

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

**OF MAY 18, 2010**

**CASE OF ESCUÉ ZAPATA V. COLOMBIA**

**MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The Judgment on the merits, reparations and legal costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on July 4, 2007, by which the State was ordered to:

[...]

8. [...] pay the amounts set in [the] Judgment as compensation for pecuniary damages, non pecuniary damages, and reimbursement of costs and expenses within one year as from notice of [the] Judgment, [...].

9. [...] conduct effectively the necessary criminal proceedings, still in process and all future investigations so that those responsible for the facts of the instant case be identified and punished as provided by law, [...].

10. [...] allocate the amount established in paragraph 168 of th[e] Judgment, within one year as from notice of th[e] Judgment, to a fund named after Germán Escué Zapata, so that the Community of Jambaló can invest it in works or services of collective interest for their benefit [...].

11. [...] grant to Myriam Zapata Escué, as soon as practicable, a scholarship for university studies, [...]

12. [...] provide, free of charge, the specialized medical, psychiatric and mental appropriate treatment required by Mrs. Etelvina Zapata Escué, Myriam Zapata Escué, Bertha Escué Coicue and Francya Doli Escué Zapata and Mr. Mario Pasu, Aldemar Escué Zapata, Yonson Escué Zapata, Ayénder Escué Zapata, Omar Zapata and Albeiro Pasu [...].

13. [...] publish, within six months, as of notice of the Judgment, the pertinent parts established in paragraph 174 of the [J]udgment.

14. [...] organize a public act to acknowledge international responsibility for the facts of this case, within one year as from notice of [the] Judgment [...].

2. The Judgment on the Interpretation of the Judgment, delivered by the Court on May 5, 2008, by which it was decided:

1. To declare admissible the request for interpretation of the Judgment on the merits, reparations, and cost delivered on July 4, 2007.

2. To determine the scope of the provisions of paragraph No. 166 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraph No. 15<sup>1</sup> of the Judgment [on Interpretation].

3. To determine the scope of the provisions of paragraph No. 168 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraphs No. 20 and 21<sup>2</sup> of the Judgment [on Interpretation].

4. To determine the scope of the provisions of paragraph No. 170 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraphs No. 26 to 29<sup>3</sup> of the Judgment [on Interpretation].

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<sup>1</sup> In that respect, the Judgment on Interpretation, in its pertinent parts, points out that:

15. In the instant case, the Court states that, regarding the reparation measures ordered, the expression “the findings reached in [the] proceedings” refers to the final judicial decisions adopted in the criminal proceedings whereby these are concluded and the main controversy decided, whether convicting or acquitting the defendant. These decisions must be made public so that the Colombian society and the Paez Community may learn the truth about the facts under investigation and, if appropriate, the identity of those accountable for such facts. Likewise, the victim’s next of kin and the above Community must be properly informed about the progress of the proceedings, particularly by the prosecutors.

<sup>2</sup> The Judgment on Interpretation provides that:

20. In determining reparations, the Court deemed it relevant to redress the memory of Mr. Escué-Zapata through the execution of works for the benefit of the Community of which he was a leader. For that purpose, which was clearly established in the Judgment, the State must allocate the amount of US\$ 40,000.00 (forty thousand United States dollars) to the creation of a fund.

21. The manner in which the State will make the foregoing reparation is to be decided by the State itself, as long as the spirit of the reparation meant to redress the victim’s name be observed and the Community to which he belonged may benefit from works or services thereby chosen, without the State interfering with the purposes for which the Community may want to use such funds.

<sup>3</sup> In its pertinent part, the Judgment on Interpretation indicated that:

26. The Court considers that the aim of this measure is at redressing the suffering and difficulties Myriam Zapata-Escué has endured. It is in the beneficiary’s particular context that the suitability and efficacy of the measures needed to make the reparation effective are to be assessed.

27. In this respect, the Court highlights that the admission of Myriam Zapata-Escué into public university must be in accordance with its regular selection processes. Notwithstanding, the State must guarantee that she may fully avail herself of the special protection measures regarding cultural, ethnical, social, and economic diversity that the Colombian university system may establish in relation to its selection processes. In this regard, if appropriate, the beneficiary shall receive support through courses or other training activities, which may be previous to her university studies or simultaneous with them, in order to facilitate her university studies and prevent her from dropping out of university. Likewise, if the beneficiary is not admitted into university or decides not to undertake university studies, the State must offer her the option to receive technical or technological training in a public institution of higher education, to be jointly chosen by the beneficiary and the State.

28. As to the duration of the State’s obligation to cover the expenses of the higher studies undertaken by Myriam Zapata-Escué, it shall depend on the regulations in force at the institution of higher education chosen and on the institutional criteria applicable to students in a similar situation. Should the institution requirements set a maximum period of time to obtain a degree or a minimum academic average or any similar provisions, the beneficiary shall comply with them, under conditions which consider her cultural diversity, as stated in the foregoing paragraph. Likewise, the application of these criteria shall be subject to the special and preferential academic support measures which are necessary for proper integration of persons belonging to minority ethnic groups into the national education system.

29. Regarding the method of payment of the scholarship, the Court points out that it may vary according to the nature of the activities supported by such grant, which shall cover all expenses related to the beneficiary’s higher studies and shall be disbursed periodically, as these studies may only be completed over time. Disbursement of the scholarship amount shall therefore be made according to the method established and shall be divided into partial payments. Hence, in principle, it is not to be made in a single payment. That notwithstanding, a different method may be agreed upon by the State and the beneficiary, once the latter has come of age.

5. To determine the scope of the provisions of paragraph No. 188 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraph No. 34<sup>4</sup> of the Judgment [on Interpretation].

[...]

3. The brief of December 26, 2007, by which the Republic of Colombia (hereinafter, the "State" or "Colombia") considered that "it [...] should not publish in any newspaper the name of [the] people, who have not been convicted by the criminal courts, since it would be like they were being marked as individually responsible for some crimes, when no condemnatory judgment has been issued yet".

4. The note of the Secretariat of the Court (hereinafter, the "Secretariat") of February 7, 2008, by means of which, following the instructions of the Tribunal, it informed the State that it was authorized to refrain from making public the complete names of the people indicated in the pertinent paragraphs of the Judgment".

5. The briefs of February 23, August 25 and September 23, 2009, and April 28, 2010, by means of which the State informed on the progress made in the compliance with the Judgment.

6. The briefs of April 23 and October 28, 2009, by means of which the representatives presented their observations to the State's reports.

7. The briefs of May 8, October 29 and November 5, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted its observations to the report of the State and the briefs presented by the representatives.

8. The Order of the Court's President of April 29, 2010 by means of which it convened the State, the representatives and the Inter-American Commission to a private hearing on monitoring compliance with the Judgment, in order to analyze the implementation of the measure of reparation ordered in operative paragraph twelve of the Judgment, related to the medical, psychiatric and psychological treatment, as well as similar measures of reparation ordered in another seven cases<sup>5</sup>.

9. The private hearing on monitoring compliance held on May 22, 2010 at the seat of the Tribunal<sup>6</sup>.

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<sup>4</sup> The Court indicated, in the Judgment on Interpretation, in that respect, that:

34. [...] [H]as noted that according to the above paragraph it is clear that it is Etelvina Zapata who must receive payment of the amount set as costs and expenses. Such payment may be personally collected by her or a person appointed by her for that purpose, pursuant to the provisions of applicable domestic legislation.

<sup>5</sup> *Case of the 19 Tradesmen V. Colombia*. Merits, Reparations and Legal Costs. Judgment of July 5, 2004. Series C N° 109; *Case of Gutierrez Soler V. Colombia*. Merits, Reparations and Legal Costs. Judgment of September 12, 2005. Series C N° 132; *Case of the "Mapiripán Massacre" V. Colombia*. Merits, Reparations and Legal Costs. Judgment of September 15, 2005. Series C N° 134. *Case of the Massacre of Pueblo Bello V. Colombia*. Merits, Reparations and Legal Costs. Judgment of January 31, 2006. Series C N°140; *Case of the Ituango Massacres V. Colombia. Preliminary Objections, Merits, Reparations and Legal Costs*. Judgment of July 1, 2006. Series C N° 148; *Case of the Rochela Massacre V. Colombia*. Merits, Reparations and Legal Costs. Judgment of May 11, 2007. Series C N° 163 and case of Valle Jaramillo et al V. Colombia. Merits, Reparations and Legal Costs. Judgment of November 27, 2008. Series C N° 192.

<sup>6</sup> To the private hearing, there appeared: a) on behalf of the Colombian State: Vice Minister of Multilateral Affairs of the Ministry of Foreign Affairs, Adriana Mejía Hernández; Technical Vice Minister of the Ministry of Social Protection, Carlos Jorge Rodríguez; Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, Ángela Margarita Rey Anaya; Head of the International Cooperation and Foreign Relations Office of the Ministry of Social Protection, Gloria Beatriz Gaviria; Management National Leader of CAPRECOM, Diego Romero and Coordinator of the Inter-institutional Operative Group, Felipe Medina Ardila; b) on behalf of the victims'

**CONSIDERING THAT:**

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.
2. Colombia has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since July 31, 1973, and that it accepted the binding jurisdiction of the Court on June 21, 1985.
3. Article 68.1 of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level<sup>7</sup>.
4. In consideration of section 67 of the Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.
5. The obligation to comply with the rulings of the Tribunal conforms to a basic principle of the law on the International responsibility of States, under which States are required to fulfill their International treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility<sup>8</sup>. The treaty obligations of States Parties are binding on all State powers and organs.<sup>9</sup>
6. The States Parties to the Convention must ensure compliance with its conventional provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are

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representatives in the eight Colombian cases before the hearing: i) on behalf of the Jose Alvear Restrepo Lawyers' Association (*Colectivo de Abogados Jose Alvear Restrepo*): Rafael María Barrios Mendivil, Jomary Liz Ortigón Osorio, Juliana María Benavides Castillo, Arturo Salgado Garzón, Angie Lizeth Fernández Gómez, Pilar Silva Garay, Dora Lucy Arias, Liliana Ambuila, Sandra Gamboa Rubiano and Luis Alfonso Fajardo Sánchez; ii) on behalf of the Interdisciplinary Group for Human Rights: María Victoria Fallon Morales, Patricia Fuenmayor Gómez, Juliana Bravo Valencia, Luz Marina Monzón Cifuentes, Miladis del Carmen Restrepo Torres and Carlos Rodríguez Mejía; iii) on behalf of the Colombian Jurists Commission: Diego Fernando Abonía Vergara, José Daniel Álvarez, Liz Arévalo, Viviana Rodríguez Peña and Oscar Javier Carbonell Valderrama, and iv) on behalf of the Center for Justice and International Law (CEJIL): Viviana Krsticevic and Gisela de León; and c) on behalf of the Inter-American Commission on Human Rights: Lilly Ching Soto and Karla Quintana Osuna.

<sup>7</sup> See *Case of Baena Ricardo et al V Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Saramaka People V. Surinam. Monitoring Compliance with Judgment*. Order of the Court's President of April 20, 2010, considering clause three; and *Case of Heliodoro Portugal V. Panama. Monitoring Compliance with Judgment*. Order of the Court's President of April 20, 2010, Considering clause three.

<sup>8</sup> See International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N° 14, para. 35; *Case of the Saramaka People V. Surinam*, supra note 7, considering clause five and *Case of Heliodoro Portugal V. Panama*, supra note 7, considering clause four.

<sup>9</sup> See *Case of Castillo Petruzzi et al V. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 1999. Series C N° 59, considering clause three; *Case of the Saramaka People V. Surinam*, supra note 7, considering clause five and *Case of Heliodoro Portugal V. Panama*, supra note 7, considering clause four.

intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties<sup>10</sup>.

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7. As to the obligation to pay the amounts set in this Judgment as compensation for pecuniary damages, non pecuniary damages, and reimbursement of costs and expenses (*operative paragraph eight of the Judgment*), the State informed that "by means of Resolution 2091 of May 27, 2008 of the Ministry of National Defense, it was ordered compliance with the payment of the compensations and legal costs and expenses and that the payment was effectively made in June 2008". Therefore, it requested the Tribunal to consider this aspect fulfilled.

8. The representatives noted that "the Colombian State made the payment of the legal costs, expenses and compensations in favor of the next-of-kin of the victims mentioned in the Judgment and, as a result, this measure of reparation must be considered complied with".

9. The Commission "observ[ed] with great pleasure the information furnished by the parties in relation to the payment of the sums corresponding to pecuniary and non-pecuniary damage and legal costs and expenses, [...] as a consequence of which, this aspect of the judgment must be considered fulfilled".

10. According to the information submitted by the parties, the Tribunal notes that the State has fully complied with operative paragraph eight of the Judgment.

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11. As to the obligation to conduct effectively the necessary criminal proceedings, still in process and all future investigations so that those responsible for the facts of the instant case be identified and punished as provided by law (*operative paragraph nine of the Judgment*), the State informed that two criminal proceedings are being conducted: one proceeding was instituted upon request of the Solicitor General's Office (Human Rights National Unit) and the second proceeding was brought before the Superior Tribunal of Popayan.

12. Regarding the first proceeding, the State mentioned that "between March and April 2009, the arrest warrants issued against [10] persons were enforced [...], who were later on included in [said] proceeding and brought before the court that is conducting the investigation". The State informed that "On April 13, 2009 it was defined the procedural status of [two of the apprehended persons], against whom a preventive detention order, without the benefit of release from prison, was issued, for the alleged commission of the illicit acts of aggravated murder, aggravated kidnapping with extortion, torture, aggravated theft and damage to someone else's property". In addition, it was informed that on May 5, 2009, "it ordered preventive detention orders against [another three of the apprehended persons] for [the alleged commission] of similar illicit acts". Moreover, on May 7, 2009, "it was defined the procedural status of [another two of the apprehended persons] for the alleged involvement in the crimes of aggravated murder, aggravated kidnapping with extortion, torture, aggravated theft and damage to someone else's property" and on May 8, 2009, "it was defined the procedural status [of another three persons] for the crimes already

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<sup>10</sup> See *Case of Ivcher Bronstein V Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Saramaka People V. Surinam*, supra note 7, considering clause six and *Case of Heliodoro Portugal V. Panama*, supra note 7, considering clause five.

mentioned". Based on the foregoing, the State indicated that "the investigation to determine other possible perpetrators of the facts to which the judgment refers, is being seriously and diligently conducted".

13. As to the second proceeding, the State asserted that "on June 9, 2008, the Second Criminal Trial Court for the Santander Circuit of Quilichao condemned three law enforcement officers [...] for the murder of Germán Escué Zapata, and sentenced them to 18 years' imprisonment and imposed other accessory penalties. In that respect, the State indicated that the individuals, who were convicted, appealed the decision and the remedy is pending before the Superior Tribunal of Popayan.

14. The representatives noted that "some of the results reported from the development of the investigations conducted by the criminal courts are relevant and decisive [...]", including the judgment of June 9, 2008, delivered by the Second Criminal Trial Court for the Santander Circuit of Quilichao. They further alleged that "likewise [...] it is of great value that the State had ordered the unofficial conduct of an investigation at the Human Rights National Unit of the Solicitor General's Office, in order to examine the commission of other possible illicit acts and identify other alleged responsible".

15. The Commission "positively valu[ed] the significant progress made in the compliance with the legal obligations, which have allowed rendering a condemnatory judgment in relation to three responsible". Moreover, it pointed out that "it [was waiting for] information related to the result of the motion of appeal that is pending decision", "in order to [...] present the corresponding observations". Furthermore, "it valu[ed] the progress made [...]" in relation to the proceedings of the Solicitor General's Office which allows the identification of another alleged responsible for the facts.

16. The Tribunal values the information furnished by the State, inasmuch as it shows the intention to comply with its international obligations to investigate and punish the responsible for the human rights violations declared in the instant case. As a result, the Tribunal declares that the State has made significant progress in the compliance with this measure of reparation and waits for updated information on the proceedings pending resolution.

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17. As to the creation of a fund named after "Germán Escué Zapata", which the Community of Jambaló [should have invested it] in works or services of collective interest for their benefit (*operative paragraph ten of the Judgment*), the State informed that "compliance with this measure of reparation was achieved with the payment, in cash, to the community of the amount ordered by the Court". In this respect, the State alleged that "the community of Jambaló decided, at the Assembly and with the participation of the victim's next-of-kin, to [use] the money of the measure of reparation to buy a "chiva" open bus (rural transport for diversified use in Colombia) [to transport] the members of the community in view of the lack of means of transport in Jambaló". The State indicated that the payment "was authorized by means of Resolution 5203 of December 5, 2008, and payment was effectively made on December 30, 2008". Based on the foregoing, the State requested to consider this aspect fulfilled.

18. The representatives noted that the State "made the allocation of the amount determined in the Judgment". In spite of this, they noted that "there were some difficulties when calculating the dollar exchange rate and other aspects, which led the State to demand, without giving clear reasons, the refund of a percentage of the money, a situation that has caused concern and discontent in the family of Germán Escué and in the Nasa people".

19. The Commission noted with satisfaction the measures adopted by the State in this regard. However, in relation to the question made by the representatives regarding the refund of a percentage of the money, it indicated that "it waits for the State to present information regarding this circumstance, in order to consider this aspect of the Judgment to be fulfilled".

20. As to the observation made by the representatives, in relation to the fact that the State would have requested the refund of a percentage of the money, Colombia informed that it forwarded to the representatives a communication in which "it explained the procedure followed to convert the sum ordered in the Judgment to pesos [and] that the Governor of the community of Jambaló did not make any observation to the explanation provided and refunded the corresponding sum of money to the Ministry of National Defense ". The Commission found this explanation to be, in principle, reasonable. Moreover, the information provided by the State was not contested by the representatives in their observations to the State's report and there is no record in the case file showing how the State did not comply with this measure of reparation.

21. Based on the foregoing, the Court declares that the State has complied with operative paragraph ten of the Judgment.

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22. As to the obligation to grant to Myriam Zapata Escué a scholarship for university studies (*operative paragraph eleven of the Judgment*), the State pointed out that "the Ministry of National Education entered into an inter-administrative agreement with the Colombian Institute of Educational Credit and Technical Studies Abroad (ICETEX) [...], to establish an Administration Fund named after Escué Zapata - Judgment of the Inter-American Court", by means of which the amount of two hundred and seven million six hundred and ninety-four thousand four hundred and eighty-two pesos (\$207.694.482,00) was delivered "to guarantee full coverage of the academic, lodging and transport expenses that Myriam Zapata Escué may incur into from the city where she studies to the community, during the length of the career she chose to study, that is, five years". As a result, it requested the Court to consider this measure of reparation to be fulfilled.

23. The representatives did not forward any observations in relation to the information recently presented by the State, despite the Secretary, following instructions from the President, requested them to present such observations on two occasions<sup>11</sup>.

24. The Commission did not present observations in that regard either.

25. The Court values the steps taken by the State in order to grant to Myriam Zapata Escué a scholarship for university studies, as ordered in the Judgment. However, it requests the representatives and the Inter-American Commission to forward the observations to what was informed by the State, after which the Tribunal shall assess whether this operative paragraph has been fulfilled.

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26. As to the obligation to provide the specialized medical, psychiatric and mental appropriate treatment required by Mrs. Etelvina Zapata Escué, Myriam Zapata Escué, Bertha Escué Coicue and Francya Doli Escué Zapata and Mr. Mario

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<sup>11</sup> Secretariat's notes of April 28, 2010 (REF: CDH-10.171/220) and of May 12, 2010 (REF.: CDH-10.171/224).

Pasu, Aldemar Escué Zapata, Yonson Escué Zapata, Ayénder Escué Zapata, Omar Zapata and Albeiro Pasu (*operative paragraph twelve of the Judgment*), the Court received information from the State, the victim's representatives and the Inter-American Commission, within the framework of the private hearing on monitoring compliance that was jointly held with other cases (*supra* Having Seen clause 9).

27. The Tribunal shall decide, in time fashion, on all the information received so far and on the information that the parties offered to forward to the Court at said hearing on the procedure to monitor compliance.

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28. As to the obligation to publish the Judgment in the official gazette and in another newspaper with national circulation (*operative paragraph thirteen of the Judgment*) the State informed that, after the meeting held with the victim's next-of-kin and their representatives, they agreed on "the publication of a text different to the one ordered [...] in [the] Judgment, in an additional offspring and with pictures. The foregoing, in order to facilitate the reading and access of the society in general". This publication "was made on September 14, 2008, in the Sunday edition of El Tiempo newspaper"<sup>12</sup>. Likewise, as to the publication translated in Nasa Yuwe language, the State pointed out that "it hired two linguists [...] who translated the Judgment into the indigenous language, which was published on December 14 in 'El Liberal' [local] newspaper"<sup>13</sup>. Therefore, it requested the Court to consider this measure to be partially complied with, in view of the fact that the publication in the Official Gazette is still pending.

29. The representatives noted that "[t]he publication of the summary of the [J]udgment, the text of which was agreed on between the parties, was made in Spanish in a newspaper with widespread national circulation and in the original language of the Nasa people, in a newspaper with regional circulation". They further alleged that "[d]espite this and going back to the information furnished in the State's report, the publication of the [J]udgment in the Official Gazette is still pending".

30. The Commission "positively valu[ed] the information presented regarding the publication of the Judgment" and pointed out that "it hopes that the State proceeds with the publication of the pertinent parts of the Judgment in the official gazette".

31. The Court values the steps taken by the State in order to publish the pertinent parts of the Judgment, especially in relation to the agreement reached between the State and the representatives in that regard. In the Tribunal's opinion, the publication is a great progress, considering not only the Spanish publication made in the newspaper with national circulation and the *Nasa Yuwe* publication made in the regional newspaper, but also the summary of the Judgment that, after have been drafted without using legal terms, it is more accessible and easy-reading material for the population in general, reaching the efficiency desired of such measure. The Court highlights the importance of publishing the Judgment in the language of the Nasa people, since it brought the work of international bodies closer to the indigenous people and showed the repairing and symbolic effect of such measure within the community. As a result,

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<sup>12</sup> See, original Offspring "Compliance with Judgment of Inter-American Court of Human Rights. Case of Germán Escué Zapata". "El Tiempo" Newspaper, September 14, 2008 (records on monitoring compliance, Volume I, pages 73 to 76).

<sup>13</sup> See, Original copy of the publication of 'El Liberal' newspaper of December 21, 2008, page 2A, in which it was published the text in *Nasa Yuwe*, translated by Fernando Uino Cuetia and Maximiliano Pilcue (records on monitoring compliance, Volume I, pages 77 and 78).



the Court considers that such measure of reparation has been partially complied with.

32. Moreover, the Tribunal looks forward to the publication of the Judgment in the Official Gazette of Colombia, for which it keeps open the procedure to monitor compliance in relation to this aspect and requests the State to fully comply with said measure of reparation and to inform the Court when this happens.

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33. As to the public act to acknowledge international responsibility (*operative paragraph fourteen of the Judgment*), the State informed that “on August 21, 2009, it organized the public act in *Vereda de Vitoyó* – community of Jambaló (Department of Cauca). The act was presided over by the Vice Minister of Interior and the Vice Minister of Multilateral Affairs. In that respect, the State forwarded photographs and videos related to the activities carried out during such act<sup>14</sup>. Moreover, the State pointed out that, before said act, it was agreed on with the victim’s next-of-kin, the Governor of the community of Jambaló and the José Alvear Restrepo Lawyers’ Association (*Colectivo de Abogados José Alvear Restrepo*), the most appropriate measures to comply with this measure.

34. According to what the State informed regarding the act to acknowledge responsibility, the Court notes the following items: the delegates of the local and national Government<sup>15</sup> were escorted by the Indigenous Guard (*Guardia Indígena*)<sup>16</sup> from Loma Redonda to Vitoyó Indigenous Reserve, where the act was organized; the act took place in an open field and a podium was mounted to place the authorities and the victim’s next-of-kin; means of transport were arranged to assemble, approximately, 3000 people from different indigenous reserves in the Cauca to *Vereda Vitoyó*; it was also coordinated the participation of traditional physicians to do a spiritual harmonization job in said event; provisions were bought to feed the assistants; the Indigenous Guard (*Guardia Indígena*) was in charge of the security as traditional authority of the Community, and it was agreed that there would be no presence of law enforcement officers within a perimeter of two kilometers; it was also agreed to disseminate the event in the local mass media; and cards were delivered to remember the event and the development of cultural activities. Furthermore, it was ordered the translation from Spanish into *Nasa Yuwe* of the comments made. The following people participated in the event: Etelvina Zapata and Mario Pasu, parents of Germán Escué; Myriam Escué, daughter; Francia, Ayender, Omar, Alveiro, Aldemar and Yoonson, siblings and Bertha Escué Coicue, his partner until his death.

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<sup>14</sup> The State forwarded a compact disc that contains photographs and short videos of the day of the event carried out to acknowledge responsibility (record on monitoring compliance, Volume I).

<sup>15</sup> The following people attended the event: the Vice Minister of Interior, the Vice Minister of Multilateral Affairs, the Governor of the Cauca Department, the Attorney General of the Cauca Department, the Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, the Director of Roma, Minorities and Indigenous Affairs of the Ministry of Interior and Justice and the Mayor of the Jambaló Municipality.

<sup>16</sup> In the State’s opinion, according to information gathered from the web page of CRIC (Indigenous Regional Council of Cauca):

“The Indigenous Guard is a civil group made up of men and women. It is conceived as an ancestral body and as an instrument of resistance, unity and autonomy in defense of the territory and the life plan of the indigenous communities. It is not a police structure, but a humanitarian mechanism for civil resistance. Its intention is to protect and disseminate their ancestral culture and the exercise of their right. Its power derives from the assemblies held at the Community; therefore, it directly depends on indigenous authorities. It was created to defend their people against all individuals who attack them, but such defense is put up with a *chonta* or swagger stick, which brings symbolic value to the guard”.

35. According to what was informed by the State, during the act of acknowledgment of responsibility, the Vice Chancellor stated in her speech that:

Regarding the facts, the Colombian State, like it did before the Court, acknowledges before the next-of-kin, the Paez people and before the national and international community, the responsibility for the violation of the human rights to life, to humane treatment, to personal liberty, and to the inviolability of private residence of Germán Escué Zapata.

Furthermore, it acknowledges its responsibility for the violation of the rights to humane treatment, right to a fair trial and right to judicial protection to the detriment of Mrs. Etelvina Zapata, Mario Pasu and Myriam Escué, Ayender Escué, Omar Zapata, Francya Doli Escué, Julio Albeiro Pasu Zapata, Aldemar Escué and Yonson Escué.

We condemned those acts, and we are ashamed about what happened against innocent people. We apologize for the suffering caused to you.

[...]

We are aware that nothing could ever replace Germán or compensate for the suffering his death caused, who was your son, father, brother and member of the community. However, we hope that this statement and other steps that have been taken would contribute to make up for the suffering you had endured.

We express our solidarity with the next-of-kin and with the community; we hope this gesture would allow us keep making progress to reestablish your confidence in the institutions of the State and the society.

[...]

For some of the people who are present today, this is the first time that homage is paid to the life of Germán Escué. For his next-of-kin, he is always present. To remember him today is such a painful as well as necessary exercise since we have the obligation not to forget that these facts happened, to ensure that such facts are never repeated, for our democracy, because the individual memory, and the collective memory in particular, is a vital tool for the history and the construction of a road to reconciliation.

I thank you, again, for the opportunity you have given me today to do my part in the construction of trust, the strengthening of our democracy and the compliance with our ethical and legal duties for the victims, for the community and for the society in general. It is our duty, commitment and will to work to ensure justice, truth and reparation to guarantee a better country for our children. On this occasion, we repeat our disposition and invitation to build together a better future.

36. The representatives stated that "the act to acknowledge responsibility was designed by the Escué family and the community, as an event not only to make amends and an act to apology by the State authorities, but as a space to honor the memory of Germán Escué Zapata". Based on the foregoing, they requested to "declare that the State complied with the act to acknowledge responsibility for the murder of Germán Escué".

37. The Commission took note of the information furnished by the State and the representatives and "consider[ed] that the available information indicates that the State would have complied with what was ordered in the Judgment".

38. The Court values the acknowledgment of responsibility made by the State, which meant, for the next-of-kin and for the community of Jambaló, an important step towards the recovery of the historical memory of the victim and the strengthening of the community. Furthermore, this type of acts constitutes an effective way to bring about reconciliation. Likewise, the Court highlights and values the willingness of the State, the representatives, the next-of-kin of Mr. Escué Zapata and of the community of Jambaló, to jointly agree on and coordinate the most appropriate measures to fully comply with this measure of reparation. The Court, in addition, values that the act was performed according to the customs and practices of the Nasa people, like the translation of the messages into *Nasa Yuwe* language, the safety measures adopted by the Indigenous Guard, the activities carried out by the traditional physicians for the spiritual harmonization and the cultural activities that took place during the act of acknowledgment of responsibility. All those measures contribute to the

reconstruction of the social fabric and the collective memory, in particular, when the commission of certain facts affects individuals of indigenous communities. Likewise, the Tribunal values the message given by the highest authorities of the Colombian State, for being a message that was not only oriented to acknowledge the facts determined in the Judgment, but also to honor the memory of Mr. Escué Zapata within his Community.

39. Based on the foregoing, the Tribunal considers that the State has satisfactorily carried out the public act to acknowledge international responsibility and therefore, operative paragraph fourteen of the Judgment has been fully complied with.

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40. As to paragraphs 178 and 179 of the Judgment of July 4, 2007, the Court indicated that "it [took] note" of what the State informed in relation to the fact that "[it has being] speeding up some approaches with the University of Cauca in order to create an university chair named after Germán Escué Zapata".

41. The representatives pointed out that "the State fail[ed] to present its opinions and observations regarding the compliance with this measure of reparation despite the fact that in meetings for dialogue, it had mentioned some progress related to the approaches made with the University of Cauca and the written proposal presented by the Community". Based on the foregoing, they requested that the State should present updated information in that regard.

42. The Commission noted that this measure "has not been subject of a decision of the Inter-American Court. However, it positively valu[ed] that measures are being implemented to contribute to remembering Germán Escué and to make amends to the next-of-kin and the community as well.

43. The State indicated that, regarding what the representatives pointed out, "this is not a measure of reparation ordered in the Judgment and therefore, it is not up to the State to inform the [Court] on this matter". Furthermore, it pointed out that the Commission also mentioned it in the observations.

44. The Tribunal clarifies that it values the corresponding State's commitments offered at the international level and, in this sense, "took note" of them, understanding that the State, in good faith, offered to make them effective, regardless of the decision made in the Judgment<sup>17</sup>. "To note the undertaking" does not imply ordering the measure in question, which the State would freely undertake to adopt. Therefore, such undertakings are offered, regardless of the measures of reparation ordered in the Judgment.

45. Based on the foregoing, the Court considers that the creation of an university chair named after Germán Escué Zapata does not constitute a measure of reparation ordered by the Tribunal in its Judgment; therefore, its compliance is not subject to monitoring, without prejudice to the right of the victims or their representatives to request, at the domestic level, the compliance with the undertakings freely assumed by the State.

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<sup>17</sup> See Case of Valle Jaramillo et al V. Colombia. Interpretation of the Judgment on the Merits, Reparations and Legal Costs. Judgment of July 7, 2009. Series C N°. 200, para. 50.

**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, 25(1) and 30 of its Statute and 31 and 69 of its Rules of Procedure<sup>18</sup>,

**DECLARES THAT:**

1. The State has fully complied with the obligations to:
  - a) Pay the amounts for pecuniary and non-pecuniary damage and reimbursement of legal costs and expenses (*operative paragraph eight of the Judgment*),
  - b) Create a fund named after "Germán Escué Zapata", so that the Community of Jambaló can invest it in works or services of collective interest for their benefit (*operative paragraph ten of the Judgment*) and,
  - c) Carry out a public act of acknowledgment of responsibility (*operative paragraph fourteen of the Judgment*);
2. The State has made significant progress in the compliance with operative paragraph nine of the Judgment, related to the development of pending criminal proceedings to determine the corresponding responsibilities for the facts of this case, according to the terms established in Considering clauses 11 to 16 *supra*.
3. The State has partially complied with operative paragraph thirteen of the Judgment, inasmuch as it made the pertinent publications in the newspaper with national circulation and in the local newspaper in the *Nasa Yuwe* language, according to the terms established in Considering clauses 28 to 31.
4. The State, the representatives and the Commission have informed on the measures adopted to comply with the obligation to provide the specialized medical, psychiatric and mental appropriate treatment required by the victim's next-of-kin (*operative paragraph twelve of the Judgment*), which shall be assessed by the Tribunal in a subsequent Order.
5. It will keep open the procedure to monitor compliance with the following obligations pending compliance, namely:
  - a) The obligation to conduct effectively the necessary criminal proceedings, still in process and all future investigations so that those responsible for the facts of the instant case be identified and (*operative paragraph nine of the Judgment*);
  - b) The obligation to grant a scholarship for university studies (*operative paragraph eleven of the Judgment*),
  - c) The obligation to provide the specialized medical, psychiatric and mental appropriate treatment required by the victim's next-of-kin (*operative paragraph twelve of the Judgment*), and

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<sup>18</sup> Approved by the Court during its LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009.

- d) The obligation to publish the Judgment in the official gazette (*operative paragraph thirteen of the Judgment*).

**AND DECIDES:**

1. To require the State to adopt the necessary measures to effectively and immediately comply with the Operative Paragraphs pending fulfillment that were ordered by the Tribunal in the Judgment, according to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit, no later than August 15, 2010, a report containing detailed, updated and precise information on the aspects of the Judgment pending compliance.
3. To request the victim's representatives and the Inter-American Commission of Human Rights to present observations to the State's report mentioned in the preceding operative paragraph, in the terms to be established by the Tribunal or by its President in time fashion.
4. To continue monitoring the aspects of the Judgment on merits, reparations and legal costs of July 4, 2007, that are still pending compliance.
5. To require the Secretariat of the Court to notify this Order to the State of Colombia, the Inter-American Commission and the victim's representatives.

Diego García-Sayán  
President

Leonardo A. Franco  
Robles

Manuel E. Ventura

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary