

**Order of the
Inter-American Court of Human Rights
of September 21, 2009
Case of Zambrano-Vélez *et al.* v. Ecuador
(Monitoring Compliance with Judgment)**

Having seen:

1. The Judgment on merits rendered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on July 4, 2007, by means of which, *inter alia*, the Court decided that:

[...]

6. The State shall immediately carry out the necessary actions and use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction to identify, prosecute and if applicable punish those responsible for the extrajudicial execution of Wilmer Zambrano-Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña; and as such, to avoid the repetition of facts similar to those in the instant case, as set forth in paragraph 148 of the present Judgment. Moreover, the State shall satisfy the right to truth of the victims' family members and ensure that they have full access and capacity to act in all stages and instances of the said investigations and proceedings, pursuant to the domestic laws and the provisions of the American Convention on Human Rights, as set forth in paragraph 149 of the [...] Judgment.

7. The State shall carry out, within six months from the notification of the [...] Judgment, a public act of acknowledgement of its responsibility for the extrajudicial execution of the victims and the other violations committed in the instant case, as set forth in paragraph 150 of the present Judgment.

8. The State shall publish at least once in the Official Gazette and in other newspaper of broad national coverage, paragraphs 9 to 130 of the [...] Judgment and the operative paragraphs therein, within six months from the notification of the [...] Judgment, as set forth in paragraph 151 of the [...] Judgment.

9. The State shall adopt all legal, administrative and other measures necessary to prevent further occurrence of similar facts; especially, the State must adapt its domestic legislation on states of exceptions and suspension of guarantees, and in particular the provisions of its National Security Law, to ensure its adequacy with the American Convention, as set forth in paragraphs 152 to 154 of the [...] Judgment.

10. The State shall implement, within a reasonable time, permanent programs of education in human rights for members of the Military Forces and National Police in all hierarchical levels, with a particular emphasis on the legitimate use of force and states of emergency; and for prosecutors and judges, on international standards related to the judicial protection of human rights, as set forth in paragraphs 155 to 158 of the [...] Judgment.

11. The State shall pay directly to the family members of Mr. Wilmer Zambrano-Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña the amounts set in paragraphs 139, 140, 143, 144 and 145 of the present Judgment, as compensation for pecuniary and non-pecuniary damages, within one year from the notification of the present Judgment, as set forth in paragraphs 163, 164, 166 and 167 of the [...] Judgment.

12. The State shall pay directly to the *Comisión Ecuánica de Derechos Humanos (CEDHU)* the amounts set in paragraph 161 of the [...] Judgment as compensation for legal costs and expenses, within one year from the notification of the [...] Judgment, as set forth in paragraphs 165 to 167 of the [...] Judgment.

13. The Court retains its authority, inherent to its functions and derived from Article 65 of the American Convention on Human Rights, to monitor full execution of [...] Judgment. The case will be closed once the State has faithfully complied with the provisions of the Judgment. Within one year from the notification of [the] Judgment, the State shall submit a report to the Court on the measures adopted in compliance therewith, as set forth in paragraphs 168 of hereof.
2. The briefs filed on October 5 and 9 and December 20, 2007 and on January 7 and December 12, 2008, whereby the State of Ecuador (hereinafter "the State" or "Ecuador") informed on the progress made in the compliance with the aforementioned Judgment. Upon receiving the abovementioned briefs and forwarding them to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and to the representatives of the victims (hereinafter "the representatives") it was indicated that, once the State had sent the report on compliance with the Judgment to which reference is made in operative paragraph number thirteen thereof, the time limit for filing which ran out on August 1, 2008, the representatives and the Commission would be granted some time so that they could file their comments.
3. The communication dated October 15, 2007 and the brief dated January 5, 2009, whereby the representatives informed about compliance with the aforementioned Judgment.
4. The notes by the Secretariat dated December 18, 2008, January 12 and May 8, 2009, whereby it was informed that the time limit for the State to submit its first report on compliance with the aforementioned Judgment, set in operative paragraph number thirteen therein, ran out on August 1, 2008, without the Secretariat having received it. Consequently, following instructions by the President of the Court, the State was required to submit it forthwith.
5. The order issued by the President of the Court on May 22, 2009, whereby she summoned the Commission, the State and the representatives to a private hearing at the seat of the Court for July 4, 2009, for the purpose of obtaining information from the State about compliance with all the reparation measures ordered in the Judgment (*supra* Having Seen Clause Number 1) and of hearing the comments thereon by the Commission and by the representatives.
6. The communication dated June 09, 2009, whereby the representatives let it be known that they were unable to attend the private hearing for lack of enough funds to pay for expenses and lodging abroad, and asked for leave to file comments in writing.
7. The brief dated June 9, 2009, whereby the State forwarded its first report on compliance with the Judgment.
8. The brief dated June 22, 2009, whereby the representatives made their comments on the first report by the State (*supra* Having Seen Clause Number 7).
9. The private hearing on monitoring compliance with the Judgment, held on July 04, 2009 during the LXXXIII Regular Session of the Tribunal at the seat thereof,¹ as well as the documents filed by the State.
10. The note by the Secretariat dated July 15, 2009, whereby, pursuant to the statements at the hearing and following instructions by the President of the Court, the State was requested to submit, no later than July 24, 2009 all the relevant information regarding compliance with operative paragraph number six of the Judgment, specifically how many investigations into the facts in the instant case

¹ In such hearing, the following appeared for the Inter-American Commission on Human Rights: Lilly Ching Soto, counsel, and for the State of Ecuador: Patricia Salazar Pazmiño, Dr. Erick Roberts Garcés, Daniela Ulloa Santos and Christian Israel Pérez Escobar.

have been made and are still pending; the stage the proceedings thereupon has reached and the results achieved, and whether the next of kin of the victims have had access to the proceedings and standing in the course thereof. Such requirement was renewed in notes by the Secretariat dated July 29 and September 02, 2009.

11. The brief dated September 09, 2009, whereby the State forwarded information regarding compliance with operative paragraph number six of the Judgment, in response to the request by the Tribunal (*supra* Having Seen Clause Number 10), as well as the brief dated September 17, 2009, whereby the representatives filed comments on such brief. The Inter-American Commission did not file any comments within the time limit granted for such purpose.

Considering:

1. That supervising the compliance with its decisions is an inherent jurisdictional power of the Court.
2. That Ecuador has been a State Party to the Convention since December 28, 1977, and recognized the contentious jurisdiction of the Court on July 24, 1984.
3. That Article 68(1) of the American Convention sets forth that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” For such purpose, the States must ensure the implementation, within their jurisdictions, of the orders issued by the Court in its decisions.²
4. That since the Court Judgments are final and not subject to appeal, pursuant to Article 67 of the American Convention, the States must comply with them promptly and fully.
5. That the obligation to comply with the rulings of the Court 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 in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to avoid their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.³
6. That the States Parties to the Convention must guarantee the compliance with conventional provisions and their specific effects (*effet utile*) in their own domestic legal systems. This principle applies not only to the substantive provisions in the human rights treaties (that is, those containing provisions regarding the rights protected), but also with respect to the procedural provisions, such as those

² Cf. *Case of Baena Ricardo et al. v. Panamá. Competence*. Judgment dated November 28, 2003. Series C No. 104, para. 131; and *Case of Herrera Ulloa v. Costa Rica*. Order of the Inter-American Court of Human Rights of July 09, 2009, Considering Clause Number Three and *Case of the Pueblo Bello Massacre v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 09, 2009, Considering Clause Number Three and *Case of the Pueblo Bello Massacre v. Colombia*.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 14, para. *Case of Castillo Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering Clause Number Three; *Case of Herrera Ulloa*, *supra* note 2, Considering Clause Number Five, and *Case of the Pueblo Bello Massacre*, *supra* note 2, Considering Clause Number Five.

pertaining to compliance with the decisions of the Court. These obligations must be construed and applied so that the protected guarantee is truly practical and efficient, taking into account the special nature of the human rights treaties.⁴

7. That when monitoring compliance with Judgment, it befalls the Tribunal to verify whether the State responsible abides by the obligations imposed upon it in the Judgment. The duty to abide by the obligations imposed upon the State by the Tribunal in the Judgment includes the obligation to inform the Court of the measures it has taken to comply with its orders. For such purpose, the Court must receive the necessary information, which the State, the Commission and the victims or their representatives must provide. Along such lines, the General Assembly of the OAS has reiterated that, in order for the Tribunal to be able to comply fully with the obligation of informing it of compliance with its judgments, it is necessary that the States Parties deliver the information required by it from them in a timely manner.⁵ Timely fulfillment of the obligation the State has to report to the Court on the exact manner in which it is complying with each of the points ordered by the latter is essential for it go be able to assess the status of compliance in this case.

8. That in the instant case, the Tribunal monitors compliance with the Judgment on the basis of the information provided by the State, the representatives and the Commission in the course of the hearing and in the various briefs on record in the case file.

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Duty to carry out investigations in the ordinary criminal jurisdiction

9. That as regards the duty to immediately carry out the necessary actions and use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction to identify, prosecute and, if applicable, punish those responsible for the events (*operative paragraph number six in the Judgment*), the State reported that on October 9, 2007 a complaint was filed before the *Ministro Fiscal General del Estado* [General Prosecuting Minister of State], so that a preliminary enquiry be commenced in order to discover, prosecute and punish the perpetrators, accomplices and aiders and abettors responsible for the extrajudicial execution of the victims in the instant case. Likewise, the State indicated that administrative proceedings were instituted before the *Consejo Nacional de la Judicatura* [National Council for the Bench] against the *Juez Noveno de lo Penal del Guayas* [Criminal Judge Number Nine in and for Guayas], for the disappearance of the court case file on the instant case and the subsequent declaration that the statute of limitations had operated. In its last brief, the State went no further than to inform about official letters and communications addressed to the *Fiscal General* [Prosecutor General], to the *Presidente de la Corte Nacional de Justicia* [President of the National Court of Justice] of Ecuador and to the *Consejo Nacional de la Judicatura* [National Council for the Bench] requesting information about the

⁴ Cf. *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Herrera Ulloa*, *supra* note 2, Considering Clause Number Six, and *Case of the Pueblo Bello Massacre*, *supra* note 2, Considering Clause Number Six.

⁵ General Assembly, Resolution AG/RES. 2408 (XXXVIII-O/08) adopted at its fourth full meeting, held on June 3, 2008, and titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights."

investigation into the facts, with no specific results, and without reporting on any progress thereof.

10. That the representatives pointed out that, according to the last report by the State, it was in September, 1999 that the *Fiscalía General* [Office of the Prosecutor General] received the complaint about the facts and forwarded it to the judges having competent jurisdiction in Guayaquil, for which reason, although at the time criminal judges had a monopoly over investigations, such circumstance did not prevent the *Ministerio Público* [Office of the Public Attorney] from taking steps aimed at furthering the identification and punishment of those responsible. In such manner, "what the *Ministerio Fiscal General* [Office of the Prosecutor General] said turns out to be false" because there are no grounds for its having abstained from instituting the public criminal action in its purview. Thus, the State has not taken any real action to tending to investigate the facts. They pointed out the "lack of a will to punish *Juez Noveno Penal de Guayas* [Criminal Judge Number Nine in and for Guayas] who irresponsibly let the time to investigate lapse [,] without effecting the investigation" and, on the contrary, lost the case file and then decreed the statute of limitations to have operated in 2007. They argued that the State did not take a position regarding the rejection of such decision declaring the statute of limitations to have operated on the criminal action, for which reason it would seem to be in force. They affirmed that "the State [...] allows the events to go unpunished, thus maintaining a permissive attitude fostering that the same acts be perpetrated in the future" and requested the Court to declare the State in contempt of this point.

11. That in the course of the hearing the Commission set much store by the information provided by the State, but held it to be insufficient, it was not known what become of the lost case file, of the apparent decree declaring the statute of limitations to have operated in two out of the three cases and of an alleged summons the State would have addressed to the public prosecutor.

12. That, in the Judgment, the Court underscored that a blatant denial of justice and a violation of the right to access to justice of the family members of the victims had taken place for "the time elapsed since the facts in the instant case took place inordinately exceeds the period of time which could be considered reasonable for the State to carry out the corresponding investigation proceedings, all the more since to the time already elapsed should be added the time necessary for instituting and carrying out the criminal proceedings, with the various stages that such proceeding involves, up to the final decision."⁶

13. That the Court notes that after the Judgment was passed, the only procedural step known to have been taken in the criminal system is the abovementioned complaint filed on October 9, 2007 with the *Ministro Fiscal General del Estado* [General Prosecuting Minister of State]. However, in its last report, the State pointed out that it was in September, 1999 that the *Fiscalía General* [Office of the Prosecutor General] received the complaint about the facts and forwarded the case to the judges with competent jurisdiction in Guayaquil. In any case, the State has not reported on specific investigation actions or results achieved in such endeavors. So that the situation verified at the time of delivering the Judgment persists to date.

14. That considering the lack of action that has been evidenced, the Court holds that the State must step up its efforts forthwith so that the facts that constituted human rights violations be investigated with all the diligence due, particularly if it is borne in mind that in the Judgment it was determined that those responsible were State agents.

⁶ Case of Zambrano-Vélez *et al.* v. Ecuador Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 126.

15. That as relates to the alleged declaration that the statute of limitations had operated on the criminal action, the Court reminds that in the Judgment it clearly established that: “[t]he State cannot allege any law or provision of its domestic laws to exempt itself from the order of the Court to investigate, and if applicable, to criminally punish those responsible for the extrajudicial execution of Wilmer Zambrano-Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña.⁷

16. That according to the foregoing, this Court considers it essential for the State to submit updated, detailed and complete information on the commencement of another investigation in the criminal system and, if it be the case, on the action taken. Additionally and more particularly, that it report on whether steps have been taken in order to identify the possible perpetrators and on whether the abovementioned decision declaring the statute of limitations to have operated has been revoked, as well as on the legal mechanisms through which the next of kin of the victims would have access and would play a part in the criminal proceedings, with respect to all of which the State has not supplied any information.

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Public act of acknowledgement of responsibility

17. That as concerns the duty of the State to hold a public act of acknowledgment of its responsibility for the extrajudicial execution of the victims and the other violations committed in the instant case (*operative paragraph number seven in the Judgment*), the State reported that on December 10, 2008 the Minister of Justice and Human Rights, in a address on the national television chain, publicly apologized to the next of kin in the name of the State of Ecuador, among other cases, “in memory of Wilmer Zambrano-Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña, victims of the extrajudicial execution by the Armed Forces.” Likewise, the State reported it had published on Friday February 29, 2008, through the *Procuraduría General del Estado* [Office of the General Attorney for the State], a public apology in a fragment of page 4A in the newspaper “*El Telégrafo*”, the text of which points out that Messrs. Zambrano and Caicedo were executed extrajudicially in March, 1993, because the State unduly applied the State of Emergency concept in violation of the American Convention. Lastly, the State pointed out that the Ministry of Justice and Human Rights produced a documentary film on human rights violations in which, with their consent, testimonies by Johanna Zambrano and Susana Cedeño were included, and it was shown at cinema forums in Guayaquil, Quito and Cuenca and will be shown continuously at national and international human rights festivals.

18. That the representatives indicated that, in the aforementioned broadcast on the national television chain, it was observed that while the Minister apologized mentioning the names of the cases, a list with the names of the victims in various cases was being scrolled on the screen. Form the foregoing it is concluded that no public act of satisfaction was prepared for the next of kin of the victims in the instant case, in which they would have been able to take part if they so wished and in which high ranking State authorities were not present.

⁷ Case of Zambrano-Vélez *et al. v. Ecuador*; *supra* note 6, para. 148.

19. That in the course of the hearing the Commission expressed that the public act of acknowledgement was irrelevant for the satisfaction of the victims and their next of kin, because apparently they were neither informed about such act, nor asked to take part in it, for which reason it was unsatisfactory.

20. That in the course of the hearing, the State affirmed that information was given to the next of kin of the victims about the public apology and that on the national chain address some excerpts of the documentary film in which one of their next of kin took part were shown.

21. That in other cases, considering the particular circumstances thereof,⁸ the Court has considered that the State may comply with the act whereby it acknowledges responsibility by taking a number of actions different from the ones proposed in the operative paragraphs, as long as they tend to serve the purpose of the reparations provided, in an appropriate way, commensurate with the seriousness of the violations and with the circumstances in each case.

22. That the Court determined that the public act acknowledging responsibility should tend to preserve the memory of Mr. Wilmer Zambrano-Vélez, Mr. José Miguel Caicedo Cobeña and Mr. Segundo Olmedo Caicedo Cobeña, to satisfy the next of kin and to avoid repetition of similar events.

23. That in order to serve such purpose, the act by the State should be held in the following manner: a) in public; b) acknowledging responsibility for the extrajudicial execution of the victims and for the other violations perpetrated in the instant case; c) in the presence of their next of kin, if such were their will, and d) with high-ranking State officials taking part.

24. That this Court finds that both the publication of the public apology effected on February 29, 2008 in the *El Telégrafo* newspaper, and that producing the documentary film called "*el derecho a la verdad*" [the right to truth] and the showing it in cinema forums attended by experts and by the next of kin of the victims, are actions fostering preservation of the historical memory of the human rights violations perpetrated in the instant case and promoting such actions to be uprooted, especially from the community and from the social environment. The former was broadcast in a national mass communications medium, while the latter was an audiovisual show targeting small audiences in different cities in the country, among which the City of Guayaquil, where the extrajudicial executions took place. In such events, according to the reports by the State, those attending had the opportunity to interact with the next of kin of the victims and with experts in the field of human rights. Therefore, as regards historical memory, the mechanism set up by Ecuador, although different from the one proposed in the Judgment, does amount to compliance with the operative paragraph, for it is appropriate and commensurate to the seriousness of the violation for which reparation is sought.

25. That as regards the act of acknowledgment and public apology held on December 10, 2008, although it is true that it was not dedicated to the case of Wilmer Zambrano-Vélez, Jose Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña only, while going over the recording supplied by the State it can be seen that

⁸ Cf., *inter alia*, *Case of the 19 Tradesmen v. Colombia*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering Clause Number Nine, subparagraph b); *Case of the Serrano Cruz Sisters v. El Salvador* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering Clause Number Nine, subparagraph d); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering Clauses Number Thirty-Five to Number Thirty-Eight and *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 2, Considering Clause Number Forty-One.

at first there appears a curtain to divide one case from the other on which, in a typescript imitating that of a typewriter, the words "*Caso Zambrano-Vélez*" ["The Case of Zambrano-Vélez] gradually appear; then, Mrs. Johana Zambrano is introduced in an interview wherein she tells how the public apologies will "clear" the name of her father and her uncles; finally, in the same television unit, the Minister speaks out in the following terms: "the national government, in compliance with international obligations and on the basis of its democratic and humanistic convictions, presents its public apologies in the name of the State of Ecuador [...] 3. In memory of Wilmer Zambrano-Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo, victims of the extrajudicial execution by the armed forces, we present the apologies of the State of Ecuador to their next of kin."

26. That the Court considers the expressions of the abovementioned high-ranking official, effected on behalf of the State, even among other human rights violations acknowledged in the same act, allowed the audience to individualize fully, both from a verbal and a graphic standpoint, the facts, the persons and the authorities related to the case. This is so because not only did the aforementioned Minister appear, but also press images relating to the declaration of responsibility by the State of Ecuador in the instant case, with the addition of a testimony by one of the victims, emphasizing the intent of the reparation measure, and even of a public apology. There is certainly no record of the next of kin having been consulted individually as to whether they wished to take part in the abovementioned act.

27. That the Court considers that the aforementioned act of acknowledgment satisfies three of the standards hereinabove set forth (*supra* Considering Clause Number Twenty-Three), to wit: a) it was broadcasted on the national chain, thereby acquiring the nature of a public acknowledgment and a greater importance, given the scope of the targeted audience, particularly because it could have been seen by a large audience, on account of the time it was shown; b) even though it did not take place within the six month time limit set for such purpose, the delay was not so great as to turn the act ineffective, and c) it was done on behalf of the State by a senior State official, such as the Minister of Justice and Human Rights. In terms hereinabove stated, the Court considers the act to appropriately serve the purpose and the object of the reparation provided, inasmuch as it was conducted by a senior State authority, as a wide dissemination was targeted by broadcasting it on a national television chain and as express reference was made to the victims in the instant case. Consequently, the State has complied fully with operative paragraph number seven in the Judgment.

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Publication of the pertinent parts of the Judgment within six months

28. That as relates to the obligation to publish in the *Diario Oficial* [Official Gazette] and in another newspaper of wide national coverage, for only one time, paragraphs 8 to 130 of the Judgment and the operative part thereof (*operative paragraph number eight in the Judgment*), the State communicated that on September 19, 2007 the respective publication was effected in the *Registro Oficial* [Official Register] N° 173 and on November 26, 2007 in the "*El Telégrafo*" newspaper, and supplied the documents sustaining such statement.

29. That the representatives confirmed the effective compliance with such operative paragraph.

30. That the Commission mentioned in the hearing that even when on other occasions it has expressed its misgivings with respect to publication of the Judgments of the Court in the "*El Telégrafo*" newspaper, in the instant case, given the agreement by the victims, it deems such operative paragraph to have been complied with.

31. That given the evidence on record in the case file, consisting in copies of the publications in the newspaper with national coverage and in the Official Gazette of the State, and the expression of the representatives and the Commission coinciding in considering this point to have been complied with, this Tribunal finds it to be fully complied with.

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Adapting domestic legislation on states of emergency and suspension of guarantees

32. That as regards the obligation to adopt all legal, administrative and other measures necessary to prevent further occurrence of similar facts; especially, the State must adapt its domestic legislation on states of emergency and suspension of guarantees, and in particular the provisions of its National Security Law, to ensure its adequacy with the American Convention (*operative paragraph number nine in the Judgment*), the State pointed out in the course of the hearing that it had submitted to the *Comisión Legislativa* [Legislation Committee] the draft bill of a *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional* [Jurisdictional Guarantees and Constitutional Control Organic Act], in which there is a section called "constitutional control of the states of exception", wherein a formal and substantive control of the declaration of a state of exception and of the measures adopted is established, as well as its coexistence with a political control in charge of the *Asamblea Legislativa* [Legislative Assembly].

33. That, in their turn, the representatives indicated that "the Tribunal Constitucional [Constitutional Court] in a June [2008] Judgment declared Articles 145 [and 147] of the *Ley de Seguridad Nacional* [National Security Law], whereby military courts were allowed to judge civilians during states of emergency, to be unconstitutional." Likewise, the representatives supplied information about the regulation of states of emergency after the adoption of the new Constitution of Ecuador.

34. That the Commission, in the course of the hearing, expressed its concern about Article 164 of the Constitution being much like the former text, and including "serious internal commotion" or "public disaster", among the grounds for decreeing the state of exception, for which reason it alleged "in the instant case, in the context of which the record and the problems attending the state of emergency decreed in order to fight social protests and common crime [...]. This latter term is very ambiguous and can be viewed from many subjective standpoints."

35. That in the Judgment, the Court determined that neither Decree No. 86 declaring the state of emergency and the suspension of guarantees nor the wording in the *Ley de Seguridad Nacional* [National Security Law] in force in Ecuador at the time of the extrajudicial execution of Wilmer Zambrano-Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo, set any limits in time or in space to

military intervention, nor any substantive limits to the suspension of guarantees, nor were the other States Parties to the Convention notified through the Secretary General of the Organization of American States (hereinafter "OAS") about the provisions in the Convention the application of which it had suspended.⁹

36. That in the Judgment it was also pointed out that adapting domestic law to the provisions in the Convention, pursuant to Article 2 thereof, implies *inter alia* to repeal the rules and practices of any kind entailing violations of the guarantees provided in the Convention or disregarding the rights enshrined therein or hindering the exercise of such rights.¹⁰

37. That in the second paragraph of Article 164 of the new Constitution of the State of Ecuador the principles of need, proportionality, freedom from *ex post facto* laws, limitation in time and space, and reasonableness are incorporated to rule the states of exception, providing, among the requirements the decree establishing them must meet, that both their duration and the territory where they are to be enforced be determined.

Such constitutional wording also includes a maximum effective period for such decree set at 60 days, with the possibility to extend it only for 30 days and a system whereby it lapses immediately whenever the President would not endorse the decree or fail to notify it to the National Assembly, to the Constitutional Court and to the international organizations.

This latter system is complemented with a mandate for the President of the Republic, once the cause providing the grounds for the state of exception has disappeared, to decree its termination.

38. That the foregoing adaptations of the legal system in Ecuador, in the view of the Court, set limits in time and (geographical) space for the action by government bodies to what is strictly necessary to address the extraordinary circumstance that would have provided the grounds to issue the declaration, affording the possibility of effectively rendering it legitimate and preventing it from becoming permanent in time, all of which embodies the spirit in paragraph 52 of the Judgment, that is to say that its duration must be limited "to the extent and for the period of time strictly required by the exigencies of the situation."

39. That the provisions in the abovementioned rule, as regards the condition that once 90 days as from the declaration of the state of emergency have passed there is no possibility whatsoever of extending the effective period thereof and it is to lapse automatically, make up an efficient mechanism to avoid the suspension of guarantees to be systematically and indefinitely extended, for it even cuts it short regardless of whether the abnormal situation has been solved or not, as well as setting a space limit spelled out in the power granted the Executive to declare it in all or in part of the national territory, something tending to prevent an excessive use of this remedy.

40. That in the Judgment the Court held that the executive order whereby the state of emergency was declared at the time of the events "neither fixed a time limit for the military intervention, which would allow knowing its duration; nor did it lay down the rights which would be suspended, that is, the material scope of the suspension. Neither did the *Ley de Seguridad Nacional* [National Security Law] establish such limits."¹¹

⁹ Cf. *Case of Zambrano-Vélez et al. v. Ecuador*; *supra* note 6, paras. 48 and 69.

¹⁰ Cf. *Case of Zambrano-Vélez et al. v. Ecuador*; *supra* note 6, paras. 57 and 58.

¹¹ *Case of Zambrano-Vélez et al. v. Ecuador*, *supra* note 6, para. 48.

41. That as regards the kind of rights which may be suspended under the state of exception, the second paragraph in Article 164 of the amended Constitution imposes upon the President of the Republic the obligation of expressly including in the decree whereby the state of exception is established which rights may be suspended or limited, as well as in Article 165 thereof the intangibility or the inviolability of all the rights enshrined in the Constitution is also guaranteed, with the exception of the ones regarding inviolability of domicile, confidentiality of correspondence, freedom of movement and of association, right of assembly and freedom of information. The latter limits the discretion of authorities as regards the kind of rights which may be suspended in states of exception and excludes from such possibility those set forth in Article 27(2) of the Convention.

42. That as relates to adapting the provisions in the *Ley de Seguridad Nacional* [National Security Law] to the American Convention, as far as preventing the military jurisdiction from being vested with powers falling under the competent jurisdiction of ordinary courts is concerned, the Court sets great store by the Judgment passed during the month of July, 2008 by the *Tribunal Constitucional del Ecuador* [Constitutional Court of Ecuador], wherein Articles 145 and 147 of the *Ley de Seguridad Nacional* [National Security Law] were declared unconstitutional, for it endorses the conventionality the courts in Ecuador apply.

43. That the new constitutional order has brought about the exclusion of such statutory statement from the domestic legal system, thereby derogating the rule that violated the Convention. Furthermore, it implies that the military criminal jurisdiction is no longer competent neither to be seized with the acts occurring during a state of exception that may be criminal, nor to judge and punish military personnel or civilians for human rights violations perpetrated during states of emergency, thus preventing *de facto* suspensions of the investigation into such acts by the ordinary criminal jurisdiction, such as it happened in the instant case.

44. That, additionally, the State reported having expedited various legislative reforms, including: 1) Article 188 in the Constitution, providing that by operation of the principle of jurisdictional unity the members of the Armed Forces and of the National Police shall be judged by the ordinary jurisdiction and the disciplinary and administrative infractions will be subject to their own rules of procedure, the cases of special jurisdiction to be judged on the basis of rank and administrative responsibility; 2) the transitional provision number eight in the Constitution, providing that the proceedings pending before the police and military courts will be forwarded to the *Corte Nacional de Justicia* [National Court of Justice]; 3) the Interpreting Judgment dated December 1, 2008, whereby the Constitutional Court indicated that, in the absence of legislation on the subject and in order to guarantee the jurisdictional unity principle, the National court was to be seized with the proceedings pending before the former police and military benches, a mechanism that remained in force until the *Código Orgánico de la Función Judicial* [Organic Code for Court Operation] became effective, and 4) the publication of the *Código Orgánico de la Función Judicial* [Organic Code for Court Operation], where it is enacted that the criminal courts specializing in military and police matters form part of the ordinary jurisdiction; the *Sala de lo Penal Militar y de lo Penal Policial* [Criminal Chamber for Military and Police Matters] is established within the *Corte Nacional de Justicia* [National Court of Justice] along with the way jurisdiction is to be determined in criminal military and police cases, as well as its transitional providing that the ordinary courts with competent jurisdiction be seized with the proceedings commenced before military or police jurisdictions, to be carried on from the procedural stage still pending and that the proceedings having commenced before the Code became effective shall observe the rules of procedure under which they

were instituted, while the procedural rules in the *Código de Procedimiento Penal* [Code of Criminal Procedure] shall apply to the new ones.

45. That although it is true that the constitutional text regulating the states of emergency employs the terms “serious internal commotion” or “public disaster”, when mentioning the grounds for decreeing a state of emergency, the assessment of whether the facts present meet such indefinite standards must be effected in each specific case and not in the abstract, complying strictly with the aforementioned mandates in the Constitution and in the Convention.

46. That as relates to the comments by the representatives to the draft bill of the *Ley de Seguridad Pública* [Public Security Law], the Court considers that even though it is still but a legislation initiative, which as such is not effective in Ecuador and which can be altered along the legislative process, its contents must be adapted to international rules, especially to the Convention, as it was declared in the Judgment. It is also important to mention that, without ruling out the possibility that in practice legal operators could construe the new legislation in a manner running contrary to the purposes which inspired its enactment or that the effective establishment of the bodies provided therein could be delayed, the Court calls upon the State to keep on the outlook all the time in order to make sure that the rules having contents that have been adapted to the Convention be applied effectively and in compliance with the principles which inspired their introduction and their amendments.

47. That the second paragraph in Article 164 of the Constitution of Ecuador sets forth as a requirement for the decree whereby the state of exception is established, the obligation to effect the notifications due under the international treaties, while the first paragraph in Article 166 thereof specifies that such communication of the state of exception to the international organizations must be effected within 48 hours, as from the signing of the order declaring it.

48. That in such terms, the provisions in the domestic legislation of Ecuador will render it possible for the international supervising bodies to know, follow up and control, in a complementary manner, compliance with the requirements provided in the Convention in such a timely way as it is due, by constitutionally imposing on the Executive a duty to notify them about the declaration of a state of exception within a maximum delay of the following 48 hours, something which strengthens the possibility of an effective international control and supervision over the measures adopted by the national authorities, for the purpose of safeguarding the rights contained in the treaty.

49. That, in conclusion, the Court considers that through the Executive and the Legislative Branches, and through the Constitutional Court, measures have been adopted which tend to repeal the domestic rules running contrary to the Convention, by either derogating them or amending them. A new set of statutory and constitutional rules have been enacted in the legal system of Ecuador, regulating states of emergency, suspension of guarantees and exceptional situations, the contents of which are oriented towards compliance with international standards and with the terms of the provisions in operative paragraph number nine of the Judgment. The Court recognizes the efforts deployed by the State and deems it has complied with this operative paragraph, in the understanding that the obligation the State has to adapt its domestic legislation to the provisions in the Convention is not limited to the wording of the Constitution, but must rather permeate all the legal provisions of a statutory or regulatory nature and translate into the effective enforcement in practice of the human rights protection standards applicable in situations of exception.

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Implementing programs of education in human rights for members of the Armed Forces and of the National Police, and for Prosecutors and Judges

50. That as concerns the duty to implement, within a reasonable time, permanent programs of education in human rights for members of the Military Forces and National Police in all hierarchical levels, with a particular emphasis on the legitimate use of force and states of emergency; and for prosecutors and judges, on international standards related to the judicial protection of human rights (*operative paragraph number ten in the Judgment*), the State indicated that it is developing a pilot scheme to implement such permanent programs mainly targeting members of the Military Forces and National Police, and for prosecutors and judges. Likewise, the State indicated that a specialized course on human rights and democracy from the standpoint of the Inter-American System was held at the Third Army Division "Tarqui" from November 12 to 16, 2007.

51. That the State informed that there had been agreement on the revision of the "*Manual de derechos humanos aplicados a la función policial*" [Handbook on human rights as applied in police activities], for the purpose of including therein the human rights contents established in the course of the aforementioned training procedure (*supra* Considering Clause Number 50), underscoring that such handbook was to be published during the second half of the year 2009 and that during this same period a human rights training procedure would be commenced on the basis of the amendments thereof, for 200 National Police training staffers. Thus, every class in the Police taking their promotion courses would receive training in human rights, cutting across all the police subjects.

52. That the State also let the Court know that, as relates to the Armed Forces, for the second half of the year 2009, in the framework of an interinstitutional cooperation agreement, the Ministry of Justice and Human Rights would design a training module. Furthermore, in the course of the hearing the State delivered a copy of a cover page and of the contents of the "*Manual de derechos humanos aplicados a la función policial*" [Handbook on human rights as applied in police activities], of information about the human rights training process in progress at the national level for National Police personnel, in its approaches to human mobility, non-discrimination, citizen security, states of exception, human trafficking, gender and the progressive use of force, as well as a report on the human rights training process in progress at the national level and at the northern frontier for the armed forces in its approaches to gender, security, states of exception, human mobility and the progressive use of force.

53. That the representatives stated that they knew that the State has training programs on the progressive use of force for members of the Police, but that they do not know the mechanism in use to disseminate the information and train all the members thereof, or whether such courses are part of the education curriculum for all hierarchical levels or whether they are imparted to all the security bodies. They also pointed out that ever since the Judgment was pronounced, the State has not established any permanent training program for the military.

54. That in the course of the hearing the State made reference to the circumstance that police training does touch upon the subject of the legitimate use of public force during states of exception and on that of citizen security, that the training workshops indeed are for all hierarchical levels, as well as for members of all

the police units, such as traffic, migrations, human trafficking, antinarcotics, and that, during the year 2010, the Ministry of Justice and Human Rights will be developing a curricular grid on human rights for the National Police and the Armed Forces. Finally, it made reference to the fact that in the month of August two training processes, on human mobility and on human rights, will be starting, both for the National Police and for the Armed Forces detailed to the northern frontier.

55. That, as per the information provided by the State regarding the permanent human rights education programs for the members of the National Police, the Court sets great store by the fact that at the planning phase of the human rights training module it would have been held in consideration to start all the workshops – regardless of their specific subject – by imparting introductory notions on human rights and their general characteristics, as well as instruction on police legislation, the use of force and the responsibilities of the Police regarding civil society in a Constitutional State under the Rule of Law. This latter action constitutes a form of reparation, for according to what the State expressed, it fostered that, at least during the year 2008, during its implementation phase, about 2,383 police personnel and police academy graduates holding the rank of Second Lieutenants acquired a general knowledge about human rights and the legitimate use of force during the states of exception.

56. That even when it was but a learning mechanism exclusively imparted to 400 members of the police force in the Province of Esmeraldas, the Court also observes that among the contents programmed for the workshop called “human rights when facing citizen security” justification, setting objectives, methodology, scheduling and appointing those in charge were included, as well as the incorporation of the subject relating to which rights could be limited during the states of exception, and of the international humanitarian law contents regarding respect and protection of persons. Such focused and hands on instruction prevents repetition of behaviors similar to those having taken place in the instant case, such as the excessive use of physical force during states of exception by members of the National Police.

57. That, on the other hand, the Court notes that the activity called “Specialized Course on Human Rights and Democracy: A standpoint from the Inter-American System”, addressing the Armed Forces, although it bears on the compliance with the Judgment, it does so to a lesser extent, for it was imparted only once. In its turn, the training module to be designed by the Ministry of Justice and Human Rights in the framework of an interinstitutional cooperation agreement is favorably assessed by the Court as a way to start implementing human rights education programs inside the Armed Forces of Ecuador. Likewise, the Tribunal reminds the State that human rights education with a particular emphasis on the legitimate use of force and states of exception is essential to generate guarantees that extrajudicial executions such as the ones that took place in the instant case will not be repeated.

58. That in the course of the hearing the State pointed out it had omitted to inform that during the year 2008 human rights training module for judges was designed and has already been imparted to 80 of them in their capacity as trainers. Such module was created in coordination with the judicial school of the *Consejo de la Judicatura* [Council for the Bench] and, after having introduced some changes, it will be delivered to this last resort to be applied on a permanent basis.

59. That as regards prosecutors training, during the year 2008 a curricular grid was designed in order to be able to implement this year the Diploma on “gender, justice and human rights”, for prosecutors, defenders and judges, wherein it is contemplated to include a module relating to the Inter-American Human Rights System.

60. That without lessening the importance of creating and implementing the aforementioned Diploma, the Court observes that training, as a permanent learning system, must have a permanent character so that the officials may acquire new knowledge, develop capabilities, specialize in new areas and adapt their skills to perform better the tasks entrusted them.

61. That this Court reminds that international obligations bind all the organs of the State Party and, considering the essential role prosecutors and judges are called to play in this matter, especially when supervising and controlling the behavior by the Armed and Police Forces in states of emergency, the action taken so that they receive instruction about the international standards related to the judicial protection of human rights must be of a permanent nature.

62. That the Court reminds that human rights education, in the security forces and in the judicial and control bodies of the State, is of the essence in order to generate guarantees that acts such as the ones in the instant case will not be repeated. For such reason, it sets much store on the progress indicated by the State in the course of the hearing and considers that the State has complied with this reparation measure, as regards designing and establishing human rights education programs, in the understanding that they are permanent programs and that they are addressed to all members of the Armed Forces and of the National Police, regardless of promotion, as well as to prosecutors and judges.

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Payment of compensation for pecuniary and non-pecuniary damages

63. That as relates to the obligation to pay the amounts fixed in paragraphs 139, 140, 143, 144 and 145 of the Judgment, as compensation for pecuniary and non-pecuniary damages (*operative paragraph number eleven in the Judgment*), the State indicated that the *Procuraduría General del Estado* [Office of the General Attorney for the State] requested, by an official letter dated on August 13, 2007, the Minister of Economy and Finance to increase the budget of the former body by 814,000.00 United States Dollars in order to comply with such payment. Likewise, the State reported that on September 1, 2008 all of the financial reparations were paid to the next of kin, except the interest amounts accrued on overdue payments.

64. That the representatives confirmed that the State has cancelled all of the financial reparations, but they pointed out that interest payment on overdue amounts has been delayed since the month of October 2008. The representatives acknowledged that, "the Ministry has deployed great efforts trying to obtain funds for the interest payments for having paid the principal for reparations to the next of kin one month in arrears."

65. That in the course of the hearing the State requested the Court to indicate whether it should go ahead in complying with payment of interest on overdue amounts, for in its view the "steps taken in order to obtain the funds to pay overdue interest has been criticized by the representatives of the victims," who deemed that the State has "created a need and expectations they did not have to receive payment for such delay, amounting to 6.000 dollars."

66. That the Commission pointed out in the course of the hearing, for the sake of clarification, that the representatives observed that the Ministry had deployed great efforts trying to effect payment, but no effort trying to investigate, but that such

expressions did not mean they were waving their right to interest on the overdue payments.

67. That the Court sets much store on the reports by the State and by the representatives, as regards disbursement of the payments for compensation provided in favor of the victims and their next of kin.

68. That, on the other hand, as concerns interest payments on overdue amounts, the Court coincides with the Commission in that such expression by the representatives must not be construed into a waiver of payment on their part, a payment which in any case could not be waived, for the State is strictly bound to comply fully with its obligations. In their expressions the representatives do not waive interest payments, but rather underscore that even though the victims have a higher interest in compliance with the operative paragraph relating to the investigations and regard it as being of a greater importance, the State maximizes its efforts to comply with other reparations of a lesser kind, such as interest payments.

69. That this Tribunal notes that in passing the Judgment the Court provided, in paragraph 167 that "should the State fall behind, it shall pay interest on the amount due, corresponding at the banking default interest rates in Ecuador." Consequently, with regard to the payments ordered, if the State does not comply with what has been provided within the mentioned term, it incurs in default and shall pay the corresponding interest on delayed payments.

70. That on account of the foregoing, the State has complied in part with this obligation, for which reason monitoring with respect to this operative paragraph will continue, inasmuch as the State will not disburse to the next of kin the interest amounts accrued on overdue payments.

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Payment of costs and expenses

71. That as regards the obligation of the State to pay directly to the *Comisión Ecuménica de Derechos Humanos (CEDHU)* [Ecumenical Human Rights Commission] the amounts set in paragraph 161 of the Judgment as compensation for legal costs and expenses (*operative paragraph number twelve in the Judgment*), the State referred to what it has reported *supra* and the representatives stated that in the month of September, 2008 the pertaining payment was made. The Inter-American Commission did not raise any objection in such respect.

72. That since the representatives of the victims themselves were the ones to point out that compliance with this operative paragraph has been effected, the Court deems it to have been satisfied.

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73. That upon monitoring compliance of the matters pending compliance in this case, the Court assesses the high usefulness of the hearing celebrated to this effect, which has been made evident in the good will and cooperative spirit shown by the parties. The Court will consider the general status of the points of the Judgment

passed in the instant case with which compliance is still pending once it receives the pertinent information.

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) and 30 of its Statute and 15(1), 30(2) and 63 of its Rules of Procedure,

Declares:

1. That pursuant with what was pointed out in Considering Clauses Numbers 27, 31, 49, 62 and 72 of the instant Order, the State has complied with the obligation:
 - a) to carry out, within six months from the notification of the present Judgment, a public act of acknowledgement of its responsibility for the extrajudicial execution of the victims and the other violations committed in the instant case (*operative paragraph number seven in of the Judgment*);
 - b) to publish at least once in the Official Gazette and in other newspaper of broad national coverage, paragraphs 9 to 130 of the present Judgment and the operative paragraphs therein, within six months from the notification thereof (*operative paragraph number eight octavo in the Judgment*);
 - c) to adopt all legal, administrative and other measures necessary to adapt its domestic legislation on states of emergency and suspension of guarantees, and in particular the provisions of its *Ley de Seguridad Nacional* [National Security Law], to ensure the American Convention on Human Rights (*operative paragraph number nine in the Judgment*);
 - d) to implement, within a reasonable time, permanent programs of education in human rights for members of the Military Forces and National Police in all hierarchical levels, with a particular emphasis on the legitimate use of force and states of emergency; and for prosecutors and judges, on international standards related to the judicial protection of human rights (*operative paragraph number ten in the Judgment*), and
 - e) to pay directly to the *Comisión Ecuménica de Derechos Humanos (CEDHU)* [Ecumenical Human Rights Commission] the amounts set in paragraph 161 of the Judgment as compensation for legal costs and expenses (*operative paragraph number twelve in the Judgment*).

2. That the State has complied in part with its obligation to pay directly to the family members of Mr. Wilmer Zambrano-Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña the amounts set as compensation for pecuniary and non-pecuniary damages (*operative paragraph number eleven in the Judgment*), as set forth in Considering Clauses Numbers 67 to 70.

3. That, in accordance with the terms of Considering Clauses Numbers 12 to 16 and 69 to 70, it will keep open the procedure to monitor compliance with the points with which compliance is still pending in the instant case, to wit:

a) to immediately carry out the necessary actions and use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction to identify, prosecute and if applicable punish those responsible for the extrajudicial execution of Wilmer Zambrano-Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña, as well as satisfying the right to truth of the next of kin of the victims and ensure that they have full access and capacity to act in all stages and instances of the said investigations and proceedings, pursuant to the domestic laws and the provisions of the American Convention on Human Rights (*operative paragraph number six in the Judgment*), and

b) to pay directly to the family members of Mr. Wilmer Zambrano-Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña the interest amounts accrued on the overdue payments effected as compensation for pecuniary and non-pecuniary damages (*operative paragraph number eleven in the Judgment*).

And Decides:

4. To call upon the State to take the necessary measures to fully and immediately comply with the operative paragraphs with which fulfillment is still pending, as ordered by the Court in the Judgment on the merits, reparations and costs delivered on July 04, 2007 according to the provisions in Article 68(1) of the American Convention on Human Rights.

5. To request the State to submit to the Inter-American Court, no later than November 30, 2009, a report specifying all the measures adopted to comply with the reparations ordered by this Court, with which compliance is still pending, as set forth in Considering Clauses Numbers 12 to 16 and 69 to 70, as well as in declarative paragraph number one in the instant Order.

6. To call upon the representatives of the victims and of their next of kin and upon the Inter-American Commission to submit their observations to the report by the State to which reference is made in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

7. To continue monitoring the points in the Judgment on the merits, reparations, and costs delivered on July 04, 2007 with which compliance is still pending.

8. To request the Secretariat to serve notice of the instant Order upon the State, upon the Inter-American Commission and upon the representatives of the victims and their next of kin.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel 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