

**Order of the**  
**Inter-American Court of Human Rights**  
**of July 8, 2009**  
**Case of the Mapiripán Massacre v. Colombia**  
***(Monitoring Compliance with Judgment)***

**Having seen:**

1. The Judgment on the merits, reparations and costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or "the Tribunal") on September 15, 2005, whereby it declared that:

[...]

7. The State must immediately take such steps as may be necessary to activate and effectively complete, within a reasonable term, the investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as those whose collaboration and acquiescence allowed the massacre to be committed, in accordance with the terms of paragraphs 295 to 304 and 326 of [the] Judgment.

8. The State must immediately take such steps as may be necessary to individually identify, within a reasonable time, the victims who were executed and made to disappear, as well as their next of kin, in accordance with the terms of paragraphs 305 to 310, 311 and 326 of [the] Judgment.

9. The State must establish, within six months of notification of [the] Judgment, an official mechanism that will function for two years, with participation by the victims of the instant case or the representatives they appoint, to perform the functions set forth in paragraph 311 of [the] Judgment.

10. The State must provide the next of kin of the victims who were executed or made to disappear, with their prior consent, beginning once the [...] Judgment has been notified for those who have already been identified, and once those who have not yet been identified are, and for as long as necessary, at no cost to them and through the national health services, adequate treatment, including medication, in accordance with the terms of paragraph 312 of [the] Judgment.

11. The State must carry out such actions as may be necessary to ensure security conditions for the next of kin of the victims, as well as other former inhabitants of Mapiripán, who have been displaced, to be able to return to Mapiripán, if they wish to do so, in accordance with the terms of paragraphs 311 and 313 of [the] Judgment.

12. The State must build, within one year of notification of [the] Judgment, an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, in accordance with the terms of paragraphs 315 and 326 of [the] Judgment.

13. The State must implement, within a reasonable term, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all levels of its hierarchy, in accordance with the terms of paragraphs 316 and 317 of [the] Judgment.

14. The State must publish once, within six months of notification of the [...] Judgment, in the official gazette *Diario Oficial* and in another national-coverage daily,

- the Section of [the] Judgment on Proven Facts, without the respective footnotes, paragraphs 101 to 123 of the Section on International Responsibility of the State, as well as its operative part, in accordance with the terms of paragraph 318 of [the] Judgment.
15. The State must pay the amounts set forth in paragraphs 274 and 278 of [...] instant Judgment, in favor of the next of kin of the victims, for pecuniary damages, in accordance with the terms of its paragraphs 257, 259, 260, 311, 326, 327, 329 to 333.
16. The State must pay the amounts set forth in paragraphs 288 and 290 of the [...] Judgment, in favor of the next of kin of the victims, for non-pecuniary damages, in accordance with the terms of its paragraphs 257, 259, 260, 289, 311, 326, 327, 329 to 333.
17. The State must pay the amounts set forth in paragraph 325 of the [...] Judgment, for costs and expenses, in accordance with the terms of its paragraphs 326 and 328 to 333.
18. The Court will oversee comprehensive compliance with [the] Judgment and it will close the instant case once the State has fully complied with its provisions. Within one year of notification of [the] Judgment, the State must report to the Court on steps taken to comply with it, in accordance with the terms of its paragraph 334.
2. The brief of May 8, 2006 by means of which the State of Colombia (hereinafter, the "State" or "Colombia") informed on proceedings conducted in order to establish an official mechanism to oversee the reparations ordered in the Judgment and the publication of the pertinent parts thereof in the Official Gazette and in another newspaper with national circulation.
3. The note of November 17, 2006 by means of which the Secretariat of the Court (hereinafter, the "Secretariat") reminded the State that the time limit to present its first report on the compliance with the Judgment, as required in operative paragraph eighteen of the Judgment, expired on October 10, 2006. In view of that, the Secretariat requested the State to present said report as soon as practicable, in order for the Court to learn about the status of compliance with said Judgment.
4. The brief of February 5, 2007 forwarded by Jaime Arturo Morales Martínez, who declared having conducted the "judicial proceedings of the case in order to pay the next-of-kin [of Messr. Eliécer Martínez Vaca], but up to [that] date the payment has not been made"; as well as the Secretariat's note of February 14, 2007 by means of which it was informed that, in accordance with the terms of paragraphs 257, 258 and 311 and operative paragraph nine of the Judgment, the victims' next-of-kin could resort to the official mechanism to oversee compliance with the reparations ordered in said Judgment, and to that end, they could consult the State's Agent of the instant case.
5. The brief of April 11, 2007 by which the State referred, *inter alia*, to "the situation of [Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca,] who were declared victims in the Judgment [...] regarding whom, after information obtained, it was determined that they did not die between the days of July 15 and 20, 1997 in Mapiripán".
6. The briefs of the representatives of the victims' next-of-kin (hereinafter, the "representatives") and of the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") of May 3, 2007 by means of which they presented comments to the State's brief of April 11, 2007 (*supra* Having Seen clause 5).
7. The briefs of November 24, 2006 and July 15, 2008 by means of which the State presented its first and second report, respectively, in relation to the compliance with the Judgment.
8. The Secretariat's note of August 28, 2007 and September 9, 2008 by means of which, following the instructions of the then President, it was noted that the time

limit for the representatives to present their comments to the first and second state's report had expired, and that up to that dates, such comments had not been received; therefore, it was repeated that they should submit the comments.

9. The briefs of the representatives of September 10, 2007 and December 12, 2008 and of the Commission of September 27, 2007 and September 3, 2008, by means of which they submitted their comments to the respective state's reports.

10. The Order of the President of November 26, 2008 by which the Commission, the State and the representatives of the victims, of their next-of-kin and the beneficiaries of the provisional measures were convened to a private hearing to be held at the seat of the Court on January 20, 2009. The purpose of the hearing was for the Tribunal to obtain information from the State on the compliance with the Judgment, listen to the comments of the Commission and the representatives in that regard and receive information on the implementation and effectiveness of the provisional measures, as well as the need to keep them in force. By means of the Secretariat's note of December 11, 2008, the parties were informed that, following the instructions of the full Court, it was decided to move forward said hearing for January 19 and to divide it into two parts; the first part would deal with the procedure to monitor compliance with the Judgment and the second part, with the provisional measures.

11. The private hearing on monitoring compliance with the Judgment held on January 19, 2009 during the LXXXII Period of Ordinary Sessions of the Tribunal at its seat<sup>1</sup>, as well as the documents presented by the State during the hearing.<sup>2</sup>

12. The notes of the Secretariat of January 30, 2009 by means of which, the State, the Commission and the Representatives were repeated to present written information on the requirements made by the Judges at the end of said hearing.<sup>3</sup> It

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<sup>1</sup> The following persons, as members of the respective delegations, participated in this hearing: On behalf of the Inter-American Commission on Human Rights: Elizabeth Abi-Mershed, Deputy Executive Secretary; Juan Pablo Albán Alencastro, advisor; Lilly Ching Soto, advisor; on behalf of the victims and the beneficiaries: Eduardo Carreño Wilches and Jomary Ortégón Osorio, of the *Corporación Colectivo de Abogados "José Alvear Restrepo"*, and Michael Camillieri and Francisco Quintana, of the Center for Justice and International Law (CEJIL); on behalf of the State of Colombia: Luz Marina Gil, Executive Director of the Military Criminal Court, Ministry of Defense; Ángela Margarita Rey, Director of Human Rights and International Humanitarian Law, Ministry of Foreign Affairs; Carlos Franco, Director of the presidential Program on Human Rights; Fernando Arévalo, Director of Judicial Defense of the Nation, Ministry of Interior and Justice; Francisco Javier Echeverri Lara, Director of International Affairs of the Government Attorney's Office; Sandra Janeth Castro Ospina, Coordinator of the Human Rights Division of the Government Attorney's Office; Colonel Juan Carlos Gómez, Human Rights Director, Ministry of Defense; Colonel Efraín Oswaldo Aragón, Human Rights Coordinator, National Police; Gloria Beatriz Gavairia, Human Rights Coordinator, Ministry of Social Protection; Juana Acosta López, Coordinator of the Interinstitutional Operative Group, Ministry of Foreign Affairs; Miguel Soto, Coordinator of the Information, Precautionary and Provisional Measures Area, Ministry of Foreign Affairs; Santiago Arteaga, Prosecutor of the Human Rights Division of the Government Attorney's Office; Generoso Hutchinson, Prosecutor of the Human Rights Division of the Government Attorney's Office; Ltn. Com. Enoc Salcedo, Advisor of the Human Rights Direction, Ministry of Defense; Natalia Salamanca, Advisor of the Human Rights Direction, Ministry of Foreign Affairs; Diana Bravo R., Advisor of the Human Rights Direction, Ministry of Foreign Affairs; General Jorge Rodríguez, Head of the Office of Joint Institutional Defense of the Military Forces Command.

<sup>2</sup> The State submitted a report on human rights and international humanitarian law training programs for the members of the law enforcement agencies, the publication of "Comprehensive Policy on Human Rights and International Humanitarian Law" of the Ministry of Defense and a copy of the payments receipts, in relation to the compliance with the Operative Paragraphs fifteen, sixteen and seventeen of the Judgment.

<sup>3</sup> Specially, the parties were requested to present written information regarding the following aspects that were subject-matter of the discussion at the private hearing: Their position as to the need (or not) to appoint a specific prosecutor for this case.

was determined that the State would have to present its written report, together with relevant information and documentation, to respond to the questions made and to elaborate upon the aspects discussed during the hearing, by February 10, 2009. In turn, the representatives and the Commission would have to present their respective comments and information required within a term of ten days.

13. The brief of February 23, 2009 by which the State submitted, after the extension granted, its third report, according to what was requested in the hearing (*supra* Having Seen clause 12).

14. The briefs of April 17 and May 26, 2009 by means of which the representatives and the Commission submitted, respectively, once an extension of time was granted and upon the expiration of the term established to that effect, their comments to the third state's report (*supra* Having Seen clauses 12 and 13).

### Considering:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Colombia has been a State Party to the American Convention since July 31, 1973, and that it accepted the binding jurisdiction of the Court on June 21, 1985.

3. That article 68.1 of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level<sup>4</sup>.

4. That, in consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

5. That the obligation to comply with the rulings of the Tribunal conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.<sup>5</sup>

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as to the meeting to be held in the Colombian Embassy, in which several agreements would be entered into, and these agreements would be forwarded to the Court and the opinion of the Commission on those agreements.

Regarding the conditions for the return of the victims of Mapiripán and, if possible, on their relocation, what are the conditions that need to be created in order for them to return or relocate? Furthermore, they should refer to the possibility of an alternative design in case the victims cannot return.

As to Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca, who were declared victims by the Court, which should be the appropriate Tribunal's response as to the reconsideration of this aspect in this procedural stage where compliance with the judgment is being monitored?

<sup>4</sup> Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para 60; *Case of Gómez Palomino V Perú*, Monitoring Compliance with Judgment. Order of the Court of July 1, 2009, considering clause 3; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) V. Peru*. Monitoring Compliance with the Judgment. Order of the Court's President of June 8, 2009; considering clause 3.

<sup>5</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.<sup>6</sup>

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***Regarding the State's request not to include, as beneficiaries of reparations, two persons declared victims in the Judgment***

7. That in the brief of April 11, 2007 the State communicated that, according to information gathered through the investigations conducted by the Attorney General's Office, two persons, who were declared victims in the Judgment, Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca, would have not died or disappeared between the days of July 15 and 20, 1997 in Mapiripán, but on a later date<sup>7</sup>. The State alleged that said information, gathered after the delivery of the Judgment, "render the reparations ordered in favor of [the] next-of-kin [of the people named] in the judgment, ineffective, considering that their death is not attributable to the State and therefore, the compliance with the reparations in favor of the next-of-kin would imply unjust enrichment". Therefore, the State requested the Court "in the exercise of its inherent, unofficial and permanent role, to adjudge and declare what may correspond in this situation and in relation to the reparations in favor of the next-of-kin of these two people". At the hearing, the State reasserted its position and its request to study the documents presented in order to declare that they are not victims under the terms of the Judgment, or beneficiaries of the measures of reparations and it also mentioned, in its last report, that "should the Court does not deal with the merits of the case, it would allow for a situation, which is not in accordance with the Convention, to carry on".

8. That the representatives acknowledge that "there are legitimate doubts as to whether Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca were really victims of the Mapiripán Massacre", though the evidence furnished by the State is not

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December 9, 1994, Series A N° 14, para. 35; *Case of Gómez Palomino V. Peru*, *supra* note 4, considering clause 5 and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) V. Peru*, *supra* note 4, considering clause 4.

<sup>6</sup> *Cf. Case of Ivcher Bronstein V. Peru. Competence*. Judgment of the Inter-American Court of Human rights of September 24, 1999. Series C N° 54, para. 37; *case of Gómez Palomino V. Peru*, *supra* note 4, considering clause 6; and *Case of the Sawhoyamaya Indigenous Community V. Paraguay*, Monitoring Compliance with the Judgment. Order of the Court's President of May 20, 2009; considering clause 6.

<sup>7</sup> The State furnished, as evidence of this argument, a report of October 14, 1999 of the Police Inspection Unit of the Municipality of Mapiripán, indicating that Messr. Eliécer Martínez Vaca would have died in La Cooperativa on February 21, 1998. This report would have been found on a judicial inspection conducted on January 13, 2005 at the premises of the Ombudsman Office of Pueblo Regional del Meta. Moreover, it furnished a body removal record of December 21, 1998 (illegible document), a statement rendered by Mrs. Delfina Vaca as internal displaced person of August 2002, a report of November 17, 2005 from a prosecutor of the Human Rights Unit, indicating that "the investigation determined that the murder of Eliécer [Martínez Vaca] and the disappearance of Omar [Patiño Vaca] occurred on February 23, 1999 and April 2002, respectively". Besides, the State referred to alleged statements of people who requested to remain unidentified, which it did not furnish.

conclusive. In this sense, they emphasized that, given the impunity surrounding this case, the Court should depend on reliable evidence before deciding on this aspect and, therefore, they requested the Court to order the State to present the relevant court files to be able to learn about the complete investigations conducted regarding these two persons.

9. That the Commission pointed out that the supporting documentation furnished by the State is incomplete, its pages are illegible and in some cases, the signature of the deponent does not appear. Besides, it emphasized that the documentation furnished was prepared before the case was brought before the Court. Furthermore, it noted that the most of the allegations made by the State are based "on statements rendered by people who requested not to be identified". Based on the foregoing, the Commission considered that the State should furnish complete and legible copies of all the documents that the State referred to in its briefs, "specially, of the statements of the witnesses, beyond their request to maintain the confidentiality regarding the identity" and that the State should explain the reasons why it did not make that information available to the parties and the Tribunal in time fashion. After the hearing, the Commission stated that "the information furnished was not sufficient to be able to refer to the situation" mentioned; therefore, it requested the Tribunal to require further information in that regard.

10. That Colombia has questioned the quality of victims of two persons that the Court declared as such in the Judgment, after alleging the existence of facts as a result of the internal investigations conducted. That is to say, the State requests the Court to substantially review an aspect regarding the merits of the case as established in the Judgment.

11. As noted by the State itself in its request, in the Judgment on the merits and reparations, the Court determined that Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca are victims of the Mapiripán massacre and, therefore, beneficiaries of the reparations so ordered. This has been determined based on information furnished by the State itself in relation to the criminal investigations, in response to a request of the Tribunal to present evidence to facilitate adjudication of the case<sup>8</sup>. Specially, on that occasion, the State forwarded a charter prepared by the Attorney General's Office, office in charge of the investigations, which included the names of those people as disappeared in the Mapiripán Massacre. Hence, the Court established as proven fact that "information supplied by the State in its brief with final pleadings and in an April 6, 2005 document signed by the Attorney General's Office points out that the following persons have been individually identified in the criminal proceeding: [...] Omar Patiño Vaca, Eliécer Martínez Vaca [...], as victims of the facts in Mapiripán."<sup>9</sup> Furthermore, it is convenient to recall that the State alleged that it explicitly acknowledged its international responsibility for the violation of the rights to life, humane treatment and personal liberty, but "with regard to those who appear [in the brief with final allegations] as proven victims and likewise with regard to those who prove, in accordance with domestic law, that they are victims". Upon responding to this argument, the Tribunal took the following into account:

133. The Court notes that when it made said acknowledgment, the State explicitly accepted that, despite being as yet indeterminate, at least 49 victims were executed or made to disappear. In its brief with final pleadings, the State sought to limit the number of victims to only 12 persons, only 6 of whom are individually identified, which is inconsistent and incompatible with the acknowledgment of responsibility made before this

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<sup>8</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005, Serie C No. 134, para. 96.52, 133 and 254.

<sup>9</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia*, *supra* nota 8, para. 96.52.

Court. Also, the Court has deemed proven that there were other victims, specifically Gustavo Caicedo Rodríguez, Diego Armando Martínez Contreras, Hugo Fernando Martínez Contreras, Jaime Riaño Colorado, Omar Patiño Vaca, Eliécer Martínez Vaca, Enrique Pinzón López, Jorge Pinzón López, Luis Eduardo Pinzón López, José Alberto Pinzón López, Edwin Morales, Uriel Garzón, Ana Beiba Ramírez and Manuel Arévalo, who have been individually identified and whom the State does not include in its statement (*supra* paras. 96.51 and 96.52 and *infra* para. 254). Likewise, the State's intention to limit the victims of the instant case to the persons identified "in the final criminal and disciplinary proceedings" and to "those who prove under domestic law that they are victims" is not acceptable. In accordance with the basic principle of law regarding the international responsibility of the State according to which the States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*), the State cannot validly resort to domestic reasons to avoid answering for the international responsibility already acknowledged before this Court.

12. That the Court has processed the instant case in all its stages, and within such framework, the parties had different opportunities to furnish and submit arguments, information and evidence, based on which the Tribunal has delivered the Judgment on the merits and reparations. The State based said request on the documentation tendered between the years 1999 and 2002, which was already in the State's possession before the case was brought before the Court, before the answer to the petition and before the moment the State forwarded to the Tribunal said evidence to facilitate adjudication of the case during the merits stage. In the Judgment, the Tribunal appreciated the proven willingness of the State to cooperate by providing the names of those persons, which entailed admitting that they are victims of the massacre, and based on this the Court set the appropriate compensations.<sup>10</sup> The State cannot validly allege, in this procedural stage, where compliance with the Judgment is being monitored, that there are no grounds for the reparations ordered in favor of the two persons mentioned inasmuch as, despite the fact that the State held information that it now presents, it mentioned, in the merits stage before this Court, that Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca were fully identified victims of the facts of Mapiripán.

