

**Order of the
Inter-American Court of Human Rights*
of November 17, 2009
Case of Caballero Delgado and Santana v. Colombia
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgments on the merits, reparations and costs (hereinafter referred to as "the Judgments"), rendered by the Inter-American Court of Human Rights (hereinafter referred to as "the Inter-American Court" or "the Court") on December 8, 1995 and on January 29, 1997, respectively.

2. The Orders of monitoring of compliance with the Judgments issued by the Court on November 27, 2002, on November 27, 2003 and on February 6, 2008. In the latter, the Court declared:

2. That it shall keep the monitoring of compliance proceedings open with regard to the following paragraphs pending fulfillment:

a) transfer of half the amount corresponding to the reparations stated in the Term Certificate of Deposit in United State dollars and the yield thereof to its maturity date to an account that shall be opened in the name of minor Ingrid Carolina Caballero-Martínez, who by then will be of age, in accordance with Considering Clause No. 14 of the [...] Order;

b) the issue of a new Term Certificate of Deposit in United States dollars in the amount corresponding to half the reparations and the yield stated in the [Term Certificate of Deposit] expiring on September 1, 2004, in favor of the representatives of minor Iván Andrés Caballero-Parra, in accordance with Considering Clauses No. 18 and 19 of the [...] Order;

c) the investigation and punishment of those responsible for the disappearance and alleged death of the victims, in accordance with Considering Clauses No. 23 and 24 of the [...] Order; and

d) the location of the victims mortal remains and the delivery thereof to their next of kin, in accordance with [...] Considering Clause No. 28 of the [...] Order.

3. The brief of August 14, 2008 and the appendixes thereto, whereby the State of Colombia (hereinafter referred to as "the State" or "Colombia") presented information on the compliance with the paragraphs of the Judgments pending fulfillment.

4. The communication of August 27, 2008, whereby the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission" or "the Inter-American Commission") requested a two-week extension from the reception of the brief of

* Judges Cecilia Medina-Quiroga and Leonardo A. Franco informed the Court that, on grounds of force majeure, they could not participate in the deliberation and signature of this Order. Therefore, Judge Medina-Quiroga relinquished the Presidency in the terms of Article 4(3) of the Court Rules of Procedure to the Court Vice-President, Judge García-Sayán, President in office for the instant case.

observations submitted by the victims representatives (hereinafter referred to as "the representatives"), in order to forward its observations to the report of the State dated August 14, 2008.

5. The note of September 11, 2008, whereby the Court Secretariat (hereinafter referred to as "the Secretariat") communicated the Inter-American Commission that the Court President (hereinafter referred to as "the President") had granted the requested extension.

6. The note of November 20, 2008, whereby the Secretariat, following instructions given by the President, reminded the representatives that the term to forward their observations to the State report of August 14, 2008 had expired on September 17, 2008, without the Court having received them, and it requested them to forward said observations as soon as possible.

7. The note of February 5, 2009, whereby the Secretariat, following instructions given by the President, repeated the representatives that the term to submit their observations to the above mentioned State report had expired on September 17, 2008, without the Court having received them. The Secretariat further informed the representatives that they were given a last chance to forward said observations, which should be presented no later than February 20, 2009. Despite of all the above, and upon the expiration of the new term, the Court did not receive the requested observations.

8. The note of June 17, 2009, whereby the Secretariat, following instructions given by the President, requested the State to forward an updated and thorough report on all the reparation measures which compliance was being monitored.

9. The brief of July 17, 2009, whereby the State submitted information on the compliance with the reparation measures of material nature. However, the State failed to submit any information regarding the other obligations pending fulfillment.

10. The note of July 27, 2009, whereby the Secretariat, following instructions given by the President, requested the State to forward, no later than August 7, 2009, an updated and thorough report on the reparations measures not included in its last brief, to wit: a) the investigation and eventual punishment of those responsible for the disappearance and alleged death of the victims, and b) the location of the victims mortal remains and the delivery thereof to the next of kin.

11. The brief of August 5, 2009, whereby the State requested the Court an extension of one month in order to submit the information requested on the reparation measures pending compliance.

12. The note of August 12, 2009, whereby the Secretariat, following instructions given by the President, granted an additional term until August 26, 2009, so that Colombia submitted the requested information regarding the reparation measures pending compliance.

13. The brief of August 26, 2009, whereby the State referred to the reparation measures related to the criminal investigation for the forced disappearance of the victims and the location of their mortal remains.

14. The brief of September 18, 2009 and the appendixes thereto, whereby the representatives submitted their observations to the information provided by the State regarding the investigation and eventual punishment of those responsible for the

disappearance and alleged death of the victims, and the location of their mortal remains. With regard to the payment of pecuniary compensations, they pointed out that they would submit their observations in a subsequent report.

15. The brief of September 22, 2009, whereby the Commission forwarded its observations to the information provided by the State and to the brief of the representatives.

CONSIDERING:

1. That monitoring the compliance with its Orders is an inherent power to the jurisdictional functions of the Court.

2. That Colombia is a State Party to the American Convention on Human Rights (hereinafter referred to as "the Convention" or "the American Convention") since July 31, 1973, and it has acknowledged the mandatory jurisdiction of the Court on June 21, 1985.

3. That Article 68(1) of the American Convention sets forth 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." For that matter, the States must guarantee the implementation of the Court Orders at domestic level.¹

4. That by virtue of the final and unappealable nature of the Court judgments, as set forth by Article 67 of the American Convention, these must be immediately complied with by the State in their totality.

5. That the obligation to comply with the court Orders corresponds to a basic legal principle of international liability of the State, supported by international case law, according to which the States must fulfill their international conventional obligations in good faith (*pacta sunt servanda*) and, as already pointed out by this Court and as set forth by Article 27 of the Vienna Convention on the Law of Treaties, 1969, a party may not invoke the provisions of its internal law as justification for its failure to perform.² The conventional obligations of the States Parties are binding to all of the State's powers and bodies.³

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003, Series C No. 104, par. 131; *Case of Caracazo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of October 23, 2009, Considering Clause No. three, and *Case of Cantoral-Huamani and Garcia-Santa Cruz v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering Clause No. three.

² Cf. *International Responsibility for the Promulgation and Enforcement of laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994, par. 35; *Case of Caracazo v. Venezuela*, supra note 1, Considering Clause No. five, and *Case of Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, supra note 1, Considering Clause No. five.

³ Cf. *Case of Castillo-Petruzzi et al. v. Peru. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering Clause No. three; *Case of Caracazo v. Venezuela*, supra note 1, Considering Clause No. five, and *Case of Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, supra note 1, Considering Clause No. five.

6. That the States Parties to the Convention must guarantee the compliance with the conventional provisions and their own effects (*effet utile*) in the scope of their respective domestic legal systems. This principle applies not only regarding substantive rules of human rights treaties, that is to say, those containing provisions on the protected rights, but also with regard to procedural rules, such as those which refer to the compliance with the Court Orders. These obligations must be interpreted and applied in such a manner that the protected guarantee is truly practical and efficient, taking the very special nature of human rights treaties into account.⁴

7. That the States Parties to the Convention which have acknowledged the adversarial jurisdiction of the Court have the duty to comply with the obligations the Court sets forth. This obligation includes the duty of the State to inform the Court on the measures adopted for the fulfillment of what has been ordered through the Court Orders. The timely observance of the State obligation to inform the Court on how it is complying with each of the Court's orders is critical to assess the status of compliance with the Judgment as a whole.⁵

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8. That with regard to the obligation to transfer half the amount corresponding to the reparations stated in the Term Certificate of Deposit (hereinafter referred to as "CD") in United States dollars and the yield thereof to its maturity date to beneficiary Ingrid Carolina Caballero-Martínez, (*first operative paragraph of the Judgment of reparations and costs*), the State supplied a record dated February 8, 2008, in which the above mentioned beneficiary confirms to have received the amount of \$ 59,043,208.00 (fifty-nine millions, forty-three thousand, two hundred and eight Colombian pesos) from the Ministry of National Defense, through payments into court made to her savings account on February 17 and February 23, and on March 10, 2006. The State further pointed out that on November 19, 2008, it paid the beneficiary an additional amount of USD 500.00 (five hundred United States dollars), corresponding to the difference between the amount for which the above mentioned CD was issued and the amount ordered by the Court in the Judgment. Consequently, the State requested the Court to declare the compliance with the reparation measure regarding the payment of compensations in favor of Ingrid Carolina Caballero-Martínez.

9. That the representatives did not present observations to the compliance with this reparation measure as they do not professionally advise said person.

10. That the Commission took cognizance of the submission of the documents which evidence the payments referred to by the State and it pointed out that Colombia allegedly complied with this reparation measure.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999, Series C No. 54, par. 37; *Case of Caracazo v. Venezuela*, *supra* note 1, Considering Clause No. six, and *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*, *supra* note 1, Considering Clause No. six.

⁵ Cf. *Case of Barrios Altos v. Peru*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering Clause No. seven; *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*, *supra* note 1, Considering Clause No. 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 No. seven.

11. That this Court appreciates the fact that the State has paid half the amount of the CD and the yield thereof to its maturity date to Ingrid Carolina Caballero-Martínez who, on her part, confirmed the payments were made. Based on the information provided by the parties, the Court considers that the State has complied with this reparation measure.

12. That regarding the difference of USD 500.00 (five hundred United States dollars) in the payment due, although the State informed that on November 19, 2008, it had also complied with said obligation, it failed to send a document evidencing so. Therefore, the Court considers that it is necessary that Colombia presents a document evidencing payment attached to its next report. Furthermore, it is necessary that the State takes the necessary steps -as it has already done in this monitoring process- so that the Court is provided a document by means of which the beneficiary may confirm the above mentioned payment or forward her observations in that respect.

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13. That regarding the material obligations in favor of Iván Andrés Caballero-Parra (*first operative paragraph of the Judgment of reparations and costs*), the State informed that: a) on June 12, 2008, it paid Iván Andrés Caballero-Parra the amount corresponding to the CD, through a payment into court into his savings account in the amount of \$ 44,342,183.00 (forty-four millions, three hundred and forty-two thousand, one hundred and eighty-three Colombian pesos); b) on November 19, 2008, it paid the beneficiary the additional amount of USD 500.00 (five hundred United States dollars), in order to complete the compensation he was entitled to, and c) it forwarded copies of the bank transfers vouchers for the yields of the CD, transfers which were effected between December 2006 and January 2008, by means of deposits into the bank account of Mrs. Nodelia Parra, legal representative of the beneficiary. Consequently, the State requested the Inter-American Court to declare the compliance with the first operative paragraph of said Judgment.

14. That in their brief of September 18, 2009, the representatives stated that "they were gathering the necessary information so as to compare it [with] that submitted by the State and what has been ordered by the Court" (*supra* Having Seen clause No. 14). As of the date of this Order, they have not presented observations regarding the payments made in favor of Iván Andrés Caballero-Parra.

15. That the Commission observed that the State did inform and present documents evidencing the above mentioned payments and "except the representatives submit information stating otherwise, it consider[ed] that this reparation measure would be complied with."

16. That regarding the payment of the amount stated in the CD in favor of Iván Andrés Caballero-Parra, the Court reminds that at the monitoring hearing held on February 4, 2008, the representatives stated that to the amount of the CD the State had to add interest in arrears originated from December 12, 2006, date on which the beneficiary attained the legal age. In view of that, in its Order of February 6, 2008, the Court stated that "the State had to timely comply with the reparations ordered in the Judgment, which implies the compensations payment on the date the fall due, in the instant case, the date on which Iván Andrés Caballero-Parra attained the legal age", and "it consider[ed] it necessary that in its

next report the State forward[ed] information with regard to this paragraph pending fulfillment.”⁶ In its report of August 14, 2008, Colombia pointed out that on June 12, 2008, it paid the above mentioned amount of 44,342,183.00 (forty-four millions, three hundred and forty-two thousand, one hundred and eighty-three Colombian pesos) to Iván Andrés Caballero-Parra, and it attached the respective deposit voucher. This State report and the appendixes attached thereto were timely forwarded by the Court to the representatives, who did not present any observations to the amount deposited or claims for other amounts pending with regard to the CD in favor of Iván Caballero, despite the repeated requests made by the Court and the elapsing of more than seventeen months since the above mentioned payment (*supra* Having Seen clauses No. 6, 7 and 14). Therefore, the Court observes that neither the representatives nor the Inter-American Commission have any objections to the amount deposited by the State to said beneficiary, reason for which it concludes that Colombia has complied with this reparation measure.

17. That regarding the difference of USD 500.00 (five hundred United States dollars) between the amount of the CD and the sum ordered in the Judgment, Colombia informed that on November 19, 2008 it paid said difference. However, the Court has not been provided a document evidencing the informed payment; consequently, the State shall forward it with its next report.

18. That at the monitoring hearing held on February 4, 2008, the representatives stated that since December 2006, the State had not delivered Mrs. María Nodelia Parra the monthly yields of the CD issued in favor of her son, Iván Andrés Caballero-Parra. However, in its report of June 2008, the State submitted deposit vouchers to the savings account of Mrs. María Nodelia Parra dated between December 2006 and January 2008. Most of these documents had been delivered to the representatives during the above mentioned hearing and, although more than twenty-one months have gone by since that moment, the representatives did not present their considerations as to the vouchers nor did they claim any other debts pending with regard to the above mentioned yields. In view of the above, the Court concludes that the State has complied with the duty to pay the legal representative of Iván Andrés Caballero-Parra the yields of the CD until January 2008. The Court requests the State to forward, together with its next report, a copy of the documents evidencing payment of the yields corresponding to the term between February and June 12, 2006, date on which the CD was paid.

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19. That regarding the obligation to investigate and punish those responsible for the disappearance and alleged death of the victims (*fifth operative paragraph of the Judgment on the merits*), the State repeated its request to the Court not to mention in any public document the information that the parties provide on the investigation of these facts, as it is in a preliminary stage under gag order. The State again reminded the different investigation measures adopted in the past and the existence of an investigation at the *Unidad de Derechos Humanos de la Fiscalía General de la Nación* [Human Rights Unit of the National Solicitor General]. As to these proceedings, it submitted a brief summary of the most important progress, and it enhanced that since 2006, the investigation was assigned to a new Prosecutor, who has made the proceedings move forward and has effected several

⁶ *Case of Caballero-Delgado and Santana v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering Clause No. eight.

evidentiary proceedings. Colombia repeated that said investigation is still active and that the *Fiscalía* [Public Prosecutors' Office] continues making efforts to identify the perpetrators and other accessories of the facts of the instant case.

20. That regarding the admissibility of the appeal for review of the criminal proceedings of the instant case, the State expressed that: i) it is a special legal mechanism, the filing of which has no possibility of success for the time being; ii) said appeal allows to reopen cases in which final judgments (*res judicata*) have been rendered, provided any of the grounds required by the Code of Criminal Procedure are met. Said appeal seeks the prevalence of the truth over legal certainty and the *res judicata* and, therefore, its admission is exceptional and restrictive; iii) pursuant to the Constitutional Court and to Colombian legislation, in the case of acquittals in proceedings for violations against human rights or serious violations of international humanitarian law, the appeal for review is appropriate when "a clear non-fulfillment of the State obligation to seriously and unbiasedly investigate such violations is set forth by the Order of an international instance of monitoring and control of human rights, the jurisdiction of which has been formally accepted by the Colombian State", and iv) in the instant case, the Court declared that the State did not violate Articles 2, 8 and 25 of the Convention for the disappearance and death of the victims, as it made no reference "to errors in the duty to investigate the proceedings of the instant case", reason for which the Judgment on the Merits rendered by the Court "does not itself constitute the grounds for the appeal for review, as the Court did not declare that the State clearly breached its duty to investigate." Notwithstanding the above, it stated that it is making its best efforts in order to gather evidence which allows to file the appeal for review based on the appearance of new evidence, as set forth by the Code of Criminal Procedure in force. The State expressed that "it is aware that in 1990, the Second [Court] of Valledupar, did not have the time and sufficient evidence to punish the persons related to that investigation, who have been repeatedly pointed out as responsible for the facts and who at this moment are protect[ed] by the principle of *res judicata*."

