

**Order of the
Inter-American Court of Human Rights*
of November 19, 2009
Case of Goiburú *et al.* v. Paraguay
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on the merits, reparations and costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on September 22, 2006, whereby it decided, unanimously, that:

[...]

5. The State must immediately carry out the necessary procedures to activate and conclude effectively, within a reasonable time, the investigation to determine the masterminds and perpetrators of the acts committed to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, and also complete the criminal proceedings that have been filed. In addition, these results should be published by the State within a reasonable time. In this regard, in the terms of paragraphs 123 to 132 and 164 to 166 of the judgment, the State should adopt the necessary measures of a diplomatic or judicial nature to prosecute and punish all those responsible for the violations committed, furthering by all possible means the necessary extradition requests under the pertinent domestic norms or international law. Moreover, Paraguay and the other States Parties to the Convention should collaborate to eliminate the impunity of the violations committed in this case by the prosecution and, if applicable, punishment of those responsible and should collaborate in good faith, either through the extradition of those responsible for the facts or by prosecuting them on their own territory.

6. The State must proceed immediately to seek and locate Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba and, if their remains are found, it must deliver them to their next kin forthwith and cover the costs of their burial, in the terms of paragraph 172 of the judgment.

7. The State must organize, within six months, a public act acknowledging responsibility and in reparation, in the terms of paragraph 173 of the judgment.

8. The State must publish once, within six months, in the official gazette and in another newspaper with widespread national circulation, paragraphs 39 to 41 and 48 to 54 of the chapter on the partial acquiescence; the proven facts of this judgment, without the corresponding footnotes; the chapter entitled "the State's international responsibility in the context of this case"; the considering paragraphs 80 to 104 and 111 to 113, and the operative paragraphs hereof, in the terms of paragraph 175 thereof.

9. The State must provide all the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba with appropriate treatment including medicines, after they have given their corresponding consent, as of notification of [...] judgment and for all the time necessary, without any charge and through the national health services, in the terms of paragraph 176 of the judgment.

* The President of the Tribunal, Judge Cecilia Medina Quiroga, and Judge Leonardo A. Franco informed the Court that, due to *force majeure* reasons, they could not participate in the deliberation and signature of this Order.

10. The State must erect, within one year, a monument in memory of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, in the terms of paragraph 177 of the judgment.

11. The State must implement, within a reasonable time, permanent programs of human rights training in the Paraguayan police forces, at all levels, in the terms of paragraph 178 of the judgment.

12. The State must adapt, within a reasonable time, the definition of the crimes of torture and “involuntary” (*forzosa*) disappearance of persons contained in Articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law, in the terms of paragraph 179 of the judgment.

13. The State must pay in cash to the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, within one year, as compensation for pecuniary damage, the amounts established in paragraph 155 of [...] judgment, in the terms of paragraphs 147 and 149 thereof.

14. The State must pay in cash to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba, Benjamín Ramírez Villalba, Elva Elisa Benítez Feliú de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Ramírez de Borba, Eugenia Adolfiná Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnaldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano, within one year, as compensation for non-pecuniary damage, the amounts established in paragraph 161 of this judgment, in the terms of paragraphs 147 to 149 and 162 thereof.

15. The State must pay in cash, within one year, for costs and expenses incurred in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights, the amount established in paragraph 183 of this judgment, which shall be delivered to Elva Elisa Benítez Feliú de Goiburú, Ana Arminda Bareiro de Mancuello and Julio Darío Ramírez Villalba, in the terms of paragraphs 183 and 187 thereof.

16. It will monitor full compliance with [the] judgment and will consider the case closed when the State has fully executed the 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.

2. The Order on monitoring compliance with the Judgment issued by the Tribunal on August 6, 2008, by which the Court declared that it would keep open the procedure to monitor compliance with all the operative paragraphs of the Judgment, which were pending compliance, and decided:

1. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment [...] according to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the [...] Court [...], no later than November 10, 2008, a detailed report specifying such measures as may have been adopted to comply with the reparations ordered by this Court, still pending compliance, as spelled out in the Considering clauses No. 45 and the declarative paragraph one of [the] Order.

3. To call upon the representatives of the victims’ next- of-kin and the Inter-American Commission [...] to submit their observations to the State’s report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

4. To continue monitoring the aspect of the Judgment [...] that is still pending compliance

[...]

3. The brief of November 17, 2008, by which the Republic of Paraguay (hereinafter, the "State" or "Paraguay") presented a second brief, requested in operative paragraph two of the Court's Order of August 6, 2008.

4. The brief of February 17, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted its observations to the second report of the State.

5. The notes of the Secretariat of February 25, May 8 and July 31, 2009, which indicated that the time limit for the representatives to file their observations to the second state report had expired on December 25, 2008, and that they were not received; therefore, following the instructions of the Court's President, the Secretariat repeated to forward the observations as soon as possible. Said observations were not received.

6. The Order issued by the Tribunal's President on August 7, 2009, by which it convened the Inter-American Commission, the State and the representatives to a private hearing to be held at the seat of the Court on October 1, 2009, in order for the Tribunal to obtain information from the State on the compliance with the Judgment and to listen to the observations of the Commission and the representatives in that respect.

7. The private hearing on monitoring compliance with the Judgment held on October 1, 2009 during the LXXXIV Period of Ordinary Sessions of the Tribunal at its seat¹, as well as the documents presented by the State and the representative of the victims' next-of-kin during the hearing².

8. The brief of November 2 2009, by means of which the State of Paraguay forwarded the "timetable of compliance [with the Judgment], dated November 1 of that same year". Upon the expiration of the time limit granted to the Commission and the representatives for the submission of the respective observations to said timetable, the observations have not been received.

Considering:

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

¹ To this hearing, there appeared, on behalf of the State, Ambassador of the Republic of Paraguay in Costa Rica, Mr. Oscar B. Llanes Torres; Deputy Prosecutor charged with the area of Human Rights, Mr Marco Antonio Alcaraz; Human Rights General Director of the Ministry of Justice and Labor, Mrs. Iris Rojas; Human Rights General Director of the Supreme Court of Justice, Mrs. Nury Montiel Mallada; General Director of the Cabinet of the National Secretary of Childhood and Adolescence, Mrs. Ricardo González Borgne; Attorney of the Treasury of the Ministry of Finance, Mr. Raúl Sapena Giménez; Human Rights Director of the Ministry of Foreign Affairs, Minister Inés Martínez Valinotti; Human Rights Director of the Ministry of Interior, Mrs. Diana Vargas; Deputy Attorney General, Mrs. Lorena Cristaldo; Legal Adviser to the Cabinet of the Ministry of Public Health and Social Welfare, Mr. Gustavo Rodríguez; Chief of the Human Rights Unit of the Ministry of Public Health and Social Welfare, Mrs. Gladys González; Legal Adviser to the General Directorate of Administration and Finance of the Ministry of Finance Mr. Federico Fabián Gill Ramírez, and Secretary Belén Morra A, responsible ad interim of the "Department of Monitoring Compliance with the Judgments of the Inter-American Court" of the Human Rights Area of the Ministry of Foreign Affairs; on behalf of the victims' representatives, attorney of the *Comité de Iglesias para Ayuda de Emergencias*, Mr. Rodolfo Aseretto and on behalf of the Inter-American Commission, advisers Karla I. Quintana Osuna and Silvia Serrano.

² The State presented a report on the aspects pending compliance and it also submitted annexes to confirm the information mentioned. Likewise, the representative submitted a brief containing its observations on the status of compliance with the operative paragraphs pending compliance.

2. That Paraguay has been a State Party to the American Convention since August 24, 1989, and that it accepted the binding jurisdiction of the Court on March 26, 1993.

3. That, pursuant to Article 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, Article 68.1 of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level³.

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

5. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with 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 treaties⁵.

6. That during the monitoring compliance with the Judgment, the role of the tribunal is to verify the compliance with the obligations established in the ruling by the responsible State. The duty to comply with the obligations established by the Tribunal in the Judgment includes the State's duty to report on the measures adopted to fulfill such decisions. Therefore, the Court needs to have the necessary information, which must be provided by the State, the Commission and the victims or their representatives.

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Obligation to investigate into the facts and, if applicable, punish the responsible

7. That, as to the obligation to carry out the necessary procedures to activate and conclude effectively, within a reasonable time, the investigation to determine the

³ Cf. *Case of Baena Ricardo et al. V. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Caracazo V. Venezuela*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 23, 2009, considering clause three and case of *Cantoral Huamani and Garcia Santa Cruz V. Peru*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering Clause three.

⁴ See *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N° 14, para. 35; *Case of the Caracazo V. Venezuela*, supra note 3, considering clause five and *Case of Cantoral Huamani and Garcia Santa Cruz V. Peru*, supra note 3, considering clause five.

⁵ Cf. *Case of Ivcher Bronstein V Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Caracazo V. Venezuela*, supra note 3, considering clause six and *Case of Cantoral Huamani and Garcia Santa Cruz V. Peru*, supra note 3, considering clause six.

masterminds and perpetrators of the acts committed to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, and also complete the criminal proceedings that have been filed (*operative paragraph five of the Judgment*), the State informed that the proceedings are at the developmental stage and that by the time being, “no accused person is in default or without a judicial proceeding being conducted against him”. Furthermore, it emphasized that “currently, it is not necessary the adoption of any diplomatic measure to solve the proceedings”.

a. investigation into the facts committed against the victim José Mancuello Bareiro

8. That in relation to the investigation into the facts committed to the detriment of the victim José Mancuello Bareiro, the State informed that the Criminal Chamber of the Supreme Court of Justice delivered the Agreement and the Judgment N° 1248 on December 4, 2008. The Court noted that, upon the delivery of the Judgment in the instant case, with regard to said criminal proceeding, Mr. Britez Borges, Saldívar and Stroessner Matiauda, as well as the convicted Milciades Coronel, had died. Regarding the other four defendants who had been detained and convicted, appeals and applications for annulment had been filed, that were pending before the Supreme Court of Justice. In addition, the case was open with regard to the other three persons: Mr. Torres, Mendoza and Montanaro⁶.

9. That from the judgment of the Supreme Court of Paraguay furnished by the State, it springs that the convictions of Mr. Almada Morel and Benitez Santacruz, after thirteen years and nine months, have been upheld by a second instance and that they were not subjected to an appeal before the maximum judicial instance. In addition, the classification applied by the Court of Appeals to Mr. Buenaventura Cantero Domínguez and Belotto Vouga was modified and, as a result, they were both convicted by the Supreme Court of Justice and sentenced to seven years and six months for the crimes of abuse of authority, coercion and serious injuries. Finally, it was decided to remit the court records to the Trial Court in order for it to decide the case of the imprisoned Torres Romero.

10. That, in relation to the investigation into the facts to the detriment of Mr. Carlos Mancuello, the representatives pointed out that the Judiciary delivered an agreement and judgment on December 4, 2008, which “sentenced to defendants to minimum penalties but [they further asserted that] the case is not definitely closed”, since “it is still open in relation to Sabino Augusto Montanaro”. By virtue of the foregoing, it is necessary for the State to inform whether the latter is still under the preliminary investigation or if there are still other people being investigated.

a. investigation into the facts committed against the victim Agustín Goiburú Giménez

11. That, regarding the proceedings instituted for the facts committed against the victim Agustín Goiburú Giménez, at the moment of the delivery of the Judgment of this Court, Mr. Coronel, Britez Borges, Guanes Serrano and Stroessner Matiauda had died. Regarding the defendant Ortiz Téllez, no judgment had been delivered, and the preliminary investigation was still open with regard to Mr. Montanaro, who was granted asylum in Honduras⁷.