13. That the Tribunal notes that, at present, there are doubts about the way in which these persons died or disappeared, according to subsequent conclusions of the Attorney General's Office. Nevertheless, the Court recalls that the characteristics of the massacre and the inefficacy of the internal investigations, determined in the Judgment itself, precisely led to the lack of full identification of the victims. Based on the foregoing, this Tribunal dismisses the request made by the State, which shall comply with the reparations ordered in favor of the next-of-kin of Messrs. Omar Patiño Vaca and Eliécer Martínez Vaca. Even in the event that it is possible to effectively and irrefutably prove that a person declared victim in a judgment is not a victim, it falls upon the State to effectively pay the compensatory amounts ordered in his favor or in favor of his next-of-kin, considering that the act of acknowledgment of international responsibility of the State gave rise to an adequate expectation of the beneficiaries to receive reparations.

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<sup>10</sup> Cf. *Case of the "Maripirán Massacre" V. Colombia*, *supra* nota 8, para. 254.

*Official mechanism to monitor compliance with the Judgment (operative paragraph nine of the Judgment)*

14. That as to the obligation to establish, within six months of notification of this Judgment, an official mechanism to perform the functions set forth in paragraph 311 of the Judgment, the State mentioned that, by means of a Record of the Permanent Inter-Sectorial Commission on Human Rights of February 28, 2006, it was established an official mechanism to monitor compliance with the reparations, called "M.O.S. Mapiripán" (hereinafter, "M.O.S. Mapiripán" or "M.O.S."). This record was signed by the Vice-President of the Republic, the Minister of Interior and Justice, the Minister of Foreign Affairs, the Minister of National Defense and Social Protection, the Minister of Treasury and Public Credit, the Director of the Presidential Program on Human Rights, the members of said Inter-Sectorial Commission, the President of the Superior Council of Judicature, the Attorney General and the Senior Presidential Advisor to Social Action and International Cooperation. The record defines the roles and the different State's entities that would participate in the mechanism. Furthermore, the State, in due time, requested the representatives and the Commission to appoint two persons to act as representatives of the victims in said mechanism, according to what was established in the Judgment. On September 11, 2006 a meeting was held between the State's entities that would participate in the M.O.S. and the representatives of the next-of-kin of the identified victims, which marked the official operation of the M.O.S. Mapiripán. The State emphasized that the procedure to monitor compliance with the measures of reparations ordered in the Judgment is being done, as the Tribunal decided, by means of the M.O.S. Mapiripán, in which certain rules for its operation were agreed upon: monthly meetings; required quorum; composition of the Technical Secretary; appointment of representatives and prior consultation of the agenda.

15. That, moreover, during the hearing the State mentioned that since its establishment, within the framework of the M.O.S., 24 meetings have been held, complying in this way with the duties imposed by the Judgment. It also indicated that the mechanism is an inter-institutional program, organized by the State but one in which the participation of the victims and their next-of-kin have been primary. It pointed out the following achievements: periodic assessment of compliance with the judgment; arrangement of the text, date and means to convene the next-of-kin; processing of a sheet to collect information. It also informed that, notwithstanding the effective term established in the Judgment, as a consequence of a meeting held with the representatives, it was agreed that the operation of the M.O.S. would extend until December 2009 and that, at that moment, the need to continue with it and also, if applicable, its operative rules, would be evaluated. In this sense, the State requested the Court to declare the compliance with this obligation and to positively value that the operation of this mechanism has been extended, by mutual agreement with the parties, until December 2009 in order to monitor the other measures of reparation ordered by the Court.

16. The representatives asserted that such mechanism has been established and that it is working and that, in addition, the representatives of the victims were invited to participate in it. Furthermore, they mentioned that several meetings were held and that some activities were carried out within the framework of the M.O.S. tending to comply with the reparations ordered in the Judgment. During the hearing, the representatives confirmed the information presented by the State and claimed that the M.O.S. has been a useful mechanism, which, though with some limitations, have made important progress. Moreover, they welcomed the willingness of the State to follow orders and invited the Court to assess the significant progress and



consider this positive experience in order to implement it in other cases. In the last comments, they noted that the M.O.S. is the "most suitable program" to oversee compliance with the measures ordered by the Court, though they consider that it should be continuously evaluated and its operative rules, re-examined. They requested the Court to extend the enforcement of the M.O.S. under the terms agreed upon by the parties and repeated the need for the Inter-American Commission to actively participate in such program on behalf of the unidentified victims' next-of-kin.

17. That, in its comments and during the hearing, the Commission appreciated what was informed by the State and the representatives and positively valued all the actions taken by the State to comply with the measures. It particularly valued the extension of the deadline for the operation of M.O.S., agreed upon with the representatives, upon considering the importance of a debate space to discuss the details of compliance, which may lead to a change of the conditions.

18. That the Court positively values the establishment and beginning of the monitoring mechanism, its regular meetings and the appropriate participation of the victims' representatives and their next-of-kin. Moreover, the Tribunal notes with satisfaction that the operation of this mechanism will continue, apart from what was stipulated in the Judgment and by mutual agreement with the parties, until December 2009 in order to continue monitoring the measures of reparations ordered by the Court that are still pending compliance. In such a way, the State has complied with what was ordered in the Judgment. Nevertheless, in view of the agreement entered into between the State and the representatives to extend the operation of the mechanism, the Tribunal shall continue monitoring its operation until the State complied with its duty, according to the terms mentioned in the Judgment. In this sense, the State and the representatives must inform, in the future, on this aspect; particularly, on the scope and content of the procedure and the decisions adopted within the framework of such mechanism.

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*Obligation to investigate into the facts and, if applicable, punish the responsible (operative paragraph seven of the Judgment)*

19. That in relation to the obligation to immediately take such steps as may be necessary to activate and effectively complete, within a reasonable term, the investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as those whose collaboration and acquiescence allowed the massacre to be committed, the Court notes that the State, the representatives and the Commission have submitted exhaustive information and have discussed relevant issues or aspect; therefore, it deems pertinent to specifically assess the aspects addressed to determine the level of compliance with this obligation, in the following order: a) the investigations conducted by the Attorney General's Office and the results; b) the appointment of an exclusive public prosecutor, and c) the extradition of an alleged responsible.

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20. That, before entering into the analysis of the foregoing, the Court needs to decide on the State's request as to the publication of the information presented in relation to the investigations. The State has requested the Tribunal not to mention, in any public document, the information furnished by the parties on the investigation conducted in relation to these facts and the search for the remains of the victims, in

view of the fact that the investigations are in a preliminary stage and subject to confidentiality of legal proceedings. Besides, the State considered that the aspects of the investigations must be mainly discussed within the scope of the criminal procedure and using the appropriate procedural remedies, inasmuch as the representatives of the victims play the role of "partie civile" in the action. It also mentioned that, unless there is an alleged due process violation, this Tribunal is not allowed to analyze in depth and decide on the procedural actions because this is within the scope of the domestic procedure and, in this case, of the prosecutor in charge of the investigation who, according to the information of the court file, shall make the appropriate legal decisions. Finally, the State based its request on the respect for the right to due process of the accused, which includes the right not to deal with matters that adversely affect them without their participation. Otherwise, according to the State, the success of an objective and sound investigation may be jeopardized, inasmuch as the accused may request the dismissal of the investigation and may succeed.

21. That the representatives stated that, without detriment to what was expressed by the State, the Court should learn about and value the progress of the domestic judicial procedures, in view of the international obligation of the State that derives from the judgment of the Court and that the comprehensive and generic study of the domestic decisions should not affect the right to due process of the accused. Besides, some of the decisions, like the extradition of a former paramilitary chief (*infra* Considering clauses 37 to 41) and discussions regarding the collaboration of said people in the procedure of Justice and Peace, have been directly adopted by the Government and outside the scope of the criminal procedure; therefore, the representatives did not have the space or appropriate opportunity to contest them or agree on mechanisms to ensure the victims' rights. They could not either participate in the discussions regarding the future collaboration of said people with the procedure of "justice and peace" and the benefits he could get in the United States as a result of the cooperation agreements entered into with the United States courts and, on the contrary, the proceedings conducted in that sense have been repeatedly turned down by the Colombian and the United States authorities.

22. That the Commission stated that even though the obligation to investigate into the facts and punish must be carried out within the framework of the criminal system of the State, this does not exclude or limit the Court's powers to analyze whether that is appropriate and effective to solve the situation of the instant case.

23. That this Tribunal is aware of the risk implied in making public certain information related to the internal investigations, regarding the effectiveness of the investigation in itself as well as the people involved or interested in the investigation. Moreover, there may be several hypothesis or situations related to the publication of the information presented within the framework of the case, as to the material aspect of the information and the moment or procedural stage of the case as well.

24. That during the processing of the merits, when the State was held responsible for alleged violations of the American Convention and other applicable treaties, in recent cases the State has alleged the reservation of information during the stage of investigations, in order not to present to the Court certain documentation requested regarding domestic criminal procedures. In this case, the Tribunal deemed that the State had to forward the documentation so required, by informing about the reservation and the need, expediency or relevance of keeping the due confidentiality of the information. In such cases, the Court considered that the State's refusal to submit the documents cannot be held to the victims' detriment, but to the State's

detriment; therefore, the Tribunal could consider as proven those facts that were only provable by means of the evidence that the State denied to forward.<sup>11</sup>

25. That during the procedure to monitor compliance with the Judgment, the role of the Tribunal is no longer to determine the facts of the case and the possible international responsibility of the State, but to verify only the compliance with the obligations stipulated in the ruling by the responsible State. To that end, the Court needs to have the necessary information, which must be provided by the State, the Commission and the victims or their representatives. Furthermore, the General Assembly to the OAS repeated that, in order for the Tribunal to fully meet its obligation to report to the General Assembly on compliance with its judgments, the States Parties to the Convention need to provide, in time fashion, the information requested by the Court.<sup>12</sup> In this way, for the sake of complying with its role in monitoring compliance with the measures of reparation regarding the violations committed to the detriment of the victims and in the presence of both parties to an action, the Court shall assess, in each case, the need, expediency or relevance of maintaining the confidentiality of the information furnished in relation to its use in the order but not in relation to the parties' access to it.

26. That in the instant case, Colombia has submitted certain information related to the investigations, which has been transmitted and learnt by the representatives and the Commission, but the State requests the Tribunal not to publish such information in the monitoring compliance orders. The Court shall take into account all the information provided and shall include in this order only the essential part of such information, in order to determine the level of compliance with this operative paragraph. As to the other allegations of the State (supra Considering clause 20), the Court has pointed out, as in previous cases, that it is not a criminal court which can analyze the criminal responsibility of individuals,<sup>13</sup> and therefore, the Court shall not analyze in this stage all the dimensions of the investigations and internal proceedings, but only the level of compliance with the order established in the Judgment.

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27. The State informed that, since September 2006, several meetings have been held within the framework of the M.O.S. in order to coordinate different issues related to the investigation into the facts, as well as the protection of witnesses, the identification of new victims and the strategy of investigation. Said investigation is being conducted by the Attorney General's Office and the Superior Council of

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<sup>11</sup> Cf. *Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 98 to 100. Cf. also, *mutatis mutandi*, case of *González et al. ("Cotton Field") V. Mexico*. Court's Order of January 19, 2009 (request for expansion of alleged victims and refusal to forward documentary evidence), para. 59.

<sup>12</sup> General Assembly, Order AG/ RES 2408 (XXXVIII-O/08 adopted at the fourth plenary session, held on June 3, 2008, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights".

<sup>13</sup> Cf. *Case of Velásquez Rodríguez V. Honduras*. Merits. Judgment of July 29, 1988. Series C N° 4 para.. 134; *Case of Yvon Neptune V. Haití*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 37; *Case of Suárez Rosero V. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 37. Cf. also, *Case of Boyce et al. V. Barbados*. Preliminary Objection, Merits, Reparations and Costs . Judgment of November 20, 2007. Series C N° 169, footnote 37 and case of *Zambrano Vélez et al. V. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 93.

Judicature, and such offices have carried out several activities.<sup>14</sup> During the hearing, the State repeated what it mentioned before, in particular that 30 people were joined to the proceedings, 18 were accused and 13 were convicted and it also emphasized the progress made during the year 2008<sup>15</sup>. Furthermore, the State mentioned that the Office of Public Prosecutors has carried out several activities related to the instant case.<sup>16</sup> Regarding the lack of orders to formally join state agents to the proceedings, as alleged by the representative (*infra* Considering clauses 28), the State insisted that it does not want for any of the responsible to elude justice, but it is neither interested in giving rise to the expectation that hundreds of military officers participated in this massacre and shall be prosecuted. In its last report, it mentioned that the association of other law enforcement members "is a line of investigation that it is constantly dealt with", but that "up to the date, there is no sufficient evidence to allow analyzing such aspects in depth". Furthermore, it mentioned that by the application of the Justice and Peace Act [Ley de Justicia y Paz], some of the demobilized officers have referred, in their preliminary interviews, to the Mapiripán Massacre, information that is useful to address other lines of investigation within the proceeding conducted at the Human Rights Unit and at the end of the proceeding in order to establish the way the facts occurred and determine other alleged responsible. Lastly, in relation to the death of the demobilized paramilitary officers, the State pointed out that there are sufficient protection plans and programs, but that none of the paramilitary officers associated with this obligation has expressed fear for his safety or asked for protection.

28. That the representatives confirmed the meetings held within the framework of the M.O.S., but they emphasized the delay of the Attorney General's Office in informing on the work plan and the status of the investigations. They claimed that most of the proceedings have been expedited by the plaintiff and they also expressed their concern about the changes of prosecutors, though they acknowledged the work done by the Attorney General's Office. They also criticized that, after ten years of the beginning of the investigation, the State has not taken specific actions to identify and associate all the responsible, specially the high-ranking military officers mentioned in the Judgment of the Court, in spite of the fact that the paramilitary officers named, at the hearings of Justice and Peace, several officers of the National Army as co-perpetrators. The State has failed to comply with the duty to investigate, within a reasonable time, and to publish the results of the investigation. During the hearing, they acknowledged the progress made by the Human Rights Unit, given the fact that several paramilitary officers were joined to this proceeding (simultaneously with the application of the Justice and Peace Act), Messr. Salvatore Mancuso in particular. They specifically referred to four critical

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<sup>14</sup> The State mentioned the following progress made: Creation of a criminal court in Bogotá so that the Judge of the Specialized Circuit "is able to exclusively take up the case of the Mapiripán Massacre"; condemnatory judgment delivered by the Third Criminal Court of the Specialized Circuit against three persons for the crime of aggravated murder, kidnapping with extortion, conspiracy to commit crime and terrorism; the order to formally join eight people to the criminal proceedings; the condemnatory judgment against Hernán Orozco for aggravated murder and kidnapping and of Jaime H. Uscátegui for forgery of public document, as well as the appeal filed by the Attorney General's Office regarding the last judgment, the accusation for several crimes against Salvatore Mancuso and another alleged paramilitary.

<sup>15</sup> Furthermore, alleged former paramilitary officers have been associated with the investigation and arrest warrants have been issued against them; the legal situation of two paramilitary officers was defined, who opted for "plea bargain"; the accusation against Salvatore Mancuso was solved and two condemnatory judgments against three former paramilitary officers were delivered, in which they were sentenced to serve a period of forty years imprisonment.

<sup>16</sup> Namely: 42 testimonies, 3 judicial inspections, requests of photo file, 42 commissions sent to the area, 3 judicial inspections of other court files.

points regarding the investigations<sup>17</sup> and they considered that no progress was made as to the association of new members of the Police, the Army or the Navy who were identified at the places mentioned in the massacre (at the airports of Urabá and San José de Guaviare and Barrancón) and at the squads that officially existed. As to the order to formally join two paramilitary officers, perpetrators of the massacre, who acknowledged the facts and requested a “plea bargain”, they requested the State to look for the best way to speed up the proceedings and noted that it is still pending the resolution of the legal situation of other paramilitary officers who were associated with the investigation as well as of those who were declared defendant not present in this proceeding and also, of the compliance with the arrest warrants. In addition, they expressed their concern about the demobilization of paramilitary officers, inasmuch as they also felt concern over the absence of guarantees during the proceeding and requested protection of their lives and close relatives in order to freely confess. They pointed out that between 1600 and 1800 demobilized paramilitary officers were murdered, facts that have not been investigated.

29. That the Commission, moreover, expressed its concern about the delay in the investigations due to the replacement of the prosecutor that took up the case; the lack of appointment of a special public prosecutor for the case; the delay in the compliance with the commitment made within the framework of the M.O.S. by the Attorney General's Office in order to prepare a work plan; the shift of the burden to further the proceedings to the representatives of the victims' next-of-kin and the lack of reference made by the State to the progress in the proceedings against some of the instigators. At the hearing, the Commission stated that it valued the progress made in the investigation; and it expressed its concern about the fact that the proceedings do not include the total number or “at least, a significant number” of the instigators or perpetrators of the facts. In the last comments, the Commission emphasized that the State has not informed on the line of investigation completed in order to associate other members of the law enforcement personnel with the investigation.

30. That, upon the delivery of the Judgment, the Court noted the partial results obtained in the criminal proceedings so far and considered that there was a situation of impunity surrounding the case and also, lack of effectiveness in the criminal proceedings, which was shown in two aspects: Most of the responsible have not been associated with the investigations, nor identified or prosecuted; and the paramilitary officers who were prosecuted and convicted “*in absentia*” had benefited from the ineffectiveness of the execution of the punishment imposed. In this way, Colombia must: a) remove all de facto and de jure obstacles that maintain impunity; b) use all available means to expedite the investigation and the judicial proceeding; and c) provide security guarantees to the victims, investigators, witnesses, human rights advocates, court employees, public prosecutors and other participants in the judicial process, as well as former and current inhabitants of Mapiripán.<sup>18</sup>

31. That the Court values the initial progress made, within the framework of the M.O.S., in order to create communication channels and the specific commitments in

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<sup>17</sup> They mentioned that after the delivery of the Judgment of the Inter-American Court, the Nine Criminal Court of the Specialized Circuit of Bogotá issued a ruling on November 28, 2007, by which the only person that informed on the facts was convicted. This decision was appealed by the plaintiff, the Solicitor General's Office and the Attorney General's Office, but the appeal has not been resolved yet. Furthermore, a complaint for breach of public duty was filed against the judge that presides that court. In addition, they referred to the decision of the Tribunal that upheld the judgment against the then commander of the 2<sup>nd</sup> Mobile Brigade and other two former military officers, and the appeal for annulment filed against such decision, which is pending resolution at the criminal chamber; as well as other two proceedings against military officers.

<sup>18</sup> Cf. *Case of the “Maripirán Massacre” V. Colombia*, *supra* nota 8, paras. 240 and 295 to 299.

terms of the purpose and direction of the investigation. It is essential, in this type of investigation, to ensure permanent and timely communication and information between state authorities and the representatives of the victims.

32. That, as has been established in the Judgment, it is necessary to remember that the instant case deals with extra-legal executions and forced disappearances of people, in which the State has the duty to initiate a prompt, serious, impartial and effective investigation *ex officio*. Certainly, during the investigation and judicial proceedings, the victims of human rights violations or their next-of-kin, must have ample opportunity to take part and be heard, both in the elucidation of the facts as well as and in the quest for fair compensation. Nevertheless, the effective search for the truth falls upon the State and does not depend on the procedural initiative of the victim or next-of-kin or on the submission of evidentiary elements.

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33. That in relation to the appointment of a special public prosecutor to investigate into the case, the representatives pointed out that the State has not complied with the commitment to appoint a special prosecutor to be in charge of the investigation of the instant case and they considered that the Attorney General's Office should receive more support by naming an investigation bureau that would remove some of the workload, in order to make some progress, within a reasonable time.

34. That the State, in addition, mentioned that it understood that the appointment of an exclusive public prosecutor was not a specific obligation, but a simple recommendation from the Court. The State considers that, at present, it is impossible and inconvenient to appoint an exclusive prosecutor to the case, inasmuch as there are more than 100 prosecutors working at the Human Rights Unit, who are in charge of more than 4800 active proceedings; therefore, such appointment would imply reassigning the workload among other prosecutors. Besides, it considers that making such appointment, in a hallmark case, could turn into a negative example for the other cases of alleged massive human rights violations the Attorney General's Office is in charge of.

35. That the Commission considered that such appointment would contribute to make a material progress in the compliance with the pending judicial obligations.

36. That the Court deemed in the Judgment that the appointment of a special public prosecutor, within the Human Rights Unit of the Office of the Attorney General, who would be exclusively in charge of the investigation and the furthering of the ongoing criminal proceeding, would contribute to the compliance with the obligation to investigate. Nevertheless, such appointment does not constitute the only way to meet such objectives and therefore, it falls upon the State the duty to order the necessary measures to guarantee some progress in the investigation, as fast and effectively as possible.

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37. That, the representatives expressed their concern about the extradition to the United States of America of 13 paramilitary officers, decided on May 14, 2008 by the President of the Republic, which includes the extradition of the former highest chief of the *Autodefensas Unidas de Colombia*, for the crime of drug trafficking, which jeopardizes the criminal investigations conducted against him for this case and constitutes a flagrant obstruction of justice. They noted that, even though both governments announced their intention to implement mechanisms of judicial

cooperation in cases involving extradited paramilitary officers, the State has not informed the victims or their representatives on the actions taken and requests filed with the authorities of the United States of America in relation to the domestic proceeding conducted against Mancusso or on the judicial proceedings or mechanisms that guarantee the participation of the victims. Even though it is possible for the extradited officers to virtually participate in the hearings held within the framework of the Justice and Peace Act [*Ley de Justicia y Paz*], the real access of the victims and their representatives is highly limited, due to language barrier, issuance of visas and travel costs. They consider that the responsible of the massacre are avoiding the Colombian justice, insofar as there is no guarantee that said people will return to Colombia when they finish serving their sentences in the other country. At the hearing, they also mentioned that said extradition ceases to recognize that the crimes against humanity "are of a higher hierarchy". They expressed that they should request the full collaboration of the United States of America and coordinate with it in order to conduct this proceeding as soon as possible and with all the support of the Colombian State. Besides, they referred to the possible extradition of another former paramilitary chief and they considered that he should not be extradited until he renders the complete preliminary interviews and complies with the punishment for the crimes committed.

38. That, during the hearing, the State mentioned that it was not true that Mr. Mancusso was extradited in order to avoid justice and avoid responding for the crimes in which he was involved. Furthermore, the State requested the government of the United States of America to send all the assets delivered by the extradited paramilitary officers, within the framework of the proceedings, to Colombia to repair the victims; to cooperate with the Colombian justice in the investigation into the crimes committed in Colombia, allowing the access of these persons where necessary and to consider any benefit they were to receive, as a condition to cooperate with the elucidation of the crimes committed in Colombia. Based on these requests, some of the virtual hearings have already been conducted, in which the participation and the direct access of the victim was guaranteed and the judicial authorities could also have access to these persons.

39. That, in the reply to this explanation, the representatives insisted in that it was not true that an agreement was entered into between the United States of America and Colombia in order for any possible benefit to be a condition for the collaboration of the accused with the cases involving human rights violations in Colombia. The test would be that two of those extradited paramilitary officers have settled by "plea bargain" before the United States courts, which not only tell us nothing about the benefits for the collaboration with the Colombia justice, but it also explicitly excludes additional benefits, even in the case of collaboration with the process of Justice and Peace.

40. That it is convenient to recall, under the terms of the Judgment, that no domestic legal provision of law can impede compliance by a State with the obligation to investigate and punish those responsible for human rights violations.<sup>19</sup> Besides, it is also necessary to recall that, in other cases, this Tribunal has acknowledged the relevance of the legal concept of the extradition as an important instrument in the criminal prosecution in cases of serious human rights violations.<sup>20</sup> In those cases, the rules of international common and conventional law establish the duty to prosecute,

<sup>19</sup> Cf. *Case of the "Maripirán Massacre" V. Colombia*, *supra* nota 8, para. 304.

<sup>20</sup> Cf. *Case of La Cantuta V. Perú*. Merits, Reparations and Costs.. Judgment of November 29, 2009. Series C N° 162, paras. 159 and 227; *Case of Goiburú et al. V. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C ° 153, paras. 127, 130 and 132.

judge and, if applicable, punish the responsible, which entail the development of national and international means, instruments and mechanisms to effectively prosecute such conducts and punish the perpetrators, in order to prevent such acts and avoid them carry on unpunished. Furthermore, the State cannot provide direct or indirect protection to the accused of crimes humanity by means of the improper application of legal concepts that threaten the pertinent international obligations. In this way, the concept of extradition cannot consist, either, in a means to favor, foster or guarantee impunity.

41. That, according to what was informed, at least one of the former paramilitary chiefs, who were prosecuted, has been extradited from Colombia to other State of the area, though there will an accusation against him for several charges related to the serious facts of this case. In fact, since the merits stage and during the whole monitoring compliance stage, the State has mentioned the accusation against Mr. Mancusso as one of the main achievements of the internal investigations. The Court considers that in the decisions regarding the application of certain procedural concepts to one person, the accusation of serious human rights violations must prevail. The application of concepts like the extradition must not serve as a means to favor, foster or guarantee impunity. Hence, based on the lack of agreement as to the judicial cooperation between the States that arranged such extradition,<sup>21</sup> it falls upon Colombia to clarify the mechanisms, instruments and legal concepts that shall be applied to guarantee that the extradited person will collaborate with the investigations into the facts of the instant case, as well as, if applicable, to guarantee the due process. The State must guarantee that the proceedings conducted outside Colombia will not interfere or hinder the investigations into the serious violations committed in the instant case or affect the rights of the victims recognized in the Judgment.

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42. That it is necessary to note that more than 12 years have passed since the Maripirán massacre and more than 3 since the Tribunal delivered the Judgment. The Court notes the work done by the Attorney General's Office, through the Human Rights Unit, since 30 people have been associated with the investigation, 18 have been accused and 13 have been convicted. Some of these results were already known by the time this Judgment was rendered, even the information related to one of the former paramilitary chiefs.<sup>22</sup> During the year 2008, the Court notes more actions taken by the Attorney General's Office and orders to formally join other persons to the criminal proceeding.

43. That the Court notes the lack of specific actions addressed to identify and formally join all the responsible and perpetrators of the massacre to the proceeding, particularly, those addressed to public servants and members of the law enforcement

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<sup>21</sup> Before the question made by Judge Macaulay, the State clarified that the issue of cooperation was a request, but not an agreement.

<sup>22</sup> Upon confirming that, impunity is reflected in the trial and conviction *in absentia* of the paramilitary who, while they hold high positions in the structures of the AUC, they have benefited from the way the judicial system has acted, convicting them but without executing the punishment, the Tribunal expressed in the Judgment: "the Court notes the fact communicated by the State, when it sent information requested as evidence to facilitate adjudication, that on August 3d of [2005] an order was issued to formally join Salvatore Mancuso Gómez to the proceeding, but the arrest warrant against him was suspended "due to his role as representative of the *Autodefensas Unidas of Colombia* in the peace process undertaken by the Government with said organization" (*Cf. Case of the "Maripirán Massacre" V. Colombia, supra nota 8, para. 240*).



agencies. Even though the State alleged that this is a line of investigation, which has not offered a satisfactory explanation regarding the factors that have hindered, so far, the association of other state agents, in spite of the clear existence of evidence in this sense. It is convenient to recall that in the Judgment, the Court noted that members of the Armed Forces of the State adopted measures tending to cover the facts and that the massacre could not have been prepared and carried out without the collaboration, acquiescence, and tolerance of high officials of the Armed Forces<sup>23</sup>, circumstance that is also shown by the decisions of the internal judicial authorities<sup>24</sup> and the statements of the identified and convicted perpetrators and demobilized paramilitary officers.

44. That, the Court deems that there still exists a situation of impunity in the instant case, as far as the truth of the facts has not been totally determined; specially, as to the determination and possible punishment of the perpetrators and instigators. In order to continue monitoring this aspect, it is necessary for the State to continue submitting complete and updated information on all the actions taken; specially, information on the mechanisms which make it possible to include into the investigation, the relevant information and documentation furnished within the framework of other internal mechanisms, as well as the reasons why some of the prosecuted or convicted persons have not been arrested and the measures to be adopted in that sense. Furthermore, the State must publicly disseminate the result of this process, according to the terms of the Judgment, so that Colombian society may know the truth about what happened. The publication is closely related to the promptness with which the investigations should have been conducted since the massacre occurred and, particularly, since the delivery of the Judgment of this Court. Based on the foregoing, the Tribunal shall continue waiting for the results of the investigations in order to determine what may correspond in relation to this aspect.

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***Steps to identify the victims and their next-of-kin (operative paragraph eight of the Judgment)***

45. That, regarding the obligation to immediately take such steps as may be necessary to individually identify, within a reasonable time, the victims who were executed and made to disappear, as well as their next of kin, the State informed on the meetings held within the framework of the M.O.S., in which it was agreed upon the text of the publication to locate the victims' next-of-kin - information that would be verified by the Attorney General's Office-, and the means to publish the announcements by means of a radio and television broadcaster and the newspaper, to which end they prepared an unique format to collect information and a mechanism to forward such information to the Attorney General's Office, in a confidential way. According to the Attorney General's Office, by June 2008, 10 persons, who consider themselves to be next-of-kin of the victims, have showed up; such information is still being verified.

46. That, during the hearing, the State informed on the announcements by means of a radio broadcaster, a television broadcaster and a newspaper, as ordered in the Judgment. The State acknowledged that such announcements were not published

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<sup>23</sup> Cf. *Case of the "Maripirán Massacre" V. Colombia*, *supra* nota 8, paras. 96.30 to 96.46, 116, 120 and 121.

<sup>24</sup> Cf. the consideration made in the Judgment regarding the decisions of the Constitutional Court and the Superior Council of Judicature (*Cf. Case of the "Maripirán Massacre" V. Colombia*, *supra* nota 8, paras. 117 and 118).

within the terms established in the Judgment; therefore, the State agreed with the representatives to extend the term to identify possible victims and next-of-kin until December 2009 and, in addition, the State mentioned that it published more announcements than the ones ordered by the Court. In this sense, it pointed out that in the year 2008, 23 persons showed up, of which 16 already rendered their statements; that there are other six more statements pending and three more people need to show up. The statements of the six people would be under evaluation in order to find out whether they are or are not related to the case. Regarding the exhumation proceedings carried out, the State informed that it began with the exhumations in the proceeding of Justice and Peace, with a negative result; additionally, within the framework of the application of the Justice and Peace Act [Ley de Justicia y Paz], 84 exhumation proceedings have been conducted, which were pending verification. At the M.O.S., it was agreed to extend the term established until December 2009 so that new victims and the victims' next-of-kin may show up to be duly identified. Based on the foregoing, the State requested the Court to declare the obligation to publish the corresponding announcements fulfilled and it also mentioned that the State is making its best efforts to search for and identify the victims and next-of-kin.

47. That the representatives pointed out that, even though there some progress was made in complying with this measure, the results obtained, that is, the location of 10 possible next-of-kin of the victims, are still insufficient considering the dimension of the massacre and the number of victims. In addition, they claimed that they agreed with the State upon the notifications and concluded that the measure of reparation does not consist in the publication in itself; otherwise, that this is a mechanism created to identify, without detriment to the other suitable measures to that end.

48. That in the comments prior to the hearing, the Commission emphasized the lack of effectiveness of the actions taken in relation to the investigation into the facts and the location and identification of the victims. Furthermore, it valued that the State has extended the term established in the Judgment and considers it is useful for the State to present to the Court detailed, systematic and updated information regarding the people that have been located and identified in order to assess the progress in the compliance with this measure.

49. That the Court positively values the activities carried out within the framework of the M.O.S. to plan, design and publish announcements for the identification of victims and their next-of-kin. Also, it values the agreement entered into to extend the terms initially established, as well as the greater number of announcements made and the effective identification of an important number of people. In this sense, the Tribunal deems that, as to the form and procedure, the State has partially complied with what was ordered in the Judgment. Nevertheless, the exhumation proceedings have showed little results so far and it is reasonable to consider, in view of the dimension and consequences of the massacre, that there is a great part of victims and next-of-kin to be identified. In this sense, the Court notes that close relationship between the compliance with this obligation and the effective investigation into the facts. Therefore, the Court shall continue monitoring compliance with this measure and requests the State to refer, in the next report, to the following:

- a) the results of the measures adopted;
- b) If the State shall adopt other suitable measures in order to implement them to that end;
- c) specific information on the people who have been located and identified;

- d) clarify whether it has been determined that Messrs. Néstor Flórez Escucha and Wilson Molina Paredes had been victims executed or made to disappear during the Mapiripán Massacre or whether their next-of-kin had showed up at the M.O.S. in that sense, according to the terms of paragraph 255 of the Judgment; and
- e) The creation of a genetic information system to enable establishment and elucidation of the kinship of the victims and their identification, under the terms of paragraph 308 of the Judgment.

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***Adequate treatment to the victims*** (operative paragraph ten of the Judgment)

50. That as to the obligation to provide the next of kin of the victims who were executed or made to disappear, and those who have already been identified, and once those who have not yet been identified are, adequate treatment, the State forwarded a report submitted within the case of *the Pueblo Bello Massacre*, in relation to the characteristics of the treatment, considering that the agreement entered into with the Ministry of Social Protection and the United States Development Program explained in said report, would be applied to the compliance with the Judgment of the instant case. The process of medical and psychological treatment is being carried out in view of several judgments delivered by the Court and it includes the following three aspects: i) it deals with psychological treatment; ii) said technical cooperation agreement was entered into for that process and iii) the treatment is divided into two phases: evaluation and treatment, as requested by the representatives. Consulting services were hired to assess some of the private entities proposed by the representatives to provide the treatment, which evidenced that such entities were suitable for the diagnosis stage but not for the treatment stage for which the health public network was the most appropriate. Then, these entities were contacted, the purpose of the job was coordinated and the entities were hired. Moreover, it emphasized that the State made available for the victims' next -of-kin, who require urgent treatment, a supporting mechanism with the Ministry of Social Protection, but that until July 2008, no request was submitted to that end. Notwithstanding that, it pointed out that by the end of 2008, the "*Corporación Centro de Atención Psicosocial*"- an inter-institutional organization hired by the victims of this case-, communicated the results obtained until then and informed that it had diagnosed 26 out of the 53 people located ant that, in addition, some of the people stated that they did not want the treatment; therefore, the second stage of the treatment began, in which the medical assistance shall be provided by the *República de la Salud* and the psychosocial treatment by means of the private entities that collaborated in the diagnosis and with an international organization. Moreover, even though the State acknowledged that there was a delay that could have violated the confidence in the process, the State requested the Court to value the compliance with this measure, highlighting that the diagnosis process was an integral part of the measure and that it was also necessary to adjust the treatment to the needs of each person. In this sense, it requested the representatives' help to make the victims that, so far, did not want to participate in the process, aware of their inclusion. Finally, the State mentioned that the health treatment was going to be provided immediately after January 2009, with a preferential and comprehensive treatment and the provision of medication.

51. That the representatives noted that, in spite of the agreement between the Ministry of Social Protection and the UNDP, there have been weaknesses in the

participation of the victims' representatives and that there were some critical points as to the hiring of an entity to be in charge of the diagnosis stage. During the hearing, they stated that even though there was a significant delay at the beginning of the compliance with this measure, important progress has been made since the agreement with the UNDP and the hiring of specialized private organizations to provide treatment to the victims of this type of crimes. They acknowledged the willingness and flexibility that the State showed to carry out this measure. Currently, by the end of the diagnosis stage and the beginning of the treatment stage, they expressed the following concerns: i) the importance of considering that the diagnosis stage only covered a part of the victims; in this sense, the duty to look for the other people and include them in the process is still pending; ii) the need for the treatment stage to directly begin after the diagnosis stage, in order to avoid mistrust and the re-victimization of the victims; iii) the importance for the same organization that was in charge of the diagnosis to provide the treatment, in view of the reliable relationship built; iv) the implementation of this measure as to the health is still pending; therefore, they request the State to provide further information in order to learn more about the plan mentioned by the State and submit their comments.

52. That the Commission, in addition, positively valued the important progress made at the end of the diagnosis stage, but it is waiting for information regarding the second treatment stage and, particularly, the implementation in connection with health. Furthermore, it noted that, so far, the treatment refers to the psychological and psychosocial part, but the aspect of the medical treatment has still not been implemented.

53. That the Court values the actions taken as a part of execution of this measure as well as the willingness to include this aspect in the execution of the agreement mentioned by the State for the comprehensive treatment of the victims of the armed conflict from a psychosocial point of view. The Tribunal values the efforts shown by the State upon the execution of the agreement between the Ministry of Social Protection and the United Nations Development Program; the psychosocial nature of the measures that are being adopted and the investment and procedure in the system of evaluation and treatment. Moreover, this Tribunal expressed satisfaction that the State has adopted a comprehensive approach for the implementation of this measure, which includes the different cases where the Court has delivered judgments and ordered this measure of reparation.

54. That, in addition, the Court notes that the appropriate treatment for the victims' next-of-kin was an obligation of immediate compliance on the part of the State. In this sense, it is worrying that the diagnosis of the next-of-kin, considering their treatment, has taken more than three years in being carried out. The Court hopes that the second stage of psychosocial treatment begins, forthwith, and for the State to adopt the remaining measures to implement the program of medical treatment and include, in the plans, the victims who have not been evaluated yet. Moreover, without detriment to the measures the State shall adopt within the framework of the general health system, it is necessary for the State to provide, free of charge, the victims of the instant case with thorough and comprehensive preferential treatment, including the medicines they may require. Certainly, the consent and cooperation of the beneficiaries of these measures are essential for the effective provision of the treatment owed to them. To this end, it is important that the State authorities continue having the cooperation of the representatives to include the rest of the people. The State has undertaken to guarantee that there will be no more interruptions between the diagnosis and treatment stages. Therefore, the State shall continuously inform, in time fashion, on the progress and results in the implementation of this measure.

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***Security conditions to return to Mapiripán*** (operative paragraph eleven of the Judgment)

55. That, regarding the obligation to carry out such actions as may be necessary to ensure security conditions for the next of kin of the victims, as well as other former inhabitants of Mapiripán, to be able to return to Mapiripán, if they wish to do so, the State pointed out that the compliance with this measure is in charge of the *Agencia Presidencial de Acción Social*, entity that forms part of M.O.S. Within the framework of the action plan established, on February 21, 2008 a Tripartite Committee on the Assistance of the Displaced Population was formed, in Villavicencio, place where most of the next-of-kin of the identified victims live. Such committee exclusively dealt with the case of the Mapiripán massacre and it was agreed to register those people who were not registered in the Unique Registry for the Assistance of Displaced Population, by means of massive workshops in Villavicencio and Bogotá and individual workshops, where the number of next-of-kin is not significant. It was also agreed the inclusion of next-of-kin in the institutional offer of assistance of the displaced population, in programs of socio-economic reestablishment and to give priority, within that offer, to the assistance of the victims' next-of-kin of this case. Furthermore, the State expressed its "deep concern" since, in spite of the multiple proceedings conducted, none of them have been effective for the victims' next-of-kin or their representatives and it pointed out that the term conferred by the entities, had expired and that, up to the date of the presentation of the report, none of the beneficiaries have appeared before the Office of the Public Prosecutor or *Acción Social* to express interest in receiving such assistance. During the hearing, the State emphasized that it cannot precise whether, currently, all the displaced people want to return, because many of them have not been located, in spite of the open announcements made. In the last report, the State highlighted the commitment made by the representatives to foster the participation of the next-of-kin in the activities the State shall organize to such end. As to the possibilities for the displaced population, that is, the return and relocation, the State repeated that each option requires the compliance with general conditions, which were established in the Protocol on the Return or Relocation of the Displaced Population, widely known. It also repeated its willingness to comply with this measure of reparation by whatever means the victims wish to adopt.

56. That the representatives valued some of the institutional efforts made to comply with this measure, like the design of an action plan and the establishment of a tripartite Committee, but these actions are insufficient and the design of additional strategies is urgent for the fulfillment of the measure. They repeated their concern about the worrying situation of security that is being experienced in the municipality of Mapiripán, where there is presence of several armed groups, including paramilitary groups who continue carrying out criminal actions in the department of Meta. Furthermore, they confirmed that massive attacks were committed against the civil population. They pointed out that the next-of-kin of the victims refused to return for security reasons and that they want to be relocated in other regions of the country. At the hearing, the representatives mentioned that they had tried to find an alternative solution to comply with the measure, which is not necessarily the return to Mapiripán, but the relocation. They welcome the willingness of the State to find a solution to the problem and they trust that, within the framework of the M.O.S., a solution will be found by mutual agreement.

57. That, at the hearing, the Commission expressed its wish to learn, more in detail, about the intention of the State to alternately relocate the next-of-kin and, therefore, requested further information in this regard. Afterwards, the Commission mentioned that the State has not informed on the precise actions to guarantee the victims the options the State offer.

58. That, this Tribunal notes that part of the victims have expressed their willingness not to return to Mapiripán and be relocated in other regions of the country. In this way, the Court values that the State has taken actions to make alternative measures, like the relocation, possible, and it also values what the State and the representatives expressed about finding, by mutual agreement, a solution within the framework of M.O.S. It is important to recall that, under the terms of the Judgment, the Court noted the connection between the fear expressed by former inhabitants of Mapiripán since they are still being threatened by paramilitary officers, and the need to effectively complete the investigations and proceedings. The State did not inform whether, as ordered in the Judgment, the official representatives were sent to Mapiripán during the first year, to verify the order and make consultations with the residents of the town, nor about the necessary measures to guarantee the security of the area and the design of such measures together with the beneficiaries of them. In defining the method of compliance with this measure of reparation, it is important the respect for the victims' will; specially, considering the effects that the forced displacement cause on them and the situation of risk and vulnerability they are exposed to, according to what was verified and declared in the Judgment. In this sense, the Court shall continue monitoring compliance with this measure.

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***Erection of a monument (operative paragraph twelve of the Judgment)***

59. That, as to the obligation to build, within one year of notification of this Judgment, an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, the State informed, at the hearing, that in view of a legitimate interest – and as has been brought to the Court's attention- this measure has been postponed in order to identify more victims and next-of-kin, in order for them to be able to participate in the decision process. It has been agreed that during the year 2009, an arrangement process shall begin in order to organize the criteria of the monument, the artist, the place and the times, so that by December 2009, some progress will be made and in 2010, the monument will be erected. In this sense, the State requests the Court to ratify what was agreed with the representatives.

60. That the representatives confirmed what was expressed by the State, as to the fact that it would be convenient to take a decision regarding the monument with less than half of the victims' next-of-kin. As a consequence, it was decided to wait for the M.O.S. Mapiripán to begin with the process to search for victims and next-of-kin in order to allow the participation of the new people in the decision-making process regarding the monument.

61. That, even though the erection of an appropriate and dignified monument in remembrance of the facts of the Mapiripán massacre is an autonomous obligation that does not depend on the compliance with other operative paragraphs, the Court values that the State and the representatives have agreed on waiting for the identification of more victims and next-of-kin, in order to allow the people who were directly affected by the facts of the case, to participate in the definition of criteria for the erection of the monument. Based on what was informed by the State and the representatives regarding the procedure to identify other next-of-kin and victims of

Mapiripán (*supra* Considering clauses 45 to 49), this Tribunal understands that the delay in the erection of the memorial, apart from the six additional months agreed between the State and the representatives at one moment, obeys to a legitimate interest. In this way, the Tribunal emphasizes the importance for the State to make progress in the compliance with this measure of reparation, given the real symbolic value that the same has as a guarantee of non-repetition of such serious facts in the future. Therefore, the Court shall continue monitoring compliance with this measure, and to that end, the State shall inform on the progress and the results obtained in relation to the commitments made.

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***Human Rights education programs (operative paragraph thirteen of the Judgment)***

62. That as to the obligation to implement, within a reasonable term, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all levels of its hierarchy, the State informed, at the hearing, that as of the delivery of the Judgment, the Ministry of Defense has carried out activities in this respect. It pointed out that a cooperation agreement was entered into with the United Nations High Commissioner on Human rights and three international consultants were hired to conduct a study on the training within the Colombian Armed Forces, which served as basis for the Ministry of Defense to design a "Comprehensive Human Rights and International Humanitarian Law Policy" in January 2008. The State explained, in detail, the activities to be carried out in order to adjust the training; it also emphasized the impact that this State policy had and pointed out, as an example, that the Attorney General's office received a considerable reduced number of complaints in the last year. Moreover, it informed that an office of human rights was created within the Army in order to ensure that this policy is internalized and it also mentioned that a cooperation agreement was entered into with the Inter-American Institute of Human Rights to oversight the progress in this respect. The State delivered, during said hearing, an exhaustive report on these programs and requested the Court to declare the compliance with this measure of reparation.

63. That the representatives noted, at the hearing, that in view of the fact that they have not previously learned about the programs mentioned by the State, they shall evaluate the material presented and submit to this Court their comments. Nevertheless, they emphasized the importance of the impact indicators, since the spirit of this measure of reparations is oriented to design a solid and timeliness educational process in order to guarantee the non-repetition of the facts. Furthermore, the Commission positively valued the measures in relation to the training of the law enforcement personnel mentioned by the State and emphasized that the purpose of this measure is not only to educate them but also to make them aware. It considers it is useful for the State to provide further information on the syllabus of the formal education that the members of the law enforcement personnel are receiving.

64. Moreover, the Court reminds the State that the education on human rights within the Armed Forces is vital to create guarantees of non-repetition of facts as the ones seen in the instant case. Therefore, it positively values the progress mentioned by the State at the hearing. Even though the Court agrees with the representatives in relation to the importance of impact indicators, it considers that the State complied with this measure of reparation, as to the design and development of

human rights and international humanitarian law training program, in view of the fact that these are permanent programs.

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***Publication of the Judgment*** (operative paragraph fourteen of the Judgment)

65. That, as to the obligation to publish in the official gazette Diario Oficial and in another national-coverage daily, the pertinent parts of the Judgment, the State informed that on April 10, 2006 it published the section of the Judgment on Proven facts- without the corresponding footnotes-, paragraphs 101 to 123 of the Section on International Responsibility of the State, as well as the operative paragraph of the Judgment, in the Official Gazette as well as in an additional offspring to "El Tiempo" newspaper, which distributes 270.000 copies. The State furnished examples of these publications and requested the Court to consider the operative paragraph fourteen of the Judgment to be fulfilled. The representatives and the Commission confirmed the fact that the State made such publications.

66. That, as a result, this Court considers that the State has duly complied with the obligation to publish the pertinent parts of the Judgment, under the terms stipulated therein.

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***Payment of compensatory amounts and reimbursement of costs and expenses*** (operative paragraph fifteen, sixteen and seventeen of the Judgment)

67. That as to the payment of the amounts set forth for pecuniary and non-pecuniary damage, as well as the reimbursement of costs and expenses, the State informed that, by means of two resolutions of 2007 and one of 2008, the Ministry of Defense ordered and paid the following compensatory amounts: all the compensatory amounts to the next-of-kin of the victims already identified in the Judgment; some of the compensatory amounts to some of the victims who have not been identified in the Judgment (next-of-kin of Edwin Morales, Georgina Pinzón and Wilson Molina Pinto), the costs to the victims' attorneys (Colectivo de Abogados "José Alvear Restrepo" and CEJIL). In this sense, the State requested the Court to study the documents presented and to declare this measure of reparation to be fulfilled in relation to the people identified in the resolutions.

68. That, the representatives expressed that the State has complied with the orders given by the Court in that sense, with a normal delay in the processing of the payments. Nevertheless, they noted that the obligation to pay the compensations shall not be limited to the victims' next-of-kin who were recognized in the Judgment, but that the amounts shall also cover those persons to be identified as victims or next-of-kin of victims. They inform that they know 10 persons who appeared as a result of the announcement, but they do not have information on the process of identification.

69. That the Commission valued that the State has made the payment of the compensatory amounts, costs and expenses ordered by the Tribunal.

70. That the Court positively values what was informed by the State and the representatives as to the fact that the State has made the corresponding payment of the compensatory amounts ordered in favor of the identified victims and next-of-kin, as well as the costs and expenses in favor of the representatives. As a result, the



State has effectively complied with this obligation, regarding the identified victims and next-of-kin.

71. That, without detriment to the foregoing, it is appropriate to recall that, in the Judgment, the Court expressed its concern about the situation of the unidentified victims, for whose death the State also acknowledged its responsibility, as well as regarding that of their next of kin. As a consequence, in paragraph 289 of the Judgment, the Court gave the next-of-kin of the unidentified victims the possibility of receiving the corresponding payment for non-pecuniary damage. In such a way, if a victim were to be individually identified, the State has to notify his or her next-of-kin in order for them to appear before M.O.S. Mapiripán within 24 months of that date and prove their relationship to or kinship with the victim, under the terms of paragraph 257.b) of the Judgment. According to what was mentioned (*supra* Considering clause 49), it is reasonably to presume, considering the dimensions and consequences of the massacre, that an important part of victims and next-of-kin need to be identified. If other people were to be identified, they could be beneficiaries of those reparations, under the terms stipulated in the Judgment.

72. That, furthermore, it is necessary to recall that, due to lack of information, the Court did not order the compensations for pecuniary damage in favor of the unidentified victims and their next-of-kin. However, the Tribunal clarified that setting of reparations neither obstructs nor precludes the possibility of the next -of -kin of unidentified victims filing the appropriate complaints before the national authorities, as they come to be identified.

73. That in the last report, the State consulted the Court about paragraph 258 of the Judgment: regarding the payment to the children of Luz Mery Pinzón López, the children of Zuli Herrera Contreras, as well as the children of Viviana Barrera; and asked the Court about the amount of the compensation that they should receive in case they appear before the M.O.S.- which has not happened so far-, since it does not spring from the Judgment the amount to be paid to the grandchildren of the executed and made to disappear victims. Also, it requested the Court to clarify whether these people should follow the same identification procedure established in paragraphs 256 and 257 of the Judgment.

74. That, the Commission pointed out in paragraph 288.c) of the Judgment regarding the determination of the compensatory amounts for non-pecuniary damage to the next-of-kin of the victims, that it would be appropriate to clarify the amount that the people mentioned in paragraph 258 should receive. The Commission emphasized the pertinent parts of the Judgment in which the Court made reference to these people, considered their relationship with the victims of the massacre proved and as well as the violations committed to their detriment. In that sense, it considered that "the spirit of paragraph 258 is to include said people as victims and as a consequence, it requests the Court to order the State to recognize the legal status of such people under the terms of paragraph 288.c)".

75. That, as to the State's consultation, this Tribunal established in paragraph 258 of the Judgment that from the evidence furnished, it spring the existence of other next-of-kin, victims of displacement and of abridgment of the right to humane treatment and of the rights of the child, for example, the children of Luz Mery Pinzón López; Mrs. Elvina o Elsy Delfina Vaca (mother of Omar Patiño Vaca and Eliécer Martínez Vaca); the four children of Zuli Herrera Contreras, as well as the five children of Viviana Barrera, whose existence and rights' abridgment was recognized

by the Court.<sup>25</sup> Therefore, these victims will be able to resort to the official mechanism established for them to receive the respective compensatory amounts. According to what was mentioned in the chapter on non-pecuniary damage, the Court established that provision contained in the chapter on beneficiaries shall apply to the next-of-kin of the unidentified victims in this process, who, in turn, are victims (paragraph 257.b). Therefore, should these people appear before the M.O.S. Mapiripán, they will be entitled to receive the compensatory amounts established in paragraph 288 c) of the Judgment for the victims' children, increased by the amount set for those who were children at the time of the massacre and lost their beloved ones.

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76. That, upon monitoring compliance with the aspects pending compliance in this case, the Court values the advantage of the hearing held to that end, evidenced by the good will and cooperation shown by the parties, who have agreed on the fact that some aspects of said Judgment have not been complied with. In particular, the Tribunal values that the State, the Commission and the representatives have organized meetings evidencing the common purpose and commitment to achieve compliance with the pending aspects.

**Therefore:**

**The Inter-American Court of Human Rights,**

by virtue of its authority to monitor compliance with its own decisions, pursuant to Articles 62(3), 67 and 68(1) of the American Convention on Human Rights, and Articles 25(2) of its Statute and 15(1), 30(2) and 63 of its Rules of Procedure,

**Declares:**

1. That in accordance with Considering clauses 18, 64 and 66 of this Order, the State has complied with the obligation to:

- a) establish, within six months of notification of the Judgment, an official mechanism that will function for two years, with participation by the victims of the instant case or the representatives they appoint, to perform the functions set forth in paragraph 311 of the Judgment (*operative paragraph nine and paragraph 311 of the Judgment*);
- b) implement, within a reasonable term, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all levels of its hierarchy (*operative paragraph thirteen and paragraphs 316 and 317 of the Judgment*);

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<sup>25</sup> Cf. *Case of the "Maripirán Massacre" V. Colombia*, *supra* nota 8, paras. 96.144, 96.152, 96.154, 96.155, 96.159, 96.162 and the corresponding considerations on the violations committed to the detriment of the victims' next-of-kin.

- c) publish once, within six months of notification of the instant Judgment, in the official gazette *Diario Oficial* and in another national-coverage daily, the Section of the Judgment on Proven Facts, without the respective footnotes, paragraphs 101 to 123 of the Section on International Responsibility of the State, as well as its operative part, in accordance with the terms of paragraph 318 thereof (*operative paragraph fourteen and paragraph 318 of the Judgment*);
2. That the State has partially complied with the following aspect pending compliance in the instant case, namely:
- a) pay the amounts set forth in paragraphs 274, 278, 288, 290 and 325 of the instant Judgment, in favor of the identified next –of- kin of the victims, for pecuniary and non-pecuniary damages (*operative paragraph fifteen, sixteen and paragraphs 257, 259, 260, 311, 326, 327, 329 to 333 of the Judgment*), as well as to pay the representatives of the victims for costs and expenses (*operative paragraph seventeen and paragraphs 326, 328 to 333 of the Judgment*).
3. That the Court will maintain open the procedure to monitor compliance with the aspects that remain pending in this case, which are:
- a) immediately take such steps as may be necessary to activate and effectively complete, within a reasonable term, the investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as those whose collaboration and acquiescence allowed the massacre to be committed (*operative paragraph seven and paragraphs 295 to 304 and 326 of the Judgment*);
- b) immediately take such steps as may be necessary to individually identify, within a reasonable time, the victims who were executed and made to disappear, as well as their next of kin (*operative paragraph eight and paragraphs 305 to 310, 311 and 326 of the Judgment*);
- c) provide the next of kin of the victims who were executed or made to disappear, with their prior consent, beginning once the Judgment has been notified for those who have already been identified, and once those who have not yet been identified are, and for as long as necessary, at no cost to them and through the national health services, adequate treatment, including medication (*operative paragraph ten and paragraphs 311 and 312 of the Judgment*);
- d) carry out such actions as may be necessary to ensure security conditions for the next of kin of the victims, as well as other former inhabitants of Mapiripán, who have been displaced, to be able to return to Mapiripán, if they wish to do so, (*operative paragraph eleven and paragraphs 311 and 313 of the Judgment*); and
- e) build, within one year of notification of the Judgment, an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre (*operative paragraph eleven and paragraphs 315 and 326 of the Judgment*).
4. That, based on the agreement entered into between the State and the representatives, as to the extension of the deadline for the operation of M.O.S. Mapiripán, it shall continue monitoring such operation until it ends its duty and according to the terms mentioned in the Judgment. In this sense, the Court requests

the State and the representatives to keep informing this Tribunal on that respect; specially, about the scope and contents of the procedure and decisions that, within the framework of such mechanism, will be adopted, under the terms of considering paragraph 18.

**And Decides:**

5. To require the State to take the necessary measures to fully and immediately comply with the aspects pending fulfillment that were ordered by the Tribunal in the Judgment on the merits, reparations and costs delivered on September 15, 2005 according to the provisions of Article 68(1) of the American Convention on Human Rights.

6. To request the State to submit to the Inter- American Court of Human Rights, no later than October 15, 2009, a report specifying all the measures adopted to comply with the reparations ordered by this Court, that are still pending compliance, as spelled out in the Considering clauses 30, 31, 32, 36, 41, 43, 44, 49, 53, 54, 58 and 61 as well as in the declarative paragraph 2 to 4 of this Order.

7. To call upon the representatives of the victims' next- of-kin and the Commission to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

8. To continue monitoring the aspects of the Judgment on merits, reparations and costs of September 15, 2005 that are still pending compliance.

9. To require the Secretariat to notify this Order to the State, the Inter-American Commission and the representatives of the victims and their next of kin.

Cecilia Medina Quiroga  
President

Diego García – Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri  
Secretary

So ordered,

Cecilia Medina Quiroga  
President

Pablo Saavedra Alessandri  
Secretary