21. That the representatives argued that, as it arises from the criminal case file, "there has been very little procedural activity during this year [2009] and there have been excessive and unjustified delays in the proceedings." Even though some measures have been ordered, such as the location of persons and the rendering of statements by several people, from the beginning of the year only one statement has been received and one resume has been analyzed. The rest of the ordered evidence has not been effected. The representatives emphasized the delay in the gathering of evidence and provided examples of several proceedings ordered in years 2007 and 2008, which have not been performed to date. They further stated that the investigation can not depend only on the statements of Gonzalo Arias-Alturo, who has presented different versions of the facts, and that the prosecutor must show progress on said proceedings in a serious and timely manner. Additionally, they emphasized that at some occasions "the participation of the civil party has been hampered by an order of the prosecutor", and as an example they mentioned the execution of a proceeding the civil party was not called to witness. As to the appeal for review, the expressed that the Court has already observed that the State arguments are not valid in the sense that the State can not comply with its international obligations based on its domestic set of rules. Finally, as to the investigation instituted by the military criminal jurisdiction on the alleged military participants in the facts, it has no subject matter jurisdiction over cases as the instant case. Therefore, the State must retake the investigation of any person whose responsibility in the facts has been ascertained by such jurisdiction and guarantee that the new investigations are developed in accordance with the principles of due process of law and right to justice.

22. That the Commission argued that the State failed to submit thorough information which “allows to infer the status of compliance [with] the [J]udgment[s] or further details on the appeal for review of the 1990 acquittal.” Furthermore, it emphasized the passage of more than eleven years since the issue of the Judgment of reparations and costs, and it argued that it considered it was necessary that the State adopted measures to remove the obstacles which keep on delaying the compliance with what has been ordered.

23. That the Court observes that since the last monitoring Order to date, that is, for more than 21 months, the State failed to provide information on any important progress of the investigation started at the *Unidad de Derechos Humanos de la Fiscalía General de la Nación* [Human Rights Unit of the National Solicitor General] as to the clarification of the facts and the eventual ascertainment of criminal liabilities.

24. That, furthermore, the Court considers that the information submitted by the State on the activity developed in this investigation is insufficient and does not include further details on the proceedings effected, such as the date thereof, purpose or results; neither has it forwarded copies of the main records or any other document which allows the Court to assess what has been done and the alleged progress indicated in the reports.

25. That the Court additionally observes that the representatives have pointed out that there are proceedings which have been ordered one or two years ago by the acting prosecutor, but they have not yet been performed. Furthermore, the representatives stated that the procedural progress by the civil party in the domestic process was allegedly hampered. As to that, the Court remembers that in prior Orders in the instant case, as well as in its case law, it has stated that the victims next of kin shall have total access and capacity to act in all the stages and instances of said investigations, in accordance with the domestic law and the rules of the American Convention.”⁷

26. That with regard to the appeal for review, the Court again states that in the instant case it found a violation against the rights to life and personal liberty, set forth in Articles 4 and 7 of the Convention, in connection with Article 1(1) of said treaty, and that, in accordance with its case law, the duty to investigate the facts on the part of the State arises from said violations. On the other hand, the Court considers it is desirable to repeat what it has stated in prior Orders⁸ in the sense that:

[...] as set forth in its case law, [...] it is inadmissible to appeal to any obstacles of domestic law by means of which it is expected to prevent the investigation and the punishment of those responsible for violations against human rights [...]. Any interpretation on the contrary would deny the effective application of the American Convention provisions in the domestic set of rules of the States Parties, and the international proceeding would be deprived of one of its main functions, as, instead of conducting to justice, it would be promoting the impunity of those responsible for such violations [...].

In accordance with the above, Colombia cannot invoke provisions of domestic law, such as the procedural figure of preclusion of the criminal investigation, in order to

⁷ Cf. *Case of Caballero-Delgado and Santana v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, Considering Clause No. eleven, and *Case of Caballero-Delgado and Santana v. Colombia*, *supra* note 6, Considering Clause No. four.

⁸ *Case of Caballero-Delgado and Santana*, *supra* note 7, Considering Clauses No. nine and twelve, and *Case of Caballero-Delgado and Santana*, *supra* note 6, Considering Clause No. 24.

prevent access to justice and to obstruct compliance with the Orders of the Court concerning the investigation and punishment of those responsible for serious human rights violations, in the terms of the conventional obligations agreed upon by the States [...].

27. That based on what has been informed by the parties, the Court considers it is necessary that the State, in its next report, provides further information regarding the measures it has adopted in order to gather evidence which allows to progress in the above mentioned investigation and, should it be the case, in the filing of an appeal for review. In that sense, it considers that it is indispensable that Colombia forwards thorough and updated information regarding the investigation started at the *Unidad de Derechos Humanos de la Fiscalía General de la Nación* [Human Rights Unit of the National Solicitor General], taking into account what has been indicated herein and in the observations made by the Inter-American Commission and the representatives in their respective briefs.

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28. That regarding the obligation to locate the mortal remains of the victims and the delivery thereof to their next of kin (*fourth operative paragraph of the Judgments of reparations and costs*), the State informed that after the Court Order of February 6, 2008, the *Fiscalía General* [Solicitor General], with the cooperation of the "Judge for Civil and Criminal cases of San Alberto [...], of the [Investigation Technical Center] and a specialized team, performed two exhumations at the ossuaries of San Alberto Magno Parish in San Alberto, on February 21, 2008 and on June 11, 2008", with negative results. At present the State is taking the steps necessary to locate the spot where the victims were possibly buried and it shall continue to make its best efforts in order to find the mortal remains of Isidro Caballero-Delgado and María del Carmen Santana.

29. That the representatives pointed out that, even though the search proceedings were effected in January, February and June, 2008, they have not yielded positive results. Among other reasons, that was due to the lack of an organized and systematic search plan, according to the report of the *Cuerpo Técnico de Investigación* [Technical Team of Investigation, hereinafter referred to as CTI, pursuant to its Spanish acronym] dated September 19, 2008. They reminded the problems of the search performed in January 2008, such as the lack of credibility in the declaration of the witness who contributed with search elements as well as the non-compliance with the CTI recommendations. They stated that the proceedings were not in conformity with the patterns of both international and national protocols such as the National Search Plan elaborated by the *Comisión Nacional de Búsqueda de Personas Desaparecidas* [National Commission for the Search of Disappeared Persons]. On the other hand, they informed that on August 14, 2009, the case prosecutor delegated the responsibility of the search process to the *Centro Único Virtual de Identificación* [Virtual Identification Center], an organization which supports the Justice and Peace Unit and the Human Rights Unit of the Prosecutor's Office. Consequently, the representatives expressed their concern on the fact that the search activities are not coordinated or supervised by the permanent assessment of the prosecutor in charge of the investigation. Additionally, they expressed that there have been obstructions to the participation of the civil party in the search proceedings such as, for instance, the lack of a timely summons so that it may attend in the proper conditions. Finally, they argued that it is critical that the existing mechanisms such as the National Search Plan are used in the search activities, and that a methodological search plan be developed with the support of the CTI in order to find the disappeared victims.

30. That the Commission noticed the willingness expression of the State. However, it noticed the lack of information on the progress and the planning of the search proceedings. Finally, it repeated that the obligation to locate the mortal remains of the victims is essential and it must be fulfilled with the highest degree of seriousness.

31. That the Court takes cognizance of two searches carried out after the Order of February 6, 2008, which had no positive results or progress in the location of the remains of Isidro Caballero-Delgado and María del Carmen Santana.

32. That the last search initiative by the State took place in June, 2008. More than seventeen months have gone by since that time, without the State having provided any information on the execution of a new search or the planning of activities aiming to comply with this obligation. The Court observes that before the lack of results or substantial progress in this respect, Colombia still fails to indicate in its reports which measures it is going to adopt in order to comply with the search for the victims mortal remains. The Court enhances the need to continue to perform the ordered search in a systematic and organized manner. For that matter, task planning is necessary to locate the mortal remains of the victims, taking into account the searches performed, the evidence included in the case file and the observations of the victims representatives.

33. That, on the other hand, the Court observes that even though the representatives expressed the State in several occasions their intention to cooperate with the search initiatives, they stated they allegedly faced difficulties to be able to participate in some of the proceedings related thereto.

34. That based on the above considerations, the Court considers it is necessary that in its next report the State makes reference to the aspects pointed out in this Order and in the briefs of observations submitted by the representatives regarding these proceedings, and that it informs the Court on the measures it shall adopt in a next future in order to comply with this obligation.

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35. That, finally, the Court considers it is necessary to notice that it is indispensable that the representatives forward without delay their observations on the information supplied by the State and which was requested by this Court with regard to the compliance with the ordered reparation measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its Orders and in accordance with Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of the Statute and 30 and 63 of its Rules of Procedure,⁹

DECLARES:

1. That the State has complied with the first operative paragraph of the Judgment of reparations and costs, with regard to:

a) the transfer of half the amount corresponding to the reparations stated in the Term Certificate of Deposit in United States dollars and the yield thereof to its maturity date to Ingrid Carolina Caballero-Martínez, in accordance with Considering Clause No. eleven herein; except for the forwarding of documents evidencing the payment of the difference of USD 500.00 (five hundred United States dollars), as well as the beneficiary statement in that respect (*supra* Considering Clause No. twelve), and

b) the payment of the new Term Deposit Certificate in United States dollars with the amount corresponding to half of the reparations stated in the CD which expired on September 1, 2004 and the yields thereof, in favor of Iván Andrés Caballero-Parra, in accordance with Considering Clause No. sixteen herein; except for the forwarding of documents evidencing the payment of the difference of USD 500.00 (five hundred United States dollars) and the payment of the yields of the Term Certificate of Deposit between February and June, 2008 (*supra* Considering Clauses No. seventeen and eighteen).

2. That the Court shall keep the monitoring of compliance proceedings open until the fulfillment of the items pending compliance in the instant case, to wit:

a) the investigation and punishment of those responsible for the disappearance and alleged death of the victims, in accordance with Considering Clauses No. 23 to 27 herein, and

b) the location of the victims mortal remains and the delivery thereof to their next of kin, in accordance with Considering Clauses No. 31 to 34 herein.

AND DECIDES:

1. To request the State to adopt all the measures necessary in order to immediately and effectively comply with the Judgment on the merits rendered on December 8, 1995, the

⁹ Rules of Procedure approved by the Court in its XLIX Regular Session, held from November 16 to November 25, 2000 and partially amended during the LXXXII Regular Session, held from January 19 to January 31, 2009.

Judgment of reparations and costs of January 29, 1997 and this Order, in accordance with Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit before the Inter-American Court of Human Rights, no later than March 17, 2010, a report in which it states all the measures adopted in order to comply with the reparations ordered by this Court which are still pending compliance, in accordance with Considering Clauses No. 12, 17, 18, 27 and 34, and with the operative paragraphs of this Order.

3. To request the victims representatives and their next of kin and the Inter-American Commission on Human Rights to present their observations to the State report mentioned in the preceding operative paragraph, in the term of four and six weeks, respectively, from the reception of said report.

4. To continue to monitor the paragraphs pending compliance of the Judgment on the merits of December 8, 1995 and the Judgment of reparations and costs of January 29, 1997.

5. To request the Court Secretariat to serve notice of this Order upon the State, the representatives of the victims and their next of kin, and the Inter-American Commission on Human Rights.

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