⁶ Cf. *Case of Goiburú et al. V. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 61.91.

⁷ Cf. *Case of Goiburú et al. V. Paraguay*, supra note 6, para. 61.80.

12. That the State informed that a judgment was delivered against Mr. Ortiz Tellez, who was sentenced to serve a prison term of 10 years on November 2, 2007. However, the decision was appealed and it is now under study before the Appellate Court. On May 20, 2009, it was decreed the preventive detention, which was later on reviewed at the request of the defense and, as a result, house arrest was ordered. The representatives confirmed said information.

13. That the representatives indicated that "this proceeding, after more than 20 years of its commencement, still continues and the next-of-kin have not been given the opportunity to learn the official truth and real circumstances of the facts that gave rise to the disappearance of Dr. Agustín Goiburú".

c. investigation into the facts committed to the detriment of the victims Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba

14. That in the proceeding conducted for the facts committed to the detriment of Mr. Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, at the moment of the delivery of the Judgment of this Tribunal, six of the accused had been detained and convicted. There were motions of appeal and petitions of nullification pending decision before the Criminal Court of Appeals. Moreover, the preliminary investigation was still open regarding Mr. Montanaro, who was granted asylum in Honduras and whose arrest warrant had not been executed, and Eusebio Torres, who was declared "in contempt of court". The accused Alfredo Stroessner Matiauda and the convicted Pastor Milciades Coronel had died⁸.

15. That the State did not furnish updated information regarding the progress made in the investigation into the facts committed to the detriment of Mr. Rodolfo Ramírez Villalba and Benjamin Ramírez Villalba, nor did it specify whether the motions of appeal and petition of nullification that were submitted by the time this Tribunal delivered the Judgment, were still pending decision. Moreover, the representatives pointed out that "judgments had been delivered [...] but the case is still at the preliminary investigation stage with regard to the accused Eusebio Torres and Sabino Augusto Montanaro", stage that "must last six months according to law".

d. criminal proceeding against former Minister of the Interior Sabino Augusto Montanaro

16. That, furthermore, the State indicated that it was reactivated the proceeding initiated by Mrs. Benítez de Goiburú against former Minister of the Interior, Sabino Augusto Montanaro, who after being in exile for 20 years, returned to Paraguay on May 1, 2009 when he detained and preventive custody was ordered against him. Nevertheless, after the filing of a writ of *habeas corpus* that questioned the legality of the measure, it was ordered the house arrest on June 26, 2009. As to the proceeding against him, the State alleged that it is in process and that "a psychiatric expert assessment was ordered in order to determine whether he is in condition of providing a preliminary examination statement". In that respect, it was informed that such expert assessment has not been conducted, given that the psychiatrists have ordered, in a prior manner, two examinations and the appointment of a neurologist to conduct such examinations was pending. In that respect, the State pointed out that "it ha[d] requested the trial court the urgent

⁸ Cf. Case of Goiburú *et al.* V. Paraguay, *supra* note 6, para. 61.120.

17. That the representatives alleged that there has been a delay in the conduct of the proceedings against the former Minister of the Interior, Sabino Augusto Montanaro, due to "interminable clinical and psychological studies". Likewise, they confirmed that said former Minister is under house arrest.

18. That, as to the reactivation of the criminal proceeding against the former Minister of the Interior, Sabino Augusto Montanaro, this Tribunal notes that after 20 years, finally there has been progress in the processing thereof. Even though the State furnished a note of the Supreme Court of Justice together with a rogatory letter issued by Paraguay to the Republic of Honduras, requesting the extradition of Mr. Montanaro, there is no evidence that the reactivation of the criminal proceeding against him has been the consequence of the measures apparently taken by the State to seek his extradition, but of his return to Paraguay on May 1, 2009, renouncing to the political asylum he was granted in the Republic of Honduras since 1989. In that respect, a report of the Attorney General's Office forwarded by the State indicates that "[r]egarding the scope of the petition of extradition requests, it is a closed issue given that, on that occasion, there was not treaty on extradition between the governments of Paraguay and Honduras[,] an issue that has been remedied once the accused Sabino Augusto Montanaro Ciarletti was detained upon his arrival at Paraguay".

19. That, without prejudice to the reasons for the reactivation of said proceeding, it is pertinent to urge the State to exercise the corresponding due diligence and promptness in this proceeding taking into account the importance of the case, in order to be able to substantiate the charges, with a view to achieve the purposes of the administration of justice, particularly the determination of the truth. Coupled with this, the determination of the facts under investigation needs to be made possible and effective as well as the corresponding criminal responsibilities, if applicable, in view of the need to protect and guarantee the rights of other injured persons to know the truth about what happened⁹.

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20. That, in general terms, the representatives considered that "throughout these long years, more than 20 years of judicial proceedings [...] the Judiciary has not been capable of adopting effective and firm measures to conclude, within a reasonable time, the cases submitted to the Inter-American Court" and that the progress made obey to the efforts of the next-of-kin and the attorneys that represent them.

21. That, during the hearing, the Commission limited to express its concern about the little progress made in the investigation of the facts of the instant case.

22. That the Court notes that more than three decades have passed since the occurrence of the facts and more than three years since the Tribunal delivered the Judgment and, despite the fact that criminal proceedings were initiated, ending in condemnatory judgments- some of which are still not final-, said proceedings are not finished because all the perpetrators and instigators of the facts have not been tried and, if applicable, punished. It was acknowledged in the Judgment that criminal proceedings were opened against the most senior members of the dictatorial Government, including the then Head of State, and the most senior officials in the Ministry of the Interior, the Military Intelligence Services, the Asunción Police and its Investigations Department, in addition to several former officers of the Asunción Police who occupied intermediate and lower positions.

⁹ Cf. *Case of Yvon Neptune V. Haiti. Merits, Reparations and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 81 and 83.

However, some of the defendants were not tried in the end, nor their punishment enforced since they died, which is closely related to the lack of effectiveness and diligence in the investigations and proceedings initiated for the facts of the instant case¹⁰.

23. That, in addition, as it has been established in the Judgment and it is noted during the monitoring compliance therewith, at the domestic level, the criminal proceedings were conducted and, in some cases, the accused were convicted for offenses such as abduction, illegal deprivation of liberty, abuse of authority, association or conspiracy to commit a crime, injuries, coercion or threats and homicide, contained in the 1914 Penal Code or in the Penal Code in force since 1998. Despite the existence of relevant constitutional and international norms¹¹, the lack of adequate classification of the crimes of torture and forced disappearance has been verified in the case at hand. It should be emphasized that, in these international proceedings, the facts of the case have been categorized as forced disappearance and torture, by both the State and the Court¹², and that the disparity in the categorization of the facts at the domestic and international level was reflected in the criminal proceedings¹³, even though it was acknowledged that the facts have not remained in total impunity through the application of other categories of crime. The Court has pointed out that in order to guarantee, among other rights, the right to judicial recourse, and the right to know and access the truth, the State must fulfill its duty to investigate, try, and, when appropriate, punish and provide redress for grave violations of human rights. To achieve this objective, the State should observe due process and guarantee the principle of the proportionality of punishment and implementation of the judgment. As to this principle, the punishment which the State assigns to the perpetrator of illicit conduct should be proportional to the rights recognized by law and the culpability with which the perpetrator acted, which in turn should be established based on the nature and gravity of the events¹⁴. With regard to the principle of lenity based upon the existence of an earlier more lenient law, this principle should be harmonized with the principle of proportionality of punishment, such that criminal justice does not become illusory¹⁵. The State has not referred to these aspects.

24. That the Court recalls that, as it has been established in the Judgment, the preparation and execution of the detention and subsequent torture and disappearance of the victims could not have been perpetrated without the superior orders of the chiefs of

¹⁰ Cf. *Case of Goiburú et al. V. Paraguay*, supra note 6, para. 119.

¹¹ The 1992 Constitution of the Republic of Paraguay makes reference to criminal types of torture or forced disappearance of people and the State ratified the Inter-American Convention to Prevent and Punish Torture on March 9, 1990 and the Inter-American Convention on Forced Disappearance of Persons on November 26, 1996.

¹² Cf. *Case of Goiburú et al. V. Paraguay*, supra note 6, para. 91.

¹³ For example, the judgment delivered in first instance in the proceeding opened in the case of Carlos José Mancuello qualifies certain acts as "torture and inhuman and degrading treatment" even though, when determining the appropriate classification of these acts, they were categorized as crimes of injury, coercion and abuse of authority, by applying the most favorable criminal norm owing to the inexistence of the crime of torture. Also, although it mentions the disappearances of the victims, it analyzed the existence of the corpse as evidence of death and this add an impact on the classification of the crime. This disparity also arises in the content of the extradition request issued by the court of first instance in the proceedings opened in the case of the Ramirez Villalba brothers. See, *Case of Goiburú et al. V. Paraguay*; supra note 6, para. 92.

¹⁴ Cf. *Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of July 21, 2002. Series C N° 94, para.102; *Case of Vargas Areco V. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C ° 155, para. 108 and *Case of Raxcacó Reyes*. Judgment of September 15, 2005, Series C No. 133, para. 70 and 133.

¹⁵ Cf. *Case of the Rochela Massacre V. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 193 to 196.

police and intelligence and the Head of State himself at the time, or without the collaboration, acquiescence and tolerance revealed by direct actions carried out in a coordinated and interrelated manner by members of the police forces, intelligence services and even diplomatic services of the States concerned¹⁶. Given that the gravity of the facts cannot be separated from the context in which they occurred, for the purpose of preserving the historical memory and the imperative need to ensure that such facts are never repeated, it is essential for the State to take forthwith the necessary measures to activate and conclude effectively, within a reasonable time, the investigation to determine the responsibilities of the perpetrators of the facts committed in the instant case, in the understanding that criminal prosecution is a fundamental way of preventing future human rights violations.¹⁷ Furthermore, the Tribunal recalls that the facts of this case have violated non-derogable provisions of international law (*jus cogens*), therefore, given the nature and gravity of the facts, the mechanisms of collective guarantee established in the American Convention, together with the regional and universal international obligations on this issue, bind the States of the region to collaborate in good faith to eradicate impunity, as a duty of inter-State cooperation, by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so¹⁸.

25. That, regarding the obligation of the State to publish the results of the investigations, under the terms of the Judgment, so that the Paraguayan society may know the truth about the facts, the Tribunal takes note that the State undertook to make such publications at the moment of the delivery of the final judgments in those cases in which the decisions are not still final, and within the term of one month of the presentation of said timetable before the Court (*supra* Having Seen clause 8); this is in early December 2009, in the cases of the judicial proceedings with final decisions. Said publications shall be made, according to what the State informed, in the Official Gazette of the Republic of Paraguay, the web page of the Ministry of Foreign Affairs and the web page of the Judiciary. The Tribunal shall continue monitoring the results of the investigations to determine what correspond as to this aspect.

26. That, in order to continue monitoring compliance with this aspect, it is necessary for the State to continue presenting complete and updated information on all the measures adopted and to refer to the aspects mentioned in this Order.

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Search and location of the disappeared victims

27. That, in relation to the obligation of the State to proceed immediately to seek and locate Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba and, if their remains are found, to deliver them to their next kin forthwith and cover the costs of their burial (*operative paragraph six of the Judgment*), the State informed that the Truth and Justice Commission (CVJ) investigated –according to the

¹⁶ Cf. *Case of Goiburú et al. V. Paraguay*, *supra* note 6, para. 66.

¹⁷ Cf. *Case of Goiburú et al. V. Paraguay*, *supra* note 6, para. 92; *Case of Anzualdo Castro V. Perú*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 66.

¹⁸ Cf. *Case of Goiburú et al. V. Paraguay*, *supra* note 6, para. 128 to 132.

hypothesis that were put forth- several places where the illegal detentions, tortures, forced disappearance and extra-legal executions were committed. Within the framework of the hearing, it emphasized that, since 2007, as a result of certain testimonies, "there was a strong conviction that in a Headquarters of the former *Guardia de Seguridad* prison, Battalion 40 [...] there would be an important number of possible clandestine graves of the period 1954-1989". Furthermore, that by virtue of the complaints filed during 2009, a new investigation was initiated, in charge of three prosecutors who are members of the Specialized Unit of Punishable Acts against Human Rights of the Attorney General's Office which, by means of Resolution N° 182 would decide to organize a Work Team for the search and location of the disappeared victims, formed by the Department of Forensic Medicine, the Attorney General's Office and Government Attorney's Office on Environmental matters. Afterwards, the prosecutors charged with the investigation decided to expand said group and included the Ministry on Public Works and Communications, the Ministry of Justice and Labor, the *Universidad Nacional de Asunción*, the Ministry of the Interior, the General Directorate of Truth, Justice and Reparation and the National Police. In this way, it was possible to rescue two complete human remains, "which are being fully analyzed and identified", but it was already indicated that they would correspond to two male persons. This has been beneficial to "devise [...] a first action plan to safeguard, protect and investigate [...] an important sector of the [property] with the corresponding technical support[...]", taking into account the important reference- by virtue of certain testimonies- of where the remains of Mr. Goiburú could be located. However, the "technology to identify, from using DNA, the osseous remains and [the taking of] comparative samples of the descendants [...] requires a level of development [which] does not exist nowadays in the country", for which it is necessary to resort to international cooperation. In that respect, the State indicated that the Argentine Forensic Anthropology Team is cooperating. Furthermore, at present, excavations are being carried out in another two locations, which may last approximately three weeks. In addition, it informed that the expert opinions of the anthropologists must commence within the term of 24 to 48 hours of the finding of the remains. In conclusion, the State emphasized that the will of the State to continue with the search of the disappeared persons is shown by the coordination of several institutions that form part of the Work Team.

28. That the representatives, in addition, indicated during the hearing that "the Paraguayan State has never begun any search and location of the disappeared", since the osseous remains recently discovered- to whom they correspond is still unknown- were found specially thanks to the efforts of the Goiburú family. However, they acknowledged the effort and help of Prosecutor Alcaraz. Moreover, they expressed their concern, given that the prosecution office helps "from the legal point of view, with the excavations [...] but it does not have [...] the necessary and sufficient financial resources to conduct a successful investigation".

29. That the Commission valued what was informed by the State, but it considered that it was necessary to provide further information about the manner in which the excavations are carried out and the way in which the remains are identified. In view of the lack of technical resources to conduct DNA tests and make future comparisons, the Commission expressed with concern that it would be important to "explore the possibilities of international cooperation".

30. That this Court notes that, after three years of the delivery of the Judgment, the State has not made significant progress in the search of the mortal remains of Mr. Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba. Without detriment to the excavations carried out during 2009, which resulted in the findings of two bodies, it spring from the information furnished at the private

hearing that there are no effective technical means to conduct genetic tests or of other kind, in order to verify the identity of such bodies and future remains. It is essential to count on an action plan, as well as adequate technology to that end; therefore, the Court urges the State to use all available means to continue searching for the victims and to identify the remains found. If the State alleges lack of effective resources, it would be appropriate for it to order the corresponding measures so as to take the actions necessary to strengthen the State's capacity to search and identify the remains with the technical and professional help required for the case, as well as to continue with the excavations as soon as possible, in order to locate the victims' remains of this case. To that effect, the Tribunal recalls that in several cases, it has urged States to seek the assistance of certain groups specialized in this type of work, or it has valued the actions taken to this end, as expression of a will or part of the compliance with the Judgment¹⁹.

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Public act of acknowledgement of responsibility

31. That regarding the State's duty to organize a public act acknowledging responsibility and in reparation for the violations committed in the instant case (*operative paragraph seven of the Judgment*), the State informed that the "National Foreign Office prepared a draft paper of recognition of responsibility and to make amends, which was [...] approved by the authorities of the Ministry of Interior". In addition, it communicated that, according to what was requested by the victims, a work subgroup shall be formed whose members shall be in charge of organizing the act, which should be "of great significance, in light of the importance of the issue and the need to [...] preserve the memory of the disappeared persons". During the hearing, the State informed regarding two proposals about the place where the act shall be organized: the first one, at the headquarters of the Specialized Unit of the National Police- former *Guardia de Seguridad of the Armed Forces*-; the second one, in the area of the Judiciary of Asunción; both proposals were repeated in the month of September of that year. Moreover, it was mentioned that several state authorities would be present, but that the Executive power was not included at the request of some next-of-kin, given that the President of the Republic as well as several Ministers "have already presented public apologies on behalf of the State on several occasions". In addition, the State mentioned that none of the proposals was accepted by the victims' next-of-kin, since they conditioned them on the payment of the compensations.

32. That the representatives stated during the hearing that President Fernando Lugo "took the opportunity to meet with the victims at certain places and offered apologies to them", which was not done within the framework of the reparation ordered by the Court for this case. Moreover, they expressed that the State, pressured by the monitoring procedure conducted by the Court, [...] resum[ed] intense negotiations to carry out the act to make amends and offer public apologies". To this end, it received a proposal to carry out the act at the *Palacio de Justicia* [Hall of Justice] or the Specialized unit, without specifying any date, to which the victims' next-of-kin do not object.

33. That the Commission "noted with great pleasure that specific measures [were being] adopted" to carry out the act with the participation of the "injured party".

¹⁹ Cf. *Case of the Serrano Cruz Sisters V. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 181.

34. That, even though there has been progress as to the negotiation of the place and the manner to carry out the act, it is evident the delay in its completion, taking into account that this obligation should have been complied with within the term of six months as of notice of the Judgment. Furthermore, it is necessary to emphasize that the effective compliance with this obligation must not depend on the payment of the compensations or on any other pending obligation. The will of the victims' next-of-kin was expressed within the framework of the private hearing; therefore, the Tribunal urges the State to complete this measure as soon as possible and takes note that the State undertook to organize such act for Friday, December 11, 2009.

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Publication of the Judgment

35. That in relation to the obligation to publish in the official gazette and in another newspaper with widespread national circulation several parts of the Judgment (*operative paragraph eight of the Judgment*), the State furnished the documentation proving the publication of the parts of the Judgment in the Official Gazette, together with the missing chapter in the publication of September 17, 2008, of Official Registry N° 180. In addition, during the hearing, the State informed that the last September 23, "it was published the paragraphs required in La Nación newspaper, [...] of great circulation" and it also furnished evidence to that end. Moreover, apart from that, the judgment was read in radio shows, since the society has broad access to them.

36. That the representatives stated that the publication was effectively made in the Official Gazette as well as in La Nación newspaper, as mentioned by the State. The Commission made no observations in that regard.

37. That this Court notes that, according to the terms of the Judgment, the State must have published the pertinent parts of the Judgment within the term of six months. The representatives informed the said parts have been published, and that the State furnished the evidence proving it. In this sense, this Court positively values what was informed and considers that the State has fully complied with this provision.

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Appropriate treatment for the victims' next-of-kin

38. That as to the obligation to provide all the next- of- kin of the disappeared victims with appropriate treatment (*operative paragraph nine of the Judgment*), the State informed during the hearing that on November 24, 2008, the Ministry of Public Health and Social Welfare issued the identity cards by means of which the victims' next-of-kin have access to all national public health services and to medicines, free of charge. That, afterwards, on the last September 24, the Minister of Health, by means of a note addressed to the victims' representative and because the delivery of the cards presented difficulties, communicated that said cards were at the offices of the Ministry. In relation to this aspect, the State also indicated that given that the Judgment stipulates "the consent of the victims", it requests the representatives to give their opinion regarding the "approach" that they claim from the State.

39. That the representatives stated during the hearing that "up to this moment, the Paraguayan State did not provide for any treatment, [a]fter more than three years from the notice of the Judgment and [...] [considering that this obligation] is of immediate compliance". Moreover, they expressed that the last weeks of September 2009, "pressured by the hearing convened by the Court, [...] it offer[ed] a card so that the next-of-kin and victims are able to have access to medical treatment". They considered that the State has the duty to visit the victims, explain the medical treatment it provides and conduct an individual evaluation of each one of the next-of-kin. Coupled with this and in relation to certain next-of-kin of the victims, they asserted that, currently, Mr. Julio Ramirez Villalba, brother of the Villalba brothers, had to resort to the health services of the Argentine Republic to undergo surgery since he no longer had that benefit in Paraguay. Also, that the mother of Mr. Mancuello suffers from serious neurological problems. To that end, they begged the State to approach the victims and include this pending issue in the "Coordination Meeting between the State and the victims" (*infra* Considering clause 55 and 61).

40. That the Commission congratulated the State on this aspect, given the fact that it delivered the medical cards, putting emphasis on that the State should consider the specific circumstances of each victim in case the victims wish to receive medical treatment.

41. That the Court notes that the State informed, on September 24, 2009, the victims, by means of the representative, that the medical cards were at their disposal at the Ministry of Public Health and Social Welfare. Even though the Tribunal values the measures adopted as part of the compliance with this obligation, it is evident the delay in the implementation thereof, which should have been immediately complied with. To this end, it is concerning that, after more than three years of the delivery of the Judgment, the next-of-kin do not have appropriate medical and psychological treatment for the victims of the instant case, including the complete provision of medicines, free of charge. This Tribunal recalls the terms established in the Judgment as to that the psychological treatment must take into consideration the specific circumstances and needs of each persons, so that it is provided through collective, family or individual treatment, as agreed with each of them and following individual assessment. Therefore, even though the Court takes into account that the State has made a commitment to provide said treatment "immediately, upon the presentation of the identity cards at the national health centers of the country", it considers it is essential for the State, in order to provide the treatment, to use all the means necessary to deliver such cards to the beneficiaries. Therefore, the Tribunal requests the State to continue informing, in time fashion, on the progress and results in the implementation of this measure.

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Monument in memory of the victims

42. That as to the obligation of the State to erect a monument in memory of the victims (*operative paragraph ten of the Judgment*), the State informed that on November 5, 2008, the representative of the Municipality of Asunción offered the beneficiaries two possible places- public parks- located within the center, where it could be possible to erect the monument to the disappeared persons. During the hearing, the State specified that said possibilities were: one in the "*Plaza de los Derechos Humanos*" and the other in the "*Plaza de los Desaparecidos*". Moreover, it mentioned that the victims rejected the proposal of the

State and considered that the monument should be erected at "*Plaza de las Armas*". This request is being considered by the Municipality of Asunción.

43. That the representatives expressed during the hearing that, up to date, the State has not erected any monument and "pressured by the hearing convened, the conversations began". In that respect, they indicated that the victims accept the proposal to erect the monument at the *Plaza de Armas*.

44. That the Commission expressed, during the hearing, that it is important to come to an agreement". However, the Commission noted that, given that it is not problematic reparation, the State should undertake to comply with it "as soon as possible".

45. That the Court recalls that the Judgment stipulated the term of one year, as of notice thereof, for the execution of this measure of reparation. After more than three years, there is no evidence that appropriate and sufficient measures have been adopted to erect the monument, which must include the names of the victims and refer to the context of the forced disappearances that occurred during "*Operation Condor*". Even though the Court values the will expressed by the State regarding this aspect, as to its commitment to define the physical place, in agreement with the victims, and to erect the monument by June 2010, it is vital for the State to make progress to comply with this measure of reparation and to adopt all the measures and actions necessary to fulfill it, given the real symbolic value of the measure as a guarantee of non-repetition of such serious facts in the future. Therefore, the Court shall continue monitoring compliance with this measure, and to that end, the State shall inform on the progress and the results obtained in relation to this measure.

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Human rights training programs

46. That as to the State's obligation to implement permanent programs of human rights training in the Paraguayan police forces, at all levels (*operative paragraph eleven of the Judgment*), the State communicated that it had implemented human rights training programs at all levels, inasmuch as it had introduced courses addressed to officers, non-commissioned officers and deputy superintendents. The State furnished the respective syllabus of each course to support the information. Likewise, Paraguay informed that the Ministry of Interior and the National Police entered into a Cooperation Agreement with the International Committee of the Red Cross, whose general purpose is to: "Update, develop and promote the inclusion of the international norms of Human Rights and the Humanitarian Principles in the practical activities of the National Police". As a result of said Agreement, two courses were organized that were called "Formation of Human Rights Instructor" and "III Formation on Human Rights International Norms and Humanitarian Principles Applied to the Police Role" and according to what the State informed, it was set up the "Office of Permanent Human Rights Training and Humanitarian Principles Applied to the Police Role". In light of the fact that the State acknowledged that the content of the Judgment has not been included in the previously mentioned programs, according to the terms of paragraph 178 of the Judgment, it mentioned that "in the next days, it shall enter into an Agreement

with the Ministry of the Interior and the Ombudsman's Office – Bureau of Truth, Justice and Reparation[-], by which the latter undertakes to collaborate with the incorporation of a program of recent historical memory in the syllabus of the police formation, to make a special study of the Judgment". In addition, the State pointed out that the Human Rights Area of the Ministry of the Interior initiated "a process of curricular review with the different Police Formation Schools" to strengthen the human rights training programs. Finally, the State exemplified its institutional commitment to promote the human rights perspective, by furnishing the "Protocol of procedures for evictions of great importance" recently adopted, which stipulates a series of guidelines for the performance of police activities, including the coordination of human rights and child protection aspects. As a consequence of the information provided, the State considered that this operative paragraph should be declared to be fulfilled.

47. That the representatives considered that "[t]here is a small program, but that it is very basic, [therefore] practically no progress has been made regarding this aspect".

48. That the Commission, moreover, valued the information presented by the State during the hearing and considered it was necessary to assess the documents furnished in order to make a decision accordingly.

49. That the Court positively values the progress mentioned by the State at the hearing. Moreover, without detriment to emphasize that it is important to include, in the human rights training programs, some material referred to the content of the Judgment delivered in the instant case, the Tribunal considers that the State complied with this measure of reparation as to the design and implementation of human rights training programs, in the understanding that these programs are permanent. In turn, the Court deems it is pertinent to recall that the efficacy of the design and implementation of the human rights training programs within the security forces is vital to provide guarantees of non-repetition of facts such as the ones of the instant case. That is to say, such programs must show the results of action and prevention to prove their efficacy, beyond the fact they may be evaluated using the appropriate indicators, since their results should not be but the effective elimination of practices in violation of human rights.

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Adaptation of the offenses of torture and forced disappearance of persons

50. That, as to the obligation of the State to adapt the definition of the crimes of torture and "involuntary" (*forzosa*) disappearance of persons contained in Articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law (*operative paragraph twelve of the Judgment*), the State pointed out that on May 20, 2009, a new bill was presented to the Congress to make such reform, which would be "subjected to the Commission's opinion" ; therefore, during the hearing, it requested the parties to make their observations in order to include them in the bill.

51. That even though the representatives pointed out that, up to the present, the adaptation of the rules has not been made, they confirmed the information furnished by the State as to the existence of said bill.

52. That the Commission noted, as informed by the State in its first report on compliance, that in 2007, a bill was submitted to the Congress, of which there is no further information; and in light of the new bill, it was communicated that it would evaluate the

material presented. Likewise, it considered it was important for the parties to give an opinion regarding the content of the bill so as to include the necessary observations.

53. That the Court values the will expressed by the State to comply with this aspect, as to its commitment to include the deliberation of the bill that would modify Articles 236 and 309 of the penal Code in the period of ordinary sessions of the Congress of the present year, and repeats that the reparation so ordered establishes the obligation for the Legislative branch to modify such provision within a reasonable time. Furthermore, it is Essentials to recall that treaty obligations of States Parties are binding on all the powers and organs. Therefore, this Tribunal urges the State to fulfill, through all competent organs, these obligations and deems it is necessary to receive further information on the specific progress made to comply with such reforms.

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Compensation for pecuniary and non-pecuniary damage

54. That, as to the State's obligation to pay the compensation for pecuniary and non-pecuniary damage (*operative paragraph thirteen and fourteen of the Judgment*), the State pointed out that "the sum of G. 921.707.200 corresponding to the second installment of the payment has been estimated [and that on] July 22, 2009, by means of Decree N° 2.539, such payment was authorized". Therefore, according to what it stated, in order to make the payment, it would be waiting for the victims' next-of-kin to come to an agreement as to the determination of the sums that, in relation to the second installment, would correspond to each one of them. Likewise, it informed regarding the balance pending that it has been already requested its inclusion in the Budget Proposal for the Fiscal Year 2010.

55. That the representatives emphasized the difficult situation in which they were as a result of the partial payments made by the State in relation to this aspect, due to the fact that it was necessary to reach an agreement with the victims' next-of-kin regarding the distribution of the installment. Based on the foregoing, they suggested the organization of a work team formed by representatives of the Ministry of Finance and of the Government Attorney's Office, in order to participate in meetings with the victims' next-of-kin, and help them understand the current situation of the payments and its commitment to pay in full the amounts established in the Judgment, plus the accrued interest. Said request was accepted by the State, which repeated its will to fully comply with the decision of the Tribunal.

56. That the Commission referred to the need to have information regarding the date on which the State could pay in full the compensations ordered in the Judgment, including the accrued interest.

57. That even though the State has ordered the payment in installments per year, the Tribunal positively values the measures adopted and the will of the State to come to an agreement with the victims and their representatives, in order to continue with the execution of these measures of reparation. Moreover, it takes note of the commitment made by the State to comply with the payment of the estimated sums in the current fiscal year, within the term of one week as of the submission by the representatives of a document establishing the proportional distribution of said sum, as well as the inclusion of

the balance in the fiscal year 2010. In addition, since the State fell into arrears, the State must refer to the allocations made to cover the respective accrued interest.

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Payment of costs and expenses

58. That as to the State's obligation to pay for costs and expenses (*operative paragraph fifteen of the Judgment*), the State furnished information proving the effective payment of such item to the requesting organization.

59. That the representatives confirmed the information furnished by the State.

60. That the Court positively values what the State and the representatives informed, as to that the former has made the corresponding payment for costs and expenses in favor of the representatives of the victims and next-of-kin. As a consequence, the State has fully complied with this obligation.

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61. That, upon monitoring compliance with the aspects pending compliance in this case, the Court values the advantage of the hearing held to that end, which is evidenced by the good will and cooperation shown by the parties, who have agreed on the fact that some aspects of said Judgment have not been complied with. Specially, the Tribunal values that the State and the representatives have undertaken to hold a meeting as soon as possible, as well as that the State has forwarded a timetable of compliance with the aspects pending full compliance, circumstances that prove the purpose and common commitment to seek full observance of such aspects.

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, and Articles 25(1) and 25(2) of its Statute and 15(1), 30(2) and 63 of its Rules of Procedure,

Declares:

1. That in accordance with Considering clauses 37, 49 and 60 of this Order, the State has complied with the obligation to:

- a) Publish, once, within six months, in the official gazette and in another newspaper with widespread national circulation, parts of the Judgment (*operative paragraph eight* and paragraph 175 of the Judgment);

- b) implement, within a reasonable time, permanent programs of human rights training in the Paraguayan police forces, at all levels (*operative paragraph eleven of the Judgment* and paragraph 178 of the Judgment); and
- c) Pay in cash, within one year, the amounts established in the Judgment for costs and expenses (*operative paragraph fifteen* and paragraph 183 and 187 of the Judgment).

2. That the Court will maintain open the procedure of monitoring compliance with the aspects that remain pending in this case, which are:

- a) To carry out the necessary procedures to activate and conclude effectively, within a reasonable time, the investigation to determine the masterminds and perpetrators of the acts committed to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba (*operative paragraph five* and paragraphs 123 to 132 and 164 to 166 of the Judgment);
- b) To immediately proceed to seek and locate Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba and, if their remains are found, the State must deliver them to their next kin forthwith and cover the costs of their burial (*operative paragraph six* and paragraph 172 of the Judgment);
- c) To organize, within six months, a public act acknowledging responsibility and in reparation (*operative paragraph seven* and paragraph 173 of the Judgment);
- d) To provide all the next of kin of the victims with appropriate treatment including medicines, after they have given their corresponding consent, as of notification of [the] judgment and for all the time necessary, without any charge and through the national health services (*operative paragraph nine* and paragraph 176 of the Judgment);
- e) To erect, within one year, a monument in memory of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba (*operative paragraph ten* and paragraph 177 of the Judgment);
- f) To adapt, within a reasonable time, the definition of the crimes of torture and "involuntary" (*forzosa*) disappearance of persons contained in Articles 236 and 309 of the current Penal Code to the applicable provisions of International Human Rights Law (*operative paragraph twelve* and paragraph 179 of the Judgment), and.
- g) To pay in cash to the next-of-kin of the victims, within one year, as compensation for pecuniary and non-pecuniary damage, the amounts established in the Judgment (*operative paragraph thirteen and fourteen* and paragraphs 147 to 149 and 162 of the Judgment).

And Decides:

3. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the merits, reparations and costs delivered by the Court on September 22, 2006 according to the provisions of Article 68(1) of the American Convention on Human Rights.
4. To request the State to submit to the Inter- American Court, no later than March 1, 2010, a report specifying all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, as spelled out in the Considering clauses 10, 19, 25, 26, 30, 34, 41, 45, 49, 53 and 57 and the declarative paragraph two of this Order.
5. To call upon the representatives of the victims' next- of-kin and the Commission to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.
6. To continue monitoring the aspects of the Judgment on merits, reparations and costs of September 22, 2006 that are still pending compliance.
7. To require the Secretariat to notify this Order to the State, the Inter-American Commission and the representatives of the victims and their next of kin.

Diego García – Sayán
Acting President

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García – Sayán
Acting President

Pablo Saavedra Alessandri
Secretary