July 6, 2007, through which the State presented its first report and an additional report on the compliance with the Judgment.

¹ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Interpretation of the Judgment on Merits, Reparations, and Costs*. Judgment of November 25, 2006. Series C No. 159.

6. The brief of April 8, 2007, through which Mrs. Amira Luisa Delgado Mestra, mother of the disappeared victim Ariel Dullis Diaz Delgado, indicated that the State had not complied with the majority of the obligations imposed by the Judgment of the Court and she requested to be informed regarding the proceedings the next of kin of the victims can file and before which official Colombian instance, in order to speed up the processes and their processing. On May 9, 2007 the Secretariat informed her that the case was in monitoring of compliance before the Court and it indicated to her who the State Agent and organizations that had acted as representatives of the victims were.

7. The briefs of June 19 and September 4, 2007, through which the Inter-American Commission of Human Rights (hereinafter "the Commission") presented its observations to the State's first report and its additional report.

8. The brief of August 9, 2007, through which the Colombian Commission of Jurists filed, as representatives of the victims and their next of kin (hereinafter "the representatives"), a copy of the brief addressed to the public prosecutor in charge of the criminal investigation, with considerations and requests regarding the search of the disappeared persons that was being planned for August 12 of that same year.

9. The brief of August 30, 2007, through which the representatives referred to "facts that have been occurring in townships surrounding and close to Pueblo Bello [that] would make evident an imminent danger for its inhabitants" and they informed that they had requested governmental representatives "to take timely and effective measures in order to prevent situations of risk or danger against the population of the township of Pueblo Bello."

10. The brief of November 21, 2007, through which the State made reference to the brief presented by the representatives (*supra* Having Seen paragraph 8).

11. The brief of January 14, 2008, through which the State referred to compliance with the act of acknowledgment of international responsibility and of public apology by the State.

12. The brief of January 27, 2008, through which the representatives presented their observations to the State's reports, after two reiterations by the Secretariat, following the then President's instructions (*supra* Having Seen paragraph 5).

13. The note of the Secretariat of February 12, 2008, through which it informed that, during the regular sessions being held, the briefs of January 14 and 27, 2008 presented by the State and the representatives were made of the knowledge of the full Court, which ruled, specifically, on the question made regarding the manner in which the realization of the act of public apology and acknowledgment of international responsibility had been set out.

14. The note of the Secretariat of April 24, 2008, through which, following the instructions of the President of the Court (hereinafter "the President"), it requested that the State forward, no later than May 23, 2008, a report on the status of the implementation of all the reparation measures pending compliance.

15. The brief of May 7, 2008, through which the representatives informed on the alleged situation that had been occurring with regard to payment of the compensations ordered in the Judgment, as well as the note of the Secretariat of May 14, 2008, through which, following the President's instructions, it asked Colombia to refer to the situation expressed by the representatives in the previous brief in its next report.

16. The brief of May 23, 2008, through which the State presented a report on the measures ordered in seeking to comply with some of the reparation measures stated in the Judgment.

17. The brief of May 28, 2008, through which the representatives made several statements regarding the payment of the compensations ordered by the Court.

18. The brief of June 18, 2008, through which the State referred to compliance with the sixteenth and seventeenth operative paragraphs of the Judgment, with regard to that indicated by the representatives (*supra* Having Seen paragraph 15).

19. The brief of June 23, 2008, through which the Commission presented its observations to the State's briefs of May 23, 2008 and that of the representatives of the 7 and 28 days of the same month and year, with regard to the payment of the compensation.

20. The brief of July 11, 2008, through which the representatives provided additional information regarding the impact the procedure adopted and that had been developed up to then by the State regarding the payment of the compensations would have on the beneficiaries.

21. The Order issued by the President of November 26, 2008, through which she summoned the Inter-American Commission, the State, and the representatives to a private hearing at the Court's headquarters on January 20, 2009, with the objective of the Tribunal obtaining information from the State regarding compliance of the judgment and hearing the observations of both the Commission and the representatives in this sense.

22. The private hearing on monitoring compliance with the Judgment held on January 20, 2009 during the LXXXII Regular Session of the Tribunal at its headquarters,² as well as the documents presented by the State during the hearing.³

² The following appeared at this hearing: for the State, Carlos Franco, Director of the Presidential Program of Human Rights, Luz Marina Gil, Executive Director of the Military Criminal Justice, Ministry of National Defense, Angela Margarita Rey, Director of Human Rights and DIH, Ministry of Foreign Affairs, Fernando Arévalo, Director of Judicial Defense of the Nation, Ministry of Internal Affairs and Justice, Francisco Javier Echeverri Lara, Director of International Affairs of the Solicitor General of the Republic, Sandra Janeth Castro Ospina, Coordinator of the Human Rights Unit of the Solicitor General of the Republic, Colonel Juan Carlos Gómez, Human Rights Director, Ministry of National Defense, Colonel Efraim Oswaldo Aragón, Human Rights Coordinator, National Police Force, Gloria Beatriz Gaviria, Human Rights Coordinator, Ministry of Social Protection, Juana Acosta López, Coordinator of the Inter-Institutional Operative Group of the Ministry of Foreign Affairs, Miguel Soto, Coordinator of the Area of Information and Precautionary and Provisional Measures, Ministry of Foreign Affairs, Santiago Arteaga, Public Prosecutor of the Human Rights Unit of the Solicitor General of the Republic, Captain de Corbeta Enoc Salcedo, Advisor to the Human Rights Office, Ministry of National Defense, Natalia Salamanca, Advisor to the Human Rights Office, Ministry of Foreign Affairs, Diana Bravo R., Advisor to the Human Rights Office, Ministry of Foreign Affairs, and General Jorge Rodríguez, Head of the Joint Institutional Defense Office of the General Command of the Armed Forces; for the Inter-American Commission, Elisabeth Abi-Mershed, Deputy Executive Secretary and Juan Pablo Albán Alencastro and Lilly Ching Soto, advisors; for the representatives, Luz Marina Monzón, Gustavo

23. The notes of the Secretariat of January 30, 2009, through which it reiterated to the State the requirements made by the Judges at the end of the hearing. It was indicated that the State would have a thirty-day period to present the written reports in which it should refer, specifically although not exclusively, to the following: a) the matter of the verification carried out prior to payment of that ordered in the Judgment in what refers to any pending tax debts the beneficiary may have; b) the use of an exchange rate different to the one ordered in the Judgment for the realization of the payments; c) the announcements made on the radio for the payments; d) the payment of the pecuniary reparations directly to the beneficiaries and not through the representatives, and e) the investigation and search for the remains of the victims. It was indicated that the representatives and the Commission would have a fifteen-day term to present the observations considered appropriate to that state report.

24. The brief of February 23, 2009, through which the State presented the report required during the hearing (*supra* Having Seen paragraph 23) and the brief of April 2, 2009, through which the State informed of the compliance with the thirteenth operative paragraph of the Judgment.

25. The brief of April 17, 2009, through which the representatives presented their observations to the state's reports received on February 23rd and April 2, 2009.

26. The brief of June 1, 2009, through which the representatives presented a "brief that the next of kin of the case had addressed to the Court [regarding] the reparation measure that referred to the medical and psychological attention."

27. The brief of June 9, 2009, through which the Commission presented its observations to the state's reports of February 23 and April 2, 2009, as well as to the respective observations of the representatives.

Considering:

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

2. That Colombia has been a State Party to the American Convention since July 31, 1973 and that it 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 case to which they are parties". For such purpose, States are required to guarantee implementation of the Court's rulings at the domestic level.⁴

Gallon Giraldo, Jahel Quiroga Carrillo, and María Victoria Fallón, of the Colombian Commission of Jurists (CCJ), and Michael Camillero and Francisco Quintana, from the Center for Justice and International Law (CEJIL).

³ Newspaper article titled "Compliance with the Judgment of the Inter-American Court of Human Rights "Pueblo Bello Massacre"" of January 31, 2005.

⁴ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; and *Case of Gómez Palomino v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, Considering clause number three; and *Case of the*

4. That by virtue of the nature of the Court's judgments as final and not subject to appeal, pursuant with that established in Article 67 of the American Convention, they must be promptly fulfilled by the State in all of their aspects.

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 municipal laws to escape their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.⁵

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 (that is, those dealing with provisions on 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.⁶

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Obligation to investigate the facts and, in its case, punish those responsible (seventh and eighth operative paragraphs of the Judgment)

7. That with regard to the duty to immediately carry out the due diligences to activate and effectively complete, within a reasonable period of time, the investigation to determine the responsibility of all the participants in the Pueblo Bello massacre as well as of those responsible through actions or omissions of the failure to comply with the state's obligation to guarantee the rights violated, as well regarding the search for the missing victims (*infra* Considering Clause number 19), the State requested that the information provided regarding the criminal proceedings not be mentioned in any public document. The State justified its request on the fact that the investigation started before the Human Rights Unit of the Solicitor General of the Republic is partially in a preliminary stage, which implies that the actions may only be of the knowledge of the parties to the process. In this sense, the State held, "the non-

Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Monitoring Compliance with Judgment. Order of the President of the Court of June 8, 2009, considering clause number 3.

⁵ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention of Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Gómez Palomino v. Peru*, *supra* note 4, Considering clause number 5; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*, *supra* note 4, considering clause number 4.

⁶ Cf. *Case of Ivcher Bronstein v. Peru. Competence.* Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of Gómez Palomino v. Peru*, *supra* note 4, Considering clause number 6; and *Case of the Sawhoyamaya Indigenous Community v. Paraguay.* Monitoring Compliance with Judgment. Order of the President of the Court of May 20, 2009, considering clause number 6.

observance of this stipulation not only implies sanctions for the officials that ignore it, but also risks for the investigation due to the failure to recognize the right to a due process and the good name of those being investigated." Likewise, the State indicated that "the matters of the investigation itself shall be discussed mainly within the realm itself of the criminal proceedings and through the procedural means offered by it" and it pointed out that the representatives of the victims have the quality of a civil party in the proceedings. Similarly, it considered that this Tribunal cannot specifically analyze or make decisions regarding procedural actions, unless a violation to the due process is argued.

8. That this Tribunal is aware of certain risks of making public certain information regarding internal investigations, both in reference to the effectiveness itself of the investigation, as well as with respect to the people involved or interested in the same. At the same time, several hypothesis or situations regarding the publicity of the information presented within the framework of contentious cases can be presented, both in the material aspect of the information and in reference to the procedural stage in which the case is.

9. That during the processing of the merits, where the State's responsibility for the alleged violations of the American Convention or other applicable treaties is determined, in recent cases the respondent State has alleged the reservation of information in the investigation phase, with the purpose of not presenting to the Court certain documents requested in relation to domestic criminal processes. In that assumption, the Tribunal considered that it corresponded to the State to send the documents required informing of the reservation and of the need, convenience, or appropriateness of maintaining the due confidentiality of the information. In those cases, the Court considered that the State's negative to forward documents cannot result in detriment to the victims, but only in its own detriment, reason for which the Tribunal could consider as established the facts that were provable only through evidence the State refused to forward.⁷

10. That during the monitoring of compliance with the Judgment, the Tribunal's duty is no longer the determination of the facts of the case and the State's potential international responsibility, but instead only the verification of the compliance with the obligations stated in the judgment by the State responsible. For this the Court shall have the necessary information, which shall be provided by the State, the Commission, and the victims or their representatives. In this sense, the General Assembly of the OAS has reiterated that, with the purpose that the Tribunal be able to fully comply with the obligation to inform it of the compliance with its judgments, it is necessary that the State Parties to the Convention provide the information required by said Tribunal in a timely manner.⁸ Therefore, in order to comply with its duty to monitor compliance of the reparation measures for the violations committed in detriment of the victims, and in attention to the principle of having both parties present, in each case the Court will assess the need, convenience, or appropriateness of maintaining the confidentiality of

⁷ Cf. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194, paras. 98 through 100. See also, *mutatis mutandi*, *Matter of Pérez et al. (Campo Algodonero) v. Mexico*, Order of the Inter-American Court of Human Rights of January 19, 2009 (request for expansion of the alleged victims and negative to forward documentary evidence), para. 59.

⁸ General Assembly, Resolution AG/RES. 2408 (XXXVIII-O/08) approved in the fourth full session, held on June 3, 2008, titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights."

the information provided in what refers to its use in the ruling, but not with respect to the access of the parties to it.

11. That in the present case, Colombia has provided certain information regarding the investigations, which has been transmitted and known by the representatives and the Commission, but it requests that the Tribunal not make it public in its orders of monitoring compliance. The Court will take into consideration all the information provided and includes in this order only what is indispensable in order to determine the degree of compliance with this operative paragraph. In what refers to the other declarations made by the State (*supra* Considering Clause number 7), the Court reiterates, as it has upon deciding other cases, that it is not a criminal court where the criminal responsibility of individuals can be analyzed,⁹ reason for which in this phase it shall not analyze the entire scope of the domestic investigations and processes, but only the degree of compliance with that ordered in the Judgment.

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12. That the State informed that it is currently making progress, in the Human Rights Unit of the Solicitor General Of the Republic, in a criminal process that is in its preliminary stages regarding one person and in the investigation phase regarding others, within the framework of which constant investigation activities are carried out. It also indicated that it has issued arrest warrants and inquiry decisions, among other actions. During the hearing, the State pointed out that there have been convictions against twelve people for their participation in the facts, that since the issuing of the Judgment of the Court an important investigative effort has been made; and that it will continue with the inquiry proceedings of several people linked to this case, promising to send information containing the details of the criminal actions carried out up to that moment. It mentioned that up to February 2009 four people had been linked and another three were captured. With regard to the observations made by the representatives on the alleged negative of the Public Prosecutor to charge the people linked with the crime of forced disappearance, the State argued that there is no information whatsoever in the criminal case file referring to that request. In what refers to the alleged lack of actions to relate State agents to the process, the State indicated that it is a line of investigation constantly being followed, but it does not have sufficient evidence to study it in depth. Likewise, it clarified that neither of the two people recently captured are part of the "Justice and Peace" process. The State asked that the Court declare that Colombia "is complying with this reparation measure."

13. That the representatives stated that the Human Rights Support Unit of the Public Prosecutors' Office of Medellín abstained from issuing the arrest warrants for the people involved, for which there were sufficient elements to individualize them and that indicated where they could be located. Likewise, they mentioned that the State has not spread through the media the summons to any person who may have information regarding the facts. The representatives also recalled that the State should forward to the Court, every six months, detailed reports of the status of the

⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 134; *Case of Yvon Neptune v. Haiti. Merits, Reparations, and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 37; and *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37. See also *Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 20, 2007. Series C No. 169, footnote 37; and *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations, and Costs*. Judgment of July 4, 2007. Series C No. 166, para. 93.

investigations and that up to this moment it has not complied with that obligation. Likewise, in the private hearing, they pointed out that up until that moment the Public Prosecutors' Office had not made progress in any action seeking to determine which State agents participated in the facts. The representatives also indicated that "what has been stated by the Government in its report, in the sense that they [have] never formally and within the procedure required the charging of the crime of forced disappearance is not true," since they had requested it on several opportunities. They consider that there is a lack of seriousness, effectiveness, and promptness in carrying out the investigations since no specific actions leading to determine the participation of State agents were proven, despite being it necessary to prioritize the boost to the investigations given the time that has gone by.

14. That the Commission indicated that even though the State had informed of multiple actions, it omitted providing specific information, such as for example what arrest warrants have been withdrawn. It also mentioned that the only specific investigation process is the request of inquiry of one person and that it had not indicated if it was carried out. The Commission also mentioned that the State does not make any reference whatsoever to the progress in the criminal proceedings already started against some of the planners and perpetrators of the facts of the present case, or the execution of the arrest warrants issued and reiterated up to that moment. It pointed out that the State was compelled to provide suitable and relevant information, in the sense that it shall reflect specific and effective results. During the hearing, the Commission requested that the Court require from the State more detailed and specific information. Further on in its observations, the Commission requested that the State inform in a summarized manner, the investigations it is carrying out regarding this case, in order to be able to determine if the access to justice is guaranteed.

15. That upon issuing the Judgment,¹⁰ this Tribunal concluded that the partial impunity and the lack of effectiveness of the criminal process in this case was reflected in two aspects: first of all, the majority of those responsible had not been linked to the investigations or had not been identified or indicted, when considering that around 60 men participated in the massacre. Secondly, in the trial and conviction in absence of the paramilitaries, they had been benefited through the act of justice that convicts them, but does not make the punishment effective.

16. That having more than three years gone by as of the mentioned Judgment, the Tribunal observes that there has not been any substantive progress in the investigation, taking into account the number of people who allegedly participated in the massacre in relation to the number of people linked to the investigation. Additionally, the lack of specific actions addressed to identifying and linking all those responsible and the planners of the massacre, specifically those who were public officials and members of the police force, is clear. Even though the State argued that this is a line of investigation, it has not provided a satisfactory explanation of the factors that have prevented up to this moment the linking of other state agents, despite the clear existence of elements in that sense. In what refers to the lack of investigations into the crime of forced disappearance, it is appropriate to remember that in those cases the State is compelled to carry out an investigation *ex officio* and without delay, in a serious, impartial, and effective manner. The effective search for the truth corresponds to the State and does not depend on the procedural initiative or the provision of evidentiary elements by the victim or its next of kin.

¹⁰ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 183.

17. That it is appropriate to recall that, in the terms of the Judgment,¹¹ for the effective compliance of this obligation the State shall: a) remove all the obstacles, *de facto y de jure*, that maintain impunity; b) use all available means to expedite the investigation and the respective proceedings, and c) grant adequate guarantees of security to the next of kin of the persons disappeared and deprived of life, investigators, witnesses, human rights defenders, judicial employees, prosecutors and other agents of the justice system, as well as to the former and actual inhabitants of Pueblo Bello. Similarly, the State was required to adopt the administrative, legislative and any other pertinent measures to ensure that the human rights violations committed were investigated effectively in proceedings in which all judicial rights are granted so as to combat the partial impunity that exists in this case and, thus, avoid the repetition of such serious events as those that occurred in the Pueblo Bello massacre. The State had to inform the Court, every six months, of the measures adopted in this regard and, specifically, of the results obtained, as well as publicly disseminate the results of those proceedings, in order to inform the Colombian society of the truth regarding the facts of the present case.

18. That the Court considers that an impunity still subsists in the present case, in the measure that the whole truth regarding the facts has not been determined, specially in what refers to the identification and possible punishment of the responsible planners and perpetrators. The Tribunal hopes that the difficulties that have arisen in the implementation of this measure of reparation, as well as the concerns expressed, can be overcome as soon as possible in order to effectively and fully comply with this obligation. In order to continue monitoring this matter, this Court requires that the State, according to the stipulations in the Judgment itself, continue presenting complete and updated information every six months regarding the progress of the investigations and the totality of the actions carried out in this sense. Namely, of the mechanisms through which the inclusion of information and/or relevant documents produced in the framework of other domestic mechanisms is made possible, as well as the reasons for which some of the people accused or convicted have not been captured and the measures to be adopted in that sense.

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Search for and identification of the disappeared victims (ninth and tenth operative paragraphs of the Judgment)

19. That regarding the obligation to adopt forthwith the appropriate measures to seek and identify the disappeared victims, as well as return their mortal remains to their next of kin, the State informed it had carried out different actions and taken on a constant investigative activity in which several tests were performed, among which it can mention the recollection of DNA along with its corresponding comparisons; the taking of statements; elaboration of photograph albums; judicial inspections; investigations at the "Las Tangas" estate, and preparation of photographic blueprints. Additionally, it stated that it ordered a diligence to exhume the osseous remains of 6 people buried in the cemetery of Pueblo Bello. It also mentioned meetings held with the representatives on March 5 and April 10, 2008, in which they agreed on methodological strategies for the search of the mortal remains and solutions for the inconveniences that exist in order to be able to carry out the investigative actions. The

¹¹ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 10, paras. 267 through 269.

State also presented a report of the collection of DNA samples and their processing. At the hearing, the State indicated that even though the investigative actions did not have positive results, they did allow it to rule out possible locations where there were traces of human remains, considering that the area has changed with the passing of time and that it is very extensive, and it got ahead of itself when it stated that for the year 2009 several actions would be carried out. In its last report, it indicated that the investigative and exhumation actions carried out in the month of August 2007- observed by the representatives- were practiced at that moment of the year, as many other actions with a satisfactory result, considering the information offered by the Meteorology and Weather Analysis Institute, IMAY, and by the General Management of the Urrá Dam regarding the climate and the flows of the Sinú River, since that month falls in the summer, but on that opportunity the action was suspended because the land was flooded. It added that the actions have been carried out with the technical support of criminal science groups made up by several professionals and with the presence of the representatives and the experts invited by them. Finally, it reiterated its will to carry out "all the actions within its reach to search for the remains of the victims," hoping that the Court will so acknowledge it in its order of compliance.

20. That the representatives indicated that, according to the report of the State itself, the Solicitor General of the Republic had not included in the search and identification process of the disappeared persons the United Nations Protocol regarding the search and identification of disappeared persons, or domestic search mechanisms such as the National Search Plan approved in February 2007 by the Search Commission for disappeared persons, as had been ordered by the Court in the Judgment. Likewise, the representatives informed that there was "resistance of the Solicitor General of the Republic to include scientific and technical mechanisms that would lead to the execution of a serious and effective search plan." Regarding the research activities, they acknowledge that an excavation was carried out between the 14 and 22 days of August 2007 at the "Las Tangas" estate, where 643 pits were excavated, and the activity had to be interrupted due to adverse weather conditions. They also mentioned that several factors prevented the appropriate development of the action, such as for example, the low number of personnel for the excavation, the few tools available, the lack of prevision and coordination of the authorities manifested especially through the flooding of the land with water channels due to the opening of the floodgates of the Urrá dam, among other problems of a technical nature.

21. That at the same time the representatives requested that, "the full identification of the remains recognized through evidence in 1990, which are located in the cemetery of the township of Pueblo Bello, be programmed." Likewise, they mentioned that they had filed a petition regarding the destination of the samples taken from 100 next of kin of those disappeared in 1998 and that from the information provided by the Public Prosecutors' Office in August 2008 it could be concluded that none of those missing has a "Single Registry of Disappeared Persons". They added that of the 100 samples taken, only 50 had been processed and that "the format of the chain of custody was only found on 9 samples." The representatives also informed that making the most of the opportunity of the publication of the Judgment, "an ad requesting information of the whereabouts of the victims" was published in a newspaper of national circulation. Despite the latter, the representatives stated that they do not know if the publication was made in the local oral and written means of communication, nor if it was, which was the result of the measure. In the hearing, they indicated that the State limited its actions to reiterating the information already known by the Court, even though they consider that the Public Prosecutors' Office made progress in the mechanisms that allow it to identify the human remains, namely, the recollection of information on the

victims and the samples for DNA tests in June 2008. Even though, the Public Prosecutors' Office states that 75% of the property was investigated, it is the representatives' understanding that only a little more than one fourth of the property was investigated. Without detriment to the latter, the representatives reiterated on this opportunity that the Public Prosecutors' Office showed "greater willingness to follow a methodology and search plans whose proposed stages have been accepted and observed according to the plan presented."

22. That the Commission indicated that the State, despite mentioning multiple actions of diverse nature, omitted to offer specific information regarding the same. Thus, it considered that the State had not informed of the specific results of the DNA exams performed nor had it provided greater details of the investigations at "Las Tangas". During the hearing, the Commission stated that it would be necessary that the exhumation actions be carried out in adequate technical conditions in order to obtain some type of result, even though it pointed out that it is very positive that, through the actions practiced, it was possible to have ruled out certain presumptions. Without detriment to the aforementioned, it considers that what was informed by the State during the hearing was limited more to repeating information already known by the Tribunal –as held also by the representatives. In its subsequent observations, the Commission indicated that it values the efforts made by the State in the search for the victims, but that the measures must be effective and comply with the objective, that is the search and finding of those who disappeared.

23. That it is appropriate to remember that, in the terms of the Judgment,¹² for the effective compliance of these obligations, the State shall guarantee that the corresponding official entities will use all the technical and scientific means possible, taking into account the relevant regulations in this matter, such as those established in the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, and also the Report of the Secretary-General on human rights and forensic science presented in accordance with resolution 1992/24 of the Commission on Human Rights of the United Nations Economic and Social Council.

24. That the Court values that certain research and disinterment actions have been carried out, as well as the recollection of DNA tests and information from the next of kin of the disappeared victims. Even though efforts have been made to guarantee that the actions carried out fulfill certain technical requirements, despite some differences in opinion regarding the methodology and opportunity of those actions, they have provided little results up to this moment, even though, it is reasonable to consider, by the dimensions and consequences of the massacre, that an important part of the victims and their next of kin still have to be identified. In this sense, the Court observes the close relationship between compliance with this obligation and the effective investigation of the facts. Therefore, it will continue to monitor compliance with this measure and it requires that the State refer, in its next report, to the results of the measures adopted and the pending publications and summons, if any; that it specify the other suitable measures that may be implemented with that purpose, and that it provide, if necessary, specific information regarding the people that have been located and identified.

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¹² Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 10, paras. 270 and 271.

Adequate medical and psychological treatment to the victims (eleventh operative paragraph of the Judgment)

25. That in what refers to the obligation to provide psychological treatment to all the next of kin of the victims that so require it, as of the notification of the Judgment to those already identified, and as of the moment of their identification in the case of those who have not yet been identified, and for as long as it is necessary, the State informed that it had agreed with the representatives that the first step toward compliance of this reparation measure was to make a diagnosis of the people who would benefit from the measure carried out by private health institutions. Later, the State informed that it had met with the representatives of the victims and their next of kin and that they had presented it with a list of different specialized institutions that could be contacted in order to request a proposal. The representatives also provided information regarding 454 people who wished to receive medical attention. However, the State added that it had not been able to contract that service because the entities they had asked for offers had difficulties to prepare a specific proposal and that "the Ministry of Social Protection was awaiting some additional offers from institutions suggested by the representatives, in order to make the best deal possible."

26. That the State later mentioned that in December 2007 it had reached an agreement between the Ministry of Social Protection and the United Nations Development Program (UNDP), within the framework of which the Reconciliation and Development Program (Networks) was being developed. One of the aspects of the mentioned agreement would be to collaborate with technical and financial assistance in the comprehensive attention of the victims from a psychosocial perspective. The State informed that this agreement was also focused on the attention of the victims mentioned in the judgments of the Court in the cases of Gutiérrez Soler, Escué Zapata, 19 Tradesmen, Mapiripán, Pueblo Bello, Ituango, and La Rochela. The State informed, that within the framework of the agreement, it had made progress in activities regarding the design and implementation of the management structure, of identification of the offer of services, and of elaboration of a work plan for the assessment and medical and psychological diagnosis of the next of kin of the victims related to the mentioned judgments of the Court. The State also informed that it held a meeting with the representatives, in which it informed them of the procedure adopted and it agreed with them that they would respond with their observations and comments in writing within a reasonable term. Reference was also made to another meeting held between the UNDP and the representatives within the framework of the "programmatic and follow-up meetings with the petitioners," in which reports on the progress of compliance were presented and "specific aspects included in the respective work plans" were considered. At the hearing, the State mentioned it hired the "Vinculus Foundation" for the attention of the beneficiaries, and by the end of last year said Foundation informed it had diagnosed 120 people; that after the diagnosis phase "that should be concluded by January 31, 2009," there would be a treatment phase. The State asked the Court to consider that this reparation measure, although late, is being carried out.

27. That the representatives initially stated that one of the factors that has delayed the implementation of this measure was the unorganized action of the Ministry of Social Protection, which issued a summons without terms of reference and with little clarity regarding its object. Therefore, no entity had presented itself to carry out the medical and psychological diagnosis of the next of kin of the victims. They also informed of a meeting held in March 2008, during which they agreed to introduce modifications to the terms of reference and that the matter of the specific compliance

with the reparation measure would be separated from the Government's initiative to launch criteria of a general public policy in that matter. However, the representatives stated that the agreements and conclusions of the negotiation meetings were not implemented and that this was seen in the lack of compliance with the reparation measure. At the hearing they stated that it was important to guarantee that there is compatibility between the medical and the psychosocial attention. In their final observations, they indicated that even though there had been great progress with regard to the lack of understanding with the Ministry of Social Protection, "there were still disagreements and lack of coordination with the UNDP that affected the selection and summons processes of the organizations that would be in charge of performing the diagnosis." In this sense, many of the victims were not diagnosed and some were assisted psychologically, but not medically. They expressed that there was still concern regarding the lack of continuity of the process of attention of the victims and that there not be continuance to the attention offered by the organizations that participated in the diagnosis stage. They also pointed out that after that audience was held, the victims had not had any additional contact with the people who performed the diagnosis.

28. That the Commission observed that even though the State referred to the agreement celebrated with the UNDP, the text refers to attention to the general population, which would be suggesting that "the State is trying to comply with that important obligation stated in the Judgment through a general plan of assistance to those affected by the internal armed conflict, which based on its design may not correspond to the reality and needs of the specific beneficiaries of this reparation." Additionally, it stated that these rehabilitation measures are of an immediate and ineludible compliance given the nature of the damages suffered by the next of kin of the victims and their permanent physical and psychological consequences. It observed that in its last report the State did not provide more information and that there is a delay in the phase of the diagnosis of the beneficiaries, without detriment to which it is imperious that a treatment be executed and that there be the necessary logistic aspects.

29. That the Court values the first actions underway for the execution of this measure, as well as the decision to include this matter in the celebration of the agreement mentioned by the State for the comprehensive attention of the victims of the armed conflict from a psychosocial perspective. The Tribunal values the efforts made by the State upon creating an agreement between the Ministry of Social Protection and the United Nations Development Program; the psychosocial nature of the measures that are being adopted and the investment and procedure followed in the evaluation and treatment system. Additionally, this Tribunal observes with satisfaction that the State adopted an integral vision for the implementation of this measure, which includes the different cases in which this Court has issued judgments and ordered this reparation measure.

30. That at the same time, the Court observes that the adequate treatment of the victims was an obligation the State should have complied with immediately, reason for which it is not considered positive, that the diagnosis of the next of kin in order to decide their treatment has taken more than three years. Since the State did not provide more information after the hearing, the Court does not know if the diagnosis stage has been finalized, nor if it started, without greater delay, the second stage of psychosocial treatment. It is necessary that the remaining measures be adopted in order to implement the medical attention program and include in the care plans the victims that have not yet been evaluated. On the other hand, without detriment of the

measures adopted within the general health framework, it is necessary that the State grant preferential attention to the victims of the present case, including the supply of medications, in a free, complete, and integral manner. Without doubt the consent and the cooperation of the beneficiaries of the measures are necessary in order to make sure that the treatment due to them be provided in an effective manner. For these effects, it is important that the state authorities continue to have the cooperation of the representatives in order to achieve the inclusion of the people who are still missing. The State has promised to guarantee that there will not be any further interruptions between the diagnosis and treatment phases. Therefore, the State shall continue to promptly inform of the progress and results of the implementation of this measure.

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Security conditions and return to Pueblo Bello and housing program for those who have been displaced (twelfth operative paragraph of the Judgment)

31. That in what refers to the obligation to carry out the actions necessary to guarantee the security conditions so that the next of kin of the disappeared persons and those deprived of their life, as well as other former inhabitants of Pueblo Bello, who were displaced, may return to that location, if they so wish to do so, the State indicated that consultation meetings were held with the next of kin of the victims and former habitants of Pueblo Bello, where they heard concerns regarding the installation of a police inspection at that location. It also mentioned that activities were organized "with the police force present in the area with the objective of spreading the Court's Judgments [...] and achieving rapprochement with the Pueblo Bello community." The State mentioned that the Presidential Agency for Social Action and International Cooperation had a Protocol for Returns, which offers a comprehensive attention to those who were displaced. The State mentioned that the domestic legislation stipulates as a requirement for the attention to the displaced population that it be recorded in the Single Registry of the Displaced Population and that the majority of the next of kin were not registered there but that, despite the latter, the State would register them with the prior express approval of the victims. It also agreed with the representatives to summon meetings with the municipal committees of Turbo and the Department of Antioquia, which are in charge of the execution of the return process, so they could inform it of the current situation of the township of Pueblo Bello and the municipalities that may have received the next of kin of the victims of massacres. Likewise, the State informed that the representatives had requested that the Ombudsman perform a diagnosis of the current situation of the township of Pueblo Bello, and in attention to this, it would organize a meeting with the representatives and this institution in order to refer to the matter of the diagnosis in July 2007. Additionally, the State acknowledged the importance, for compliance of this reparation measure, "that the criminal proceedings for the identification, prosecution, and punishment of those responsible be continued, also with the purpose of allowing the next of kin of the victims to return to the town."

32. That the representatives mentioned that "the compliance of the State with this measure has to reflect positive adjustment measures within the township of Pueblo Bello that will allow those who were terrorized to make a decision, based on their free will, to return." In what refers to the diagnosis of the conditions for the return to Pueblo Bello, they stated that in August 2007 a meeting was held with the

Ombudsman and the representatives, during which the state entity expressed its willingness to perform the diagnosis of the situation on the land, but it expressed that it did not have enough funds to transfer the people in charge of carrying out the study, reason for which it agreed to consult with the Presidential Human Rights and Humanitarian International Law Program in order to obtain the necessary funds. They received no additional information regarding the fulfillment of these commitments. Likewise, they mentioned that the protection measures stated in the Judgment not only referred to the public police force, but also to measures regarding the access infrastructure, the adjustment of health and education centers, and plumbing and sewage. On the other hand, they stated that two associations of Special Surveillance and Private Security Services, authorized by the public police force, are active at Pueblo Bello. However, that they did not understand why a town as small as Pueblo Bello, which has around 850 habitants and the presence of more than fifty police and army officials, required the services provided by private surveillance. They added that the State should take "all measures necessary to prevent the continuance of the operation of [...] companies of this nature that have contributed to the execution of facts such as those of the present case."

33. That with regard to the obligation to implement an adequate housing program for the next of kin that return to Pueblo Bello, the State informed that it was carrying out the internal procedures in order to define the entity in charge of executing this reparation measure and to recollect information on the people that were beneficiaries of a housing plan after the occurrence of the facts of the case. The State also indicated that it was not aware of which people wished to return to Pueblo Bello. At the hearing the State appreciated the comprehension of the next of kin and their representatives when allowing it "to find a solution to the prohibition the State has on building housing projects directly," reason for which it referred to the possibility of granting a pecuniary subsidy to the beneficiaries, as a way to comply with the requirements agreed on by the parties in compliance of the Judgment.

34. That the representatives indicated that the State has not complied with its obligation and that pursuant with that stated in the Judgment of Interpretation (*supra* Having Seen paragraph 2), the State shall provide those who wish to return with a housing plan as a way of mitigating the damages caused by the displacement. At the hearing they stated that the solution proposed by the State would be accepted in the understanding that the money to be received, may be destined to the restoration of the homes, reaffirming said acceptance in its final observations, upon stating that "they are awaiting the specific modality of compliance with this measure through a mechanism that makes compliance easier, but that does not modify its purpose."

35. That the Commission stated that regardless of the fact that it be or not aware of the next of kin who wanted to return to Pueblo Bello, the State should have already set in motion specific actions in order to comply with that ordered by the Court. It indicated that it valued the information regarding the agreement between the State and the representatives to grant a pecuniary subsidy to the beneficiaries and, in that sense, it hopes that the matters pending in order to comply with said measure can be executed as soon as possible.

36. That the Court considers it necessary that the state authorities know the will of the next of kin of the disappeared persons and those deprived of their life, as well as other former habitants who were displaced, to return to Pueblo Bello. The State is who shall carry out the necessary actions to determine the aforementioned and the representatives shall offer all possible collaboration in this sense. If that is the will of

the next of kin and the other former habitants of that location, the State shall inform of the measures adopted or to be implemented in seeking to guarantee adequate security conditions in order to make the return of the beneficiaries that so wish to do so possible.

37. That there are, in fact, several ways to comply with this stipulation, in consideration of possible risks verified for those people. However, the Court considers it necessary to recall that one of the suitable measures for the generation of security measures and guaranteeing the return of the next of kin of the victims to Pueblo Bello is, as pointed out by this Tribunal in paragraph 275 of the Judgment, avoiding impunity through the realization of a complete investigation and an effective judicial process, which would result in the elucidation of the facts and the punishment of the responsible parties.

38. That even though the State and the representatives expressed different opinions regarding the current security situation in the municipality of Pueblo Bello, it has been stated that the victims of forced displacement do not wish to return. Therefore, the State proposes that, in compliance with that ordered in the Judgment, it grant those victims socioeconomic aid. The representatives stated their agreement with this form of compliance, under certain conditions. Taking into account that the State has requested that the Tribunal allow the satisfaction of this measure of reparation through the mentioned granting of socioeconomic aid, the Court considers that, in attention to that stated in the Judgment and in considering clauses 42 through 49 of the Judgment of Interpretation (*supra* Having Seen paragraph 2), the proposal may be an adequate form of compliance, as long as it has the express support of the beneficiaries of the reparation ordered. Given the time that has gone by since the massacre, and taking into account the effects the forced displacement has on the victims and the situation of risk and vulnerability to which they are exposed, this reparation measure shall 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 safety of those victims that decide to return to Pueblo Bello and, while those security conditions are not in place, dispose of those resources necessary and sufficient to secure that the next of kin that have suffered the forced displacement may resettle wherever they freely and voluntarily state, in conditions similar to those they had prior to the facts. Alternatively, the State may provide socioeconomic aid to those victims if that is their will and with their express consent, and requests that the parties present complete and updated information in this regard.

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Public act of apology and acknowledgment of international responsibility (thirteenth operative paragraph of the Judgment)

39. That with regard to the obligation to hold, within a one-year term, a public act of apology and acknowledgment of international responsibility, the State informed that in April 2007 it held a meeting with the representatives in which it stated that the public act of apology would be coordinated along with the next of kin of the victims. The State later mentioned that there different opinions arose with the representatives in what referred to the appointment of the State official in charge of presiding the act of acknowledgment of responsibility, and with regard to the geographical location where it should be held. The State had appointed the Minister of Internal Affairs and

Justice since he was a high State official very well known in the Colombian society and he was “the representative of the entity of which the administration of justice depended at the time of occurrence of the facts.” In reference to the place where they planned to hold the act, the State mentioned the Municipality of Apartadó as the most appropriate since it is the seat of the municipal government located closest to where the facts occurred and it has easy aerial and land access routes. In the same brief, the State asked the Court that it inform it if it would be possible to hold the act as proposed to the next of kin of the victims.

40. That the representatives had observed that the Ministry of Internal Affairs and Justice was not the most adequate to preside over this act since a high official of that Ministry had granted an interview to the weekly newspaper of national circulation, “El Espectador”, in which it stated that accusing the State before the Inter-American Court had turned into a business, thus delegitimizing the decision adopted by the Tribunal as well as the interest and right the victims of violations to human rights have to demand the reparation that corresponds to them. They also argued that the municipality closest to Pueblo Bello was not Apartadó but Turbo and they requested that the act be held in the township of Pueblo Bello. They also expressed that the powers of the State to comply, through its own tools, with the decisions of the international organizations for the protection of human rights, could not be understood as “contrary to the sense and scope of the reparation measure” and that the city of Bogotá could be a solution in the event that the Government consider that Pueblo Bello does not offer sufficient security conditions. Likewise, they requested that the act be held preferably on January 14, 2008, a commemorative date of the facts that occurred in Pueblo Bello or alternatively on February 28, 2008, date on which the Judgment was notified. They also expressed that a meeting had been held in April 2008 with the Vice-Minister of Justice, and in the same the representatives of the State requested that the place where the act was to be held be consulted once again with the next of kin. They added that those consultations were hard to carry out since all the next of kin do not live at the same place, nor do all of them have access to immediate means of communication.

41. That the Court had already considered, as communicated through the Secretariat’s note of February 12, 2008 (*supra* Having Seen paragraph 13), in response to the State’s petition in reference to the questions regarding which official should preside over the act, the place and date of the same, that “[it was] the State’s power to appoint the officials that would make, in their representation, the public apology and acknowledgment of responsibility, provided that they enjoy the characteristic of high investiture referred to in the Judgment. In those terms, the Tribunal has considered that the Minister of Internal Affairs and Justice is one of those ‘high-ranked authorities’ referred to in the thirteenth operative paragraph and his appointment does not affect the sense of the reparation measure ordered.” In what refers to the appropriate place to hold the act, this Tribunal has considered that “as long as the reparation ordered constitutes a measure of satisfaction for the next of kin of the victims executed and disappeared and at the same time a measure of non-repetition of the facts of the case, the sense of that ordered implies, preferably, that an official public act of apology and acknowledgment of responsibility be held in the same place where the facts occurred. Therefore, the Court ask[ed] that the State make its best efforts to hold said act in the township of Pueblo Bello; if this were not possible, at the Municipality of Turbo, in attention to that expressed by the next of kin of the victims and their representatives. If after having made the consultations and having adopted the measures necessary to decide the location, it is still difficult to have it at one of these locations, then Bogotá or the location proposed by the State would be a valid option.” Finally, the Court asked the State and the representatives to,

considering the logistical difficulties it implied, make their best effort to coordinate and decide on an appropriate date for the holding of the act, so as to guarantee the presence of the next of kin of the victims.

42. That the State informed that on March 4, 2009 it held the act of acknowledgment of international responsibility in coordination with the representatives and the next of kin of the victims. The Minister of Defense, the Attorney General of the Republic, the Ombudsman, the General Director of the National Police, and other high authorities were present at the act held at the Ministry of Foreign Affairs. Additionally, approximately 190 next of kin were present, among which were those who live in Bogotá and those who came from other places. Several guests of the representatives of the victims, such as civil society organizations, academicians, and representatives of several state institutions, such as the Attorney General's Office, the Ministries of Social Protection and Internal Affairs and Justice, the Presidential Human Rights Program, the National Reparation and Reconciliation Commission, among others, were also present.¹³ The State considered that the public act was held in attention to the highest standard of reparation and it at all times respected the opinion of the next of kin dignifying and respecting the memory of the victims and their next of kin; the public acknowledgment of responsibility; a request for forgiveness for the damage caused; criticism of those actions and the direct participation of the next of kin, becoming an unmistakable sign of the State's desire to recover their trust and establish new relationships with the victims. It requests that the Court declare that the thirteenth operative paragraph of the Judgment has been complied with.

43. That at the hearing the representatives stated that they had accepted that the public act of acknowledgment of international responsibility be performed by the Minister of Defense. In their final observations they stated that the act celebrated was the result of a very important agreement between the Government and the representatives of the victims and their attorneys, which led to "the proposals made by the next of kin being heard and developed in their majority" with the corresponding satisfaction with the results obtained. They stated that the photographs that were to be delivered during the act were not received because they did not comply with what was requested (that they be placed on an altarpiece); that the cost of the master of ceremonies was covered by the Government and the representatives, as agreed; that the appointment of the Minister of Defense was a unilateral decision of the Government, but that they understand that it obeyed their prior request for a change of ministry. Thus, they "acknowledge the disposition, seriousness, and transparency with which the officials in charge of carrying out the act of acknowledgment acted" despite the fact that there were disagreements, all of which were overcome.

¹³ As informed by the State, the authorities took care of the transfers from different parts of the country toward the city of Bogotá – where the act was held –, as well as of the lodging, food, and security during their stay. The act had the participation of a musical group from Medellín; a master of ceremonies proposed by the representatives to participate with words of support and acknowledgment for the victims and the next of kin was hired; diplomats were invited, as well as different state institutions, organizations of the civil society, international organizations, and the media. On the other hand, the elaboration of 43 silhouettes in a heroic size were hired and they would be located at the site where the act would be held as a symbol of the disappeared people, as well as the elaboration of altarpieces with photographs of the forty-three disappeared people that will be handed over to the next of kin at the act, even though on the day prior to the event the coordination group of the next of kin decided that the photographs would not be delivered in the act, circumstance that the State respected. A banner made by the next of kin was hung in the auditorium. The act was widely broadcast by all the media and at the end of it there was a space for the media to interview the next of kin and the representatives. The State promised to send the next of kin a written memoir signed by the Ministry, it forwarded to the Court the transcripts of the words spoken by the Minister of Defense and announced it would send the videotape of the act.

44. That the Commission stated in its observations that the purpose of the reparations is to help in the recovery of the victims and their next of kin and in that sense "it acknowledges the value and importance of the information presented by the State, especially taking into account the positive impact that has been mentioned by the representatives of the injured party."

45. That the Tribunal values positively the actions carried out and the willingness of the state authorities to compromise with their victims and their representatives for the coordination of the realization of the public act of acknowledgment of responsibility. Even though this act was not held within the term stated in the Judgment, the Court observes with satisfaction the ample disposition of the state authorities to seek compliance of the measure of satisfaction in its full sense and scope, as well as the ample participation of the victims and high state authorities, and its diffusion among the civil society, public and international organizations, and the media. In that sense, this Court considers that the measure ordered in the thirteenth operative paragraph has been fully complied with by the State in highly satisfactory terms.

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Construction of a monument (fourteenth operative paragraph of the Judgment)

46. That in what refers to the obligation to erect an appropriate and proper monument to recall the facts of the massacre of Pueblo Bello, the State informed that the entity in charge of executing this reparation measure was the Ministry of Internal Affairs and Justice and that it was necessary to know under which figure the next of kin considered it appropriate to recall the memory of the victims. Therefore, the State mentioned that it took into consideration suggestions made by the representatives and that it "would be taking steps with a state entity with experience in this subject [in order to...] agree on the procedure and construction of the monument." At the hearing, the State referred to the fact that the representatives proposed the name of an artist that could prepare a proposal for the elaboration of the monument and it stated that it was awaiting the artistic proposal in order to continue with the administrative processes necessary for its execution.

47. That the representatives observed that the State had not made any serious progress in the measures oriented to complying with this reparation, which has been delayed due to bureaucratic problems. They also indicated that the State should make proposals that may be observed and assessed by the beneficiaries of the measures. In this sense, they stated at the hearing that the next of kin are waiting for the proposal from the artist chosen by them, not only regarding the monument but the budget as well.

48. That the Commission expressed at the hearing that "it values positively the actions carried out by the State with the objective of partially complying with several of the operative paragraphs [...] and the agreements reached with the representatives" to make access to certain measures easier, especially the construction of the monument.

49. That the Court recalls that the Judgment stated a one-year term computed as of the notification of the same for the execution of this measure of reparation and that this is an autonomous obligation that does not depend on the compliance of the other

operative paragraphs. Having almost three and a half years gone by, there is no evidence that the appropriate and sufficient actions for the construction of the monument were carried out. Therefore, this Court urges the State that if within a month the artist chosen by the next of kin of the victims does not inform of the quote for the elaboration of the monument, it continue with the process started with the state entity chosen in a timely manner, taking into account the suggestions made by the representatives that have already been informed to the State, so it may arbitrate the means necessary to remove any possible obstacle of an administrative nature in order to comply with this measure of reparation, whose real symbolic value as a guarantee of non-repetition of such grave acts in the future continues to exist. Therefore, the Tribunal will continue monitoring compliance of this measure, for which the State shall inform of the progress and results achieves in relation to the commitments acquired.

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Publication of the judgment (fifteenth operative paragraph of the Judgment)

50. That with regard to compliance with the obligation to publish certain parts of the Judgment, within a six-month term computed as of its notification, for a single time, in the Official Gazette and another newspaper of national circulation, the State informed that it held a meeting in April 2007 with the next of kin of the victims and that at the same they agreed to make the publication in an additional offprint inside the most important newspaper of national circulation in the country ("El Tiempo"). During the hearing, the State expressed that the publication was made on August 27, 2007 and in order to guarantee its diffusion it inserted an ad in the first page of the newspaper "El Tiempo" indicating the publication of the additional offprint. It also stated that the publication had been made in the Official Gazette.

51. That the representatives acknowledged that the publications had been made through a permanent and respectful negotiation process between the Government and the representatives. Despite the aforementioned, they observed that "the publication went unnoticed by the general population and therefore the objective that it have an impact on the society, so that the facts do not occur again, was not reached," since the size and font of the publication were not adequate. During the hearing, they reiterated that the ad referring to the publication was not visible. On its part, the Commission stated that Colombia had complied with this obligation.

52. That the Court observes that, according to that stated in the Judgment, the State should make the corresponding publications within a six-month term. The Commission and the representatives informed that the mentioned publication had been made in a newspaper of national circulation and at the hearing the State presented a newspaper article (*supra* Having Seen Paragraph 22). The Tribunal positively values that informed regarding the fact that there had been an agreement in reference to the manner in which said publication would be made and considers that the State has complied with this provision.

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Payment of compensations and reimbursement of costs and expenses (Sixteenth, seventeenth, and eighteenth operative paragraphs of the Judgment)

53. That with regard to payment of the indemnities and compensations ordered in favor of the victims and their next of kin, as well as the costs and expenses in favor of the representatives, the State and the representatives have referred to several aspects, which will be analyzed in the following order: a) the payments made and steps taken in this sense; b) the payment of interests on delayed payments; c) the exchange rate used; d) the modalities of delivery of the payments; e) the situation of risk generated by the public summons to make the payments; f) costs and expenses.

a) *The payments made and the steps taken*

54. That the State informed that, through Order 3666 of December 17, 2007 of the Ministry of Internal Affairs and Justice, on the 27 day of the same month and year it had ordered compliance with the Judgment and the opening of a savings account with daily returns at the Banco Agrario de Colombia. It expressed that it had made "the payment of the compensations through a global account, and that they may be withdrawn at any branch of the Banco Agrario de Colombia throughout the country by each of the beneficiaries, with the mere presentation of their identification document." Likewise, the State informed of a meeting with the representatives on May 29, 2007 in which it informed them "that the Ministry of Internal Affairs and Justice could take care" of the payment of the compensations; the issuing by the Ministry of the Treasury and Public Credit of the Certificate of Budgetary Availability No. 342 for thirteen thousand one hundred and fifty four million one hundred and forty seven thousand nine hundred and sixty Colombian pesos (\$13.154.147.960,00); the request made by the State to the representatives for the addresses and telephone numbers of the beneficiaries, responding to the fact that payment would be made directly to them; the forwarding to the Ministry of Internal Affairs and Justice, by the Banco Agrario, of the project for the agreement on bank payment services for the settlement of the compensations to the beneficiaries; the Order of the Ministry of Internal Affairs and Justice No. 825 of April 3, 2008 that orders the compliance with the judgment and makes the distribution per beneficiary, of the settlement and value that corresponds to each of them, whose consigned values were generating daily returns as of the date of the deposit, that is, since December 27, 2007; an official letter of April 24, 2008 through which the State notified order No. 825 to five beneficiaries, informing them of the procedure to be followed in order to make the payment effective; an official letter of April 28, 2008, through which the State communicated order No. 825 to the representatives and asked them to communicate it to the beneficiaries. Likewise, it presented a publication of the newspaper "El Tiempo" of June 7, 2008, in which it informs the beneficiaries that they may access the collection of the compensations as stipulated in Article two of order 825. It also stated that through order 1561 of June 10, 2008 it ordered the payment of the amount that corresponded to the victims identified in the Judgment as next of kin of the direct victim, regarding those who did not present any new next of kin.

55. That the State detailed during the hearing the proceedings in force at a domestic level in order to comply with the payment of the compensations ordered by the Court. In this sense, within the framework of different regulations and decrees, it stated that as a first measure the beneficiary shall present the request for payment before the entity in charge of the same, which is later forwarded in consultation to the Ministry of the Treasury and Public Credit – Tax and National Customs Department – so it may inform of the existence of any tax debt, in which case it is paid from the corresponding compensation.

56. That the State initially informed that up to May 2008, 33 people acknowledged in the Judgment had made themselves present at the offices of Banco Agrario de Colombia to withdraw their compensations, and that they appeared between May 12 and 19, 2008. It later stated that by the end of June 2008, 169 beneficiaries had requested payment of the compensations. During the hearing, the State mentioned it had paid 373 beneficiaries and it requested that the Court declare partial compliance with the obligation of payment of the compensations. In its last report it stated that on February 11, 2009 the representatives of the beneficiaries met with representatives of the Ministry of Internal Affairs and Justice and of the Ministry of Foreign Affairs, "in attention to its interest to comply with the reparation measures in the best way possible." There they agreed to hold as many meetings as necessary to fulfill that purpose.

57. That regarding the next of kin for whom official documents have not been provided or in those cases in which the documents provided do not prove the relationship, the State informed that, as indicated in paragraph 237 of the Judgment, on February 20, 2008 the representatives forwarded, along with the request for payment, the documents and powers as beneficiaries of the people they consider have a right to the compensation and that said information could be found at the Ministry of Internal Affairs and Justice for its study and decision. During the hearing the State pointed out that said Ministry had set forth actions of an administrative nature tending to acknowledge new beneficiaries. Likewise, it indicated that documents were never requested in order to prove situations that had already been objected in the proceedings before the Inter-American System and that, with regard to the new beneficiaries, the State did require the documents that would prove said condition, reason for which up to the date of the hearing around 90 people had provided the documents, of which only 37 were acknowledged as beneficiaries, since the rest did not comply with the requirements necessary to obtain that condition.

58. That the representatives confirmed several aspects of the content of Order No. 825 of April 3, 2008, as well as the elaboration of regulations establishing the conditions and requirements of payment, which only ordered "the payment of the compensations corresponding to the non-pecuniary damages caused to the next of kin of the victims" and that "payments corresponding to the non-pecuniary and pecuniary damages of the victims disappeared and executed [were] pending," in the measure that they were in the investigation phase with regard to the people that do not appear in the Judgment. They stated that said order was notified to them within the framework of a meeting held with officials of the Ministry of Internal Affairs and Justice on May 8, 2008. At the hearing, they stated that at the end of 2006, once the Judgment of interpretation had been notified, they requested a meeting with the State in order for the latter to inform them what entity would be in charge of making the payment, but several months later they found out that it would be the Ministry of Internal Affairs and Justice. Likewise, they indicated that the State may reach interpretations not necessarily shared by them, but this would not allow the State to understand in good faith that the requirements for payment were not being fulfilled, since there were documents of the conversations held and the letters from the beneficiaries stating they wanted to be represented. On the other hand, they expressed that "the date on which the State ordered payment was not December 27, 2007 but in May 2008, after an order of April 30, that is more than one month after they had settled the collection of the compensation as representatives of the victims."

59. That the Commission stated at the hearing that no domestic administrative procedure whatsoever is necessary and that, even though the domestic legislation of

the State clearly demands it, the jurisprudence of the Inter-American System indicates that this is not an excuse based on which the State can fail to comply with that ordered in the Judgment by the Court. In its subsequent observations the Commission limited itself to stating that "it hopes that the obstacles that have presented themselves in the present case can be overcome as soon as possible."

60. That the Court appreciates the State's actions tending to comply with this operative paragraph, specifically its inclusion of the corresponding budgetary item to make the payments. The Tribunal considers that the State has partially complied with this obligation regarding payment for the concept of non-pecuniary damages set in favor of the next of kin of the victims, and assesses that, even though made outside of the terms set in the Judgment, the majority of the beneficiaries has received the totality or the majority of the payments that correspond to them. There is no controversy specifically in what refers to the delivery of the payments, except regarding the exchange rate used, the delayed payment interests accrued, and the way in which the calculations were made, and the procedures through which they were made effective (*infra* Considering Clauses 62 through 80).

61. That on the other hand, it is necessary to require that the State complete, as soon as possible, the study and evaluation of the corresponding documents in what refers to the beneficiaries of the compensations for non-pecuniary damages who are not mentioned in the Judgment and who were later identified within the term established to that effect, according to that established in paragraph 237 of the same. Once said exam has been completed, the State shall make effective the payments in their favor. On the other hand the State shall complete the payments for the concept of pecuniary and non-pecuniary damages suffered by the 43 victims who either disappeared or were deprived of their life, which correspond to their next of kin in their nature of successors, in the terms established in the Judgment. The State shall inform of all the aforementioned, as well as with regard of the people who have come forward to claim compensations under the assumptions of the Judgment, the cases in which the status of beneficiaries has been acknowledged or denied, and, in each case, the criteria applied.

b) *Interests on delayed payments*

62. That with regard to payment of the interests on delayed payments, the State informed of a series of steps taken, assuming that the delay in payment had generated interests on delayed payments. At the same time, the State pointed out that, according to Article 177 of the Administrative Proceedings Code, along with Article 60 of law 446 of 1998, the causing of interests ceases after six months computed as of the execution of the decision if the beneficiaries do not present themselves before the entity responsible for making it effective, along with the documents required for that effect." The State added that at a meeting held on June 22, 2007 it informed the representatives they should present the documents necessary for payment before the Ministry of Internal Affairs and Justice and they were required to do so. At the time of the consignment of the resources on December 27, 2007 at the Banco Agrario, it made the corresponding update according to Article 178 of the Contentious Code, that is, using as a base the index of prices to consumers. It added that on February 20, 2008 the representatives had not yet fulfilled that requirement and that it therefore could not demand interests on delayed payments for the period that had gone by up to December 27, 2007. Thus, it stated "that it will acknowledge in good faith the interests on delayed payments according to the regulations stated and taking into account that

the corresponding documents for the payment [had] not been duly presented until February 20, 2008," and that the Ministry of Internal Affairs and Justice would settle the interests for delayed payments through an administrative act. That is, it acknowledges the interests on delayed payments from the date of the expiration of the term for the payment of the compensation, that is February 27, 2007, and up to the following six months as established by Law 446.

63. That the representatives mentioned that the State, in Order No. 825 of April 3, 2008, indicated that the beneficiaries had not requested their compensation in the terms of Decree 768 of 1993 and that therefore it would not acknowledge in its settlement the interests on delayed payments. They recalled that the Judgment had ordered the State to pay, within a one-year term computed as of the notification of the Judgment, and that the interests on delayed payments that should be paid when the amounts of money were not paid within that term should be considered at the "bank interest on delayed payments in force in Colombia."

64. That the Commission considered that the State had incurred in delay and that it had erroneously interpreted that the payment was made when the deposit was made in a savings account of the Banco Agrario de Colombia, despite the fact that the beneficiaries of the compensations had not yet received the amounts that corresponded to them.

65. That this Tribunal points out that, in the terms of the Judgment, the obligation to comply with a specific measure of reparation is effective as of the moment of the notification itself of the Judgment, regardless of the term granted for those effects. In this sense, upon issuing the Judgment the Court assumes that the State will, in good faith, carry out the processes and make the necessary efforts to comply with it within the mentioned terms. Consequently, with regard to the payments ordered, if the State does not comply with that stated within the mentioned term, it incurs in default and shall pay the corresponding interests on delayed payments.

66. That the Court is aware of the diversity of processes, proceedings, and administrative steps that may be necessary at a domestic level to make the compensatory payments ordered in the Judgment, as well as of the subsequent obstacles they may cause. According to that stated in paragraphs 286 and 294 of the Judgment, the term established for the State to comply with the obligations of payment ordered was of a year computed as of the notification of the same or, in its case, as of the moment in which other beneficiaries were to come before the competent authorities and within the terms established to this effect. At the end of that period, the State incurs in default and shall pay the corresponding interests on delayed payments on the amounts owed to the beneficiaries. As has been stated repeatedly by this Tribunal, and as it results from paragraph 291 of the Judgment, the State cannot fail to comply with that stated in the Judgment based on its domestic law, reason for which the mentioned regulations cannot be put forward (*supra* Considering Clause 62) as a reason to not comply with the pecuniary obligations in their whole.

67. That in the present case from the information provided it could be concluded that the amount included in the Certificate of Budgetary Availability of July 25, 2007 corresponds to the amount deposited on December 27, 2007, which was liquidated on March 12, 2008. However, it was not until the mentioned order No. 825 of April 3, 2008 of the Ministry of Internal Affairs and Justice that the distribution per beneficiary of the liquidation was specified along with the amount that corresponded to each of them. In effect, it is not until May 2008 that the payments started becoming effective.

Therefore, the Court considers that the State shall pay the interests corresponding to the bank interest on delayed payments in Colombia and for the period of time that went by between February 27, 2007 –expiration date of the term stated in the Judgment in which the payment should have been made- and the date on which the State actually made the payment or informed each of the beneficiaries or, in its case, their representatives, according to each individual case, that the payments were at their full disposal to be withdrawn or made effective.

c) Exchange rate used

68. That regarding the exchange rate for dollars to Colombian pesos used for the effects of the payments made, the State indicated it complied with that stated in paragraph 288 of the Judgment, that is, it used as base the Representative Market Rate (TRM) of the dollar of the day prior to December 27, 2007, date on which the deposit was made at the Bank. Additionally, it stated that the Judgment cannot be settled with the dollar's value in February 2007, since the exchange rate used is that of the day prior to payment, according to said Judgment.

69. That the representatives stated, with regard to the exchange rate used, that the amounts of money would have had to be deposited in United States dollars and in the most favorable financial conditions for the beneficiaries. They state that for this it would have had to use the value of the dollar on the day prior to the date on which the payment became demandable and not the date on which the State deposited the money at the bank. They considered that the moment of payment is the one in which the people in fact have the possibility to access the compensation and stated that the consignment of the amount of money made by the State was not communicated to them or the beneficiaries directly or their representatives, thus they did not have the possibilities to access said payment until Order No. 825 was communicated to them, at the meeting of May 8, 2008. Therefore, the representatives requested that they be paid the value of the totality of the compensations and interests on delayed payments pursuant with the value of the dollar at the time in which the corresponding payment became demandable, that is, on February 27, 2007.

70. That the Commission considered it incorrect that the State froze the value of the dollar taking into account the quote in force the day prior to said deposit.

71. That regarding the currency used to make the payments, in the cases in which the payment of pecuniary compensations has been ordered, the Tribunal "has established that the State may comply with its obligations through the payment in dollars of the United States of America or in an equal amount in the national currency, which applies based on the exchange rate between both currencies in force in the international market, obeying only the need to preserve the value of the amounts set in the concept of reparation, with regard to the period of time the processing of the case took at a national and international level, as well as the amount of time that will go by until the payment offered is in fact made."¹⁴ In the terms of the Judgment, the State may make the payments in either of the two currencies mentioned, for which in this sense the Tribunal does not consider that the State failed to comply with that ordered.

¹⁴ Cf. *Case of Perozo et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 405; and *Case of Rios et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 396.

72. That regarding the exchange rate of the dollar that shall be taken into consideration for the payment of the compensations ordered, this Tribunal observes that paragraph 290 of the Judgment states that it was the one in force in the plaza of New York, United States of America, the day before the date on which payment is made.

73. That the Court already observed that the State incurred in arrears, reason for which, according to the aforementioned criteria, in any case the exchange rate that should be used to make the payments is the one in force the day before the date on which the State actually made the payment (*Supra* Considering Clause 67). Thus, the State shall make the respective calculations and, in its case, pay the corresponding difference.

d) Modalities for the delivery of payments

74. That the State expressed that payment of the compensations should be carried out according to that stipulated in the Judgment in its paragraph 288, this is, directly to the beneficiaries, and that the Ministry of Internal Affairs and Justice understood in good faith that payment should be made in that manner. Likewise, it added that since on December 28, 2007 no request had been filed by the beneficiaries or by the representatives regarding the form of payment, the same was made through the Banco Agrario.

75. That on their part, the representatives indicated that Order No. 825 established that payment would be made directly to the beneficiaries, despite the fact that the next of kin of the victims expressed their will to be represented by the Colombian Commission of Jurists, including for the effects of compliance with the Judgment. The reasons for this, as argued by the representatives, are related to the places where they reside, which would make the payment difficult since there are no branches of the bank where the deposit was made or simply that the displacements in the area may imply a risk within the framework of the armed conflict. The representatives also mentioned that said order imposed the obligation on the people benefited to prove their condition of victim, in contrast to that expressed by the Judgment of interpretation issued by the Court (*supra* Having Seen paragraph 2). In that sense the compliance with the obligations stated in the Judgment of the Court were delayed in an unjustified manner. The representatives are demanding that this Tribunal order the State to respect the mandate granted by the beneficiaries of the compensations to the Colombian Commission of Jurists to receive and claim the comprehensive payment of the amounts set in the Judgment. During the hearing, the representatives indicated that the State had tried to prove it had acted in good faith and that it strictly complied with the rules of the domestic law, besides having applied a settlement adjustment to the government measure. They reiterated that it simply omitted, in a deliberate manner, the representation of the next of kin of the victims they have been carrying out and that "the State paid in installments the compensation and thus, it has not paid it." Even though the State expressed that when the beneficiaries presented themselves at the Banco Agrario with their identification, they may withdraw their compensatory payment, this is not true, since there were cases in which the money was not given to them, and sometimes even when the Ministry of Internal Affairs and Justice orders the payment, the local Bank may decide to not make the payment. In this same sense, they expressed that payment was prevented on one opportunity based on order 2374, since the birth certificates of two victims were being demanded even though those documents had already been presented in the proceedings before the Court.

76. That the Commission expressed that “any action carried out by the State in order to comply with payment of the compensations [...] shall take into account the will of the beneficiaries, either expressed directly or through the representatives duly appointed before the Tribunal from the start of the judicial stage of the process before the Inter-American System.” Likewise, the Commission stated that, “it is evident that there are very big differences between the assessment the State has of what it has done and the assessment of the victims’ representatives regarding the actions carried out by the State.” It considered that based on the information provided during the hearing, it cannot assume a position, reason for which it asks that the Court require from the State a detailed response regarding each of the matters discussed at the hearing.

77. That any dispute regarding agreements on fees between the representatives and the beneficiaries shall be resolved through the corresponding mechanisms within domestic law. However, the representatives have the duty to inform the Tribunal, especially during the processing of the case in its contentious stage, of the agreements on fees that result in the victims not receiving the totality of the compensatory amount ordered in their favor. On the other hand, the Court urges the State to remove all the hindrances of an administrative nature or any other nature that may prevent the effective compliance of the obligations to pay that correspond to the latter and it especially considers that in those cases in which the victims or their next of kin have granted a specific written mandate to a third party to receive the payments ordered in the mentioned Judgment, after the notification of the same, pursuant with the legal requirements established within domestic law, payment may be made through their representatives.¹⁵

e) *Public summons in order to make the payments*

78. That the representatives referred to the situation of risk that could result from a public summons in order to make the payments of compensations to the next of kin declared beneficiaries. During the hearing they mentioned that the State made that summons even on the National Army’s radio stations. They stated that, in general, a public summons is made when the name and location of the beneficiaries is unknown, which is not the case here. Therefore, they requested that this Tribunal order the State to suspend payment of the compensations through public announcements –stated in Order No. 825 of April 3, 2008 of the Ministry of Internal Affairs and Justice- since it puts the beneficiaries at risk. In this sense, they also informed of the existence of telephone threats to three of the beneficiaries of compensations. The commission shared the representatives’ concern, considering that it can place the next of kin of the victims at risk due to the high levels of insecurity, violence, and crime present in the areas where some of them live.

79. That with regard to that expressed by the representatives, the State informed it had sent official and personal letters to a number of beneficiaries and it “had been careful not to mention proper names,” precisely to avoid putting them at risk. Additionally, the State indicated that it seemed strange to it that the victims had not informed it they were being the objects of pressures. Likewise, the State mentioned that the complaints regarding the threats received by some of the beneficiaries of the compensations had not been filed and that it had asked that the representatives inform the competent authorities of the alleged facts.

¹⁵ The Court made a similar ruling in the monitoring of compliance with the judgment issued in the *Case of the La Rochela Massacre v. Colombia*, which was communicated to the State through the Secretariat’s note of May 15, 2008.

80. That the Court agrees with the fact that the public requirements through the media, so that the beneficiaries of the reparations come forward to make the payment effective, may generate a situation of risk for them. In that sense, the State is urged to, if still necessary, carry out the necessary steps to locate the beneficiaries or, in its defect, their representatives so they may be notified directly what corresponds, in order to finalize the corresponding payments. The Tribunal will await the information regarding the steps taken and the results achieved in this sense.

f) *Costs and expenses*

81. That in reference to the duty to pay the amounts set for the concept of costs and expenses, during the hearing the State indicated that the Ministry of Internal Affairs and Justice had made progress in the administrative actions necessary to comply with the payment of costs and expenses. On its part, the representatives did not refer at all to this operative paragraph in their observations and the Commission stated that this matter was still pending compliance.

82. That due to the lack of clarity regarding compliance with this matter, it is necessary that the State and the representatives present updated information in this sense.

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83. That upon monitoring compliance of the matters pending compliance in this case, the Court assesses the high usefulness of the hearing celebrated to this effect, which has been made evident in the good will and cooperative spirit shown by the parties. Specifically, the Tribunal values that the State, the Commission, and the representatives held meetings that prove the purpose and common commitment to seek compliance with those matters pending compliance.

Therefore:

The Inter-American Court of Human Rights,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 62(3), 67, and 68(1) of the American Convention on Human Rights, 25(2) of its Statute, and 15(1), 30(2), and 63 of its Rules of Procedure,

Declares:

1. That pursuant with that stated in Considering Clauses number 45 and 52 of the present Order, the State has complied with the obligation to:

- a) organize, within one year of notification of this judgment, a public act of apology and acknowledgment of international responsibility, with the presence of high-ranking State authorities, concerning the violations declared therein and in reparation to the persons disappeared, deprived of life, and their next of kin, because it failed to comply with its obligation to guarantee the rights to life, humane treatment and personal liberty of those persons, as a result of its failure to comply with its prevention, protection and investigation obligations, and also due to the violation of the rights of access to justice, judicial protection

and judicial guarantee committed to their detriment. (*thirteenth operative paragraph* and paragraphs 277 and 286 of the Judgment);

b) publish once, within six months of notification of this judgment, in the official gazette and in another daily newspaper with national circulation, the section of the judgment entitled Proven Facts, without the corresponding footnotes, as well as its operative paragraphs (*fifteenth operative paragraph* and paragraphs 279 and 286 of the Judgment)

2. That the State has partially complied with its obligations set forth in the following operative paragraphs of the Judgment:

a) pay the amounts established for pecuniary damage in Appendix I of this judgment to the next of kin of the persons disappeared and deprived of life (*sixteenth operative paragraph* and paragraphs 234 through 241, 246 through 251, 286, 288, and 290 through 294 of the Judgment), and

b) pay the amounts established for non-pecuniary damage in Appendix II of this judgment to the next of kin of the persons disappeared and deprived of life (*seventeenth operative paragraph* and paragraphs 234 through 241, 254 through 259, 286, 288, and 290 through 294 of the Judgment).

3. That it will maintain open the procedure of monitoring compliance with the matters pending compliance in the present case, namely:

a) take forthwith the necessary measures to activate and complete effectively, within a reasonable time, the investigation to determine the responsibility of all the participants in the massacre, as well as that of those responsible, by act or omission, for the failure to comply with the State's obligation to guarantee the violated rights (*seventh operative paragraph* and paragraphs 265 through 268 and 287 of the Judgment);

b) adopt the pertinent measures to ensure that the human rights violations committed are effectively investigated in proceedings that guarantee judicial rights, in order to avoid the repetition of such grave facts as those that occurred in the Pueblo Bello massacre. Every six months, the State must inform the Court about the measures adopted and results achieved (*eighth operative paragraph* and paragraphs 269 and 287 of the Judgment);

c) adopt forthwith the pertinent measures to seek and identify the disappeared victims and return their mortal remains to their next of kin and also pay their burial expenses, within a reasonable time. To this end, it must complete the actions undertaken to recover the remains of the persons disappeared, as well as any others that are necessary and, to this end, it must use all possible technical and scientific measures, taking into account the pertinent international norms (*ninth operative paragraph* and paragraphs 270 through 273 and 287 of the Judgment);

d) guarantee that, irrespective of the actions indicated in the preceding operative paragraph, the respective official entities use these international norms as part of their equipment in the search for and identification of persons

disappeared or deprived of life (*tenth operative paragraph and paragraphs 270 and 271 of the Judgment*);

e) provide medical and psychological care, as applicable, to all the next of kin of the 37 persons disappeared and the six deprived of life who require this, as of notification of the judgment to those who have already been identified and, as of the time when they are identified, in the case of those who have not yet been identified, and for the time necessary (*eleventh operative paragraph and paragraphs 274 and 287 of the Judgment*);

f) take the necessary measures to guarantee security conditions so that the next of kin of the persons disappeared and deprived of life, and other former inhabitants of Pueblo Bello who have been displaced, can return there, if they so wish (*twelfth operative paragraph and paragraphs 275, 276, and 287 of the Judgment*);

g) erect, within one year of notification of the judgment, an appropriate and proper monument recalling the facts of the Pueblo Bello massacre (*fourteenth operative paragraph and paragraphs 278 and 286 of the Judgment*); and

h) pay the amounts established for pecuniary damage in Appendix I of this judgment to the next of kin of the persons disappeared and deprived of life (*sixteenth operative paragraph and paragraphs 234 through 241, 246 through 251, 286, 288, and 290 through 294 of the Judgment*);

i) pay the amounts established for non-pecuniary damage in Appendix II of this judgment to the next of kin of the persons disappeared and deprived of life (*seventeenth operative paragraph and paragraphs 234 through 241, 254 through 259, 286, 288, and 290 through 294 of the Judgment*); and

j) pay the amounts established for costs and expenses (*eighteenth operative paragraph and paragraphs 283 through 286, 289, 291, and 294 of the Judgment*).

And Decides:

4. To require that the State adopt all the measures necessary to fully and promptly comply with the matters pending compliance that were ordered by the Tribunal in the Judgment on merits, reparations, and costs of January 31, 2006, pursuant with the stipulations of Article 68(1) of the American Convention on Human Rights.

5. To request that the State present to the Inter-American Court, no later than October 15, 2009, a report indicating all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, pursuant with that stated in Considering Clauses number 18, 24, 30, 36 through 38, 49, 61, 67, 73, 77, 80, and 82, and in declarative paragraphs 2 and 3 of the present Order.

6. To request that the representatives of the next of kin of the victims and the Commission present their observations to the State's report mentioned in the previous operative paragraph, within a four and six-week term, respectively, computed as of the receipt of that report.

7. To continue monitoring the matters pending compliance of the Judgment on merits, reparations, and costs of January 31, 2006.

8. To request that the Secretariat notify the present Order to the State, the Inter-American Commission, and the representatives of the victims and their next of kin.

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 Alesandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary