

Order of the
Inter-American Court of Human Rights
of November 19, 2009
Case of the “Juvenile Reeducation Institute” v. Paraguay
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations, and costs (hereinafter “the Judgment”) issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court”, or “the Tribunal”) on September 2, 2004.

2. The orders on monitoring compliance with judgment issued by the Court of July 4, 2006 and February 6, 2008. In the latter, the Tribunal stated it would maintain open the procedure of monitoring compliance with judgment regarding the matters pending compliance in the present case, namely:

a) The organization, in consultation with civil society, of a public act to acknowledge international responsibility at which it announces the elaboration of a short, medium and long-term State policy concerning children in conflict with the law (*Operative point 11 [of the Judgment]*);

b) The psychological treatment for all the former interns of the Institute between August 14, 1996, and July 25, 2001; medical and/or psychological treatment for the former interns injured in the fires, and psychological treatment for the next of kin of the interns who died or were injured (*Operative point 12 [of the Judgment]*);

c) Vocational assistance and a program of special education for the former interns of the Institute between August 14, 1996, and July 25, 2001 (*Operative point 13 [of the Judgment]*);

d) Providing a place for the burial of Mario del Pilar Álvarez Pérez, son of María Teresa de Jesús Pérez, in a cemetery near her residence (*Operative point 14 [of the Judgment]*);

e) The safeguard of the life, integrity and security of the persons who testified and of their next of kin (*Operative point 15 [of the Judgment]*);

f) Payment of the compensation for pecuniary and non-pecuniary damage to the victims and their next of kin (*Operative points 16 and 17 [of the Judgment]*), and

g) Reimbursement of expenses and costs to the representatives of the victims (*Operative points 18 [of the Judgment]*).

3. The Memorandum of Understanding signed by the parties after the private hearing for monitoring compliance of February 4, 2008 (hereinafter the “Memorandum of Understanding”), through which the Republic of Paraguay (hereinafter “the State” or “Paraguay”) undertook to carry out several actions with regard to compliance of the matters pending compliance.

4. The briefs of June 13th, July 10th, and September 8, 2008 and of May 12th, July 1st and 24th, and November 2, 2009 and their annexes, as well as other additional briefs, through which the State informed on the matters pending compliance of the Judgment and forwarded a time line for compliance of the same (hereinafter "the Time Line").
5. The briefs of March 19th, July 25th, and October 9, 2008 and of November 17, 2009 and their annexes, among other briefs presented, through which the representatives of the victims (hereinafter "the representatives") presented their observations to that informed by the State and to the Time Line.
6. The briefs of August 29th and December 31, 2008, through which the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") forwarded its observations to the State's reports and to the representatives' observations. Up to the date on which the present Order is being issued, the Commission had not presented observations to the Time Line.
7. The Order of the President of the Inter-American Court of August 5, 2009, through which, in consultation with the other Judges of the Tribunal, she summoned the parties to a private hearing for monitoring compliance with Judgment.
8. The arguments and the information provided by the parties at the private hearing for monitoring compliance with the Judgment of September 30, 2009, held during the LXXXIV Regular Session of the Court, in the city of San José, Costa Rica¹.

CONSIDERING:

1. That monitoring compliance with its judgments is a power inherent to the judicial functions of the Court.
2. That Paraguay has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 24, 1989 and it acknowledged the contentious jurisdiction of the Court on March 26, 1993.
3. That Article 68(1) of the American Convention states that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which

¹ Pursuant with Article 6(2) of the Rules of Procedure, the Court held the hearing with a commission of Judges made up by: Judge Diego García-Sayán, President in exercise; Judge Manuel E. Ventura Robles, and Judge Margarete May Macaulay. The following parties appeared at the hearing: a) for the Inter-American Commission of Human Rights: Florentín Meléndez, Commissioner, and Karla Quintana Osuna, specialist of the Executive Secretariat; b) for the State: Oscar B. Llanes Torres, Ambassador of the Republic of Paraguay in Costa Rica; Inés Martínez Valinotti, Director of Human Rights of the Ministry of Foreign Affairs; Marco Antonio Alcaraz, Deputy Prosecutor in charge of the Area of Human Rights; Iris Rojas, General Human Rights Director of the Ministry of Justice and Labor; Rocardo González Borgne, General Cabinet Director of the National Secretariat for Children and Teenagers; Raúl Sapena Jiménez, Attorney of the Treasury; Diana Vargas Human Rights Director of the Ministry of Internal Affairs; Lorena Cristaldo, Special Prosecutor of the Attorney general of the Republic; Gustavo Rodríguez, Legal Advisor of the Staff of the Ministry of Health and Social Wellbeing; Gladys González, Head of the Human Rights Unit of the Ministry of Health and Social Wellbeing; Federico Fabián Gill Ramírez, Legal Advisor of the General Administrative and Financial Office of the Treasury, and Belen Morra, Head a.i. of the Department of Follow-Up to Compliance with Judgments of the Court, and c) for the victims and their next of kin: Alejandra Arancedo and Sergio Fuenzalida of the Center for Justice and International Law (CEJIL).

they are parties.” For such purpose, the States are required to guarantee that the Court’s orders are implemented in decisions made at the domestic level.²

4. That, because the judgments of the Court are final and not subject to appeal, as established in Article 67 of the American Convention, the State is required to promptly and fully comply therewith.

5. That the obligation to comply with the Court’s judgments conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with 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 internal laws for failure to honor their pre-established international responsibility.³ The States Parties obligations under the Convention bind all branches and organs of State.⁴

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) within their own domestic laws. This principle is applicable not only to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights) but also to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁵

7. That the States Parties to the Convention who have acknowledged the Court’s contentious jurisdiction have the duty to comply with the obligations established by the Tribunal. This obligation includes the State’s duty to inform the Court of the measures adopted in compliance of that ordered by the Tribunal in those decisions. The timely observance of the State’s obligation to inform the Tribunal of how it is complying with each of the matters ordered by the latter is fundamental in evaluating the status of compliance with the Judgment as a whole.⁶

² 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 Judgment. Order of the Inter-American Court of Human Rights of September 23, 2009, Considering clause number three, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause number three.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention of Human Rights)*. Advisory opinion OC-14/94 of December 9, 1994, para. 35; *Case of the Caracazo v. Venezuela*, *supra* note 2, Considering clause number five, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra* note 2, Considering clause number five.

⁴ Cf. *Case of Castillo Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering clause number three; *Case of the Caracazo v. Venezuela*, *supra* note 2, Considering clause number five, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra* note 2, Considering clause number 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 2, Considering clause number six, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra* note 2, Considering clause number six.

⁶ Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause number seven; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra* note 2, Considering clause number seven, and *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause number seven.

8. That the Court is aware of the usefulness of the hearing held on September 30, 2009 to supervise the matters pending compliance in the present case.

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9. That regarding the realization, in consultation with civil society, of a public act of acknowledgment of international responsibility and at which it announces the elaboration of a State policy concerning children in conflict with the law (*eleventh operative paragraph of the Judgment*), the State informed that an Inter-Institutional Technical Team prepared the report named "ISAI Strategy: Methodological Proposal for the Elaboration of the Public Policy for the Attention of Teenage Offenders" (hereinafter "ISAI Strategy"). Said report establishes the general principles and methodological guidelines that act as grounds for the elaboration of the State's policy in this subject. The document was presented before the National Council for Children and Teenagers, which approved it in its regular session of the month of May 2008 and it put the National Secretariat for Children and Teenagers in charge of the implementation of the proposals included therein. Therefore, the Secretariat created an Inter-Institutional and Multisectoral Table (hereinafter the "Inter-Institutional Table"), made up by the representatives of different State bodies and UNICEF with the objective of creating, in a participative manner, the juvenile criminal public policy based on the ISAI Strategy. The Inter-Institutional Table started its tasks in the month of February 2009.

10. That at the private hearing for monitoring compliance Paraguay informed that the National Secretariat for Children and Teenagers "is currently coordinating the realization of a consultancy through an executing body," with the purpose of obtaining a base diagnosis on children and teenagers in Paraguay and thus offer input for the effective design of the State's policy in matters of children in conflict with the law. The final report from that consultancy will be available for the mentioned Inter-Institutional Table in December 2009. Likewise, said, "articulating space" meets every two weeks and has produced documents that will serve as the technical grounds for the elaboration of the public policy of reference, with a preventive component, a component of attention during the criminal proceedings that will guarantee the right to a fair trial and the educational purpose of the juvenile criminal system, and a component of social insertion that will promote that teenagers "be incorporated into the community as well as the educational, work, and cultural life without any discrimination whatsoever." Additionally, it referred to other initiatives related with this matter and concluded that even though Paraguay does not yet have the corresponding public policy "it cannot be stated that it is failing to comply" with this obligation; even when it could be running behind, the State has worked actively on the design of the mentioned policy. Finally, according to the Time Line it undertook to comply with this obligation in June 2010.

11. That the representatives pointed out that it is vital that the State comply with this obligation, "even more so in light of the situation of abandonment and lack of educative services that exists among the youngsters imprisoned at the Ita[u]guá Educational Center," which was created with the intention of being a reeducation model for teenage offenders, based on the facts that motivated the Judgment in the present case. They added that the continuance of the violations to children's rights at that Center is evidenced from information provided by the State, specifically from the Inter-Institutional Commission for the Monitoring of Detainment Centers for Teenagers, which concluded in the "Report on the situation of different detainment centers for teenagers" that the youngsters at the Itauguá Educational Center "are left to their own luck, [...] they are unprotected." They stated that up to this moment the civil society has not been

participated in any of the definitions, orientations, or methodologies included in the Inter-institutional Technical Team's Report.

12. That at the public hearing for monitoring compliance the representatives indicated that the information presented by the State "almost five years after the time period granted for compliance of [this reparation measure] had expired refers once again to the realization of preliminary stages in the elaboration of the policy to which it is compelled." They considered that it was reason for concern that despite the time that had gone by the process is still in a preliminary stage and that they are just now designing the actions to be carried out for the definition of a public policy. Likewise, they stated that the acknowledgment of responsibility and the elaboration of the public policy should be simultaneous, since they are part of the same reparation measure according to the terms of the Judgment. They concluded that the State's obligation to respect the present operative paragraph of the Judgment has not been complied with and that the information provided evidences "a path for progress towards compliance with the obligations, but [also] that it is in very initial stages."

13. That based on the information provided by the parties, the Inter-American Commission observed that this obligation is still pending compliance and that it was awaiting more specific information in this regard. It pointed out that it considers that the elaboration of this policy "is an element of fundamental importance for the non-repetition of the facts [of the J]udgment."

14. That during the public hearing of monitoring compliance the Commission proposed to the State that it record in an memorandum "specific commitments [with] precise dates or reasonably predictable terms" to comply with the measures of reparation, since it considered that the pending processes or matters did not refer to complex issues that required a lot of time or that depended on State bodies different to the Executive Power. It considered that in order to fully comply with this Judgment "it is not enough to plan the compliance and let time go by." It added that this Judgment is especially different because of the subjects involved, who are in highly vulnerable situations, "where the State's response has to correspond to the subject's quality and not only to the general obligation to respond before the [Inter-American] System." Therefore, it highlighted the need to have the State's commitment expressed through specific actions and commitments, within precise time periods recorded in a memorandum before the Court so that the latter can give them the correct follow-up.

15. That the Court recalls that the time period established for the compliance of the present obligation was of six months computed as of the notification of the Judgment and that, therefore, it expired in March 2005. Despite the fact that more than four years and eight months have gone by since that term expired, this obligation has not been fulfilled. In this regard, the Tribunal observes that the process promoted for the elaboration of the public policy in matters of children in conflict with the law is in its initial stages, which is of concern in light of the time that has gone by.

16. That the Court takes note that the State committed itself through the Time Line to "elaborate public apologies, in consultation with the Civil Society with the objective of holding a Public Act of acknowledgment of international responsibility, and make the statement that contains the Public Policy in matters of children in conflict with the law," in June 2010. In that sense, the Tribunal recalls that to the effect of holding the public act of acknowledgment of international responsibility and of the statement that includes the elaboration of a State policy in matters of children in conflict with the law, Paraguay shall consult with the victims, their next of kin, and their representatives.

17. That based on the aforementioned considerations the Inter-American Court considers it necessary that the State: a) adopt as soon as possible all the measures necessary for the effective design of the State's public policy in matters of children in conflict with the law, and b) continue forwarding updated and detailed information of the progress achieved and the specific measures adopted to comply with the eleventh operative paragraph of the Judgment.

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18. That with regard to the psychological treatment of all former inmates of the Institute between August 14, 1996 and July 25, 2001; the medical and/or psychological treatment of former inmates injured in the fires, and the psychological treatment of the next of kin of the inmates who had died or were injured (*twelfth operative paragraph of the Judgment*), and regarding the vocational assistance and special education program destined to the former interns of the Institute between August 14, 1996 and July 25, 2001 (*thirteenth operative paragraph of the Judgment*), the State indicated that according to the report prepared by the General Office for the Attention of Teenage Offenders, "the aid for victims has been systematically developed, despite certain inconveniences such as inability to locate some victims or the distrust of any of [them] towards the authorities," which results in their failure to show up to the diagnosis consultations programmed. It added that it does not have the addresses of fifteen victims of the fire or a means of transportation to make the necessary visits and make the diagnosis required. Based on meetings held with representatives of the victims' mothers, the attorneys that exercised the defense of the case, some of the youngsters, and authorities of the Ministry of Justice and Labor and the Ministry of Public Health and Social Wellbeing, it decided to create a registry of the beneficiaries and their next of kin. On April 8, 2009 a "Public Act for the delivery of identification cards for medical attention and diffusion of vocational assistance for the victims and next of kin of the Institute" was held with the presence of high authorities from the Ministries of Justice and Labor and of Public Health and Social Wellbeing. On the other hand, the Ministry of Justice and Labor, through the National Professional Formation and Training System, presented a series of courses for the work training of victims and their next of kin.

19. That at the public hearing for monitoring compliance, the State informed that forty-three beneficiaries, who had the corresponding identification card, had been registered to receive medical attention. Several of them were tended to at different health centers throughout the country and "the response of the establishments that are dependent on the Ministry of Public Health has been highly satisfactory." Among the services offered they mentioned emergency services, the realization of studies, the supply of medications, and medical assistance in general. Given the reluctance of many of the young victims to receive medical, psychological, or psychiatric attention the presentation of the training courses established by the State was used to communicate to the representatives, the mothers, and some of the youngsters the possibility to receive assistance at any health center throughout the country through the use of the identification card, as well as to inform of the hospitals, the working hours, and the mental health professionals available for their attention. On the other hand, it indicated that the victims that are imprisoned, among other measures, are regularly accompanied and assisted by the General Human Rights Office of the Ministry of Justice and Labor and they also have the help of a psychologist from whom they receive group and individual therapy. Some of these imprisoned victims are enrolled in the basic school cycle within the National Prison of Tacumbú. It stated that "[a]ccording to the last interviews carried out with [the detained victims,] all of them are in good health conditions." Finally, regarding the education programs, it stated that five beneficiaries registered in the

courses offered by the Ministry of Justice and Labor and that on September 26, 2009 they started the four first courses in the elaboration of cleaning products, administration of human resources, bakery and pastry, and residential electricity. On the other part, one of the victims entered the Trial Course for Acceptance into the School of Veterinarian Sciences of the University of Asunción and they were exempt from the corresponding tariffs.

20. That regarding the medical and psychological treatment the representatives stated that progress was achieved despite the late start in compliance with this obligation, which occurred in March 2008. The staff of the Ministry of Justice and Labor went to the homes of several victims to start carrying out evaluations and "a systematic plan has been established in order to reach the entire population affected." However, they indicated that some of the victims have been summoned, for the realization of the medical diagnosis, to the Itauguá Educational Center, where some officials that carried out tasks at the Children's Reeducation Institute at the time the victims were deprived of freedom are employed. Therefore, some of them do not wish to visit that location out of "fear of being the object of retaliation or a denigrating treatment." They added that the difficulties to perform the medical diagnosis "cannot be used as a justification by the State for not having done everything within its reach in order to satisfy that ordered by the Court." They asked the Tribunal to request that the State provide information regarding: i) the specific result of the evaluations performed and their follow-up in order to guarantee the victims' access to medical and psychological treatments; ii) the processes carried out in order to practice the medical and educational evaluations on the victims that have not yet been contacted, and iii) follow-up that is being performed on those victims who are enrolled in training courses.

21. That during the public hearing the representatives stated that "[t]he information [provided] by the State lacks systematization and the necessary support to be able to evaluate the effective compliance with the obligations." The State has not informed of the total number of people who have used the benefit of medical attention. Likewise, the State has not presented any document proving the constant psychological additional assistance argued and according to that informed by some of the victims, these have not received psychological attention and they did not seem to be aware it was available. They reiterated that this obligation "implies a positive action on behalf of the State in order to diagnose and treat the physical and psychological consequences the violations had [...], reason for which their actions cannot be limited to a mere offer of medical and psychological attention." With regard to the offer of education programs, they acknowledged that the State's initiative is important, but some beneficiaries are not aware that the courses are available.

22. That the Commission took note of the processes carried out with the objective of preparing medical charts and offering medical attention to some victims, of granting of a scholarship to one of them, and of the processes carried out to identify and locate the other victims. However, it stated its concern for the limited number of survivors that have been benefited from these reparations, due to "the lack of credibility of the State's initiatives for the reparation of the damage caused," and due to the health situation of some of the victims that are deprived of freedom who, given the seriousness of the injuries suffered, should have received assistance. It warned that the offering of those services is an obligation that cannot be delayed.

23. That at the private hearing for monitoring compliance the Commission observed that there would be an agreement to create a system for the registry of the next of kin and it requested that the State inform when that registry would be in operation.

24. That the Court values the actions carried out by the State to put at the disposal of the beneficiaries medical and psychological treatments, as well as training programs. On the other hand, it observes that a small percentage of victims have benefited from them. Therefore, the State shall continue with its task to divulge them in order to inform all the victims of the existence and availability of those programs.

25. That, without detriment of the aforementioned, the Tribunal observes that the compliance with this obligation by the State may depend, in great measure, on the cooperation and information provided by the representatives and beneficiaries. Therefore, it points out the importance of the progress made in the coordination between the State and the representatives in order to make compliance with these reparation measures a reality so they can reach all the beneficiaries.

26. That based on the previous considerations, the Court considers it necessary that the State forward with its next report an updated list of the beneficiaries who: a) have been given their identification card for medical attention; b) have had the diagnosis and/or have been offered medical and/or psychological treatment, and c) have been offered training courses or vocational assistance.

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27. That regarding the obligation to provide a place to deposit the body of Mario del Pilar Álvarez Pérez, son of Mrs. María Teresa de Jesús Pérez, in a cemetery close to her (*fourteenth operative paragraph of the Judgment*) the State informed that on May 4, 2007 contract 32/07 for the Usufruct of a Cemetery Plot was signed between the Municipality of Asunción and Mrs. María Teresa de Jesús Pérez.

28. That, likewise, Paraguay informed that through note PGRNo.100/08 of February 6, 2008 it requested that the City Council of Asuncion free a plot located in the Cemetery of the East in order to transfer it to the victim's mother or, in its defect, grant a free usufruct for life over the same. Additionally, it requested the realization of the processes necessary in order to obtain the exemption of the payment of the municipal taxes that fall upon that plot. Additionally, it indicated that the processes before the municipal authorities for the exoneration of the corresponding taxes are still pending. It indicated that it started the process of building a mausoleum in the mentioned plot and that "it prepared a budget [and] it is currently awaiting some internal processes within the Ministry of Justice and Labor for the execution of that construction." It clarified that titles over plots in cemeteries [within the Paraguayan system] is offered through the figure of usufruct for life [and] that cannot be changed."

29. That the representatives regretted that several years after the Judgment was issued this simple obligation had not been complied with by the State. They considered that "the demand of a reasonable term also reaches the administrative processes that seek to determine a right and that the simplicity of the request in question does not justify the time invested in its resolution."

30. That at the public hearing for monitoring compliance the representatives recalled that in the Memorandum of Understanding, the State had undertaken to carry out the processes necessary so the Municipal Board could donate the plot. This obligation has not been fulfilled by the fact that the body of Mario del Pilar Álvarez Pérez is in the cemetery, but it is necessary to grant "a juridical status to the plot that would allow the mother to have security that the body would not be removed." Regarding the figure of usufruct, they reiterated that it would not be satisfactory and that the corresponding

contract celebrated in the present case included some cancellation clauses that would allow the cemetery to remove the body. On the other hand, they considered "the time the State has taken to comply this obligation, which should have been fulfilled in a 15-day term, as completely inadmissible."

31. That the Inter-American Commission observed that complying with this obligation under the figure of an usufructuary right, instead of the transfer of control through donation, as it had committed to doing so in the Memorandum of Understanding, "would generate the risk that said usufruct could be eventually revoked." It pointed out that the present is an obligation that the Court "considered so urgent that it ordered that the State fulfill it within a very brief term of fifteen days, and it is, additionally, an obligation that due to its simplicity and specificity should not be the object of continuous supervision."

32. That during the public hearing for monitoring compliance the Inter-American Commission warned that the State informed of the existence of pending processes before the Ministry of Justice for compliance of the present obligation and requested that it inform "when these pending processes will be satisfied and complied with in order to conclude this matter," especially since they are "processes before the [...] State [...] itself."

33. That the Tribunal values the steps taken by the State in order to make progress in compliance with this reparation measure. However, the Court observes that having more than five years gone by since the expiration of the present obligation, it is still pending compliance. Regarding the discrepancies in what refers to the modality in which this reparation measure shall be fulfilled, the Court recalls that the State's obligation consists in "providing a place" to Mrs. María Teresa de Jesús Pérez so she can bury her son's body in a cemetery close to her home. The Tribunal considers that the usufruct or any other figure Paraguay may consider appropriate can satisfy this reparation measure, provided it guarantees that said place is being given to Mrs. Perez in a permanent manner and that it will not be taken away from her for reasons such as lack of payment of possible taxes or tariffs that, in any case, shall be covered by the State. Therefore, the Court considers it necessary that Paraguay in its next report refer to: a) the appropriateness of the figure of usufruct with the characteristics necessary to comply with this reparation measure; b) the state of the processes necessary to obtain the definitive municipal exoneration of the tariffs or taxes on the mentioned usufruct, and c) the construction of the mausoleum whose completion, according to the Time Line, is scheduled for February 2010.

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34. That, with regard to the obligation to guarantee the life, integrity, and security of the people who testified and their next of kin (*fifteenth operative paragraph of the Judgment*), the State informed that it became aware "of harassment by police officers over two youngsters [...] on four occasions." Based on that it started the corresponding administrative preliminary proceedings that are in the stage of conclusions and rulings and their result will be informed to the Tribunal pursuant with that stated in the Time Line. It added that it designed "instruction manuals addressed to all police officers in which it unequivocally established [...] the conditions under which the arrest of people is acceptable [and] the procedure for the control of vehicles and the inspection of persons." Likewise, it informed that the Ministry of the Interior authorized a Center for Citizen Complaints, for the channeling of complaints regarding police procedures carried out on the wrong side of the law.

35. That the representatives informed that, "there have been acts of violence that have affected the direct victims of the case." They added that in an interview carried out with some of the victims on August 31, 2009, in the city of Asunción, "all the victims [interviewed] denounced that they are constantly submitted to harassment by the police, who investigate their work activities, ask them for money, or threaten them with incriminate them for the commission of different crimes." They specifically denounced two cases in which the victims suffered acts of violence. In the month of April 2009, once of the victims was extra-legally detained, her house was illegally and violently searched, and she was extorted in exchange for her freedom after being detained for several hours. They also stated that on December 13, 2008 one of the victims that had testified before this Tribunal, Osmar Verón López, who was imprisoned in the Tacumbú Prison, passed away "in a fight between inmates [...] without the State having offered the means necessary to guarantee his personal integrity." In fact, they received information that "he was transferred to an area of the prison that was extremely dangerous." They considered that "[t]his death in itself is a worrying sample of the lack of care the State has had in the protection of those who testified in this case." They requested that the State inform of the investigations started with regard to this death.

36. That the Commission did not present specific observations regarding compliance of this obligation.

37. That the Court observes that the representatives informed of the death of one of the victims that offered his testimony in the present case, Mr. Osmar Verón López. On the other hand, acts of harassment against some victims were recorded and motivated the start of the corresponding administrative proceedings. The Tribunal considers it necessary that the State, in its next report, refer to: a) the investigation started because of the death of Mr. Osmar Verón López, and b) the progress in the mentioned administrative proceedings, which, according to the Time Line, is scheduled to be concluded in January 11, 2010.

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38. That regarding payment of the compensations for pecuniary and non-pecuniary damages to the victims and their next of kin (*sixteenth and seventeenth operative paragraphs of the Judgment*), and the reimbursement of the expenses and costs to the victims' representatives (*eighteenth operative paragraph of the Judgment*), the State informed that, after the two partial payments corresponding to the 2006 and 2007 Tax Years, for the 2008 tax year it included budgetary credits within the General Budget of the Nation for "the amount of [Guaraníes] 3,800,000,000, corresponding to the third payment made by the State," which was made effective through Decree No. 12,594 of August 5, 2008. In reference to the fourth payment, it stated that the Ministry of Hacienda has included the amount of "[Guaraníes] 3,800,000,000 in the General Budget for the Nation's Expenses [of 2009]," and over this amount they are carrying out the corresponding processes for its execution. Finally, it indicated that "it had requested the inclusion of the remaining amount in the General Expense Budget of the year 2010."

39. That during the public hearing for monitoring compliance, the State informed that the Treasury made a transfer for [Guaraníes] 3,800,000,000 equal to US\$ 764,587.00 [seven hundred and sixty four thousand five hundred and eighty seven dollars of the United States of America] for payment of the corresponding compensations, which was available for its collection on September 30, 2009. Likewise, it reiterated that it had already requested the inclusion of the remaining balance, equal to US\$ 572,000.43 [five

hundred and seventy two thousand dollars of the United States of America with forty three cents] for the complete payment of the compensations, in the General Expense Budget of the year 2010. Likewise, it presented the report of the First Instance Court in Civil and Commercial Matters of the Twelfth Duty of Asunción regarding the payments made, the name of the persons who received them, and the existing balance in the account. Regarding the payment system mentioned in the Memorandum of Understanding, it clarified that in obeying the statements made by the victims, in what refers to their request that payment be made "as soon as possible" it asked the Treasury to "offer continuance to the processes tending to pay, through judicial means, the amount assigned in the concept of that compensation, since a change in the procedure at this time would imply a considerable delay, until the administrative mechanisms have been established."

40. That the representatives pointed out that the funds put at the disposal of the beneficiaries were drawn against a judicial account to be distributed through a civil court, requiring that the beneficiaries present themselves with their individual attorneys in order to make the payment effective.

41. That at the public hearing for monitoring compliance the representatives acknowledged the realization of partial payments, but they observed that "the victims are still subject to additional charges" for the collection of the amounts owed through the court. They recalled that the State undertook through the Memorandum of Understanding to change the procedure used for the payment of the compensations. Additionally, with regard to the request to include the remaining balance in the 2010 budget, they observed that the State has informed of this type of requests to the Treasury "since they started to comply [with this obligation] in installments," without a subsequent effective payment of the totality of that owed. They recalled that the State shall include in the balance to be paid the interests accrued due to the delay in the payment of the amounts owed. Therefore, they asked that the Court order the State to fully comply with the present obligation within a one-year term.

42. That the Commission considered that compliance with the pecuniary obligations has not been effective or efficient. It added that taking into account that the payments were not made within the one-year term established by the Court, it should have paid the interests on loan arrears stated in the Judgment. It considered it important that the documents that prove the complete execution of this obligation be presented as soon as possible.

43. That at the public hearing for monitoring compliance the Commission requested that the State present documents that could prove that "the inclusion of this pending balance in the 2010 budget is guaranteed as well as [...] the amount pending" payment.

44. That the Court takes note of the list of amounts paid and the beneficiaries that received them, presented by the State at the hearing for monitoring compliance.

45. That the Tribunal observes that the State is complying with this reparation measure through the partial payment of the compensations. However, said payments were made outside of the term established in the Judgment and therefore the State owes the corresponding interests on loan arrears as of the month of September 2005,

date on which the term for the compliance with this obligation expired, in the terms of paragraph 338 of the Judgment.⁷

46. That, similarly, there is still a discrepancy in the way in which the amounts corresponding to the compensations ordered in the Judgment shall be paid. In this regard, the Court warns that regardless of the mechanism through which the expenditures are made, the State shall guarantee that it does not imply any expense for the victims or their next of kin.

47. That regarding the reimbursement of the amounts of US\$ 5,000.00 (five thousand dollars of the United States of America) to the Tekojojá Foundation and of US\$ 12,500.00 (twelve thousand five hundred dollars of the United States of America) to the Center for Justice and International Law for the concept of expenses and costs (*eighteenth operative paragraph of the Judgment*), the State has not provided updated information on its state of compliance.

48. That, based on the preceding considerations, the Court considers it necessary that the State: a) present information on the proceedings used for the full payment of the compensations, especially in what refers to the accessibility and gratuity of the process for judicial payment; b) continue forwarding in its reports the updated list of the payments made along with the complete identification data of the beneficiaries that received them, and c) forward the relevant documents regarding payment of the remaining balance foreseen for 2010, including the information that refers to the mentioned interests on loan arrears (*supra* Considering Clause number 45). The State is asked to forward information on the monetary amounts expressed in dollars of the United States of America.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Articles 30 and 63 of its Rules of Procedure,⁸

DECLARES:

1. That the State has partially complied with its obligation stated in the following operative paragraphs of the Judgment:

⁷ Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 338.

⁸ Rules of Procedure approved by the Court in its XLIX Regular Session held from November 16 through 25, 2000 and partially reformed during the LXXXII Regular Session, held from January 19 through 31, 2009.

- a) The payment of the compensations for pecuniary and non-pecuniary damages to the victims and their next of kin (*sixteenth and seventeenth operative paragraphs of the Judgment*), pursuant with Considering Clause number 45 of the present Order.

2. That it will maintain the monitoring proceedings open until the matters pending compliance in the present case have been satisfied, namely:

- a) carry out, in consultation with civil society, a public act of acknowledgement of international responsibility and issue a declaration setting forth a short-, medium- and long-term State policy on the matter of children in conflict with the law (*eleventh operative paragraph of the Judgment*);
- b) provide psychological treatment to all persons who were inmates at the center in the period from August 14, 1996 to July 25, 2001; medical and/or psychological treatment to the former inmates injured in the fires, and psychological treatment to the next of kin of the injured and deceased inmates (*twelfth operative paragraph of the Judgment*);
- c) provide vocational guidance and a special education program geared to those who had been inmates at the center at any time during the period between August 14, 1996 and July 25, 2001 (*thirteenth operative paragraph of the Judgment*);
- d) provide a place to deposit the body of Mario del Pilar Álvarez Pérez, son of Mrs. María Teresa de Jesús Pérez, in a mausoleum near her home (*fourteenth operative paragraph of the Judgment*);
- e) ensure the life, personal integrity and safety of the persons who gave affidavits and their next of kin (*fifteenth operative paragraph of the Judgment*);
- f) pay the compensations for pecuniary and non-pecuniary damages to the victims and their next of kin (*sixteenth and seventeenth operative paragraphs of the Judgment*), except for the amounts already paid for pecuniary and non-pecuniary damages mentioned in the first declarative paragraph of the present Order, and
- g) reimburse the expenses and costs to the victims' representatives (*eighteenth operative paragraph of the Judgment*).

AND DECIDES:

1. To require the State to immediately adopt all the measures necessary to effectively and promptly satisfy the matters pending compliance that were ordered by the Tribunal in the Judgment on preliminary objections, merits, reparations, and costs of September 2, 2004, pursuant with that stated in Article 68(1) of the American Convention on Human Rights.

2. To request the State to present to the Inter-American Court of Human Rights, no later than March 19, 2010, 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 17, 26, 33, 37, 47, and 48, as well as in the second declarative paragraph of the present Order.

3. To request that the victims' representatives and next of kin and the Inter-American Commission of Human Rights present observations to the State report mentioned in the previous operative paragraph, within a two and four-week term, respectively, computed as of the receipt of said report.

4. To continue monitoring the matters pending compliance of the Judgment on preliminary objections, merits, reparations, and costs of September 2, 2004.

5. To request that the Secretariat of the Court notify the present Order to the State, the Commission, the Inter-American Commission of Human Rights, and the victims' representatives and next of kin.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra Alessandri
Secretary