

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF FEBRUARY 8, 2012

**MONITORING COMPLIANCE WITH THE MEASURES OF REPARATION
CONCERNING THE MEDICAL AND PSYCHOLOGICAL ATTENTION
ORDERED IN NINE COLOMBIAN CASES¹
NOTICE OF A PRIVATE HEARING**

HAVING SEEN:

1. The order issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on April 29, 2010, giving notice of a hearing in the context of monitoring compliance with the measures of reparation concerning the medical and psychological attention ordered in the cases of the 19 Tradesmen, the Mapiripán Massacre, Gutiérrez Soler, the Pueblo Bello Massacre, the La Rochela Massacre, the Ituango Massacres, Escué Zapata, and Valle Jaramillo, all with regard to the Republic of Colombia (hereinafter “the State” or “Colombia”).

2. The private hearing held by the Court on May 19, 2010, in the above-mentioned cases (*supra* having seen paragraph 1), during which the State, the representatives of the victims (hereinafter “the representatives”) and the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) referred to the status of compliance with the measures of reparation concerning medical and psychological attention ordered by the Court in each case.

3. The briefs of June 28, and July 2 and 26, 2010, in which the representatives of the victims forwarded information on compliance with the measures of reparation in the said cases (*supra* having seen paragraph 1), and also on the proposed “Integral health care reparation program (medical and psychological treatment) from a psychosocial perspective, in the context of compliance with the judgments” delivered in these cases.

4. The brief of July 2, 2010, in which the State forwarded a report with diverse observations and “proposals” designed “to advance the commencement of the medical and psychological attention for the beneficiaries” in the above-mentioned cases.

5. The brief of April 26, 2011, in which the State provided information on compliance with the measure of reparation and forwarded a “memorandum of understanding” in which the parties “acknowledged and assumed compliance with the measure of reparation” and agreed on a “coordination mechanism.”

¹ *Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109, *Case of Gutiérrez Soler v. Colombia. Merits, reparations and costs.* Judgment of September 12, 2005. Series C No. 132, *Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, *Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192. In addition, on March 15, 2011, the parties agreed “to include the Case of Manuel Cepeda Vargas within the framework of the measure of reparation concerning health.” *Case of Manuel Cepeda Vargas v. Colombia.* Preliminary objections, merits, reparations and costs. Judgment of May 26, 2010. Series C No. 213.

6. The brief of August 22, 2011, in which the State presented a report on compliance with the measure of reparation concerning medical and psychological treatment and submitted the document entitled "Proposed initial method of attention to the victims."

7. The communications of May 6 and August 16, 2011, forwarded by Deycci Marcela Salgado Bolaños, daughter of Arturo Salgado Garzón, victim in the case of the *La Rochela Massacre v. Colombia*, in which she asked for the "support" of the Court in view of the "complex" health situation of her father and "the serious health conditions" of her aunt, María Sara Salgado.

8. The briefs of July 8 and October 3, 2011, in which the representatives presented observations on the State's report on compliance with the measure of reparation on medical and psychological attention in the nine Colombian cases (*supra* having seen paragraphs 5 and 6).

9. The briefs of August 16, 2010, June 22, 2011, and January 26, 2012, in which the Commission presented its observations on the State's report on medical and psychological attention in the nine Colombian cases.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

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

3. As established in Article 67 of the American Convention, the State must comply with the judgments of the Court fully and promptly. In addition, 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." To this end, the State must ensure implementation of the Court's decisions in its judgments at the domestic level.²

4. 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 is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

I. Implementation of the measure of reparation in 2010

1. The private hearing on monitoring compliance held in relation to this measure of reparation (*supra* having seen paragraph 2) concluded with the commitment of the

² Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60 and *Case of the Pueblo Bello Massacre v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of January 23, 2012, third considering paragraph.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999, para. 37; *Case of Castañeda Gutman. Monitoring compliance with judgment*. Notice of a public hearing. Order of the President of the Inter-American Court of Human Rights, of January 18, 2002, fifth considering paragraph.

parties to initiate a "process of *rapprochement*" and to present a "timetable for actions as well as substantive proposals" to settle the disputes that existed at that time.

2. On July 2, 2010, the representatives referred to the "proposal for implementation of the measures of reparation concerning medical and psychological attention" that they had forwarded to the State, and advised the Court that, "although they had delivered [...] [this] proposed memorandum of understanding," they had not received "any observation or response."

3. On July 2, 2010, the State submitted to the Court a brief with "considerations" and "proposals [...] aimed at initiating the provision of the service." In this document, the State indicated that:

- a) "Despite the State's willingness to comply fully with the measure of reparation," several obstacles to its implementation had arisen, above all: (i) "its innovative nature," and (ii) the institutional adjustments required to comply fully with the criteria established by the Court";
- b) The Ministries of Social Protection and of Foreign Affairs had been working to elaborate the "most appropriate methodological path" to implement the measure of reparation; however, various "concerns" had arisen following the final diagnostic reports presented by the non-governmental organizations. These concerns reflected aspects that made it difficult to comply with the measure" and which, in the State's opinion, "go beyond" its obligation "in the context of complying with what the Court ordered";
- c) Regarding the comments made by the representatives during the private hearing held on May 19, 2010, it indicated that: (i) the signature of the contract with CAPRECOM cannot be interpreted as "a way of delaying the start of the treatment stage"; (ii) regarding the "supposed limitation of the attention to the beneficiaries identified in the judgments," it indicated that, in compliance with the Court's rulings in the cases of the Mapiripán Massacre and the Pueblo Bello Massacre, it had included in the budget of the contract signed with CAPRECOM "resources that ensure the medical and psychological care of the beneficiaries to the extent that they are identified, and (iii) it has not disregarded the diagnoses made during the first stage of coordination," because "most" of the recommendations are reflected in the contract signed with CAPRECOM.
- d) It reiterated its "willingness and capacity" to initiate the treatment of the beneficiaries of the measure of reparation "by means of the inter-administrative contract signed by the Ministry of Social Protection and the health care company, CAPRECOM." In addition, the State advised its intention of "reaching agreement on and coordinating" with the representatives a "mechanism to monitor the health care stage within the framework of [that] contract." To this end, it proposed "to request the support of the Pan-American Health Organization." Lastly, it urged the elaboration of a "simple informative manual" that included "the basic elements" that the beneficiaries, the authorities, and the health care providers should take into account, as well as the holding of "periodical evaluation meetings to identify problems" in the provision of the service.

5. On July 26, 2010, the representatives forwarded their proposed "Integral health care reparation program (medical and psychological treatment) from a psychosocial perspective, in the context of compliance with the judgments of the Inter-American Court in eight Colombian cases" (*supra* having seen paragraph 3). In this regard, they indicated that:

- a) The State had “ignored the agreements and understandings on the way in which the required treatment should be provided [...] based on the assessments [...] that had been made,” taking into account that the obligation to make reparation implies “ensuring a treatment that is able to act on the harm,” and not merely providing “access to affiliation” in the health care system, which, far from being a reparation, constitutes a “State obligation”;
- b) The State had not indicated how the reparation mechanism possesses “the integral dimensions required by the measure ordered” and maintained that the treatment must be implemented with a “psychosocial approach,” which it explained “substantially and operationally” throughout its proposal;
- c) The State had disregarded “the consent of and coordination with the beneficiaries of the measure” and “the results of the initial assessment,” and this had resulted in “a process of re-victimization that annuls the usefulness of the measure of reparation,” and
- d) The State must provide attention that is: (i) preferential; (ii) free of charge; (iii) complete, and (iv) integral.

II. The coordination process during 2011

6. The State indicated that, on December 9, 2010, the parties had agreed “to establish a committee in which, together, they [would] prepare a timetable of work following the signature of a memorandum of understanding [...] with the central objective of making progress towards complying with the measure.” On that occasion, the victims were advised that the above-mentioned contract with CAPRECOM was no longer valid.

7. On March 15, 2011, a “memorandum of understanding [was signed by the State and the representatives], by the representatives of the victims, the Director of the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, and the Head of the International Relations and Cooperation Office of the Ministry of Social Protection” (*supra* having seen paragraph 5). Among other matters, the memorandum affirms that:

- a) The measure of reparation would be composed of two stages: (i) assessment and diagnosis, and (ii) treatment;
- b) “The implementation of the treatment stage would be defined by the parties [...] based on the framework of the General Social Security System for Health Care,” in keeping with the criteria established by the Court, namely: “(i) priority; (ii) preferential; (iii) integral; (iv) cost-free; (v) prior informed consent; (vi) through specialized institutions; (vii) with the provisions of any medication required, and (viii) for the time necessary”;
- c) Until the treatment stage is implemented, urgent cases would be attended as a priority;
- d) A “coordination committee” would be established in order to reach agreement on “the program to attend and treat the victims [of the eight cases], based on the proposal presented by the representatives.” This committee would be composed of representatives of the State,⁴ the victims,⁵ and the

⁴ A representative of the Ministry of Social Protection, of the Ministry of Foreign Affairs, and of the National Health Superintendence will act on behalf of the State.

⁵ A victim from each case will be a member of the coordination committee.

representatives of the victims.⁶ The committee's mandate "would be exercised for an initial period of two months," during which the parties would "define the program of attention and treatment of the victims and a timetable for its implementation," to be sent to the Court "within two months, at the most, of the date of signature of the memorandum."

8. On April 26, 2011, the State submitted a document entitled "Memorandum of understanding concerning compliance with the judgments of the Inter-American Court of Human Rights. Measure of medical and psychological attention" and another document entitled "Road map for attention to victims," in which it indicated the proposals for the State's implementation of the measures (*supra* having seen paragraph 5).

9. On June 22, 2011, the Commission indicated that the State had "failed to explain to what extent [...] the recommendations of the assessment reports prepared [by the non-governmental organizations] would be applied at the treatment stage." Similarly, the Commission stated that the State had not referred to "the differentiated impact on the beneficiaries of the measure compared to the other users of the social security" system, or the "path to follow for urgent cases." Lastly, the Commission recalled that "the principle that should guide implementation [...] of reparations is effectiveness," and that the State should not confuse "the provision of social services that it provides to the individual, with the reparations to which the victims of human rights violations have a right."

10. On July 11, 2011, the representatives indicated that the State "had again failed to comply with the agreements" regarding the meetings established, as well as the substantive agreements signed by the parties during previous meetings. On this last point, they considered that "the document entitle 'Road map for attention' did not respond to the previously agreed criteria," because "it is not a special urgency mechanism for victims of human rights violations," and "its contents, reproduce, [or] at most summarize, the same procedure of individual insurance coverage and access to health care services established for all Colombians under the General Social Security System." The representatives maintained that "the major obstacle [to the implementation of the measure of reparation] relates to the reluctance and inexperience of the officials responsible for preparing the proposal" and they called attention to the effect of re-victimization that "the State's numerous and unjustifiable delays over the course of [...] six years" have caused to the victims.

11. On August 22, 2011, the State described the progress made in the implementation of the coordination process following the declarations of "disagreement [...] [by] the representatives," owing to the "supposed non-compliance of the Ministry of Social Protection with what was agreed in [...] the] memorandum [of understanding]." In this context, the State forwarded "a new proposal for the road map for attending priority cases, and also those that can be included in group with addictions." In the proposal, the State specified that:

- a) The road map for attention seeks "to ensure that the victims can access the Colombian General Social Security System for Health Care." In this regard, they will have access to the provisions of health services through "an insurance plan";
- b) The "general elements" of the proposal are: (i) to provide "coverage to all the victims"; (ii) to ensure free choice of the Health Care Enterprise (hereinafter "EPS"); (iii) to equalize the benefit plans of the beneficiaries who have a subsidized regime [for those who are unable to pay] to those who are affiliated to the contributive regime. Regarding the services that are not

⁶ A representative of each non-governmental organization accredited to the Court.

included in the compulsory health plan of the contributive regime (hereinafter "POS-C"), "they will be covered by a process of insuring them with each EPS"; (iv) "the beneficiaries of the Court's judgments" will be exempt from payment of the financial contribution known as the "moderating quota" when they use the health care services they require, in accordance with domestic law. Likewise, they will be exempt from paying "co-payments," understood as the "financial contribution corresponding to part of the cost of the service required"; (v) the victims who are part of the contributive regime must continue "making their regular contributions to the health system"; (vi) "identification of each EPS that will be given a program of preferential attention for beneficiaries of the judgments of the Court"; (vii) creation of a working team by the Ministry of Social Protection "to train the beneficiaries in the use of the system," to supervise and evaluate the provision of the services, and "to design and measure attention, satisfaction and quality indicators";

- c) The "prior actions" will be: (i) the precise identification of "the beneficiaries of the nine judgments," in order "to carry out a validation with the Affiliates' Database (hereinafter "BDUA") in order to detect the population that needs to be affiliated," to identify the beneficiaries as "users belonging to 'preferential groups'" and to train the EPS in attending to this type of groups; (ii) insurance coverage according to the situation of "not affiliated," "affiliated to the subsidized regime," "affiliated to the contributive regime," or "affiliated to a special regime," as well as the "harmonization [with the] contributive benefits plan for those who are affiliated to the subsidized regime";
- d) In order to "use the health care services," the beneficiary must "request [...] an appointment" and come to the Health Care Institution (hereinafter "IPS") for "an initial general examination." If the beneficiary should require, "the provision of more complex health care services, he or she must be referred [...] to the institutions of second and/or third level of care";
- e) For the "provision of emergency health services," the beneficiary must "go immediately to the nearest IPS" and, following attention, the beneficiary's "affiliation to the system will be verified," and
- f) For treatment of addictions, the beneficiary must "go to the IPS [...] for an initial general examination" and, subsequently, the "EPS [...] will determine a treatment program through specialized institutions."

12. On October 3, 2011, the representatives of the victims indicated that "it was not pertinent [...] to submit observations" on the State's proposal, because it "had not been approved by the parties and [continues to be] the subject of discussions." They indicated that the State's proposal "does not incorporate progress in the attention to victims; still contains provisions that increase administrative procedures, [...] and reveals difficulties to ensure access to all the beneficiaries of the measure."

13. On January 26, 2012, the Commission indicated "its concern" because "once again, the State fails to provide information [...] on the differentiated impact on the beneficiaries of the measure compared to the other users of the social security system," as well as the description "of the road map for urgent cases." The Commission observed that "it cannot be inferred from the information provided that rapid and immediate assistance is being provided to the beneficiaries." In addition, it maintained that "it appears that the prior diagnoses are not being taken into account," and that it is unclear whether "those responsible for the treatment have "the specialization required by each individual, or group of individuals, personally." Lastly, it considered that it would be

“desirable” to hold a private hearing in which the “parties present a joint proposal that reflects the needs of the beneficiaries and responds to the concerns of the Court.”

III. Notice of a private hearing

14. At this stage of monitoring compliance with judgment, the President deems it pertinent to convene a private hearing for the Court to receive, as stipulated in Article 69 of its Rules of Procedure, complete and detailed information from the State on compliance with these measures of reparation and to hear the respective observations of the Inter-American Commission and the representatives.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the Court’s authority to monitor compliance with its decisions, pursuant to Articles 62(3), 67 and 68(1) of the American Convention, 25(2) of its Statute, and 15(1), 31(2) and 69(3) of its Rules of Procedure,⁷

DECIDES:

1. To convene the State of Colombia, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin, to a private hearing to be held at the seat of the Court on February 23, 2012, from 9 a.m. to 10.30 a.m. during the Court’s ninety-fourth regular session, in order to obtain information from the State on compliance with the measures of reparation concerning medical and psychological attention ordered in the nine cases that are the subject of this order, and to hear the respective observations of the Inter-American Commission and the representatives of the victims.

2. To require the Secretariat to notify this order to the State, the Inter-American Commission, and the representatives.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

⁷ Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, which entered into force on January 1, 2010.