ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS[1]

OF MAY 21, 2013

CASE OF THE ITUANGO MASSACRES *v.* COLOMBIA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs delivered on July 1, 2006 (hereinafter "the Judgment"), by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court").[2] The facts of this case occurred in in June 1966 and, as of October 1997, in the villages of La Granja and El Aro, respectively, both located in the municipality of Ituango, department of Antioquia, Colombia, owing to acts of omission, acquiescence and collaboration by members of the Armed Forces posted in the municipality de Ituango with paramilitary groups belonging to the United Self-Defense Forces of Colombia (AUC) who perpetrated successive armed raids in that municipality, murdering defenseless civilians, stripping others of their property, and generating terror and displacement.

2. The Order on monitoring compliance with judgment issued by the Court on July 7, 2009, in which it declared:

> 1. That, as indicated in considering paragraphs 50, 54, and 72 of the […] Order, the State has complied with the obligation:
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> a. To implement, within a reasonable time, permanent education programs on human rights and international humanitarian law within the Colombian armed forces (*twenty-first operative paragraph of the Judgment*);
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> b. To publish in a national newspaper, once, the chapter on proven facts of the Judgment, without the corresponding footnotes, and the operative paragraphs (*twenty-second operative paragraph of the Judgment*), and
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> c. To pay the amounts ordered as reimbursement of costs and expenses arising in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights (*twenty-fifth operative paragraph of the Judgment*).

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[1] Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the deliberation and decision concerning this Order on compliance with judgment, pursuant to Articles 19(2) of the Statute and 19 of the Court's Rules of Procedure.

[2] *Cf. Case of the Ituango Massacres v. Colombia. Merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148. http://corteidh.or.cr/docs/casos/articulos/seriec_148_esp.pdf

2. That, as indicated in considering paragraph 71 of the […] Order, the State has complied partially with its obligation to pay the persons indicated in Annexes I, II and III of the Judgment the compensation for pecuniary and non-pecuniary damage (*twenty-third and twenty-fourth operative paragraphs of the Judgment)*.[3]

3. The private hearing on monitoring compliance held at the seat of the Court on May 19, 2010, in relation to the measure of reparation concerning medical, psychiatric and psychological care, as well as to similar measures of reparation ordered in other cases involving Colombia.[4]

4. The Order of the Court of May 25, 2010, in which it decided to authorize the State to hand over a percentage of the compensation established in favor of the three children of María Oliva Calle, victims who are minors, specifically for the purchase of a house.[5]

5. The private hearing on monitoring compliance with the Judgment[6] held on February 25, 2011, during the Court's ninetieth regular session.

6. The Order of the Court of February 28, 2011, in which it declared that:[7]

1. As indicated in considering paragraphs 9 and 19 of the […] Order, the State had complied with the obligation:

   a) To publish in the Official Gazette, once, the chapter on proven facts of the Judgment, without the corresponding footnotes, and the operative paragraphs (*twenty-second operative paragraph of the Judgment*), and

   b) To pay the persons indicated in Annexes I, II and III of the Judgment the compensation for pecuniary and non-pecuniary damage (*twenty-third and twenty-fourth operative paragraphs of the Judgment),* in the terms of considering paragraphs 12 to 19 of [the] Order.

2. As indicated in considering paragraph 8 of [the] Order, by jointly monitoring compliance with the measure of reparation on medical and psychological care ordered in eight Colombian cases, the Court will monitor the State's obligation to provide the appropriate treatment required by the next of kin of the victims who were executed (*sixteenth operative paragraph of the Judgment*).

3. As indicated in considering paragraph 23 to 26 of [the] Order, the following obligations remain pending compliance:

   a) To take the necessary measures to provide justice in the case (*fifteenth operative paragraph of the Judgment*);

   b) To provide, free of charge, the appropriate treatment required by the next of kin of the victims executed in the case (*sixteenth operative paragraph of the Judgment*);

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[3] *Cf. Case of the Ituango Massacres v. Colombia.* Order on monitoring compliance. July 7, 2009. Second declarative paragraph. http://corteidh.or.cr/docs/supervisiones/ituango_07_07_09.pdf

[4] *Cf. 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 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.

[5] *Cf. Case of the Ituango Massacres v. Colombia*. Order of the Inter-American Court of Human Rights of May 25, 2010, twelfth considering paragraph.

[6] Convened by an Order of the President of the Court de December 22, 2010. Available at: http://www.corteidh.or.cr/docs/supervisiones/ituango_22_12_10.pdf

[7] *Cf. Case of the Ituango Massacres v. Colombia*. Order of the Inter-American Court of Human Rights, of February 28, 2011. http://www.corteidh.or.cr/docs/supervisiones/ituango_28_02_11.pdf

c) To take the necessary measures to guarantee safe conditions for the former inhabitants of the villages of El Aro and La Granja who have been displaced to be able to return to El Aro or La Granja, as appropriate, and if they so wish (*seventeenth operative paragraph of the Judgment*);

d) To organize a public act to acknowledge international responsibility for the facts of the case, in the presence of senior authorities (*eighteenth operative paragraph of the Judgment*);

e) To implement a housing program to provide adequate housing to those surviving victims who lost their homes and who require this (*nineteenth operative paragraph of the Judgment*), and

f) To erect a plaque in an appropriate public place in the villages of La Granja and El Aro, so that the new generations will be aware of the facts that gave rise to the case (*twentieth operative paragraph of the Judgment*).

7. The private hearing on monitoring compliance held at the seat of the Court on February 25, 2012, in relation to the measure of reparation on medical, psychiatric and psychological treatment.

8. The reports of April 29 and December 19, 2011, and of September 27, 2012, in which the State presented information on compliance with the Judgment.

9. The briefs of May 31, June 9 and November 30, 2011, and January 31 and November 16, 2012, in which the Commission forwarded its observations on the State's reports.

10. The briefs of October 20, 2011, and May 31, 2012, in which the representatives referred to the State's reports and requested clarification with regard to an aspect of the compensation ordered in the Judgment.

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 American Convention") since July 31, 1973, and accepted the contentious 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." To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.[8]

4. Owing to the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention on Human Rights, the judgment of the Court must be complied with promptly and fully by the State.

5. The States Parties to the Convention that have accepted the Court's binding jurisdiction have the duty to comply with the obligations established by the Court. This duty includes the State's obligation to provide information on the measures taken to comply with the decisions of the court in its judgments. Prompt observance of the State's obligation to

[8] *Cf. Case of Baena Ricardo et al. v. Panamá. Competence*. Judgment of November 28, 2003, Series C. No. 104, para. 131, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of October 24, 2012, second considering paragraph.

provide information to the Court on how it is complying with each aspect ordered by the latter is essential in order to assess the status of compliance with the judgment.[9]

a) *Obligation to take the necessary measures to provide justice in this case (fifteenth operative paragraph of the Judgment)*

6. The State advised that the criminal investigation into the events of La Granja continued in the Office No. 5 of the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office, under case file No. 122. It indicated that, as a result of the investigation, Isaías Montes Hernández and Jorge Alexander Sánchez Castro had received criminal convictions. In addition, in October and November 2010, two former paramilitaries were implicated in the investigation and their statements were taken. In its ruling of December 11, 2010, the Criminal Chamber of the Supreme Court of Justice declared admissible the application for review filed by the Prosecutor's Office in relation to the decisions issued against José Vicente Castro, and ordered that the proceedings be forwarded to the National Human Rights and International Humanitarian Law Unit. In its last report, the State underscored that an indictment had been issued against that individual for crimes of aggravated multiple homicide, aggravated simple kidnapping, and conspiracy to commit a crime. In addition, the State indicated that an order had been issued to receive the testimony of Salvatore Mancuso, but this did not provide any information that was useful for the investigation and, currently, efforts were being made to identify other perpetrators, because some of the people who had been named were already deceased. Regarding the events that occurred in El Aro, the State reported that proceedings were underway in the Criminal Court of the Adjunct Specialized Circuit of Antioquia against an Army lieutenant, who had been detained, and a corporal. (However, the State clarified that, in 2011, the proceedings against the corporal had concluded owing to his death). The State also indicated that alias "Pilatos" had been charged and his legal situation had been defined on February 22, 2011, when he had pleaded guilty in return for a reduced sentence; a procedure that was pending the establishment of a date. In addition, Isaías Montes Hernández "alias Junior" had also pleaded guilty in return for a reduced sentence for the crimes of aggravated homicide and larceny and aggravated theft, and had been sentenced on September 20, 2010, by the Adjunct Court of the First Criminal Court of the Specialized Circuit of Antioquia, to 24 years' imprisonment. The State advised that, currently, the convicted man is detained in the Itagüí maximum security prison.

7. In addition, the State highlighted measures taken by the Prosecutor General's Office in order to further the investigations, namely: (1) the three investigations, of El Aro, La Granja and Jesús Maria Valle, will be concentrated in a single office; (2) the efforts will be supported by at least 10 investigators from the Technical Investigation Unit of the Judicial Police, who, within their terms of reference, will work exclusively on procedures for the said investigations; (3) it is planned to bring in two analysts from the Technical Investigation Unit who will work, exclusively, on the three investigations; they will carry out the fundamental task of cross-checking information from the three cases, making a comparative analysis of the probative elements, and the similarity of the motives among other components that are found to be common to the three cases; (4) regarding the methodology, once these cases have been reassigned to a single office, a first meeting will

[9] *Cf. Case of the Five Pensions v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment.* Order of the President of the Inter-American Court of Human Rights of October 24, 2012, third considering paragraph. See also, *Case of the Ituango Massacres v. Colombia*. Order of the Inter-American Court of Human Rights of February 28, 2011.

be held with the prosecutors (leading and assistant prosecutors), investigators and analysts in order to outline the leads to be followed, and to propose a timetable of activities; (5) regular meetings will be held between the Justice and Peace Unit and the Human Rights Unit, in which collaboration and coordination between the two units will be encouraged in order to obtain rapidly the versions of those demobilized about the events, and (6) the Prosecution will examine the possibility of filing an application for review in the case of La Granja with regard to the decision of April 9, 2002, precluding the investigation of the brothers Jaime and Francisco Angulo.

8. In its last report, the State indicated that it had concentrated the investigation of the three cases in the Tenth Prosecutor's Office attached to the National Human Rights Unit; that the office had ordered the involvement in the investigation of senior Army and National Police officials, and that committee meetings were being held to monitor the investigations under the leadership of the Head of the said Unit. The State described the measures taken since February 2011. In addition it indicated that, once confirmed, the results would be published.

9. The representatives indicated that the State had disregarded important information that involves senior State officials, from the Army and the Police, and the Executive, and stressed the delay in prosecuting Isaías Montes despite the 1998 testimony of Enrique Villalba. They added that the investigation had not elaborated methodical plans with appropriate working hypotheses to investigate all those involved effectively, including civil and military authorities who had been named by both the paramilitary leader Salvatore Mancuso, and by Enrique Villalba who has been murdered. The representatives suggested to the State that it create "a working group to advance the criminal investigations, with the special appointment of a coordinating prosecutor, the participation of at least the prosecutors in charge of the investigations, the special delegate criminal prosecutors for the investigations, the Human Rights Directorates of the Ministry of Foreign Affairs and of the office of the Vice President of the Republic, and also the representatives of the victims." Regarding the measures proposed by the State (*supra* para. 7), the representatives considered that they had not been implemented satisfactorily and, even though they welcomed the State's intention to improve the investigation methods, they insisted in the proposal they had presented in the hearing before the Court. According to the representatives, the State's plan continues to omit:

a. Incorporation into the same task force of special delegate criminal prosecutors for the investigations, representatives of the Human Rights Directorates of the Ministry of Foreign Affairs and of the office of the Vice President of the Republic, and representatives of the victims, so as to ensure following up on theories and lines of work that are different from those that the Prosecution has been following for more than 10 years.

b. Determination of the objectives of the work, such as identification of the main obstacles that have hampered the development of the investigations, and the mechanism to remove them; joint elaboration of a methodical investigation plan with the participation of State agents; design and execution of a plan of activities that includes the questioning of the paramilitary leaders who have been extradited, and identification of probative elements that must still be obtained, to be examined by the Technical Investigations Unit.

10. In addition, the representatives indicated that no publicity has been given to the limited results of the criminal proceedings that are final, as ordered by the Court. They insisted that the obstacles to obtaining justice in this case include:

a. The Justice and Peace Law and the impunity that it has promoted. In particular, they stressed that, in this case, the paramilitary leader Salvatore Mancuso had referred to the Ituango massacres on several occasions, but in a piecemeal manner; however, the representatives of the victims were unable to question him, initially when he was in Colombia, owing to the dynamics of the spontaneous deposition hearings implemented by the Justice and Peace Prosecution Service and, subsequently, because he was extradited.

b. The extradition of the paramilitary leaders and the absence of an agreement with the United States of America concerning collaboration with the investigations in which the paramilitary leaders are involved or are required to testify.

c. The absence of a State criminal policy to investigate the phenomenon of paramilitarism at all levels in order to clarify its roots and offshoots within the institutional framework at the local, regional and national levels.

d. The murder of key witnesses who had testified against former senior State officials, as in the case of the testimony of Francisco Enrique Villalba against former President Uribe Vélez, against members of the latter's family, and against high-ranking military personnel, as well as the absolute failure to investigate these facts.

11. Regarding the measures that the State should implement according to the proposals made by the representatives, the Commission expressed its hope that the efforts indicated by the State and the correct implementation of the mechanisms for crosschecking data and coordinating would allow progress to be made towards obtaining justice in this case. The Commission also observed that, despite advances in the investigations, the proceedings against two former agents of the Armed Forces had not yet been decided, and the State should provide an explanation for this. It also considered it important to receive information on the procedural situation of the nine accused in case No. 122 concerning the person known as alias "Pilatos," and on the filing of an application for review in relation to the Angulo brothers.

12. The Court recalls that, in the Judgment, it established that, in order to comply with the obligation to investigate and punish, as appropriate, those responsible for the grave human rights violations that occurred in this case, the State must: (a) remove all the factual and legal obstacles that maintain impunity; (b) use all available means to expedite the investigation and the judicial proceedings, and (c) ensure adequate guarantees of safety for the victims, investigators, witnesses, human rights defenders, court employees, prosecutors and other agents of justice, as well as for the former and actual inhabitants of Ituango.[10] In addition, the State should clarify, as applicable, the existence of complex criminal structures and the interrelationships that made the violations possible.[11] The Court also established that the State had failed to ensure prompt justice for the victims, because most of those responsible had not been implicated in the investigations or had not been identified or prosecuted, even though the facts of the case were carried out by a group of approximately 30 armed men with the knowledge, tolerance and acquiescence of the

[10] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 400.

[11] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 194, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 101.

Colombian Army. Furthermore, most of those who have been given prison sentences have not been detained.[12]

13. It should be recalled that, in its Order of July 2009, the Court noted that "of the eight individuals regarding whom the State ha[d] provided information [to date …], six had already been implicated in the facts of the case at the date on which this [Judgment] was delivered by the Court."[13] Consequently, the Court considered, *inter alia*, that "even though more than 11 and 12 years have passed since the massacres of La Granja and El Aro, respectively, the violations declared in the case remain in almost the same situation of impunity as at the time the Judgment was delivered, three years ago."[14] In addition, the Court observed that the murder of Francisco Enrique Villalba Hernández, a paramilitary who had acknowledged his participation in the case and who was serving his sentence under house arrest ruled out the possibility that he would provide further information on other perpetrators who took part in the Ituango massacres, thus eliminating a possible source of evidence for the pending criminal proceedings. In this regard, the Court reiterates that the State must take the necessary measures to protect the other witnesses, agents of justice, victims and their family members who require this in order to ensure that the investigations in this case are not obstructed.

14. In addition, the Court observes that, from July 2009 to date, two former members of the paramilitary forces have been convicted with regard to some of the facts that they were accused of (aggravated murder, terrorism, arson and theft) and another two have entered plea bargains. In addition, other individuals have been implicated in the investigation, including, according to the State, senior officials of the Army and the National Police, and an investigation has been re-opened against the former police commander of Ituango (and the same possibility is being contemplated with regard to another member of the security forces).

15. Meanwhile, the Court appreciates the measures taken by the State through the Prosecutor General's Office to expedite the investigative procedures in this case; in particular the concentration of the investigations in a single office; the mechanisms to crosscheck information within the Prosecution; the exclusive appointment to these cases of several investigators and analysts, and the measures to monitor the investigations.

16. Nevertheless, the reasons why the investigations have been hindered has not been clearly explained, and there is no clear information about the plan to be followed to investigate the participation of State agents in the facts, to question the extradited paramilitary leaders, and to search for probative elements that have not yet been explored regarding the existence of complex criminal structures of a paramilitary or other type, and the interrelationships that made the violations declared in this case possible. The State must provide this information, as well as any pertinent information about the mechanisms to improve the lines of investigation, and a systematization of the actual situation and the

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[12] *Cf. Case of the Ituango Massacres*, paras. 125.94, 303 to 307, 310 to 312, 321, 323 and 325. Specifically, on July 8, 2005, the First Criminal Court of the Specialized Circuit of Antioquia sentenced Orlando de Jesús Mazo, civilian, to 12 years' imprisonment for the crimes of conspiracy to commit a crime, terrorism and extortion; Gilberto Antonio Tamayo Rengifo, civilian, to 12 years' imprisonment for the crimes of terrorism and extortion; Carlos Antonio Carvajal Jaramillo, civilian, to 72 months' imprisonment for the crimes of conspiracy to commit a crime and extortion, and Jorge Alexander Sánchez Castro, Army Captain, to 31 years' imprisonment for aggravated murder and conspiracy to commit a crime.

[13] *Case of the Ituango Massacres v. Colombia. Order of the Inter-American Court of Human Rights of July 7, 2009, sixteenth considering paragraph*.

[14] *Case of the Ituango Massacres v. Colombia. Order of the Inter-American Court of Human Rights of July 7, 2009, sixteenth considering paragraph*.

implication by act or omission in the facts of the case of all the persons investigated and prosecuted, whether or not they are deceased, whether or not they have been convicted before or after the Judgment, together with the acts or crimes of which they are accused, so as to allow the Court to assess the effectiveness of the domestic investigations and to understand the obstacles to compliance with this measure of reparation.

17. Consequently, the Court considers it necessary that the State continue the investigations with the greatest possible diligence in order to determine all those responsible, both direct perpetrators and masterminds, for the violations committed against the victims. As it has indicated on previous occasions, the Court finds it pertinent to underline that a trial that is conducted through to its conclusion and achieves its goal is the clearest sign of zero tolerance for human rights violations, contributes to the reparation of the victims, and demonstrates to society that justice has been done.[15]

18. In the investigation into the interaction between the illegal group and State agents and civilian authorities, the State must continue conducting with special diligence the exhaustive investigation of all those connected to State institutions as well as of members of paramilitary groups who could be involved. To this end, as decided in this case[16] and in others,[17] the State must ensure that the extradited paramilitaries can be made available to the competent authorities and that they continue cooperating with the proceedings being conducted in Colombia. Also, the State must ensure that the proceedings abroad do not hamper or interfere with the investigation of the grave violations that occurred in this case or reduce the rights that this Judgment recognizes to the victims, by using mechanisms that make it possible for those extradited to collaborate in the investigations undertaken in Colombia and, if appropriate, for the participation of the victims in the measures taken abroad.

19. Based on the foregoing, the Court concludes that the measure of reparation concerning the obligation to investigate the facts of this case is being complied with. In this regard, the Court finds it essential that, within the time frame established in the operative paragraphs of this Order, the State present complete, detailed and updated information on all the measures undertaken to comply with the obligation, the results obtained, and also a copy of the documentation that substantiates this, so that the Court may verify that the investigations are being conducted with due diligence.

b) *Obligation to provide appropriate treatment to the victims (sixteenth operative paragraph of the Judgment)*

20. Regarding the State's obligation to provide the appropriate treatment required by the next of kin of the victims who were executed during the events of this case, during the private hearing on monitoring compliance (supra having seen paragraph 7) and

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[15] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Monitoring compliance with judgment*. Order of the Court of January 27, 2009, twenty-first considering paragraph, and *Case of the 19 Tradesmen v. Colombia. Monitoring compliance with judgment*. Order of the Court of June 26, 2012, sixteenth considering paragraph.

[16] *Cf. Case of the Ituango Massacres v. Colombia*. *Monitoring compliance with judgment.* Order of the Inter-American Court of July 9, 2009, nineteenth considering paragraph.

[17] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 216. See also, *Case of the Mapiripán Massacre v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of July 8, 2009, fortieth and forty-first considering paragraphs.

subsequently, the Court has received information from the State and from the victims' representatives on the implementation of this measure of reparation. In this regard, the Court will rule opportunely on all the information received in the context of the procedure of monitoring jointly the eight Colombian cases, without prejudice to receiving, if necessary, pertinent and urgent, information concerning the victims of the instant case from the State, the representatives and the Commission.[18]

c) *Obligation to take the necessary steps to guarantee conditions for the return of those displaced from El Aro and La Granja (seventeenth operative paragraph of the Judgment)*

21. Regarding the obligation to take the necessary steps to guarantee safe conditions so that the former inhabitants of the villages of El Aro and La Granja who were displaced may return, as applicable and if they so wish, the State advised that the heads of the Presidential Agency for Social Action had set up a Human Rights and International Humanitarian Law Team for prevention of and comprehensive attention to internal forced displacement, and that the Social Action Agency had put in place the System of Attention to Displaced Population, the *JUNTOS* National Network, and the *Retornar es Vivir* strategy. In view of the fact that the victims referred to in the Judgment have not been fully identified, the Social Action Agency has implemented numerous measures to achieve the full identification of the population universe and has focused its efforts on the identification and characterization of the members of the displaced population, as well as on finding and entering into direct contact with them, which are essential phases in providing them with attention. The State indicated that, of the total of 709 beneficiaries, 318 have been "included in the Unified Registry of Displaced Population" (RUPD), one has not been included, and 390 have not been verified (including 300 undocumented persons). Of the 318 in the RUPD, 309 beneficiaries have been included in the "*JUNTOS* Strategy"; of these, 78 are with the Basic family program [*Línea Base Familiar*] or Session 3. Also, of these 318 in the RUPD, 68 are beneficiaries of the program "Families in Action," and 219 benefit from a subsidized regime under the Unified Registry of Affiliates of the Social Protection System (hereinafter "RUAF") while 38 are included under the contributive regime. The Social Action Agency has coordinated "inter-institutional procedures" to incorporate the beneficiaries into existing programs in the components of income generation, housing, and land. This agreement was established with the representatives of the victims.

22. The State referred to the main challenges: to apply the indicators that have been designed for the JUNTOS strategy to the beneficiaries of Annex IV of the Judgment of the Court and other beneficiaries of the *amparo* decision ordering the registration procedure, in order to evaluate the effective enjoyment of the rights of the respective population; to obtain a baseline for all the families who are beneficiaries of the Judgment that have been located to date, in order to proceed to include them in programs that exist or to be created; to enhance the attention and comprehensive reparation to the victims of the violence in accordance with the requirements established in the Victims Act; to ensure that the attention to the displaced population beneficiary of the Court's Judgment is incorporated into the Single Comprehensive Program for the Displaced Population that integrates nationwide and territorial efforts, and to make an effort to ensure that the entities involved in providing attention and reparation to the beneficiaries of the Ituango Judgment make their offer of services more flexible in keeping with the characteristics of the target population.

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[18] *Cf. Case of the Ituango Massacres v. Colombia*, Order of the President of the Inter-American Court of Human Rights of December 22, 2010, on monitoring compliance with judgment.

23. The representatives have expressed their willingness to collaborate with the State so that it may comply with its obligation to guarantee decent living conditions for all those displaced as a result of the Ituango massacres by adopting mechanisms aimed at their social and economic rehabilitation. These include support for plans for production projects, support for micro-enterprises, subsidies for the purchase of housing and/or land, and subsidies and special conditions for education. However, they indicated that the State had insisted in indicating that, owing to the representatives or the victims, it had not been able to meet its obligations, because it had been unable to identify the beneficiaries. As a result of the failure to comply with this measure of reparation, the representatives determined that it was necessary to file an application for *amparo* before the Criminal Chamber of the Superior Court of the Judicial District of Antioquia against the Ministry of Foreign Affairs, the Presidential Social Action Agency, against the Ministry of the Environment, Housing and Territorial Development, and against the Ministry of Agriculture, in order to protect the right to a decent life and to justice. In first instance, the Criminal Chamber of the Superior Court of Antioquia rejected the objections filed by the State[19] and ordered the protection of the fundamental rights to a decent life and to justice of the displaced persons listed in Annex 1 to the Judgment of the Court, from the municipality of Ituango, owing to the events that occurred in the villages of La Granja and El Aro in 1996 and 1997, respectively. The Criminal Chamber of the Supreme Court of Justice confirmed all aspects of the judgment of the Superior Court of Antioquia. The Constitutional Court chose to review the ruling on protection and, on May 11, 2010, confirmed partially the judgments in first and second instance, by ordering the protection of the violated rights to a decent life and to justice, and annulling the aspect relating to the need to register the victims in the RUPD as a mechanism to guarantee them the reparation ordered by the Court. The representatives argued that the State had not complied with what the Inter-American Court had ordered as regards measures for the socio-economic rehabilitation of those displaced, or with the measures ordered by the Constitutional Court in relation to compliance with the international Judgment.

24. The Commission has expressed its concern because the State has alleged requirements under domestic law to postpone compliance with its international obligation; in particular, because the victims have merely been incorporated into the RUPD and measures have been taken to comply with a domestic rulings, which reveals that the State had not taken measures to comply with what the Court ordered, but appeared to be subordinating its obligations to the exhaustion of additional domestic proceedings filed by the representatives. In addition, it considered it essential that the State identify and provide details of the service that the beneficiaries are actually receiving.

25. In its last report, the State indicated that the safety situation in the area had improved, ostensibly due to the permanent military operations and actions of the National Army. This is corroborated by the office of the Delegate Ombudsman for Prevention of the Risk of Human Rights Violations, which did not include these areas in the June 2012 list concerning early warning systems. In addition, the State presented information on a plan to provide attention to the displaced population that was the subject of operative paragraph 17

[19] The representatives reported that the State had contested the ruling and had insisted that the representatives did not have legal standing; that the Judge of the *amparo* action was not empowered to rule on aspects related to a judgment of the Inter-American Court, and that, in the case of those displaced, the requirements established by constitutional case law in order to apply for *amparo* had not been complied with. The Social Action Agency argued that, even though the Constitutional Court had reiterated that the forced displacement was a *de facto* situation that did not require recognition by any authority, the legislator had imposed this as a requirement to accede to the benefits of registration on the Unified Registry of Displaced Population (RUPD), so that it was possible "to establish the truth" of the facts recounted.

of the Judgment, consisting of four components, namely: identification and characterization; location or direct contact; return or relocation, and monitoring, and this has allowed the State to target the offer of existing local, departmental and national programs by giving priority to the beneficiaries of the Judgment. The State also referred to actions taken in compliance with Judgment T367 (2010) of the Constitutional Court in favor of the victims of displacement in the Ituango massacres, in particular strategies for communicating with them and for summoning them through local, regional and national radio and television media, which had permitted the inclusion of part of the population that had not appeared previously as a beneficiary of these proceedings (8 beneficiaries of the Judgment in the municipalities of Bello, Valdivia, Medellín and Yarumal). Furthermore, currently there are a total of 746 beneficiaries, of whom 264 were included without having identification data, the latter based on compliance with the constitutional ruling. In order to give coherence to the action strategy established in Law Ley 1448 of 2011 and its decrees, the State undertook to ensure that the process is in keeping with the law, guaranteeing its continuity in order to make reparation to the victims of the case.

26. The Court takes note that the State entity, the Social Action Agency, has implemented the "System of Attention to Displaced Population, the *JUNTOS* National Network, and the *Retornar es Vivir* strategy" and has focused its efforts on identifying and characterizing the displaced population.

27. However, the Court considers it inappropriate that the representatives of the victims have had to file applications for constitutional protection (*amparo)* at the domestic level in order to obtain compliance with this measure of reparation. The obligation to comply with the Court's decisions corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law (*pacta sunt servanda*) and, as this Court has indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[20] The treaty obligations of the States Parties are binding for all the powers and organs of the State;[21] in other words, all the powers of the State (the Executive, the Legislature, the Judiciary, or other branches of the public powers) and other public or State authorities, at any level, have the duty to comply in good faith with international law.[22] Consequently, and particularly considering the time that has elapsed since the Judgment was handed down and the needs of the beneficiaries of this measure of reparation, the State should have adopted the required measures, and the adaptations and interpretations of the law to comply effectively with what the Court ordered, without the need for administrative obstacles, and without the need to resort to the courts.

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[20] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights).* Advisory Opinion OC- 14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fourth considering paragraph. This has been included in "Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1] 56/83, Responsibility of States for internationally wrongful acts, at its 85th plenary meeting on 12 December 2001. Official records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1 and 2).

[21] *Cf. Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 17, 1999, fourth considering paragraph, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fourth considering paragraph.

[22] *Cf. Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of March 20, 2013, fifty-ninth considering paragraph, and *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights).* Advisory Opinion OC- 14/94 of December 9, 1994. Series A No. 14, para. 35.

28. Notwithstanding the above, the Court assesses positively the decisions of the domestic courts that heard the application for constitutional protection filed by several individuals and the organization that represents the victims. The Constitutional Court of Colombia, in its judgment T-367 of May 11, 2010, analyzed whether the defendant State organs and institutions "violated the rights to a decent life and to justice, by requiring the registration in the Displaced Population Information System (SIPOD), of the petitioners, victims of the violent events that occurred in the villages of La Granja in 1996 and El Aro in 1997, of the municipality of Ituango, recognized in the judgment of the Inter-American Court of Human Rights as displaced by the violence, as a requirement for access to some of the measures of reparation established in the Judgment of July 1, 2006, delivered by the Inter-American Court." In its ruling that protects the rights to a decent life and to justice, the Colombian Constitutional Court found as follows:

> Based on this declaration (the Inter-American Court) sentenced the Colombian State to comply with a series of measures of reparation, indicated in the previous table, the essential purpose of which is full restitution, understood as the re-establishment of the situation prior to the violation.
>
> It has not been possible to comply with the essential elements of this restitution, based on events that took place 12 and 13 years ago, and ordered more than three years ago by the Inter-American Court – obligations concerning health care, housing and safety – because the State entities responsible for attending to and protecting the displaced population have demanded compliance with additional requirements established in domestic laws in order to access the measures of reparation established by the Inter-American Court, specifically registration in the Displaced Population Information System (SIPOD). The Review Chamber finds that this course of action disregarded:
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> (i) Article 68(1) of the American Convention, which 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 at the national level of the Court's decisions in its judgments.
>
> (ii) The final and non-appealable nature of the judgments of the Inter-American Court, which, according to Article 67 of the American Convention, must be complied with by the State fully and promptly.
>
> (iii) Article 27 of the 1969 Vienna Convention on the Law of Treaties, which establishes that a State Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty; and that the treaty-based obligations of the States Parties are binding for all the powers and organs of the State;
>
> (iv) The obligation of the States Parties to the Convention to ensure compliance with the provisions of the Convention and their inherent effects within their respective domestic laws. 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, and
>
> (v) The commitment acquired by the Colombian State when accepting the contentious jurisdiction of the Inter-American Court, on June 21, 1985, to comply with its decisions and to ensure their implementation in the domestic sphere, pursuant to Article 68(1) of the American Convention.
>
> The Court observes that, during the three years that have passed since the Inter-American Court of Human Rights delivered its judgment, numerous obstacles have prevented significant progress in compliance with the judgment, originating mainly from errors of assessment and interpretation by the different officials with responsibilities in the area of forced displacement. Among the most relevant are: the transfer of some of the obligations of the State to the victims' representatives, including the localization of the victims, the establishment of their needs and requirements, and the elaboration of lists for different purposes, including as a prior requirement for access to the measures of reparation that the Court had accorded them. A decisive role has also been played by the fact that, in order to comply with these measures, the contribution of many entities is required and the agenda and institutional commitments of the latter end up by postponing the priority attention required by the displaced population owing to their special situation of vulnerability and lack of protection.
>
> This Chamber finds that the main obligation of the State is to devise the measures required to locate the displaced persons and, consequently, it is not admissible that public officials adduce the failure of those petitioning on behalf of the victims to provide information in order to postpone, indefinitely, compliance

with international obligations that, by constitutional mandate, prevail in the domestic legal system, and even with obligations established by domestic law and case law to ensure the fundamental rights of the victims and their families that were violated.

As already indicated, constitutional case law has recognized and reiterated on numerous occasions that, owing to the constitutional rights affected by displacement, and considering the special circumstances of weakness, vulnerability and defenselessness in which those displaced find themselves, this population has the right to receive, urgently, preferential treatment from the State in the attention to its crucial needs, in order to render them less vulnerable and to permit the effective exercise of their rights.

Therefore, insofar as: (i) the judgment of the Inter-American Court of Human Rights determined, expressly, the persons who were victims of forced disappearance as a result of the so-called Ituango Massacres, events that were investigated and verified by the international organ and regarding which the Colombian State acknowledged its responsibility; (ii) the judicial decisions of this Court are binding for the Colombian State, which cannot invoke provisions of domestic law to fail to comply with them; (iii) the population displaced by the violence has been recognized as subject to special protection owing to the extreme vulnerability of their situation, and (iv) the authorities in charge of guaranteeing the rights of the displaced population and ensuring prompt redress and reparation of the violated rights have not acted with the diligence warranted by the circumstances; the Chamber finds that, in this case, the Unified Registry of Population Displaced by Violence, has constituted an insurmountable obstacle that has perpetuated the violation of the fundamental rights of the victims. […]

Requiring the petitioners who were victims of the so-called Ituango Massacres to register in the Displaced Population Information System, as a requirement for access to some of the measures of reparation (mainly housing, safety, and medical services) ordered by the Inter-American Court of Human Rights in its judgment of July 1, 2006, violates their fundamental rights to a decent life and justice, ignoring with this procedure, not only the international commitments of the Colombian State, but also the constitutional mandate and the reiterated case law of this Chamber, in the sense of providing prompt and opportune attention to groups of individuals who, owing to their situation of defenselessness and vulnerability, require special protection from the State.

Regarding the persons who have been individualized by the non-governmental organization, *Grupo Interdisciplinario de Derechos Humanos* following the delivery of the Judgment of the Inter-American Court, this Chamber finds that they are legitimated to require compliance with the State's obligations concerning forced displacement, insofar as the State has not been able to disprove their status and they will be beneficiaries of the measures of reparation contained in the Judgment of July 1, 2006, of the Inter-American Court of Human Rights, established, in general, for all the members of the populations affected by the violent events that took place in 1996 and 1997 in the villages of La Granja and El Aro of the municipality of Ituango (Antioquia), known as the Ituango Massacres.

29. In its recent case law, the Inter-American Court has stipulated, with regard to the obligation of the State to exercise "control of conformity with the Convention," that two distinct manifestations of this can be observed, depending on whether or not the Judgment has been handed down in a case in which the State is a party. Thus, when an international judgment has been delivered that constitutes *res judicata* with regard to a State that has been a party to the case submitted to the Court's jurisdiction, all its bodies, including its judges and the organs concerned with the administration of justice, are also subject to the treaty and to this Court's judgment, which obliges them to ensure that the effects of the provisions of the Convention and, consequently, the decisions of the Inter-American Court are not adversely affected by the application of norms contrary to their object and purpose or by judicial or administrative decisions that make total or partial compliance with the Judgment illusory. In other words, in this case, an international *res judicata* exists based on which the State is obliged to comply with and execute the Judgment.[23]

30. As a result of the legal force of the American Convention in all the States Parties to it, a dynamic and complementary control of conformity with the Convention also plays an important role in compliance with or execution of specific judgments of the Inter-American

[23] *Cf. Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of March 20, 2013, sixty-seventh and sixty-eighth considering paragraphs.

Court, especially when this execution is the responsibility of the national judges. In this case, the function of the judicial organ is to ensure the prevalence of the American Convention and the rulings of this Court over domestic laws, interpretations and practices that prevent compliance with what the Court has ordered in a specific case.[24] With regard to what has happened in relation to the execution of this measure of reparation ordered in favor of those who were displaced, the Court recalls that the control of conformity with the Convention is an obligation for all State organs and authorities. The Court assesses positively that the Superior Court of Antioquia, the Criminal Chamber of the Supreme Court of Justice, and the Constitutional Court of Colombia have exercised a satisfactory, effective and comprehensive control of conformity with the Convention in order to ensure compliance with this aspect of the Judgment of the Court, as did the Administrative Court of Antioquia, in other circumstances analyzed below (*infra* considering paragraph 40), which is reflected in the legal findings of these courts and also denotes a dynamic jurisprudential dialogue.

31. According to the Constitutional Court's final decision, the Inter-American Court observes that the State was obliged not to require the registration of the beneficiaries of the Judgment of July 1, 2006, as an additional requirement in order to comply with the reparations ordered in the latter. In addition, the Presidential Social Action Agency was ordered to inform the population affected by the Ituango Massacres, by local and national press, television and radio, including community radio, at least once a month on all the media and for six months, in peak airtime and programs, about the measures of reparation ordered by the Inter-American Court for the persons individualized in this judgment and about the procedures to follow in order to access them, as well as about the comprehensive support programs for the displaced that the national Government offers for the rest of those affected by the violent events that took place in the villages of La Granja in 1996 and EL Aro in 1997, in the municipality of Ituango. The State has already taken measures in this regard. Also, this time frame does not postpone compliance with the Judgment of the Inter-American Court, and therefore the beneficiaries must receive reparation as soon as they come forward to the entities and agencies designated by the Agency for this purpose throughout national territory. Lastly, the Constitutional Court urged the Ministry of Foreign Affairs to exercise effective coordination including provide adequate and timely information to the different State entities responsible for attending the population displaced by the violence about the need to comply with the judicial rulings of the international organs; but, above all, about the implications for a particularly vulnerable population, owing to its situation of defenselessness, of non-compliance with their constitutional and legal obligation to guarantee this population the effective enjoyment and exercise of its rights.

32. Thus, the Court considers that the State has taken significant steps to locate the beneficiaries of the measure of reparation relating to guaranteeing conditions for the return of those displaced, and therefore finds that this aspect of the Judgment is being complied with. In this regard, the Court hopes that the remaining obstacles will be overcome shortly and requires the State to provide information on the specific measures taken in order to execute the plans and programs that have been established, the work plans and the results obtained; in particular individualized, detailed and updated information on the services that the beneficiaries are specifically, truly and effectively receiving.

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[24] *Cf. Case of Apitz Barbera et al. v. Venezuela*. *Monitoring compliance with judgment*. Order of the Inter-American Court of November 23, 2012, twenty-sixth considering paragraph, and *Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of March 20, 2013, seventy-third considering paragraph.

d) *Obligation to organize a public act to acknowledge responsibility (eighteenth operative paragraph of the Judgment)*

33. Regarding the obligation to organize a public act to acknowledge international responsibility for the facts of this case in the presence of senior authorities, the State has reiterated its wish to meet with the representatives to decide on the corresponding details. The State referred to its autonomous obligation to comply with the measures of reparation ordered, and argued that the representatives had insisted on the need to move forward on other measures of reparation ordered as a condition for reaching the pertinent agreements concerning this measure. At the meeting held in March 2011, "it was agreed to evaluate, over a period of six months, the progress made in compliance with the measures relating to the substitution of a pecuniary subsidy for the acquisition of housing to the persons mentioned in Annex III, as well as the measure relating to the socio-economic assistance for the displaced persons, as a prelude to discussing the details of the organization of the public act of acknowledgement of responsibility." In its latest report, the State considered that compliance with this measure should not be postponed further and considered that the representatives should indicate their willingness to reach agreement on compliance with it, at which time the Court would be duly informed.

34. The representatives had advised the Court – after consulting a group representing next of kin of the victims – that it considered that the failure to comply with most of the measures of reparation ordered by the Court in the Judgment, was sufficient reason for not organizing the public act until the State had demonstrated its real intention that events of this nature would not be repeated and most of the measures of reparation ordered by the Court had been implemented. The State had respected this decision and had abstained from imposing the act unilaterally, which they considered a positive attitude. It did not appear that the State would comply, in the short-term, with the obligation to provide comprehensive health care and take measures for the socio-economic rehabilitation of those displaced who were unable to return. Regarding the situation of public order in the northern region and in Bajo Cauca in the department of Antioquia, this continued to be critical, owing to the presence of new paramilitary groups, which made it almost impossible to carry out a public act peacefully. Nevertheless, the representatives understood that this was a measure that could not be postponed indefinitely; hence they considered it essential to explore solutions, and expressed their willingness to decide on the most appropriate procedure jointly with the State.

35. The Court takes note of the willingness of the State and the representatives to comply with this measure of reparation and, therefore, urges them, now that 15 and 16 years have passed since the massacres took place and six years since the Judgment was handed down, to reach agreement promptly in order to comply with it. It therefore awaits information in this regard.

e) *Obligation to implement a housing program (nineteenth operative paragraph of the Judgment)*

e.1. Regarding the agreement to hand over funds for the purchase of housing

36. The Court recalls that, in its Order of July 7, 2009, it observed and assessed "that the State had taken certain measures to comply with this obligation, in particular the acceptance of a proposal from the representatives for its implementation by giving each beneficiary a sum of money equal to 135 current legal minimum monthly wages for the

purchase of a house. Given that the parties have asked the Court to endorse this agreement, the Court finds this pertinent, provided that the victims have expressly agreed to this and that it complies with the purpose of the reparation ordered in the Judgment. The State should provide information on the measures taken under the agreement, which should be executed within the time frame established in the Judgment for compliance with this obligation."[25]

37. The State indicated that, during the meeting of March 2011, the Administration and the representatives agreed to make a joint request to Fonvivienda designed to make its decision more flexible so as to facilitate compliance with this measure; the request was forwarded on March 17, 2011,

38. According to the representatives, despite the State's indication of its willingness to comply with the agreement, which the Court has endorsed, it had not complied with the agreement promptly, and in Decision 1460 of the Ministry of the Environment, Housing and Territorial Development, had imposed terms and conditions that were not in the agreement signed between the parties and endorsed by the Court. These terms and conditions were mainly aimed at handing out "agreements for real estate purchases," which hindered compliance, because most of the beneficiaries had already taken out loans or had used the resources of the compensation granted by the Court for the non-pecuniary damage suffered to negotiate land, houses, possessions or other solutions that did not necessarily conform legally to the new formal requirements established by the State, but that were designed to resolve their housing problems, which, moreover, represented a life project that is especially deep-rooted in Colombians, whatever their social status.

39. The representatives argued that they were obliged to file an application for constitutional protection before the Administrative Court of Antioquia on August 2, 2011, against the Ministry of Foreign Affairs, the Ministry of the Environment, Housing and Territorial Development, and the National Housing Fund (Fonvivienda), so that protection would be granted to the fundamental right to acquire a decent home, in connection with the right to a decent life and to the protection of the judicial guarantees, compliance with judicial decisions, and the right to receive reparation.

40. According to the Judgment of the Administrative Court of Antioquia that decided the application for protection under the Constitution, the positions of the State organs were as follows:

a. The National Housing Fund ("Fonvivienda") adduced that it had complied fully with its obligation to allocate the resources corresponding to the reparation ordered by the Inter-American Court and endorsed by the victims' representatives. It considered that, as beneficiaries of the decisions of the Inter-American Court, all the necessary prevention and assistance measures must be taken to ensure that the victims obtain, improve and, in general, satisfy, their guarantee of a house.

b. In turn, Fonvivienda, by Decision No. 1460 of December 28, 2010, issued by the Coordinator of the Budget and Finance Group, destined the sum of 2,502,900,000 Colombian pesos, establishing in article 4 of this decision that the resources would be disbursed to each beneficiary in planned savings accounts and would remain immobilized until the signature of the public deed of the property had been certified by its registration before the Office for the Registration of Public Instruments. Therefore, compliance with the said conditions is extremely important for the beneficiaries and for the representatives of

[25] *Cf. Case of the Ituango Massacres v. Colombia*. *Monitoring compliance with judgment.* Order of the Inter-American Court of July 9, 2009, twenty-fifth considering paragraph.

the victims. It also indicated that in August 2011, a letter had been sent to the legal representative of the *Grupo Interdisciplinario de Derechos Humanos* proposing that the procedure for disbursing the money be modified, provided that its investment in housing was guaranteed, a letter that had not been answered. Lastly, it considered that the amounts destined for the beneficiaries in order to comply with the reparation, should be those established in Decision No. 1460 of 2010, and not the value of the minimum wage for 2011.

41. The application for protection under the Constitution was decided in a ruling of August 23, 2011, ordering Fonvivienda to comply immediately, as follows: "execution of the Judgment of the Inter-American Court of Human Rights of July 1, 2006, is ordered so as to render truly effective the reparation of the victims who lost their homes owing to the violent events that took place in the villages of El Aro and La Granja in the municipality of Ituango (Antioquia), and to end the prolonged and unjustified violation of their fundamental rights by the Colombian State." Consequently, the Chamber ordered the National Housing Fund (Fonvivienda) that, within 30 working days from the writ of execution of this ruling, it pay to each of the victims who were petitioners in the *amparo* hearing, the sum of 135 current monthly legal minimum wages. It added that, "in order to ensure that the said sum complies with the purpose of the reparation established in the Judgment of the Inter-American Court of July 1, 2006, the Colombian State may establish a collective compliance policy in order to guarantee compliance with the measures of reparation."

42. Regarding the additional requisites that Fonvivienda is trying to impose on the beneficiaries, the Administrative Court established that "the Colombian State shall not require the beneficiaries to meet any additional requisite for the execution of the judgment of the Inter-American Court of Human Rights, because this would be adding to and modifying the judgment of the high international court, to which the Colombian State is subject pursuant to the 'Pact of San José, Costa Rica,' signed and ratified by Colombia." In addition, "since this is a case of the violation of fundamental rights, and in keeping with article 178 of the C.C.A., which refers to the pecuniary obligation of the Colombian State, given the omissive position of the State in complying with what was ordered by the Inter-American Court of Human Rights in a judgment of July 1, 2006, which had been transformed into an Agreement that is now being executed, endorsed in the Order on monitoring compliance of July 7, 2009, the sum of 135 minimum wages shall be updated from the time at which the order should have been complied with until the moment at which the payment is made."

43. The representatives advised that, based on the peremptory order issued by the Administrative Court of Antioquia, Fonvivienda was preparing to hand over the substituted pecuniary subsidy, annulling the above-mentioned requisites. In June 2012, it had still not handed over the pecuniary subsidy to the heirs of Luis Argemiro Arango and María Vásquez, who had died before the State had met its obligations. The heirs have filed inheritance proceedings and have already forwarded the documents to Fonvivienda, which has not paid out the funds yet. Also, the adjustment of the subsidies has not been paid out, because the agreement made between the parties was for the payment of 135 monthly legal minimum wages in force (hereinafter "MLMWF") on the date that the payment was made. Based on the foregoing and taking into account that Fonvivienda paid out 135 MLMWF for 2010 rather than for 2012 as it has been making disbursements, payment of the said adjustment remains pending.

44. In its most recent report, the State advised that the entity responsible for handing over the substitute pecuniary subsidy had indicated that it had now made the pecuniary

adjustments, so that it would inform the Court when it received the vouchers for the disbursements made.

45. Reiterating its previous findings (*supra* considering paragraphs 27 to 30), the Court considers it inappropriate that the representatives of the victims had to file additional domestic lawsuits in order to obtain compliance with an operative paragraph of the Judgment, regarding which this Court had even endorsed an agreement between the representatives and the State in July 2009, for the award of a pecuniary subsidy to the victims in substitution for the housing program that had been ordered. Nevertheless, the Court assesses positively the terms in which the application for *amparo* was decided by the Fourth Sentencing Chamber of the Administrative Court of Antioquia, and this has ended the differences regarding the way in which the agreement should be implemented. As indicated by the State, the pecuniary adjustment has already been made and is about to be paid out, so that the Court considers that the State has complied partially with this measure of reparation and awaits the information and documentation indicating that the pending payments have been made.

e.2 Regarding the payment to Marcelino Barrera

46. Regarding Marcelino Barrera, whose measure of reparation was ordered by the Court under No. 49 of Annex III, and Héctor Builes, the representatives were informed by these two men that, when the massacre in El Aro occurred, Mr. Barrera was, indeed, an inhabitant of El Aro, but merely as a tenant of a house for which Héctor Builes possessed the ownership title. When the house was set on fire, Mr. Barrera lost all his household goods and the contents of a store that operated in the house. The representatives only received this information when they had commenced the formalities for the beneficiaries to sign the express acceptance of the agreement of substitution by the 135 MLMWF, which would be forwarded to the Court in order to substitute the measure. When the parties communicated this situation, they also indicated that they were in agreement and had made a verbal agreement that Mr. Barrera would receive the reparation to be paid out to the titleholder Mr. Builes who, in turn, would recognize to Mr. Barrera the loss of his household goods and the contents of the store. Héctor Builes died at the beginning of 2011 and his 11 heirs wanted to renew, in writing and in the same terms, the agreement that their father had reached with Marcelino Barrera. Accordingly, they informed Fonvivienda of the facts and asked that, temporarily, it abstain from making the payment in favor of Mr. Barrera, in order to give the parties time to sign a prior agreement. Subsequently, Mr. Barrera informed the heirs of Héctor Builes that he was not willing to make the same agreement with them that he had reached with their father. The representatives provided information on the ownership deeds of the property that Marcelino Barrera occupied, but indicated that it was not up to them to resolve the dispute between the parties. They were also informing Fonvivienda that the parties had not reached an agreement.

47. The Court observes that the actual situation must be resolved by the competent domestic authorities. The Court will not continue to monitor this aspect.

e.3 Regarding the situation of "Carlos Mendoza"

48. The representatives asked the Court for clarification regarding a name under No. 17 of Annex II of the Judgment which contains the list of those who lost possessions in El Aro (according to paragraph 125.81 of the Judgment), victims of the violation of the right to property. After making inquiries, the representatives have concluded that, in the village of El Aro, there is not and never has been a person who responds to the name of simply

"Carlos Mendoza," but there are two villagers who were victims of the violations that occurred in this place whose names are "Luis Carlos Mendoza Rúa" and "Juan Carlos Mendoza Garro," and who are, respectively, grandfather and grandson. Luis Carlos Mendoza Rúa is fully identified under No. 33 of Annex III of the Judgment in the case of the Ituango Massacres, and the youth "Juan Carlos Mendoza Garro" has claimed the entitlements of "Carlos Mendoza" as his own and presented the documentation required by Fonvivienda to accede to the payment of housing, documentation that the representatives had processed "in the understanding that these were two different persons," according to paragraph 125.81 of the Judgment. They indicated that, in compliance with the above-mentioned agreement, in Decision No. 1460 of 2010, the State had ordered the payment to Luis Carlos Mendoza Rúa and to Juan Carlos Mendoza Garro of 135 monthly minimum wages as members of the group of persons who lost their homes.

49. They indicated that Aura Rosa Mendoza Arroyave, heir of the deceased Luis Carlos Mendoza Rúa, contacted the representatives on October 13, 2011, to report that neither she nor her siblings agreed that Juan Carlos Mendoza Garro, grandson of their father, Luis Carlos Mendoza Rúa, should receive the pecuniary compensation ordered in favor of their father, who appears in the Judgment, with that name and also as "Carlos Mendoza"; in other words, the two names refer to the same person. Aura Mendoza Arroyave has indicated verbally and in writing to the representatives that she disagrees with the payment of the pecuniary subsidy to Juan Carlos Mendoza Garro, on the basis that the reparation ordered under No 17 for "Carlos Mendoza" corresponds to her father Luis Carlos Mendoza Rúa, without prejudice to his entitlement established under No. 33 with his complete name; that her father had two houses in El Aro, and that Juan Carlos Mendoza Garro was a minor in 1997 and does not appear individualized among the children mentioned in the Judgment.

50. The representatives indicated that they did not have the necessary information to determine confidently the full identity of "Carlos Mendoza," who was not mentioned in the Commission's application or in the brief with pleadings, motions and evidence. They advised the Court that: up until this time, they were unaware that Luis Carlos Mendoza Rúa had two houses in the village of El Aro, and that, in 1997, Juan Carlos Mendoza Garro was a minor and that he had been individualized during the proceedings before the Court, and therefore appears among the victims of the violation of Articles 5 and 22 under No. 405 of Annex IV of the Judgment. Bearing in mind that Aura Mendoza Arroyave has been clear in informing them of the liability that will result for the representatives if they do not act with complete care and diligence in this matter, they asked the Court to indicate whether the reparation ordered for "Carlos Mendoza" also refers to Luis Carlos Mendoza Rúa, or whether the claim made by Juan Carlos Mendoza Garro is pertinent.

51. For her part, Aura Mendoza Arroyave addressed the Court directly and stated that the fact that her father appears with both forms of his name in the Court's Judgment in the case of El Aro, referring to the same person, cannot be used by his grandson, Juan Carlos Mendoza Garro, to benefit from this, based on the fact that he and her father share the name "Carlos Mendoza." She alleged that her father had two houses and, therefore, should also receive the other compensation. Regarding the fact that paragraph 125.81 refers twice to a Carlos Mendoza (under No. 17 as Carlos Mendoza and under No. 33 as Luis Carlos Mendoza Rúa), Mrs. Mendoza stated that "… there is a case in which the Judgment awarded reparation to the wife and to her husband separately and the two of them benefited with two houses, so that it is not unusual that the Judgment had recognized to [her] father, who owned two properties in El Aro, two pecuniary reparations; one as Luis Carlos Mendoza Rúa and the other as Carlos Mendoza. It would be unusual if it had granted them to his grandson, Juan Carlos Mendoza Garro, who does not appear in any way in the facts on which the Judgment is founded."

52. In addition, in December 2011, Juan Carlos Mendoza Garro addressed the Court and stated that, in Annex III, Carlos Mendoza Rúa and Carlos Mendoza, grandfather and grandson, respectively, were individualized, ordering that the former be compensated for the loss of housing, livestock and mules, and the latter as a victim for the loss of the home only; facts mentioned by the Court. He indicated that "Luis Carlos Mendoza Rúa, deceased, was compensated by the State in compliance with the financial reparations for the non-pecuniary damage suffered by the victim, established in the Judgment, and collected by his wife and [he,] Juan Carlos Mendoza Garro, who appeared in the Judgment as Carlos Mendoza, also received separately the compensation [for non-pecuniary damage] by Decision No. 5898 of December 28, 2007, issued by the Ministry of Defense." He also stated that he had been individualized in Annex III of the Judgment and that he had received his compensation for non-pecuniary damage by the Decision of December 28, 2007. He asked that the Court clarify that the names refer to two different victims and that the way is cleared for the compensation that was approved.

53. In this regard, the State indicated that, while implementing compliance with the measure of reparation relating to the payment of the pecuniary subsidy for housing to the beneficiaries indicated in Annex III of the Judgment, a confusion had arisen among the members of one family as to the true identity of the beneficiary "Carlos Mendoza," as described by the representatives in their brief. The State was not totally clear about the identity of the beneficiary "Carlos Mendoza," taking into account that neither the Commission's application, nor the brief of the representatives, nor the State's acknowledgment of responsibility refers to this individual. In addition, it indicated that it considered that "according to the information provided by the representatives, and revealed by them in the processing of the case before the Court, the youth Mendoza Garro would not be the person indicated by the Court as "Carlos Mendoza," as victim of the violation of the right to property, taking into account that, at the time of the events, he was a minor; however, for the sake of discussion, if he had been the owner of a piece of property at the time of the events, this situation was not determined during the said proceedings, a situation contrary to that of his father and his grandfather who were beneficiaries of the measure to which Annex III of the Judgment refers."

54. Regarding the interpretation of the next of kin of Luis Carlos Mendoza Rúa, that they would be beneficiaries of the measure ordered under No. 17 for Carlos Mendoza, the State indicated that, without prejudice to the right that corresponds to them under No. 33 of Annex III of the Judgment in the case of the Ituango Massacres, in which he is referred to with his complete name, based on the fact that: (i) Mr. Mendoza Rúa had two houses in El Aro, and (ii) the youth Mendoza Garro was a minor at the time of the events, namely 1997, this interpretation is not viable, because during the litigation before the Court, it was never proved that Mr. Mendoza Rúa really owned two houses and, in particular, that both of them were affected by the regrettable events of El Aro, so that the State asked the Court to reject the said claim based on the lack of evidence to substantiate it, because, to the contrary, it would lead to unjust enrichment. Lastly, the State indicated that it would abstain from making the payment of the pecuniary subsidy corresponding to 'Carlos Mendoza' until the Court, based on the background material of the litigation of the case, was able to elucidate who the judgment refers to when it mentions that individual who is identified as a beneficiary in Annex III of the Judgment.

55. The Inter-American Commission stated that there is "insufficient information to make more conclusive observations on whether "Carlos Mendoza" is the same person as "Luis Carlos Mendoza Rúa" and that it "had no additional evidence that would allow [it] to make more detailed observations." Furthermore, it indicated that the only person identified as a

victim by the Commission in Chapter XII of the application submitted to the Inter-American Court in this case is Luis Humberto Mendoza Arroyave and that the determination of Carlos Mendoza and Luis Carlos Mendoza Rúa, as victims of the case in the Judgment, was made by the Court based on the testimony of Luis Humberto Mendoza Arroyave during the hearing before the Court, as well as confidential statements made before the Court on August 11 and 18, 2005. The Commission observed that "the Court needs complete information, available to all the parties, that permits the clarification of this matter, using adversarial proceedings in order to reach the corresponding conclusions, taking into account the need to protect the rights of the victims of human rights violations."

56. The Court observes that, in Annex III of the Judgment, "Luis Carlos Mendoza Rúa" (victim of the violation of Articles 5, 11(2) and 21) and "Carlos Mendoza" (victim of the violation of Articles 5, 11(2), 21 and 22) appear as beneficiaries of reparations for violation of the right to property. In addition, the proven facts of the Judgment reveal that, as in the case of his sister, Juan Carlos Mendoza Garro would only be a victim of the rights recognized in Article 22 of the Convention, as recorded in Annex IV, so that the Judgment does not establish any compensation for him for loss of housing.

57. In addition, paragraph 125.81 of the Judgment considers as a proven fact that "Carlos Mendoza" (No. 17) and "Luis Carlos Mendoza Rúa" (No. 33) lost their houses. However, the analysis of the evidence that substantiates the said paragraph 125.81 reveals that, in fact, this would be the same person with the name repeated and not two different victims, and this repetition was then transferred to Annex III of the Judgment. Furthermore, during the proceedings, no evidence was provided that Juan Carlos Mendoza Garro had a different home from that of his father Luis Humberto Mendoza Arroyave; neither was it alleged or proved that Luis Carlos Mendoza Rúa really was the owner of two houses, or that both of them had been affected in the events of El Aro. Consequently, the Court observes that no compensation at all is due to Juan Carlos Mendoza Garro in relation to the violation of the right to property declared in the Judgment and, therefore, he should not receive the pecuniary subsidy agreed between the State and the representatives to substitute the housing program. In addition, based on the terms of the Judgment, no additional compensation based on the pecuniary subsidy is due to Luis Humberto Mendoza Rúa or his heirs, without prejudice to any actions they may file at the domestic level, if appropriate.

f) Obligation to place a plaque in the villages of La Granja and El Aro (twentieth operative paragraph of the Judgment)

58. Regarding the obligation to place a plaque in an appropriate public place in the villages of La Granja and El Aro, so that the new generations may be aware of the events that gave rise to this case, the Court observes that the parties have not reached agreement on the text of the plaques.

59. The representatives indicated that, as the State had mentioned, it had not been possible to reach an agreement on this point. The previous Administration had unilaterally ordered the elaboration of plaques, which not only contained errors in the names of the victims, but also included a text that had not been agreed on. Based on the argument that there would be financial costs for the State if the plaques were corrected, the delegates of the Government repeatedly refused to discuss the text. The representatives considered that there was no element of reparation if the State installed plaques that failed to reflect the truth of the events and that it was offensive and re-victimizing for the victims if the text did not make it absolutely clear that their next of kin were murdered owing to the arbitrary action of State agents. The representatives argued that, during the past Administration,

State agents constantly tried to weaken the coordination mechanisms between the representatives and the victims and their next of kin in order to obtain the participation of a reduced group of misinformed individuals in some type of event that they would subsequently present as the measure of reparation. The representatives affirmed that they hoped to reach an agreement shortly with the State on the content of the plaques and the terms for the implementation of this measure.

60. The State reiterated that it profoundly regretted that an agreement had not been reached with the representatives on the text of the commemorative plaques, which would not be modified. The State considered that the content of the text affords redress, reflects the truth of the events, and acknowledges the State's responsibility for them. The State forwarded the text of the plaques and indicated that it hoped that the representatives would collaborate with it to ensure the installation of the plaques and the participation of the victims in this event.

61. The Commission considered that, despite the difficulties that might arise in the process of reaching consensus in order to comply adequately with the measures ordered by the Court, it was essential that such obstacles were overcome, bearing in mind the importance of this measure of reparation, the time that has passed, and the necessary participation and satisfaction of the victims with the implementation of this aspect of the Judgment. Lastly, they expressed their concern that the State was seeking to take a definitive unilateral position on the text of the plaques, because the expectations of the victims should be taken into account and their consent and participation were required. Consequently, it considered it essential that the State "revise its position and adopt adequate coordination and participation mechanisms to reach agreement on the text of the plaques." It added that "any imposition of this content would be contrary to what the Court had explicitly established in its Judgment and would gravely affect the victims of this case."

62. The Court recalls that, according to paragraph 408 of the Judgment, the State must place a plaque in an appropriate public place in the villages of La Granja and El Aro, so that the new generations may be aware of the events that gave rise to this case, "within one year of notification of this Judgment," and that "the content of these plaques must be agreed on by the victims' representatives and the State." Nevertheless, owing to the time that has passed, the absence of agreement between the representatives and the State, and the content of the text of the plaques that the State has already elaborated, the Court finds that this content complies reasonably with the reparatory purpose of the measure ordered and therefore awaits information and documentation corroborating the site and the day on which they were placed, on condition that the State verify that the precise and correct names of the victims appear on the plaques that are placed.

g) Other requirements

63. Regarding the request concerning the State's position in relation to the proposal presented by the representatives during the last monitoring hearing,[26] the State advised

[26] In considering paragraph 19 of the Order of February 18, 2011, the Court observed "that the State had made the payments owed. However, the Court takes note of the matter to be resolved in relation to the issue of inheritance, so that Mercedes Barrera's heirs can access the amount deposited; to this end, it asks the State and the representatives to present information in this regard. In these terms, the State has complied with the provisions of the twenty-third and twenty-fourth operative paragraphs of the Judgment, with this exception, regarding which the Court must be duly advised. The Court asks the State, in its reports on this issue, to indicate its reaction to the representatives' proposal." (Regarding Mercedes Barrera, whose compensation was established in Order 1946 of May 19, 2008, issued by the Ministry of Defense, the State advised that the amount had been

that it was evaluating this proposal and hoped to present its position on this point shortly, and this would be forwarded to the Court and the representatives opportunely. With regard to the payment to the heirs of Mercedes Barrera, the State sent a communication to the representatives informing them of the decision not to take extrajudicial measures to register the death of Mrs. Barrera, who died in the El Aro massacre, and whose body was buried without identification and without being recorded. The State indicated that the death certificate should be obtained through the judicial procedure of death "presumed owing to disappearance."

64. The representatives did not share the State's position, because they argued that her death was fully proved and the State itself had acknowledged it during the proceedings before the Court. The representatives indicated that it had transmitted this information to the heirs and that they should file the said judicial procedure, which requires legal representation and entails a cost. They advised that there are many heirs and, to date, they have not reached agreement about the way in which they are going to take this measure, which the representatives are unable to take for them.

65. The Court takes note of the information provided and urges the State to make every effort to expedite the respective procedures and, if possible, without this involving any cost to Mrs. Barrera's next of kin.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its 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 the Statute and 31(2) and 69 of its Rules of Procedure

DECIDES THAT:

1. As indicated in the pertinent considering paragraphs of this Order, the State has complied partially with its obligations:

   a) To implement a housing program to provide adequate housing to the surviving victims who lost their homes and who require this (nineteenth operative paragraph of the Judgment), and

   b) To place a plaque in an appropriate public place in the villages of La Granja and El Aro (twentieth operative paragraph of the Judgment)

2. It will keep open the proceeding of monitoring compliance with the preceding operative paragraphs, as appropriate, and of operative paragraphs 15, 16, 17 and 18 of the Judgment, regarding the State's obligations:

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deposited in a bank account so that her heirs could request it, a measure that has not been taken to date. During the last private hearing, the representatives indicated that the heirs of Mercedes Barrera had not been able to access the amount deposited in their favor because the Treasury of the Ministry of Defense would not permit this without the corresponding inheritance proceeding, which, in their opinion, was impossible to comply with because, owing to the way in which the events occurred, no death certificate was issued for the victim or other documents required for this procedure. During the private hearing, the representatives proposed that the State assume the obligation to issue the official death certificate of Mercedes Barrera in order to fulfill this requirement to comply with the inheritance procedure.) *Cf. Case of the Ituango Massacres v. Colombia*. Order of the Inter-American Court of February 28, 2011, nineteenth considering paragraph.

a) To take the necessary measures to provide justice in the case;

b) To provide, free of charge, the appropriate treatment required by the next of kin of the victims who were executed in this case;

c) To take the necessary steps to ensure safe conditions for the former inhabitants of the villages of El Aro and La Granja who have been displaced to be able to return to El Aro or La Granja, as applicable, and if they so wish, and

d) To organize a public act to acknowledge international responsibility for the facts of the case, in the presence of senior authorities.

3. It will monitor the State's obligation to provide the appropriate treatment required by the next of kin of the victims, by monitoring jointly compliance with the measure of reparation concerning the medical and psychological care ordered in eight Colombian cases (*sixteenth operative paragraph of the Judgment*).

4. The State of Colombia must adopt all necessary measures to comply promptly and effectively with the aspects pending compliance, indicated in the first, second and third operative paragraphs *supra,* pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

5. The State of Colombia must present to the Inter-American Court of Human Rights, by September 1, 2013, at the latest, a report in which it indicates all the measures adopted to comply with the reparations ordered by the Court that remain pending, as indicated in the pertinent considering paragraphs of this Order, as well as in the first, second and third operative paragraphs of this Order.

6. The representatives of the victims and the Inter-American Commission on Human Rights must present observations on the State's report mentioned in the preceding operative paragraph, as well as any relevant information, within four and six weeks, respectively, of being notified of the said report.

7. Following the report required in the second operative paragraph of this Order, the State must continue reporting to the Court every three months on the measures taken to comply with the reparations ordered that remain pending.

8. The Secretariat of the Court shall notify this Order to the State, the Inter-American Commission and the representatives of the victims.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary