Sentence C-462/13
(Bogotá DC, July 17)

THING JUDGED CONSTITUTIONAL IN VICTIMS LAW OF THE ARMED CONFLICT-Configuration in relation to normative contents and expressions that had already been subject to control.

The Court has warned that for the determination of the existence of constitutional res judicata, a double examination must be carried out when the decision has declared the constitutionality of the norm under control. First, (1) it must be established whether the rule being sued is the same as that which was the subject of a previous trial, and second, (2) it is necessary to determine whether the charges raised at the new trial coincide with those examined in the previous decision. In these conditions, the Court found that the constitutional res judicata was configured with respect to the expressions "occurred on the occasion of the armed conflict" in Article 3, "and when these do not have the resources for payment" in Article 51, "that do not contravene the present law" in the second paragraph of Article 60 and the second paragraph of the first paragraph and the second paragraph of Article 60, as well as the first and second paragraphs of article 66 and the expression "of its own means or" of the first paragraph of article 67, as well as with respect to article 125 of Law 1448 of 2011, provisions which had been subject to control, decided by judgments C-781 of 2012 and C-280 of 2013.

THING JUDGED CONSTITUTIONAL-Constitutes a quality/COSA **JUDGED CONSTITUTIONAL-Significant/COSA JUDGED CONSTITUTIONAL-Foundation/COSA JUDGED CONSTITUTIONAL-Characteristics**

The res judicata is based (i) on the need to preserve the legal security attached to the consideration of Colombia as a Social State of Law; (ii) on the obligation to protect good faith by promoting the predictability of judicial decisions; (iii) on the duty to guarantee judicial autonomy by preventing a debate from reopening after examination of a matter by the competent judge and according to the rules in force; and (iv) on the duty to ensure the supremacy of the Constitution. To this foundation is attached the intangible, immutable, definitive, indisputable and obligatory character that accompanies the res judicata. The value of constitutional res judicata includes all judgments adopted by this Corporation, and accordingly this effect accompanies not only decisions of simple constitutionality or unconstitutionality but also those that adopt some form of modulation such as, for example, with conditional constitutionality judgments, integrative judgments by addition, integrative judgments by substitution or exhortation judgments. It also extends to decisions modulating the temporal effects of the decision taken, such as, for example, retroactive judgments or judgments of deferred inexequibilidad.

THING JUDGED CONSTITUTIONAL-Scope

THING JUDGED CONSTITUTIONAL-Importance

The importance of res judicata is manifested in the consequences it brings. Thus, when the decision has consisted in declaring the unconstitutionality of a norm, the prohibition contained in article 243 is activated, according to which no authority may reproduce its material content; and in cases in which the determination of the Court has consisted in declaring the constitutionality of the norm, the effect is that a new trial cannot take place for the same reasons, unless the constitutional provisions of the parameter of constitutionality are no longer in force or have been modified. In the case of judgments of conditional constitutionality, res judicata has the consequence, among other possible consequences, that the excluded interpretation of the legal system cannot be reproduced or applied in another legal act. Additionally, in cases in which the Court has adopted an additive sentence, res judicata implies that it is not permitted to reproduce a provision that omits the element that the Court has deemed necessary to add. In any case, and regardless of the specific consequences of assigning res judicata to the judgments of this Court, this value implies either a limitation on the possibility for the authorities to adopt certain types of norms, on the one hand, or the establishment of a restriction on the possibilities for the judicial authorities - and in particular the Constitutional Court - to adopt a new pronouncement.

INHIBITORY SENTENCE-exceptional **character/INHIBITORY SENTENCE-Budgets** of origin

The inhibitory sentences, insofar as they imply a decision not to carry out the intended trial activity, constitute an exceptional type of judicial decision that is only appropriate when precise hypotheses are verified that prevent the constitutionality examination from being carried out. Such character has meant an effort of the jurisprudence of this Corporation to establish the events in which it is necessary to adopt an inhibitory decision when exercising its abstract control competences and such hypotheses are associated (i) with the object of control, thus an inhibitory decision proceeds in those cases in which the accused norm has ceased to belong to the legal order as a consequence of its express or tacit derogation, or by the loss of executory force; (ii) with the characteristics of the accusation, associated with the predominantly begged character of the public action that imposes the obligation to comply with certain argumentative burdens in order for the accusation to be considered admissible; (iii) with the jurisdiction of this court, such as when a rule is demanded that is not covered by the typical or atypical powers of this Corporation or when the term for the formulation of the public action has elapsed, as provided for in articles 242 and 379 of the Constitution; or (iv) with evidentiary deficiencies that prevent a substantive pronouncement, in which event the Plenary Chamber of the Court may adopt the decision to temporarily abstain from issuing a substantive pronouncement until the evidence required to advance the examination (evidentiary defects that prevent control) is provided, as has occurred, for example, in the case of the control of constitutionality of governmental objections when the Congress of the Republic does not send the gazettes or certifications that account for the processing of objections in said Corporation.

PREVIOUS INHIBITORY DECISION OF THE CONSTITUTIONAL COURT-

It does not prevent a new inhibition.

For this Tribunal, in those cases in which (i) there is an inhibitory sentence of the Constitutional Court adopted in development of its functions of abstract control, (ii) a new lawsuit is filed against the same rule and (iii) the content of the lawsuit clearly coincides with the argumentation formulated in the previous one, the Court must again inhibit itself. Thus, although the inhibition adopted by the Court does not prevent the charge of unconstitutionality of the norm in question from being reformulated with a new discursive basis, it does determine the inadmissibility of a new claim with an identical charge of unconstitutionality based on the same argument.

INHIBITION OF THE CONSTITUTIONAL COURT-Procedure

While in Judgment C-280 of 2013 the Court refrained from making a substantive pronouncement with respect to several of the accused expressions of Law 1448 of 2011 and which are now being re-defended, in particular with respect to (i) some paragraphs accused of the first, second and third paragraphs of Article 61, (ii) the expression "of restitution" included in the title of Article 123 and (iii) of the defendant expressions of Article 132, The Court observes that despite the fact that the lawsuit now being studied incorporates new considerations, it is based on an incorrect premise that does not have the ability to activate the Court's jurisdiction to adopt a substantive decision, and in other events the argument coincides substantially with the reasoning presented in the previous opportunity, so that it is appropriate to adopt a new inhibitory decision.

ADMINISTRATIVE INDEMNIFICATION FOR VICTIMS OF INTERNAL ARMED CONFLICT-Components

ADMINISTRATIVE INDEMNIFICATION FOR CONFLICT VICTIMS INTERNAL ARMED-Mechanisms for determining maximum **amount/ADMINISTRATIVE** INDEMNIFICATION **FOR CONFLICT VICTIMS INTERNAL** ARMED-Maximum **Amount**

INTEGRAL ATTENTION, ASSISTANCE AND REPAIR LAW FOR VICTIMS OF THE INTERNAL ARMED CONFLICT-Mechanisms foreseen to materialize the administrative indemnification in favor of the population in situation of displacement does not violate the **Constitution/ATTENTION** LAW**, INTEGRAL ATTENTION AND REPAIR OF VICTIMS OF THE INTERNAL ARMED CONFLICT-Mechanisms** constituting administrative indemnification in favor of the displaced population are additional to the amount of the administrative indemnification that must be paid in money.

Article 132 also requires the regulatory provisions that set forth the mechanisms that may be used to provide administrative compensation to displaced persons, including subsidies, acquisition or allocation of land, as possible forms of administrative compensation that, for the Court, is not contrary to the Constitution inasmuch as it is a clear manifestation of the configuring freedom of Congress to take action against a population whose members are

considered to be victims. In interpreting Article 132 of Law 1448 of 2011, the Court highlighted the importance of not confusing compensation measures with the State's obligation to ensure basic living conditions for people from the weakest population groups. This precedent therefore requires the exclusion of any interpretation that may have the effect of assimilating the mechanisms enunciated in the third paragraph of article 132 of Law 1448 of 2011 with the administrative compensation to be paid in cash.

INTEGRAL ATTENTION, ASSISTANCE AND REPAIR LAW OF VICTIMS OF THE INTERNAL ARMED CONFLICT-Measures of performance content constituting administrative indemnification cannot affect indemnification in money.

Reference: File D-9362.

Complaint of unconstitutionality against articles 3 (partial), 51 (partial), 60 (partial), 61 (partial), 66 (partial), 67 (partial), 123 (partial), 125 and 132 (partial) of Law 1448 of 2011.

Actors: Franklin Castañeda and others.

Magistrate Substanciador: MAURICIO GONZÁLEZ CUERVO.

I. BACKGROUND.

1. Standards demanded.

Franklin Castañeda Villacob and other citizens, in the exercise of the public action of unconstitutionality provided for in articles 40-6, 241 and 242 of the Constitution, request the declaration of unconstitutionality of several expressions and provisions of Law 1448 of 2011 "*by means of which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other provisions are dictated*".

LAW 1448 OF 2011

(…)

(…)

2. Rules sued, charges brought and interventions.

For the purpose of specifying the general scope of each of the allegations, the expressions or dispositions accused, the charges brought and the interventions presented will be indicated below.

Charges against the expression "*occurred on the occasion of the armed conflict*" in Article 3 of Law 1448 of 2011.

The defendant part, which is underlined, is part of Article 3:

> ARTICLE 3 VICTIMS. For the purposes of this law, victims are considered to be those persons who, individually or collectively, have suffered damage as a result of events that occurred after January 1, 1985, as a consequence of violations of International Humanitarian Law or of serious and manifest violations of international human rights norms that occurred on the occasion of the internal armed conflict.
>
> Also victims are the spouse, permanent partner, same-sex partners and first degree of consanguinity, first civilian of the direct victim, when the victim has been killed or is missing. In the absence of these, those who are in the second degree of ascending consanguinity will be.
>
> Similarly, persons who have suffered harm by intervening to assist the victim in danger or to prevent victimization are considered victims.
>
> The status of victim is acquired regardless of whether the perpetrator is individualized, apprehended, prosecuted or convicted of the punishable conduct and the family relationship that may exist between the perpetrator and the victim.

2.1.1. Form of order sought.

A declaration is requested that the expression "*occurred on the occasion of the internal armed conflict*" is unconstitutional. Subsidiarily, and in such a case where the Constitutional Court does not declare the inexequibilidad, it is requested to issue a sentence of conditional constitutionality, on the basis of which it is understood that the expression "*occurred on the occasion of the internal armed conflict*" is not limited to violations that occurred on the basis of a direct causal relationship with the armed conflict, but in its context, and therefore includes violations such as those based on socio-political violence, gender violence, forced disappearance, internal displacement, among others.

2.1.2. Cargo.

The condition introduced by the defendant article in establishing the concept of victim constitutes a restriction that is unknown to articles 1, 2, 6, 12, 13, 29, 93, 94 and 229 of the Constitution. This restriction has the effect of depriving some persons affected by serious human rights violations of the protection regime established by Law 1448 of 2011. Thus, "[*a*]*n restrictive interpretation such as that indicated by the norm leaves outside the scope of*

the law the victims of serious human rights violations and crimes against humanity that occurred in the context of the armed conflict but originated in acts of socio-political violence. Under this assumption, victims of forced disappearance due to socio-political persecution, serious violations of human rights committed against women, cases of forced displacement among other cases of similar characteristics would be excluded. "

2.1.3. Interventions relating to Article 3 of Law 1448 of 2011.

2.1.3.1. Ministry of the Interior: res judicata. The expression "*occurred on the occasion of the internal armed conflict*" was pronounced by the Constitutional Court in Ruling C-781 of 2012 and, in view of this, the Court must take into account what was decided there.

2.1.3.2. Ministry of Finance and Public Credit: exequibilidad.

The Constitutional Court has had the opportunity to point out that the criteria used by the legislator to determine the scope of the concept of victim are compatible with the right to equality. The criterion used reasonably includes subjects placed in the same situation and does not arbitrarily exclude any of the subjects, while the non-inclusion of persons affected by common delinquency is fully justified in light of the purposes pursued by Law 1448 of 2011. At that address are judgments C-253A and C-781 of 2012.

2.1.3.3. Ministry of National Defence: res judicata. On the use of the expression "*on the occasion of the armed conflict,*" the Constitutional Court pronounced itself in Ruling C-781 of 2012 and, additionally, it specified the scope of this concept in Ruling C-253A of 2012.

2.1.3.4. Unit for Comprehensive Care and Reparation of Victims: exequibilidad. The Constitutional Court has considered that the definition of victim established in Article 3 of Law 1448 of 2011 is fully compatible with the Constitution. This follows, among others, judgments C-052, C-253A and C-781 of 2012.

2.1.3.5. Colombian Institute of Rural Development: res judicata. The Court must declare the charges brought against article 3 of the law judged in light of judgments C-1054, C-715 and C-781 of 2012.

2.1.3.6. Ombudsman's Office: res judicata. In relation to the accused expression of Article 3, the Court must be in accordance with what was resolved in Ruling C-781 of 2012 given that the phenomenon of constitutional res judicata is configured.

2.1.3.7. Universidad del Rosario -Grupo de Investigación en Derechos Humanos-: exequibilidad. The expressions accused of article 3 of Law 1448 of 2011 are compatible with the Constitution, as constitutional jurisprudence has had the opportunity to point out on several occasions. The definition of victim, and in particular the term "armed conflict", has been interpreted broadly *to include the full complexity and factual and historical evolution of the Colombian internal armed conflict.*

2.2. Charges formulated against the expression "*provided they do not have the resources*

***to pay*" of article 51 of Law 1448 of 2011.**

The defendant part, which is underlined, is part of Article 51:

> The various educational authorities shall adopt, in the exercise of their respective powers, the necessary measures to ensure access to and exemption from all types of academic costs in official educational establishments at the preschool, basic and intermediate levels for the victims referred to in this law, provided that they do not have the resources to pay for them. If access to the official sector is not possible, the educational service may be contracted with private institutions.
>
> In higher education, professional technical institutions, technological institutions, university institutions or technological schools and universities of a public nature, within the framework of their autonomy, shall establish selection, admission and enrolment processes that enable victims under the terms of this Act to have access to the academic programmes offered by these institutions, especially women heads of household and adolescents and persons with disabilities.
>
> For its part, the Ministry of National Education will include the victims covered by the present law within the strategies of attention to the diverse population and will take steps to include them within the special credit lines and subsidies of ICETEX.
>
> Within the quotas set and to be set aside for the training provided by the National Apprenticeship Service (SENA), priority will be given to facilitating and guaranteeing access to the victims covered by this Act.

2.2.1. Form of order sought.

It is requested the declaration of inexequibilidad of the expression "*as long as they do not have the resources for payment*.

2.2.2. Structure of the position.

The defendant expression implies a violation of articles 13, 44, 67 and 93 of the Constitution. The condition for free access to preschool, basic and intermediate education, consisting in the victims not having the resources to pay for it, implies (i) ignorance of the content of the right to education that imposes free basic primary education, (ii) violation of the obligation to establish measures that grant special treatment to persons considered victims, and (iii) prohibition of retrogression in the area of social rights, since the benefits provided for in article 51 of Law 1448 of 2011 are qualified as assistance measures and not as expressions of a constitutional right.

This expression also implies the violation of children's rights and the requirements deriving from international instruments regarding the protection of the right to education.

2.2.3. Interventions relating to Article 51 of Law 1448 of 2011.

2.2.3.1. Ministry of the Interior: enforceability. The required expressions of article 51 are not contrary to the Constitution. When it comes to the regulation of social rights, the legislator has freedom of configuration. It is not appropriate for the exercise of public action of unconstitutionality to affect a provision that is articulated with a long-term public policy. In terms of people's incomes, it is possible for the State to design policies that are in line with the principle of solidarity.

2.2.3.2. Ministry of Finance: exequibilidad. In spite of the fact that the charge has some argumentative deficiencies, it is possible to conclude that the accused provision is enforceable. Such a conclusion is based on different reasons. In the first place, the accused provision does not provide for differentiated treatment between persons who are not victims and persons who are victims, since the only thing it does, in a manner compatible with the Constitution, is to provide that those who have resources may assume the expenses for the purpose of assisting other victims. Secondly, the accused provision is not regressive in view, inter alia, of the fact that it does not limit the realization of the right but enshrines a mechanism to deepen the possibilities of access. Thirdly, there is no prohibition for an assistance measure to be at the same time an expression of a right, such as that of article 25 of Law 1448 of 2011.

2.2.3.3. Ministry of National Defence: exequibilidad. The accused expression is enforceable. It is necessary to understand that it refers to the eventual payments required to access secondary or higher education since, according to the current constitutional regime, it is free at the preschool, basic and intermediate levels. Consequently, *charges at the secondary and higher education levels may be compatible with the State's obligation to progressively introduce free education at such levels, provided that they reasonably consult the ability of individuals or families to pay.*

2.2.3.4. Ministry of Agriculture and Rural Development: exequibilidad. The regulation adopted is comprised of the freedom of configuration of which Congress is the holder to adopt measures in contexts of transitional justice as has been pointed out, among others, in judgment C-370 of 2006.

2.2.3.5. Ministry of National Education: inexequibilidad. The accused expression of article 51 is contrary to the Constitution. In fact, the apart that is accused *entails a clear regression, since it does not know that to date, in Colombia, pre-school, basic and secondary education is free in public establishments.* The accused expression subjects to two conditions the exigibility of free education and, in that direction, it does not know its condition of public service not subject to conditions of an economic nature.

2.2.3.6. Ministry of Housing, City and Territory: exequibilidad. The expression "*as long as they do not have the resources to pay for it*" does not oppose the Constitution. On the contrary, the purpose of this provision is to promote the participation of people in situations of weakness and to meet the needs of the vulnerable population. Such a provision, which is really intended, is to *give preferential and special treatment* to persons who, as victims, are

particularly vulnerable.

2.2.3.7. Instituto Colombiano de Desarrollo Rural: exequibilidad. The different treatment established therein is intended, on the one hand, to provide special protection for persons with fewer resources and in situations of weakness and, on the other, to enable State resources to be allocated to meet the needs of persons in situations of vulnerability. The differentiated treatment that follows from the accused expression finds support precisely in the diverse situation in which the groups that arise by using the criterion of distinction that underlies the demanded norm find themselves.

2.2.3.8. Ombudsman's Office: conditional exequibilidad. On the basis of various international and national provisions, the constitutionality of the expression demanded is only possible on the condition that it is understood that free of charge is imposed on victims who attend preschool or basic primary education. However, the enforceability of making such a charge for those in basic secondary or middle education is admissible if and only if such a charge is balanced and reasonable in view of capacity to pay and, in addition, such capacity is proven by the competent authorities.

2.2.3.9. Universidad del Rosario -Grupo de Investigación en Derechos Humanos: inconstitucionalidad. The expression being accused is unconstitutional for a number of reasons. Firstly, it provides for disproportionate treatment between persons to whom the law is addressed and persons not subject to it, inasmuch as case law has established a general standard of free treatment and, to that extent, they are subject to an additional burden. Secondly, the provision of which the defendant segment is a party ignores the obligations of the State by not providing, in this matter, favorable and differentiated measures in favor of the addressees of the law. In addition to the foregoing, the placement of article 51 in the title on measures of assistance and care for victims is contrary to the Constitution if it is considered that education is not such a measure but a constitutional right protecting all persons.

2.3. Charges filed against certain expressions of article 60 of Law 1448 of 2011.

The defendants' paragraphs, which are underlined, are part of Article 60:

> ARTICLE 60. APPLICABLE LAW AND DEFINITION. Care for victims of forced displacement shall be governed by the provisions of this chapter and shall be supplemented by the public policy of prevention and socio-economic stabilization of the displaced population established in Act No. 387 of 1997 and other regulations governing it.
>
> Existing provisions aimed at achieving the effective enjoyment of the rights of the displaced population, <u>which do not contravene this Act</u>, shall remain in force.
>
> PARAGRAPH 1: The cost incurred by the State in providing the offer addressed to the displaced population shall in no case be deducted from the amount of administrative or judicial compensation to which this population is entitled.

This offer, provided that it is a priority, prevalent and addresses their specific vulnerabilities, has a remedial effect, with the exception of immediate, emergency and transitional humanitarian attention.

PARAGRAPH 2 For the purposes of this Act, it shall be understood that any person who has been forced to migrate within the national territory, abandoning his or her locality of residence or habitual economic activities, because his or her life, physical integrity, personal security or freedom have been violated or are directly threatened on the occasion of the violations referred to in article 3 of this Act, is a victim of forced displacement.

2.3.1. Form of order sought.

2.3.1.1 A declaration of unconstitutionality of the expression "*not contrary to this law*" contained in paragraph 2 of article 60 of Law 1448 of 2011 is requested.

2.3.1.2 It is requested to declare the unconstitutionality of the expression "*This offer, provided that it is a priority, prevailing and addresses its specific vulnerabilities, has reparative effect, except for immediate, emergency and transitional humanitarian attention*" contained in the first paragraph of article 60 of Law 1448 of 2011.

For the *purposes of this Act, any person who has been forced to migrate within the national territory, leaving his or her place of residence or usual economic activities, because his or her life, physical integrity, personal security or freedom have been violated or are directly threatened on the occasion of the violations referred to in article 3 of this Act, shall be deemed to be a victim of forced displacement.* ". They request that if the above-mentioned paragraph is not declared unconstitutional, it be established that the constitutionality of the rule is conditional on the understanding *that only those who suffer harm as a result of direct actions of the armed conflict will not be considered as victims, but that it will be understood that the rule refers to damage suffered as a result of the context of the armed conflict.*

2.3.2. Structure of the position.

2.3.2.1 The expression "*which does not contravene the present law*" ignores the principle of non-regression and, consequently, articles 1, 2 and 13 of the Constitution. Such violation occurs because, without differentiating between those rules prior to Law 1448 of 2011 that grant more favorable prior treatment for victims of forced displacement, the general application of the law is provided for. This would imply, in view of the fact that the rights of displaced persons can be more broadly protected in the pre-existing regulation, a violation of the prohibition of retrogression established in the area of social rights and widely recognized by constitutional jurisprudence.

2.3.2.2. The charge on the basis of which he requests that the expression "[*t*]*his offer, provided that it is priority, prevalent and addresses his specific vulnerabilities, has reparative effect, except for immediate, emergency and transitional humanitarian attention*" be declared unconstitutional, indicates that the respondent party is unaware of the principle that requires a

distinction to be made between reparation measures and other different measures associated, for example, with the provision of social services. This distinction, which is supported by the jurisprudence of the Inter-American Court of Human Rights, the Constitutional Court and the Council of State, assumes -among other things- (i) that in no case do assistance measures or the prioritization of general social services constitute forms of reparation and (ii) that the confusion between the different measures implies a direct affectation of the right to reparation of victims of forced displacement. Thus, the accused provision constitutes a violation of articles 2, 90 and 93 of the Constitution.

2.3.2.3 The challenge that the plaintiffs raise against the second paragraph of article 60 and with the support of which they request a declaration of unconstitutionality is closely related to the charge brought against the expression "*occurred on the occasion of the internal armed conflict*" in article 3 of the law. The definition of a victim of forced displacement, referring to article 3 of the law, implies a restriction of the concept, ignoring the fact that such a situation may arise for reasons other than the armed conflict. This excludes events that "according to *Law 387, the Deng principles and constitutional jurisprudence contain, among others, internal disturbances and tensions, generalized violence, fumigations of illicit crops, acting as apparatus of power whatever its denomination, pressures generated by productive megaprojects (mining, agro-industrial, infrastructure, etc.), human rights violations, or other circumstances analogous to those described above insofar as they may alter or drastically alter public order*". The imposition of this rule has the effect of ignoring article 13 of the Constitution, which imposes on the State the obligation to adopt measures to ensure that equality is real and effective. The restriction means that some of the victims of forced displacement cannot benefit from the care, assistance and reparation measures provided for by Law 1448 of 2011.

2.3.3 Interventions relating to Article 60 of Law 1448 of 2011.

2.3.3.1. Ministry of the Interior: enforceability and res judicata. The expressions being accused are not in opposition to the Constitution. One of the challenges of Law 1448 of 2011 consists in the articulation of *common social public policies* with the particular and temporary measures of the victims. This attempt at articulation, which can sometimes lead to coincidences, does not ignore the differences between social policy and the measures established in favour of the victims. In addition, the attempt to articulate the different rules applicable to victims does not lead to a lack of knowledge of progressivity, while Law 1448 of 2011 *seeks to gradually increase, in a staggered manner, the attention, assistance and reparation to victims*. Thus, the objective is to have a harmonious system for channeling existing resources that takes into account the demands ascribed to the unconstitutional state of affairs declared in Ruling T-025 of 2004. The definition of victim established in article 60 is covered by the effects of the decision adopted in Ruling C-781 of 2012, given that the referred provision refers to article 3 that was the object of the judgment in the aforementioned ruling.

2.3.3.2. Ministry of Finance: exequibilidad e inhibición respecto del inciso 2 del parágrafo 1. La expresión acusada del segundo inciso del artículo 60 no vulnera la Constitución. The determination of the preferential application of the provisions adopted in Law 1448 of 2011 is based on its special character which justifies its prevalence over

provisions of ordinary law. It is not, therefore, a regressive measure in that it seeks to materialize the public policy associated with transitional justice and, in addition, to ensure sufficient standards of legal security. It would be regressive to allow the provisions prior to Law 1448 of 2011 that affect the realization of the rights and benefits established therein to continue in force. In determining the reparative effect of the special offer for the displaced population, the defendant apart from paragraph 1 of article 60 does not contradict the Constitution. It should be noted that article 25 of Law 1448 contemplates the reparative nature of social services and assistance measures when *they devote additional actions to those developed within the framework of the National Government's social policy for the vulnerable population, they include prioritization criteria, as well as particular characteristics and elements that respond to the specific needs of the victims.* These considerations are compatible with constitutional jurisprudence and, in any case, their materialization does not result in a restriction to the corresponding administrative compensation; in any case, the charge formulated by the plaintiffs lacks certainty and specificity since they do not demonstrate how the accused expressions ignore articles 2, 90 and 93. The second paragraph of article 60 does not oppose the Constitution in view of the reasons given to demonstrate the constitutionality of the expressions demanded by article 3 of Law 1448 of 2011.

2.3.3.3. Ministry of National Defence: exequibilidad. The provisions of the second paragraph of article 60 do not conflict with the Constitution insofar as they are part of the process of fine-tuning public policy on forced displacement, which was promoted by the provisions of judgement T-025 of 2004. Thus, the accused expression implies *the integration of rules aimed at achieving the effective enjoyment of the rights* of persons in situations of displacement. Nor do the disputed paragraphs of article 60, paragraph 1, oppose the Constitution, since it is possible to give the measures laid down therein restorative effect. This does not mean, however, *that such aid is regarded as part of the compensation or is discounted, a possibility expressly excluded by the same rule.* Nor does the second paragraph of Article 60 contradict the Political Charter if it is considered that the definition of victim mentioned therein coincides with the jurisprudence of the Court and, in particular, with that indicated in Judgment T-141 of 2011. In addition, in relation to the use of the expression "*on the occasion of the armed conflict,*" the Constitutional Court ruled in Ruling C-781 of 2012 and specified the scope of this concept in Ruling C-253A of 2012.

2.3.3.4. Ministry of Agriculture and Rural Development: enforceability and res judicata of paragraph 2. The provisions of article 60 do not disregard the principle of progressivity. The determinations adopted there fall within the existing configuration margin for the definition of transitional justice policies. The Court must declare proven the exception of res judicata in relation to the second paragraph of Article 60 of Law 1448 of 2011 due to the provisions of Judgment C-781 and C-253A of 2012.

2.3.3.5. Ministry of Housing, City and Territory: exequibilidad. The expression "*which do not contravene this Act shall continue in force*" does not oppose the Constitution. Law No. 387 of 1997 and Law No. 1448 of 2011 regulate public policy on displaced persons in Colombia. In view of its position in the legal system, neither has a higher hierarchy than the other. In accordance with the foregoing, *neither displaces the other, since they have the same degree of importance and applicability in the Colombian legal framework, and those cases*

and situations that refer to this type of population and are not previously regulated in such legislation, it will be necessary by analogy to refer to other legal sources, in such a way that there is no room for preaching the possibility of them being left unprotected by the State. The accused expression of the second paragraph of the first paragraph of article 60 does not contradict the Constitution inasmuch as what is stated therein does not imply that with regard to immediate emergency and transitional humanitarian assistance "*the victims of the armed conflict are left unprotected and defenseless by the State, since the coverage for this type of situations are regulated and directly protected by the programs and policies of the Administrative Department for Social Prosperity*". The second paragraph of article 60 does not ignore the Constitution. The definition of victim contained therein, which is closely related to that provided for in article 3 of the Act, does not make it possible to identify the violation of victims' rights if it is considered that such rights are also protected by Act No. 975 of 2005.

2.3.3.6. Unit for Integral Attention and Reparation to Victims: Inhibition and Res judicata. The lawsuit is based on subjective interpretations that are not deduced from the text of the provision given that the brief *does not demonstrate that a case could be presented in which a provision contrary to Law 1448 that is more favorable to the rights of the victims of Law 1448 of 2011 must be disapplied*; the argument of the plaintiffs refrains from considering the integrating and complementary nature of the different regimes. The questioning against the accused expressions of paragraph 1 of article 60 has no legal basis whatsoever, since *partial, decontextualized expressions* are demanded and given *an arbitrary interpretation*: it is sufficient to examine the law to identify that it establishes a clear distinction between reparation measures and those corresponding to assistance; the Court should be bound by the provisions of constitutional jurisprudence and, in particular, in judgment, T-458 of 2010, C-1199 of 2008 and T-188 of 2007, in which the differences between the measures referred to above are specified. The indictment against article 60, paragraph 2, cannot be opened. First, in Ruling C-372 of 2009, the Court examined the definition of displaced persons in Law 387 of 1997 and to that extent the law was already subject to review by this Corporation; in turn, the expression "*on the occasion of the armed conflict*" was declared adjusted to the Constitution in Ruling C-781 of 2012.

2.3.3.7. Colombian Institute of Rural Development: exequibilidad, inhibición y res juzgada (exequibilidad, inhibition and res judicata). The Constitution does not disregard the expression demanded in the second paragraph of article 60: the apart defendant does not imply a retrograde step with respect to the pre-existing protection if one takes into account that the interpretation of Law 1448 of 2011 must adjust, on the one hand, to the prevalence of international human rights treaties and, on the other, to the duty to interpret Law 1448 in the manner most favorable to the victim. The accusation against the second paragraph of paragraph 1 of article 60 does not meet the requirements for the formulation of a charge of unconstitutionality: they are *vague, indeterminate and abstract* charges*;* affirming that the measures indicated therein have a repairing effect does not imply that the social and reparation duties of the State are being replaced. Consequently, the Court should refrain from issuing a ruling on the merits or, in any event, from declaring the contested provision enforceable. The question that is directed against the second paragraph of article 60 and that is built from the reference to article 3 of the law, must be analyzed taking into consideration that

the Court already judged such question in the sentence C-781 of 2012 and, consequently, the constitutional res judicata has been configured.

2.3.3.8. Ombudsman's Office: conditioned exequibilidad, inhibition and res judicata.

The expression "*not contrary to the present law*" raises complex problems of interpretation. As a starting point, it is clear that the provision may or may not be constitutionally problematic depending on whether the new regulation extends or reduces the level of protection compared to the previous regulation. This difficulty in interpreting the norm implies, in some way, a special obligation to argue when posing the constitutional questioning. Thus, the approach of the plaintiffs evidences an important flaw in the presentation of the accusation, by not specifying the matters in respect of which the application of the defendant rule would imply a backward step compared to the pre-existing level of protection. This indeterminacy, which must be confronted by the plaintiff citizen, prevents the proper identification of the scope of the reproach for violation of the principle of progressivity. This would lead, prima facie, to the obligation to take a inhibitory decision. However, in order to ensure the supremacy of the Constitution, it is possible to declare the constitutionality of the accused provision as long as it is understood to be applicable *only to the extent that it does not entail restrictions, limitations, conditions or requirements that make the situation of the population victim of forced displacement more burdensome, as opposed to those established for the same event or situation by Act No. 387 of 1997 or provisions implementing or regulating it*.

The accusation directed against the expressions of paragraph 1 of article 60 does not satisfy the requirements of argument to formulate a charge of unconstitutionality. In effect, although the argument is integrated by references to different sources, it does not offer express reasons of unconstitutionality and omits to consider the expression demanded together with others of the law that could specify its normative meaning. It is therefore appropriate for the Court to refrain from issuing a substantive pronouncement.

As was concluded when examining the appropriateness of the charge against the accused expression of Article 3 of the law, the Court must be in accordance with what was resolved in Ruling C-781 of 2012 given that the phenomenon of constitutional res judicata is configured.

2.3.3.9. Universidad del Rosario - Grupo de Investigación en Derechos Humanos: inexequibilidad. The expression claimed could result in affecting the principle of progressivity if Law 1448 of 2011 had established a measure implying a lower level of protection of a right. This possibility, although not demonstrated by the plaintiffs on the basis of existing assumptions, would give rise to ignorance of the Constitution. This being the case, it is appropriate to declare the accused provision to be unconstitutional.

2.4. Charges formulated against some expressions of article 61 of Law 1448 of 2011.

The defendants' paragraphs, which are underlined, are part of Article 61:

ARTICLE 61. THE STATEMENT OF THE FACTS MAKING UP THE

DISPLACEMENT SITUATION. The victim of forced displacement must make a statement before any of the institutions that make up the Public Prosecutor's Office within two (2) years following the occurrence of the event that gave rise to the displacement, provided that these events have occurred since January 1, 1985, and are not registered in the Single Registry of Displaced Population.

The declaration shall become part of the Single Registry of Victims, in accordance with the provisions of Article 155 of this Law. The assessment made by the official in charge of receiving the application for registration must respect the constitutional principles of dignity, good faith, legitimate expectations and the prevalence of substantive law.

PARAGRAPH 1: A period of two (2) years is established for the reduction of under-registration, a period in which the victims of the displacement of previous years may declare the facts in order to decide whether or not to include them in the Register.

To this end, the National Government will carry out a nationwide dissemination campaign to ensure that victims of forced displacement who have not testified approach the Public Prosecutor's Office to give their testimony.

PARAGRAPH 2: In statements submitted two years after the occurrence of the event that gave rise to the forced displacement, the official of the Public Prosecutor's Office shall investigate the reasons why the statement was not made earlier, in order to determine whether there are barriers that hinder or impede the accessibility of victims to the protection of the State.

In any case, one should ask about the circumstances of time, manner and place that generated his displacement in order to have precise information to decide on the inclusion or not of the declarant to the Registry.

PARAGRAPH 3 In the event of force majeure that has prevented the victim of the forced displacement from making the declaration within the term established in the present article, the same shall be counted from the moment in which the circumstances giving rise to such impediment cease to exist.

The victim of forced displacement must inform the officer of the Public Prosecutor's Office, who will investigate the circumstances and send the diligence to the Special Administrative Unit for Comprehensive Care and Reparation for Victims so that it can take appropriate action in accordance with the events mentioned herein.

2.4.1. Form of order sought.

2.4.1.1 It is requested to declare the inexplicability of the expressions "*A period of two (2) years is established for the reduction of the under-registration, period in which the victims of*

the displacement of previous years will be able to declare the facts in order to decide their inclusion or not in the Register", "*For this purpose*" and "*who have not declared"* contained in paragraph 1 of article 61 of Law 1448 of 2011.

In the event that the Court does not accede to the main application, the declaration of conditional constitutionality is requested on the understanding that the two-year period be interpreted as a measure that in no case can be inflexible, nor represent a disproportionate burden for the victims who demonstrate the affectation of their fundamental rights outside the period indicated in the law.

2.4.1.2. It is requested that the words '*the reasons why the declaration was not previously made*' and '*In any event, the circumstances of the time, manner and place in which the person moved should be asked in order to have precise information to enable a decision to be taken on whether or not to include the declarant in the Register' be* declared inadmissible. "contained in paragraph 2 of article 61 of Law 1448 of 2011.

2.4.1.3 It is requested that the expression "*The victim of forced displacement must inform the official of the Public Prosecutor's Office, who will investigate the circumstances and send the diligence to the Special Administrative Unit for Integral Attention and Reparation to the Victims to carry out the pertinent actions in accordance with the events mentioned herein.* "Article 61, paragraph 3, of Law 1448 of 2011.

2.4.2. Structure of the position.

2.4.2.1. The expressions in the first paragraph of the rule demanded, by imposing a time limit for overcoming under-registration and enabling victims of displacement from previous years to advance their declaration within that period - 2 years - with the purpose of the State deciding whether or not to include them, disregards the rights of victims.

In effect, although the establishment of a time limit for victim registries serves a constitutionally relevant purpose in that it allows the State to specify its duties and to that extent ensures greater planning for the execution of resources, such a determination results in ignoring the complexity of the conflict and the profound difficulties faced by victims.

These strategies impose serious barriers to the exercise of rights by victims, given that, as constitutional jurisprudence has even recognized, events not attributable to the victim -force majeure or fortuitous case- may occur that prevent the victim from carrying out the required activities in a timely manner in front of the registry.

In addition, the defective disclosure of this possibility makes the provision being sued ineffective. The Court must consider that the constitutionality of this provision may lead to the denial of the possibility of victims being effectively registered.

It is necessary, therefore, to declare the accused expressions unconstitutional and, if this is not appropriate, the Court must condition their scope by indicating that the period set therein must not imply an inflexible term or represent a disproportionate burden for victims who

demonstrate that their fundamental rights have been affected outside the period established by law.

2.4.2.2. The rules laid down in article 61, paragraphs 2 and 3, concerning statements preceding the decision whether or not to include a person in the Consolidated Register of Victims, run counter to constitutional jurisprudence in this area and, in particular, ignore the fact that, on the basis of the principle of good faith, it is the State that has the burden of proving that it is not a person with the right to register. Thus, "*it is necessary to emphasize that before denying inclusion in the Universal Declaration of Human Rights, the State has the burden of proving that the declarant has not suffered serious violations of his or her human rights or breaches of international humanitarian law.* "

2.4.3. Interventions relating to Article 61 of Law 1448 of 2011.

2.4.3.1. Ministry of the Interior.

The claims *are mere subjective appraisals that do not obey a constitutional judgment.* In any event, the provisions of Article 61 are based on Article 83 of the Constitution. It is clear that the allocation of public resources to the execution of any activity *must have a legal basis and supports that support such investments and allow control by the competent bodies*.

On the other hand, with regard to the temporary rule for the declaration of facts giving rise to the inclusion in the register of victims, it may be noted that article 61, paragraphs 2 and 3, follows *the possibility that after two years they may make entries in the register*, so that it *is not a closed term*.

2.4.3.2. Ministry of Finance and Public Credit.

The establishment of a term for declaring facts relating to their displacement for the purposes of defining whether or not their inclusion in the register is not contrary to the Political Charter. This decision is protected by constitutional jurisprudence concerning the possibility of setting time limits for access to certain reparation measures.

The measures provided for in the defendants' paragraphs of Article 61, as well as in Article 66 of Law 1448 of 2011, are not intended to hinder the protection of victims but, in another direction, to allow knowledge of those facts that limit their access to the offer provided for in order to make the necessary determinations.

2.4.3.3. Ministry of National Defence.

The rules concerning the registration of persons in the register of victims generally conform to the criteria that have been established by constitutional jurisprudence when considering the rules applicable to the registration of displaced persons. The assessment of statements should be made taking into consideration dignity, good faith, legitimate expectations and the prevalence of substantive law. In addition, it is important to consider that the configuration of a force majeure situation must be considered at the moment of defining the inscription or not

in the registry.

2.4.3.4. Ministry of Housing, City and Territory.

The establishment of a period of two years to declare the facts required to define the inclusion or not in the register "*becomes a prudent and more than reasonable period for people who are immersed in these conditions can make such statements*" which implies compliance with the requirement for flexibility in this area has provided constitutional jurisprudence.

The rules laid down in article 61, paragraphs 2 and 3, which make it possible to inquire into the reasons which prevented the prior declaration, constitute a manifestation of the right to due process recognized in article 29 of the Constitution.

2.4.3.5. Unit for Comprehensive Care and Reparation for Victims.

The time limit set for the implementation of the declaration for the purpose of obtaining registration is constitutionally admissible insofar as it must be understood that such a time limit cannot be inflexible or impose a disproportionate burden on victims to demonstrate the impairment of their fundamental rights even outside the time limit set out in the accused standard.

2.4.3.6. Colombian Institute of Rural Development.

Establishing a time limit for declaring the facts that justify inclusion in the register of victims or requiring certain information from the declarant for the purpose of specifying the conditions and effects of the displacement is not contrary to the Constitution insofar as it seeks to ensure the existence of *accurate information.* These requirements for the provision of information contribute to the materialisation of the right to the truth.

Nor are the rules laid down in the other normative paragraphs unknown to the Charter, insofar as they are limited to establishing rules that make it possible to know in greater detail the conditions of displacement as well as its causes.

2.4.3.7. Ombudsman's Office.

The accused expression, which contemplates a term to carry out the registration for events prior to its entry into force, does not ignore the Constitution. If it is interpreted with the remaining parts of the provision it can be concluded that it is not an inflexible term. In this way, the systematic understanding of the rules that make up article 61 allows us to conclude *that the time limit they mention is essentially relative, consider the eventuality in which circumstances of different order could have prevented the declaration from being made within the two-year time limit and explicitly mention the fact of force majeure as a milestone justifying its late filing*.

The question raised is inept to trigger the constitutionality test. In any case, the provisions generally conform to the Constitution insofar as they do not impose excessive demands on the

declarants and, on the contrary, place an obligation on the State to investigate the actual circumstances of the declarant. In addition, these provisions are *limited to imposing on him the duty to provide truthful and sufficient information in the diligence of the declaration before the official of the Public Prosecutor's Office.* However, the expression "*that allows to decide on the inclusion or not of the declarant to the registration*" may be considered constitutional as long as it is understood *that the registration in the Single Registry of Victims of those* affected by *forced displacement, derives directly from the fact of the declaration, so that such registration cannot be postponed until the information is corroborated or distorted by the Administrative Unit* (...) *in application of the principles of good faith and prevalence of substantive law over formalities*.

2.5. Charges formulated against some expressions of articles 66 and 67 of Law 1448 of 2011.

The paragraphs sought, which are underlined, are part of Articles 66 and 67:

> ARTICLE 66. RETURNS AND RELOCATIONS. In order to guarantee comprehensive care for victims of forced displacement who voluntarily decide to return or relocate, under favourable security conditions, they will endeavour to remain in the place they have chosen so that the State can guarantee the effective enjoyment of their rights, through the design of special accompaniment schemes.
>
> When the security conditions for staying in the chosen place do not exist, the victims must approach the Public Prosecutor's Office and declare the facts that generate or could generate their displacement.
>
> PARAGRAPH 1o. The Special Administrative Unit for Comprehensive Care and Reparation for Victims must take appropriate action before the various entities that make up the National System of Care and Reparation for Victims to ensure effective comprehensive care for the returned or relocated population, especially with regard to the minimum identification rights of the National Civil Registry, The Ministry of Health is in charge of the Ministry of Social Protection, education is in charge of the Ministry of National Education, food and family reunification is in charge of the Colombian Family Welfare Institute, decent housing is in charge of the Ministry of Environment, Housing and Territorial Development is in charge of urban housing, and the Ministry of Agriculture and Rural Development is in charge of rural housing and occupational guidance is in charge of the National Learning Service.
>
> PARAGRAPH 2 The Special Administrative Unit for Comprehensive Care and Reparation for Victims shall regulate the procedure to ensure that victims of forced displacement who are outside the national territory on the occasion of the violations referred to in article 3 of this Act are included in the return and relocation programmes referred to in this article.
>
> ARTICLE 67. CESSATION OF THE CONDITION OF VULNERABILITY AND

MANIFEST WEAKNESS. The condition of manifest vulnerability and weakness caused by the very fact of displacement will cease when the victim of forced displacement through his or her own means or through programmes established by the National Government achieves the effective enjoyment of his or her rights. To this end, it shall have access to the components of comprehensive care referred to in the public policy of prevention, protection and comprehensive care for victims of forced displacement in accordance with article 60 of this Act.

PARAGRAPH 1: The National Government shall establish the criteria for determining the cessation of the situation of vulnerability and manifest weakness due to the fact of displacement itself, in accordance with the indicators of effective enjoyment of comprehensive care rights defined by jurisprudence.

PARAGRAPH 2 Once the manifest condition of vulnerability and weakness caused by the fact of displacement itself ceases, the Single Registry of Victims shall be modified to record the cessation referred to in this article.
In any event, the dismissed person will maintain his or her status as a victim, and will therefore retain the additional rights arising from that situation.

PARAGRAPH 3 Until the Single Registry of Victims enters into operation, the operation of the Single Registry of Displaced Population shall be maintained in accordance with the provisions of Article 154 of this Law.

2.5.1. Form of order sought.

2.5.1.1 It is requested that the words "*In order to guarantee comprehensive care for victims of forced displacement who voluntarily decide to return or relocate, under favourable security conditions, they shall endeavour to remain in the place they have chosen so that the State guarantees the effective enjoyment of rights, through the design of special accompaniment schemes"* be declared unconstitutional. *"When the security conditions for staying in the chosen place do not exist, the victims must approach the Public Prosecutor's Office and declare the facts that generate or could generate their displacement.* "contained in Article 66 of Law 1448 of 2011.

2.5.1.2. It is requested that the expression "*of its own means or*" contained in article 67 of Law 1448 of 2011 be declared unconstitutional.

2.5.2. Structure of the position.

The expressions accused of articles 66 and 67 of Law 1448 of 2011 are unconstitutional in that they establish disproportionate burdens on the victims that should be assumed by the State. Thus, establishing as a condition for the State to guarantee the effective enjoyment of rights, the return of people to their place of origin, implies ignoring the difficulties associated with this process. At the same time, the expression "*of their own means or*" is opposed to the considerations set forth by the Constitutional Court in Ruling C-278 of 2007 in which it was indicated, among other things, that it is unconstitutional to assign to the displaced person the

responsibility for his reinstatement since, if it were to be done, it would be unknown that the State is in charge of the main duty of protection of the victims as recipients of special constitutional protection.

2.5.3. Interventions relating to articles 66 and 67 of Law 1448 of 2011.

2.5.3.1. Ministry of the Interior.

2.5.3.1.1. The plaintiffs' approaches do not meet the requirements for the formulation of a charge of unconstitutionality. In relation to the accusation against article 66*, there are assertions that have no legal basis and no burden of proof would be and consequent*.

2.5.3.1.2 The accusation made by the plaintiffs - in relation to Article 67 - does not meet the conditions of argument required to propose a charge of unconstitutionality. In any case, it is clear that the State has the power to intervene in the economy with the aim, as provided for in article 334 of the Constitution, of ensuring that all persons, particularly those with lower incomes, have access to basic goods and services. In view of this, the standard must be declared enforceable.

2.5.3.2 Ministry of Finance and Public Credit

2.5.3.2.1 For the same reasons as those justifying the declaration of constitutionality of the defendants in Article 61, it is justified to make such a declaration in respect of Article 66.

2.5.3.2.2 Establishing as an event of cessation of the condition of vulnerability and weakness the hypothesis that the victim can ensure effective enjoyment through his or her own means is fully compatible with the Constitution insofar as it recognizes that overcoming that condition may be due to the active behavior of the person affected by the displacement. In addition, reasons based on fiscal sustainability support the measure adopted as it ensures an equitable and efficient allocation of resources.

2.5.3.3. Ministry of National Defence.

It indicates that the accused provisions do not ignore the Constitution insofar as they do not establish disproportionate, unreasonable restrictions and do not violate the right to equality.

2.5.3.4. Ministry of Housing, City and Territory.

2.5.3.4.1. Article 66 is constitutional if it is considered that its purpose "*is to have control of this population, in such a way that they do not become floating throughout the national territory and in this way different public policies can be carried out in favor of their interests*".

2.5.3.4.2. The expression '*of its own means or*' is in line with the Constitution, given that the Constitution does not follow a prohibition to foresee that the condition of vulnerability and weakness ceases when the victim, through his own means, can achieve the effective

enjoyment of rights. The cessation regulated there may have its origin in the execution of different public policies or in the victim's own behavior.

2.5.3.5. Colombian Institute of Rural Development.

The Court must refrain from issuing a substantive pronouncement *since the lawsuit does not make an objective confrontation of the exequibilidad that preaches and sends its explanations to generic investigations on the displacement without specifying the charges or demonstrating where and why the disproportion that concludes is located.*

In any case, it is in accordance with the Constitution that article 66 promotes the return and relocation of victims and that it is necessary for them to declare before the Public Prosecutor's Office the circumstances that prevent them from remaining in the chosen site.

2.5.3.6. Ombudsman's Office

2.5.3.6.1. The lawsuit does not meet the conditions for the filing of an unconstitutionality charge. In effect, first of all, it does not know that the law does not establish a requirement of permanence of the displaced person who is relocated or returns, given that such permanence is hardly foreseen as a desirable purpose. In addition to the fact that the starting point of the indictment is not correct, no specific and sufficient reasons are given when the attack is directed against the second subsection.

2.5.3.6.2. The complainants do not meet the requirements to challenge the constitutionality of a provision. Although judgment C-278 of 2007 is invoked*, they do not state why the accused expression is similar or assimilable to the expression declared unconstitutional, nor the reason why that jurisprudential precedent is applicable to the present case*. It is therefore appropriate to take a decision to disqualify the applicant.

2.6. Charges filed against the expression "restitution" in Article 123 of Law 1448 of 2011.

The defendant part, which is underlined, is part of article 123:

> ARTICLE 123. MEASURES FOR THE RESTITUTION OF HOUSING. Victims whose homes have been affected by dispossession, abandonment, loss or impairment shall have priority and preferential access to housing subsidy programs in the modalities of improvement, on-site construction and home purchase established by the State. This is without prejudice to the fact that the offender may be sentenced to construction, reconstruction or compensation.
>
> Victims will be able to access the Family Housing Allowance in accordance with the regulations in force governing the matter and the special mechanisms provided for in Act No. 418 of 1997 or the regulations extending, modifying or supplementing it.

> The Ministry of the Environment, Housing and Territorial Development, or the entity acting in its place, or the Ministry of Agriculture and Rural Development, or the entity acting in its place, as the case may be, shall exercise the functions conferred on it by the regulations in force governing the matter in relation to the family housing subsidy dealt with in this chapter, bearing in mind the constitutional duty to protect persons who are in a situation of manifest weakness, which is why it shall give priority to applications submitted by households that have been victims under the terms of this Act.
>
> The National Government shall take the necessary steps to generate housing supply in order that the subsidies allocated under this article have effective application in housing solutions.

2.6.1. Pretension.

Requests that the expression "OF RESTITUTION" contained in the title of article 123 of Law 1448 of 2011 be declared unconstitutional.

2.6.2. **Structure of the position.**

Restitution, a component of the right to reparation, consists of taking things back to the previous state they were in at the time when the violation of the victims' rights occurred. This implies the obligation to guarantee housing *tenure with legal security for victims*. The granting of subsidies regulated in the norm demanded does not coincide with the content of the right to restitution and, consequently, its classification as such -restitution- is unconstitutional.

The accused expression also has the effect of ignoring the principle of distinguishing between reparation measures and other types of aid offered by the State, including, for example, humanitarian assistance measures or the provision of social services at its own expense. In addition, the determinations included in the defendant provision do not include all the damages suffered by the victim and are not proportional to the gravity of the violations.

2.6.3. Interventions relating to Article 123 of Law 1448 of 2011.

2.6.3.1. Ministry of the Interior.

The charge presented is deficient. In any case, the questioned norm is not incompatible with the Constitution insofar as housing policy must take note of the differences that exist between the target groups and, in a special way, those who lack resources or who are in a situation of weakness.

2.6.3.2. Ministry of Finance and Public Credit.

Reparation in the framework of transitional justice incorporates different ways of compensating for harm. These forms go beyond the traditional concept of reparation and, to

that extent, not all measures taken in that direction have a specific pecuniary content. However, considering the measures contemplated in Article 123 as restitution is part of the broad concept of reparation within the framework of transitional justice processes. In addition, the definition of this reparation mechanism does not imply that whoever benefits from it cannot access the other forms of reparation provided for in the law.

2.6.3.3. Ministry of National Defence.

The Court indicated in Ruling T-515 of 2010 that one of the rights of displaced persons is the right to *return voluntarily to their former homes, land or place of habitual residence in conditions of safety and dignity*. Thus, the set of measures laid down in Article 123 are articulated with the securing of such a right and, consequently, their classification as a form of restitution may be accepted.

2.6.3.4. Ministry of Agriculture and Rural Development.

Constitutional jurisprudence, in particular judgement C-715 of 2012, has recognized as constituting a measure of restitution the adoption of strategies aimed at ensuring the right to decent housing and, in particular, those derived from the regulation of subsidies offered for this purpose.

2.6.3.5. Ministry of Housing, City and Territory.

Article 123 is directly linked to various provisions, including those contained in Act No. 1537 of 2012, aimed at establishing criteria for the prioritization and targeting of the resources provided for in the housing budget. To that extent, the legislator established priority for the least well-off and, in particular, for those who are in a vulnerable situation. The purpose of the state housing offer is to ensure the stability, settlement or rootedness of the beneficiaries.

2.6.3.6. Unit for Comprehensive Care and Reparation for Victims.

Restitution is a species between different reparation measures. In accordance with the provisions of article 71 of Law 1448 of 2011, such restitution takes the form of measures to restore the situation prior to the violations that occurred. There is no unconstitutionality of any kind, since it is clear that this is a form of reparation that does not exclude others that contribute to its integral nature.

2.6.3.7. Colombian Institute of Rural Development.

The charge formulated does not meet the requirements to make possible a substantive pronouncement of the Constitutional Court insofar as its formulation is abstract, global and, consequently, lacks the required specificity.

Apart from the foregoing, the plaintiffs' interpretation of the expression "*of restitution*" is contrary to the systematic understanding that must be made of Law 1448 of 2011, in order to make it compatible with the guiding principles that guide it.

2.6.3.8. Ombudsman's Office.

The accused provision must be declared unconstitutional because, although the expression is part of the title of an article, it may lead to the consideration that the provision may be confused with reparation measures.

2.6.3.9. Universidad del Rosario - Human Rights Research Group.

The term "restitution" ignores not only the difference *between humanitarian aid and the State's obligations to provide benefits*, but also the right of victims to be assured full reparation. The confusion referred to above arises when it is considered that, in accordance with Law 418 of 1997, the provision of social services to victims under preferential and priority conditions constitutes a form of humanitarian aid.

2.7. Charges filed against article 125 of Law 1448 of 2011.

Article 125, which is fully charged, provides as follows:

> ARTICLE 125. MAXIMUM AMOUNT. The maximum amount of the family housing allowance covered by this chapter shall be that which is granted at the time of application to beneficiaries of social housing.

2.7.1. Form of order sought.

He requested that article 125 of Law 1448 of 2011 be declared unconstitutional.

2.7.2. Structure of the position.

The contested provision regresses in the degree of protection of the right to adequate housing of displaced persons. This regression implies ignorance of the principle of progressivity and, consequently, violates articles 13 and 51 of the Constitution.

This conclusion is reached once the pre-existing regulation is compared with that which derives from the provisions of the accused norm. Thus "*the accused norm decreases the maximum subsidy from 30 to 20 s.m.l.m.v., which represents a decrease of 26%*" if one considers, on the one hand, what is defined in Decrees 4911 of 2009 and 4729 of 2010 when regulating the subsidies for displaced persons and, on the other hand, what is stated in Decree 2190 of 2009 when establishing the rules relative to subsidies for access to social interest housing.

2.7.3. Interventions relating to Article 125 of Law 1448 of 2011.

2.7.3.1. Ministry of the Interior.

The article in question is not contrary to the Constitution and, on the contrary, is closely

linked to the principle of progressivity recognized in article 17 of Law 1448 of 2011. It is necessary to have *a decisional consistency that allows legal operators and the State itself to have legal certainty in their real actions of service and attention to the community that cannot be taken in isolation*.

2.7.3.2. Ministry of Finance and Public Credit.

The argument presented by the plaintiffs does not meet the conditions that an unconstitutionality charge must satisfy. In particular, it lacks clarity as they fail to demonstrate how the accused provision constitutes a disregard of the prohibition of regressivity. Nor do they explain how the right to equality would have been unknown despite the special requirements that have been established in relation to a position of this nature.

The charge also lacks certainty inasmuch as the normative comparison that is made to base the existence of an infraction is raised with respect to norms that are not subject to control at present and that, additionally, regulate different cases. Finally, the vagueness and indeterminacy of the plaintiffs' argument leads to the assertion that the position does not satisfy the specificity requirement.

2.7.3.3. Ministry of National Defence.

Indeed, displaced persons have priority and preferential access to housing subsidies and, in accordance with the applicable rules, their guarantee is not reduced but, on the contrary, extended.

2.7.3.4. Ministry of Agriculture and Rural Development.

Situations of transitional justice require the adoption of measures to articulate the different interests at stake. It is within this framework that administrative reparation strategies are established aimed at broadening the universe of protected subjects. It should also be noted that the measure adopted complied with the principles of necessity, appropriateness and proportionality.

It should be noted that Law 1448 of 2011 does not contemplate a limitation to demand the family housing subsidy provided by Law 418 of 1997.

2.7.3.5. Unit for Comprehensive Care and Reparation for Victims.

Although the assertion that there are differences between the various amounts of the housing subsidy is true, the plaintiffs do not appreciate the differences between the target groups of the regulation and the different treatment established in each of the decrees.

2.7.3.6. Colombian Institute of Rural Development.

The legislator is authorized to regulate the different rights. One of the manifestations of this power is the determination of the rules that apply to the different subsidies. In addition, this

regulation must be carried out in a way that is compatible with the principle of fiscal sustainability, insofar as *a catalogue of rights without fiscal sustainability would be worthwhile*.

2.7.3.7. Ombudsman's Office.

Article 125 is contrary to the Constitution, since linking the amount of the subsidy to the regime provided for ordinary subsidies *certainly implies a substantial reduction in net values with respect to what they have been receiving as beneficiaries of the regulations in force, especially under Article 14 of Decree 951 of 2001, modified by Article 5 of Decree 4911 of 2009.* This interpretation is based on the second paragraph of article 60, according to which the pre-existing provisions, which establish a higher subsidy, would be contrary to the article under examination.

2.8. Charges formulated against some expressions of the third paragraph of article 132.

The defendants' paragraphs, which are underlined, are part of the paragraph of Article 132:

> PARAGRAPH 3 The administrative compensation for the displaced population shall be paid by family nucleus, in cash and through one of the following mechanisms, in the amounts defined by the National Government for this purpose:
>
> I. Comprehensive land subsidy;
> II. Land exchange;
> III. Acquisition and allocation of land;
> Adjudication and titling of vacant lots for displaced population;
> V. Rural Social Interest Housing Subsidy, in the modality of housing improvement, housing construction and basic sanitation, or
> VI Subsidy of Housing of Urban Social Interest in the modalities of acquisition, improvement or construction of new housing.
> Any sum in addition to the amount for the non-displaced population established in other regulations for the mechanisms referred to in this paragraph shall be deemed to have been paid in the form of administrative compensation.

2.8.1. Pretension.

The Committee requests that the words "*by family nucleus*" and "*and through one of the following mechanisms, in the amounts defined by the National Government for this purpose"* be declared unconstitutional*: I. Integral land subsidy; II. Exchange of land; III. Acquisition and allocation of land; IV. Adjudication and titling of vacant lots for displaced population; V. Subsidy of Housing of Rural Social Interest, in the modality of improvement of housing, construction of housing and basic sanitation, or VI. Subsidy of Housing of Urban Social Interest in the modalities of acquisition, improvement or construction of new housing. Any sum in addition to the amount for the non-displaced population established in other regulations for the mechanisms referred to in this paragraph shall be deemed to have been paid in the form of administrative compensation.* "contained in paragraph 3 of article 132 of

Law 1448 of 2011.

2.8.2. Structure of the position.

The difference in treatment between the victims of forced displacement and the other victims of the conflict, in establishing in the case of the former that compensation will be provided by the family nucleus, is unconstitutional insofar as it does not know that displacement may have individual victims. This provision, which must be submitted to an intermediate judgment of equality, does not pursue a constitutional or even legitimate purpose, being inappropriate, inasmuch as it is a guarantee of the effective enjoyment of fundamental rights, to claim its basis in financial stability.

In addition, the accused provision omits to provide for special treatment that takes note of the special circumstances in which women victims of displacement find themselves, given that it is the men who have usually represented the family nucleus. Order 092 of 2008 of this Court has dealt with the special situation of women victims of forced displacement.

2.8.3. The other accused expressions of the third paragraph of article 132 do not know the principle of distinction between reparation measures and other assistance measures. Considering the instruments provided for in the paragraph in question as administrative compensation mechanisms implies ignoring the fact that they correspond to the fulfilment of the State's social duties and that their greater value, far from compensating, is an expression of the existing responsibility for the special situation in which the victims of forced displacement find themselves.

2.8.3. Interventions relating to Article 132 of Law 1448 of 2011.

2.8.3.1. Ministry of the Interior.

The provision is in line with the Constitution. It is based on the principle of fiscal sustainability and the need to protect the fundamental core of society. In any event, in accordance with the provisions of judgement T-025 of 2004, any person affected by forced displacement has the right to be registered individually or with the family nucleus to which he or she belongs.

2.8.3.2. Ministry of Finance and Public Credit.

The questioning that is directed against the expression "*family nucleus*" lacks certainty. In fact, the accusation is based on a misinterpretation insofar as that expression does not in any way imply the exclusion from reparation of persons without a family. According to this, "*at no time did the Legislator impose on the displaced population the burden of proving that they are part of a family in order to qualify for compensation.* In any case, the Court must declare the exequibilidad of the expression that is accused.

The consideration of the measures provided for in article 132 as forms of administrative redress is not unaware of the Constitution. This is so because these measures do not exclude

other forms of reparation associated with restitution, rehabilitation or guarantees of non-repetition.

2.8.3.3. Ministry of National Defence.

The plaintiff's argument is unsubstantiated. Indeed, to consider that individual reparation is not appropriate as a consequence of the reference in the provision to an unknown family nucleus, openly stating that the same article refers to the need to adopt a regulation on individual reparation.

2.8.3.4. Ministry of Agriculture and Rural Development.

This provision is compatible with the provisions of the Constitution and falls within the specific features of a transitional justice process.

2.8.3.5. Unit for Comprehensive Care and Reparation for Victims.

The plaintiff's argument is uncertain. The plaintiff simply assumes that the expression "*family nucleus*" excludes individual reparation without demonstrating the correctness of such a claim or indicating, for example, the constitutional basis of the right to administrative reparation. In a more careful approach, the plaintiffs would have cautioned that the accused expression does not eliminate access to individual reparation as a complement to the victims' other rights. In addition, the apart defendant is compatible with the constitutional orientation regarding the concept of family.

2.8.3.6. Colombian Institute of Rural Development.

The possibility of defining different amounts and mechanisms to implement administrative redress enables the State to fulfil its obligations regarding the provision of services and the guarantee of the rights of persons in situations of displacement or vulnerability. This rule, moreover, does not preclude recourse to the competent jurisdiction to seek compensation for the damage suffered.

2.8.3.7. Ombudsman's Office.

The expression family nucleus correctly understood from the object of the law, the definition of victim and the mandate of differential approach, leads to point out that it does not deny the possibility of claiming individual reparation nor does it affect the rights of women victims of displacement. A proper reading of the norm leads to pointing out that the *direct reference to the family nucleus does not exclude the victim itself, when she is an individual or does not have a family group affected by the displacement*. This rule also responds to criteria associated with the financial stability of the State.

Nor does the rule according to which administrative compensation may be carried out by means of any of the mechanisms mentioned therein not oppose the Constitution. In effect, the determination adopted by Law 1448 of 2011 *is a legitimate and admissible decision from a*

constitutional and rational administrative point of view. The State is empowered to provide specific guidance to State programmes with a view to dealing in particular with the situation of victims.

However, what would oppose the Political Charter would be to establish as reparation those benefits that victims receive and that correspond to general care programs offered by the different state institutions.

3. Intervention of the Attorney General of the Nation.

3.1. In view of the fact that the application essentially coincides with the application in file D-9321, it is appropriate to reiterate what is stated therein. In view of this, the Court must declare that it is in accordance with the ruling to be made in the file in question.

3.2 The constitutionality of the concept of victim and armed conflict was already defined in judgments C-052 of 2012 and C-781 of 2012. That being so, this Court must be in accordance with the decisions of such orders.

3.3 The expression "*and when they do not have resources for payment*" provided for in article 51 of Law 1448 of 2011 is evident as an *unjustified discrimination* since it establishes requirements for victims that have not been provided for others. In the latter case, pre-school, basic and intermediate education in official establishments is free of charge. That being the case, the rule is unconstitutional.

3.4. The accusation against certain sections of the second paragraph of Article 60 is based on an unfortunate interpretation of what is stated therein, which leads to a lack of certainty in the charge. This conclusion is necessary because two provisions guaranteeing rights cannot be opposed as long as they are aimed at achieving the same end. The court must then inhibit itself.

The questioning of the second sentence of the first paragraph of Article 60 on the grounds of infringement of the principle of distinction is based on a partial reading of the corresponding sentence. When read in its entirety, it is possible to establish that immediate, emergency and transitional humanitarian assistance have no restorative effect. Thus, *the charge does not satisfy the minimum certainty argument, since it has mutilated normative content* and, consequently, the Court must inhibit itself from issuing a pronouncement.

3.5. The measures adopted in articles 61 and 66 do not ignore any constitutional requirement and, on the contrary, have been issued under the scope of configuration recognized to the Congress of the Republic to adopt rules on transitional justice. It should be noted that it is not disproportionate (i) to set a term for the declaration even more so when it *leaves open the possibility of registration outside that term* or (ii) to prescribe that persons who have returned or relocated seek to remain at the place where they have defined it.

3.6 *The establishment of burdensome, unfair or disproportionate burdens on the victims of the internal armed conflict does* not derive from Article 67. Thus, the position does not have a

certain and sufficient basis what imposes the need for a decision to inhibit.

3.7. The expression "restitution" used in Article 123 of the Constitution does not ignore the Political Charter. Indeed, although the provision of a subsidy does not imply the elimination of the difficulties faced by victims*, it cannot be assumed that it is a useless or inane measure, that it does not contribute at all to restitution to the victim, or that it does not constitute a form of reparation*. The provision must be declared enforceable.

3.8 Article 125 of Law 1448 of 2011, in providing for the maximum amount of the housing subsidy for the displaced population victim of the internal armed conflict, does not ignore the Constitution. This is so *because the provisions of other lower-ranking legal systems do not apply to the population under these two circumstances*. In any case, article 132 warns that the additional resources to the fixed amount and that are foreseen in other norms, will be understood as delivered by way of indemnification.

3.9 The charge made against the term "*family nucleus*" in article 132 of Law 1448 of 2011 is based on an uncertain premise, since that term does not imply excluding any person from the faculty to claim recognition as a victim in the corresponding registry.

The accusation directed against the enunciation of the administrative compensation mechanisms contemplated in article 132 forgets that they *do constitute restoration measures within the framework of administrative compensation insofar as they are aimed at resolving the situation of vulnerability of persons displaced as a result of the internal armed conflict.* "

II. CONSIDERATIONS.

1. Competition.

The Constitutional Court is competent to hear the lawsuit filed against Law 1448 of 2011, by virtue of the provisions of numeral 4 of Article 241 of the Charter.

2. Previous question: examination of the existence of constitutional res judicata.

In Ruling C-280 of 2013, the Constitutional Court examined the constitutionality of several articles of Law 1448 of 2011. It decided at that time to declare the simple constitutionality of some, the conditioned constitutionality of others and, finally, decided to refrain from issuing a substantive pronouncement on the challenges directed against three provisions. Likewise, in Ruling C-781 of 2012, this Corporation advanced the examination of the expression "*occurred during the internal armed conflict*" of Article 3 of Law 1448 of 2011. On that occasion, the Court concluded that the expression did not disregard the Constitution and, consequently, ordered that it be declared enforceable.

In view of such pronouncements and considering that the lawsuit that gave rise to the first of them has significant similarities with the one that now occupies the attention of the Court, it is necessary to establish whether the charges now filed were subject to trial at that time or whether, on the contrary, this Corporation should adopt a substantive decision. So this Court

must address the following problem:

Is there constitutional res judicata, derived from Judgment C-280 of 2013, with respect to the charges brought in the complaint examined in this opportunity?

2.2. Constitutional res judicata.

2.2.1. Res judicata is a quality predicated on a given factual or normative hypothesis. The term "res judicata" characterizes a particular set of facts or rules that have been the subject of a trial by a court with jurisdiction to do so and in application of the relevant procedural and substantive rules. Res judicata is based (i) on the need to preserve the legal certainty attached to the consideration of Colombia as a Social State governed by the rule of law (art. 1), (ii) on the obligation to protect good faith by promoting the predictability of judicial decisions (art. 83), (iii) on the duty to guarantee judicial autonomy by preventing a debate (art. 228) and (iv) on the duty to ensure the supremacy of the Constitution (art. 4) after a case has been examined by the competent judge and in accordance with the rules in force; (v) on the duty to ensure the supremacy of the Constitution (art. 4). To this foundation is attached the intangible, immutable, definitive, indisputable and obligatory character that accompanies the res judicata.

2.2.2 In matters of abstract control, res judicata finds a precise constitutional basis in Article 243 of the Charter, according to which the rulings of the Constitutional Court make the transition to res judicata. In the development of what is prescribed there, article 21 of Decree 2067 of 1991 established that the sentences pronounced by this Corporation shall have the value of constitutional res judicata.

This value includes *all judgments* adopted by this Corporation. Accordingly, this effect accompanies not only decisions of simple constitutionality or unconstitutionality, but also those that adopt some form of modulation such as, for example, conditional constitutionality rulings, composite rulings by addition, composite rulings by substitution or exhortation rulings. It also extends to decisions modulating the temporal effects of the decision taken, such as, for example, retroactive judgments or judgments of deferred inexequibilidad.

2.2.3 The importance of res judicata is reflected in the consequences. When the decision has consisted in declaring the unconstitutionality of a rule, the prohibition contained in article 243 is activated, according to which no authority may reproduce its material content. In cases in which the Court's determination has consisted of declaring the constitutionality of the rule, the effect, which has been widely favored by the jurisprudence of this Court, is that a new trial cannot take place for the same reasons, unless the provisions constituting the parameter of constitutionality are no longer in force or have been modified. In turn, in the case of judgments of conditional constitutionality, res judicata has as a consequence, among other possible consequences, that the excluded interpretation of the legal system (norm) cannot be reproduced or applied in another legal act. Additionally, in cases in which the Court has adopted an additive sentence, res judicata implies that it is not permitted to reproduce a provision that omits the element that the Court has deemed necessary to add.

In any case, and regardless of the specific consequences of assigning res judicata to the

judgments of this Court, this value implies either a limitation on the possibility for the authorities to adopt certain types of norms, on the one hand, or the establishment of a restriction on the possibilities for the judicial authorities - and in particular the Constitutional Court - to adopt a new pronouncement.

2.2.4. With regard to the present case, it should be noted that the determination of the existence of constitutional res judicata requires a double examination to be carried out when the previous decision has declared the rule under review to be constitutional. First, (1) it must be established whether the standard being sued is the same as that which was the subject of a previous trial. This implies that it is not enough to state that it is a question of identical normative enunciation inasmuch as the object of constitutional control is constituted by norms. Second, (2) it is necessary to determine whether the objections raised at the new opportunity coincide with those examined in the previous decision. This double examination is combined by comparing the charges of unconstitutionality analyzed in the previous judgment with those formulated in the new lawsuit.

In the examination of the existence of res judicata, it makes no difference whether the previous decision was one of simple constitutionality or conditional constitutionality. In both hypotheses, the determination of whether or not this phenomenon has been configured requires a review of the two elements mentioned above. It is for this reason that the judgement of res judicata in the case of interpretative judgements of the type indicated will not vary in any way. However, the establishment of a condition of constitutionality will provide the interpreter with further elements of judgment in order to identify the scope of the previous decision of this Tribunal.

Existence of res judicata with respect to the expression "*occurred on the occasion of the internal armed conflict*" in article 3 of Law 1448 of 2011.

2.3.1 The constitutionality of the expression "*occurred on the occasion of the internal armed conflict*" in the first paragraph of Article 3 of Law 1448 of 2011 is questioned. In the view of the plaintiffs, the condition introduced when establishing the concept of victim constitutes a restriction that is unknown to articles 1, 2, 6, 12, 13, 29, 93, 94 and 229 of the Constitution. This restriction would have the effect of depriving some people affected by serious human rights violations of the protection regime established by Law 1448 of 2011. Thus "[*a*]*n restrictive interpretation such as that indicated by the norm leaves victims of serious human rights violations and crimes against humanity that occurred in the context of the armed conflict but originated in acts of socio-political violence outside the scope of the law. Under this assumption, victims of forced disappearance due to socio-political persecution, serious violations of human rights committed against women, cases of forced displacement among other cases of similar characteristics would be excluded.* "

2.3.2. Confronted with the content of the claim which gave rise to judgment C-280 of 2013 and the claim now under consideration, it can be concluded that there are no significant differences between the two with regard to the charge made. Additionally, this Corporation must insist that the accusation related to its eventual infra-inclusive character, for not contemplating some subjects as such, was expressly valued in judgment C-781 of 2012 in

which this Corporation synthesized its decision:

> "For the Court, the expression "*on the occasion of the armed conflict*", inserted in the operative definition of "*victim*" established in Article 3 of Law 1448 of 2011, delimits the universe of victims who benefit from the law in a constitutional manner compatible with the principle of equality, since those who are considered as such by illegal acts outside the context of the armed conflict, even when they are not beneficiaries of Law 1448 of 2011, can resort to all the tools and ordinary procedures of defense and guarantee of their rights provided by the Colombian State and its legal system. The expression "*on the occasion of an armed conflict*" has a broad meaning that covers situations occurring in the context of an armed conflict. This conclusion is reached mainly following the *ratio decidendi* of the C-253A judgment of 2012, in the sense of declaring that the expression "*on the occasion of*" alludes to "*a close and sufficient relationship with the development of the armed conflict*".
>
> This conclusion is also in harmony with the broad notion of "*armed conflict*" that has been recognized by the Constitutional Court throughout numerous pronouncements on the control of constitutionality, tutelage, and follow-up to the overcoming of the unconstitutional state of affairs in the matter of forced displacement, which, far from being understood from a restrictive perspective that limits it to strictly military confrontations, or to a specific group of armed actors to the exclusion of others, has been interpreted in a broad sense that includes all the complexity and factual and historical evolution of the Colombian internal armed conflict. These criteria were taken into account by the Legislator when issuing Law 1448 of 2011 and constitute mandatory interpretative criteria for legal operators responsible for giving concrete application to Law 1448 of 2011.

2.3.3. In light of the above, this Corporation shall adopt the decision included in Judgment C-280 of 2013 and which consisted of *STANDING FOR THE RESOLVED in Judgment C-781 of 2012 in relation to the expression "occurred during the armed conflict"*.

2.4 Existence of res judicata with respect to the expression *"and when they do not have the resources for payment"* in article 51 of Law 1448 of 2011.

2.4.1. The lawsuit attacks the expression "*and when they do not have the resources to pay*" in Article 51 of Law 1448 of 2011. In the applicants' view, that expression constitutes an infringement of Articles 13, 44, 67 and 93 of the Constitution. In effect, the condition for free access to preschool, basic and intermediate education, consisting in the victims not having resources to pay for it (i) ignores the content of the right to education that imposes at least free basic primary education, (ii) violates the obligation to establish measures that grant special treatment to persons considered victims and (iii) violates the prohibition of retrogression in the area of social rights by qualifying the provisions of article 51 of Law 1448 as a measure of assistance and not as a constitutional right. The accused expression also leads to the infringement of children's rights and to ignorance of the requirements derived from international instruments regarding the protection of the right to education.

2.4.2. For this Court, a comparison of the arguments set out in the application that gave rise to judgment C-280 of 2013 with those put forward on this occasion leads to the conclusion that they are the same. Although some additional arguments are presented in the lawsuit now before the Court, they do not affect the structure or orientation of the reproach formulated on that occasion. In that ruling, the Court considered that the expression "defendant" was in conformity with the Constitution, given that the contested text did not have the effect of depriving children of their right to education under the terms of article 67 of the Constitution; in addition, it specified that the rule does not exclude any of the victims covered by Law 1448 of 2011 from their status as beneficiaries of the educational measures established therein and whose situation of vulnerability is presumed; also warned that it is up to the State to prove that the addressee of the measure has the resources to pay for it, but in principle, those who have the character of victims under this law will be beneficiaries of the protection established there in the area of education. On these grounds, the Constitutional Court decided to declare the defendant's expression enforceable.

It should be noted, in any case, that there are currently provisions that ensure the free nature of education in state institutions, even beyond the minimum requirements laid down in the third paragraph of Article 67 of the Political Charter. Decree 4807 of 2011, after establishing in article 1 that its purpose is to regulate free education for all students of state educational institutions enrolled between the transition and eleventh grades, warns in article 2 that such free education is understood as the exemption from payment of academic fees and complementary services.

At that address, the aforementioned article 2 warns that state educational institutions may not charge any academic fees or complementary services. This being the case, the regulation currently in force is in line with the mandate for progressivity in the area of social rights and, in particular, with the obligation to implement as far as possible the standards that recognize such rights.

2.4.3. In view of the foregoing, the Court will *comply with the decision of Judgement C-280 of 2013 regarding* the expression "*and when they do not have the resources to pay*".

2.5. Existence of res judicata with respect to (i) the expression "*that do not contravene the present law*", (ii) the second paragraph of the first paragraph and (iii) the second paragraph of article 60 of Law 1448 of 2011.

2.5.1. In the lawsuit admitted on this occasion, several accusations were made against some sections of Article 60 of Law 1448 of 2011:

2.5.1.1 The argument on the basis of which it is requested that the expression "*which does not contravene the present law*" be declared unconstitutional warns that the accused expression is unaware of the principle of non-regressivity and, consequently, of articles 1, 2 and 13 of the Constitution. Such a violation would have occurred because, without differentiating between those rules prior to Law 1448 of 2011 that grant more favorable prior treatment to victims of forced displacement, its general application is foreseen.

2.5.1.2. The questioning of the segment "[*t*]*his offer, provided that it is priority, prevalent and addresses its specific vulnerabilities, has reparative effect, with the exception of immediate, emergency and transitional humanitarian care*", which corresponds to the second paragraph of the first paragraph, indicates that it ignores the principle that requires differentiation between reparation measures and other different measures associated, for example, with the provision of social services. This distinction implies - among other things - (i) that in no case do assistance measures as well as the prioritization of general social services constitute forms of reparation and (ii) that the confusion between the different types of measures implies a direct affectation of the right to reparation of the victims of forced displacement. Thus, the accused provision constitutes a violation of articles 2, 90 and 93 of the Constitution.

2.5.1.3. The attack on the second paragraph of article 60 is closely related to the charge against the expression "*occurred during the internal armed conflict*" in article 3 of Law 1448 of 2011.

He pointed out that the definition of a victim of forced displacement, referring to article 3 of the law, would imply a restriction of the concept and, to that extent, he was unaware that such a situation could arise for reasons other than the armed conflict. It excludes events that "according to *Law 387, the Deng principles and constitutional jurisprudence contain, among others, internal disturbances and tensions, generalized violence, fumigations of illicit crops, acting as apparatus of power whatever its denomination, pressures generated by productive megaprojects (mining, agroindustrial, infrastructure, etc.), human rights violations, or other circumstances analogous to those described above insofar as they may alter or drastically alter public order*".

2.5.2 The expression "*that do not contravene the present law*" was challenged by resorting to the same arguments presented in the lawsuit that gave rise to judgment C-280 of 2013. Although the new action invokes Article 13 as also violated, the reasoning presented is structurally the same. At the same time, the above-mentioned Order, in bringing forward the examination of the entire paragraph of which the accused expression is a part, considered the following:

> "In relation to the regulations applicable to the population in a situation of forced displacement, aimed at achieving the effective enjoyment of their rights, (...) the enactment of Law 1448 of 2011 cannot lead to the disappearance of previous provisions that have a greater protective scope than the new law, since this creates a situation of regressivity that is contrary to the constitutional order. For this reason, the validity of the norms prior to this law that develop such rights cannot be subordinated, as is done in the second paragraph of the accused article 60, to "that do not contravene the present law".

In dealing with the derogatory effects of the accused expression he warned:

> "(...) the rule on tacit derogation contained in article 208 of Law 1448 of 2011 only applies to those norms that have the same degree of specialty as those that

> make up the new law, but leaves untouched the general precepts that regulate the same issues in front of scenarios different from those foreseen in article 3. On the other hand, the second paragraph of article 60 could result in the repeal of all the norms that, prior to the Victims Act, had regulated the rights of the population in a situation of forced displacement in a different way than this one does, a hypothesis that would include, among other norms, Law 387 of 1997 and those that subsequently modified and/or regulated it.

And then he held on:

> (...) the reduction in the degree of protection recognized by law for victims of forced displacement that may take place in some of the norms of Law 1448 of 2011, leads to the neglect of the essential purposes of the State contained in Article 2 of the Political Constitution, since it leads to a lower degree of effective compliance with the duty to protect the victims of this situation. It also implies an ignorance of the duty embodied in the main human rights and social, economic and cultural rights treaties to adopt appropriate provisions of domestic law to guarantee the full effectiveness of the rights recognized by those treaties, especially for vulnerable populations.

On the basis of these considerations, it declared constitutional the second paragraph of Article 60 of Law 1448 of 2011, with the exception of the expression "*that do not contravene the present law*", which was considered contrary to the Constitution. In the Court's opinion, this made it clear that the existing provisions aimed at the effective enjoyment of the displaced population who cannot access the benefits developed by the Victims Act would remain in force.

Thus, in the light of the decision of unconstitutionality of sentence C-280 of 2013, the elements of the constitutional res judicata are structured and, to that extent, the Court will dispose itself to what has been resolved there.

2.5.3 The argument put forward - in the application that preceded the adoption of judgment C-280 of 2013 - to challenge the second paragraph of the first paragraph of Article 60, coincides with the one that now occupies the attention of the Court. In assessing the charges made, the Court indicated that this paragraph did not disregard the so-called principle of distinction *according to which reparation measures and humanitarian aid or assistance may not be confused with the provision of social services by the Government*. The Court stood out:

> "When the norm refers to the "reparative effect" of the offer addressed to the displaced population, it does so under a broad perspective of that concept, which then consists of the positive effect, guaranteeing rights and restoring human dignity that is common to all the actions that the legislator created in this Law 1448 of 2011 for the benefit of the victims, in accordance with the objectives that he himself set forth in article 1. Furthermore, it should be borne in mind that the aforementioned offer must be priority, prevalent and address the specific vulnerabilities that affect the displaced population. In this way, the reparative

> effect does not simply extend to all actions that are developed in compliance with this law, but must be qualified actions that in a timely, specific and adequate manner meet the particular needs faced by the displaced population. In this sense, the reparative effect that the provision attributes to what it calls the offer addressed to the displaced population is not contrary to the Constitution.

Based on this, the Corporation declared exequible, for the charges analyzed, the second paragraph of paragraph 1 of article 60 of Law 1448 of 2011. Thus, the Court can conclude that the constitutional res judicata has been configured and, to that extent, it will comply with what was resolved in Ruling C-280 of 2013.

2.5.4 As with the previous charges, the charge against Article 60, second paragraph, is substantially similar to that raised by the Court's pronouncement in Judgment C-280 of 2013. In dealing with such a disposition, the Court declared its exequibilidad for the charges analyzed "*under the understanding that the definition contained therein may not be reason to deny the attention and protection provided by Law 387 of 1997 to victims of forced displacement*.

In order to support this conclusion, the Court held that if it were to be admitted that the regulation of Law 1448 of 2011 replaced the pre-existing regulation for victims of forced displacement *a significant number of people who under the previous legislation were considered victims of this serious social phenomenon, would be left out of such qualification and without access to the benefits provided for in the regulation whose repeal is discussed and developed by the jurisprudence of this Corporation.*

He warned then in the sentence:

> "If this were the understanding and scope attributed to the aforementioned paragraph 2, there would clearly be situations contrary to the Constitution, since the definition of victims of forced displacement included in article 60 has less coverage than that contained in Law 387 of 1997. In fact, the definition of victim of forced displacement in this law -which coincides with that contained in a United Nations document, which compiled criteria to guide the attention of this population, known as the Dang Principles- as opposed to the one established in Law1448 of 2011, also contemplates other situations as a possible cause of risk or threat, such as generalized violence, violations of international human rights law, breaches of international humanitarian law and even natural disasters.
>
> (...) victims of forced displacement are all persons affected by actions that constitute violations of human rights and/or international humanitarian law, such as those currently perpetrated by so-called criminal gangs, demobilized from armed groups that instead of reintegrating into civilian life would have relapsed into their criminal activities, and even those affected by natural disasters generated within the conflict, such as the blasting of a dam".

In accordance with the foregoing, this Corporation concludes that also with respect to the

second paragraph of article 60, the elements that delimit the concept of constitutional res judicata have been structured and, consequently, the Court will dispose of what has been resolved in that opportunity.

2.6. Existence of res judicata with respect to the first and second paragraphs of article 66 and the expression *"of its own means or"* of the first paragraph of article 67.

2.6.1 According to the plaintiffs, the accused expressions are unconstitutional as they place disproportionate burdens on the victims. Thus, establishing as a condition for the State to guarantee the effective enjoyment of rights, the return of persons to their place of origin - article 66, first and second paragraphs - implies ignoring the difficulties associated with this process. At the same time, the expression "*or their own means*" in Article 67 is opposed to the considerations set forth by the Constitutional Court in Ruling C-278 of 2007 in which it was indicated, among other things, that it is unconstitutional to assign to the displaced person the responsibility for his reinstatement since this ignores the fact that the State has the main duty to protect the victims as recipients of special constitutional protection.

2.6.2 From the reading of the complaint that was examined by the Court in Judgment C-280 of 2013, it can be concluded that the charges in relation to the expressions accused of Articles 66 and 67 of Law 1448 of 2011 coincide with those raised in this opportunity. In turn, according to that judgment, the rules deriving from those provisions are not disproportionate, nor do they shift to displaced persons the burden of alleviating or resolving their own situation, which is the responsibility of the State. Based on this, the Court declared the simple exequibilidad of the expressions accused of the first paragraph of Article 66 and the first paragraph of Article 67 of Law 1448 of 2011. In addition, it conditioned the enforceability of the provisions of the second paragraph of article 66 "on *the understanding that the provisions therein shall not affect the enjoyment of the rights recognized by law to victims of forced displacement, including the possibility of being relocated again to a safe place*".

On the basis of the foregoing, this Court considers that the charges brought on this occasion were the subject of a trial in Judgment C-280 of 2013 and, to that extent, it will dispose to be resolved there.

2.6.3 Notwithstanding the foregoing, the Court must make the following clarification: the application now being examined by the Court makes the accusation against the entirety of the first and second paragraphs of Article 66. However, the Court's decision comprised the entirety of the second paragraph but only a separate part of the first paragraph. Indeed, in Judgement C-280 of 2013, the Court dealt only with the paragraphs highlighted below:

> ARTICLE 66. RETURNS AND RELOCATIONS. In order to guarantee comprehensive care for victims of forced displacement who voluntarily decide to return or relocate, under favourable security conditions, they will endeavour to remain in the place they have chosen so that the State can guarantee the effective enjoyment of their rights, through the design of special accompaniment schemes.
>
> When the security conditions for staying in the chosen place do not exist, the

victims must approach the Public Prosecutor's Office and declare the facts that generate or could generate their displacement.

Considering that the section that precedes the expression demanded in the first paragraph (i) indicates the purposes of the measures established therein - to guarantee *the integral attention of the victims who take the decision to return or relocate* - in such a way that it is inextricably linked to the sentence that was the object of the Court's examination and (ii) does not pose any constitutional problem from the perspective of the charge formulated, the Court will declare its exequibilidad in response to the precedent that follows from the C-280 judgment of 2013.

This decision is justified by the fact that the precedent relating to the constitutionality of the expression "*they shall endeavour to remain in the place they have chosen for the State to guarantee the effective enjoyment of the rights*" may be extended to the segment now being demanded. Such a conclusion is more forceful when considering that precisely the conditioning established by the Court was concerned with reinforcing the protection that was already established in the first part of the subparagraph.

Consequently, the Court will declare the expression "*For the purpose of guaranteeing comprehensive care to victims of forced displacement who voluntarily decide to return or relocate, under favorable security conditions,*" enforceable.

In contrast to the foregoing, the expression "*through the design of special accompaniment schemes*" -also demanded and against which a specific charge was not addressed-, does have a normative meaning of its own insofar as it establishes the obligation to design special measures. This being so, the Court will refrain from taking a substantive decision on its enforceability.

2.6.4. In relation to the expression *"of their own means or"* in article 67, as already expressed in C-280/13, the Court has stated that it is not disproportionate nor does it transfer to displaced persons the burden of alleviating or resolving their own situation, a responsibility incumbent on the State, and has therefore declared the exequibilidad of the first paragraph of article 67 of Law 1448 of 2011.

In any case, it should be pointed out that the decision of a person who is a victim of forced displacement to face for himself, without the assistance of the State, the circumstance of *"manifest vulnerability and weakness"* inherent in his status as a displaced person should not be considered unconstitutional. The determination of an individual or family to rely on their own efforts to overcome the situation of victim is part of their right to self-determination and the free development of the chosen life project. Although the State cannot transfer to such victims the burden of solving the displacement *"by their own means"* in order to avoid fulfilling their social and special protection duties, the personal option of doing so does not cease to be constitutionally valid, especially when it may involve legally relevant social values such as work and dignity.

2.7. Existence of res judicata with respect to article 125 of Law 1448 of 2011.

2.7.1 The plaintiffs question the constitutionality of article 125 of Law 1448, pointing out that the provisions of the law are a step backwards in the degree of protection of the right to decent housing of displaced persons. In his opinion, this regression implies ignorance of the principle of progressivity and violates articles 13 and 51 of the Constitution. This conclusion, as stated in the question formulated, can be established once the pre-existing regulation is compared with that which derives from the provisions of the accused norm. Thus "*the accused norm decreases the maximum subsidy from 30 to 20 s.m.l.m.v., which represents a decrease of 26%*" if one considers what is defined, on the one hand, in Decrees 4911 of 2009 and 4729 of 2010 when regulating the subsidies to displaced persons and, on the other hand, what is stated in Decree 2190 of 2009 when establishing the rules relative to subsidies for access to social interest housing.

2.7.2. Having contrasted the content of the lawsuit that gave rise to judgment C-280 of 2013 with the one that now motivates this pronouncement, the Court concludes that the charges brought in both cases are the same. In addition, having examined the C-280 judgment of 2013 in which Article 125 was declared enforceable, it can be concluded that the same charge as the one now raised was dealt with on that occasion. the Court gestured:

> "This norm cannot be seen from the perspective of progressive expansion in the enjoyment of rights and the prohibition of regressivity. The reasons for this have to do with the special and temporary nature of Law 1448 of 2011, which in such a measure does not imply derogation or modification of the general rules in force on matters such as the right to housing, making it impossible to speculate on alleged setbacks. (....) apart from the ordinary rules of the right of access of all Colombians to decent housing, the housing subsidy provided for in the Victims Act constitutes a component of restitution aimed at those victims "whose homes have been affected by dispossession, abandonment, loss or impairment". It is therefore a special benefit, in addition to the other rights and guarantees provided for in Title IV of this law, in favor of the victims of the armed conflict in general, which is granted in view of the special circumstance of having altered the conditions in which this right was satisfied before the victimizing acts.
>
> Because of the clearly differentiated nature and the different requirements, depending on whether or not the particular connotation of the victim is present, (...) these are two different situations that cannot be mixed or compared, so that no violation of the right to equality can be invoked as a result of the different possibility of achieving that benefit. Nor is it wise to claim that the amount of the housing subsidy, as a restitution mechanism within the context of the Victims Act, must necessarily be equal to or higher than that granted under other circumstances, in which its granting serves other purposes, or to affirm that such differences imply a violation of the principle of progressivity of social rights. Therefore, the charges brought against Article 125 of Law 1448 of 2011, were not called to prosper, so that it was declared exequible against them."

2.7.3. On the basis of the considerations set out above, the Court will proceed to the *ruling in*

Ruling C-280 of 2013 on the issue of constitutional res judicata.

3. Examination of compliance with the conditions for taking a disqualification decision.

3.1. Decisions inhibiting abstract control of constitutionality.

3.1.1. Deferral judgments, insofar as they involve a decision not to bring forward the intended trial activity, constitute an exceptional type of judicial decision that is only appropriate when precise hypotheses are verified that prevent the constitutionality examination from being brought forward. Such character has meant an effort of the jurisprudence of this Corporation to establish the events in which it is necessary to adopt a inhibitory decision when exercising its powers of abstract control. These hypotheses are associated (i) with the object of the control, (ii) with the characteristics of the accusation, (iii) with the jurisdiction of this court or (iv) with evidentiary deficiencies that prevent a substantive pronouncement.

From the perspective of the *object of control*, an inhibitory decision proceeds in those cases in which the accused norm has ceased to belong to the legal system as a consequence of its express or tacit derogation or because of the loss of enforceability. In this hypothesis, except in those cases in which it can be identified that the rule in question is intended to produce effects despite its repeal or loss of enforceability, it is not appropriate to adopt a substantive decision.

However, based on the predominantly pleaded nature of the public action, this Court has pointed out that citizens who question the constitutionality of a rule have the obligation to comply with certain argumentative burdens in order for the accusation to be considered admissible (*characteristics of the accusation*). In that regard, he had stressed that the positions must be certain, clear, relevant, specific and sufficient. This starting point has also implied an effort to specify the requirements that some accusations must comply with due to the nature of the position, as occurs in positions for infringement of equality, for configuration of a relative legislative omission or for excess in the exercise of constitutional reform powers.

Thirdly, an injunction may occur if cases are formed that affect *the jurisdiction* of the Court. This is the case when a norm is demanded that is not covered by the typical or atypical attributions of this Corporation or when the term for the formulation of the public action has elapsed, as provided in articles 242 and 379 of the Constitution.

Fourth, the Plenary Chamber of the Court may adopt the decision to temporarily abstain from issuing a substantive pronouncement until the evidence required to advance the examination (*evidentiary defects that impede control*) is provided, as has occurred, for example, in the case of the control of constitutionality of governmental objections when the Congress of the Republic does not send the gazettes or certifications that account for the processing of objections in said Corporation.

3.1.2 In view of the particularities of the present case, the Court considers it necessary to establish what happens in those cases in which a prior inhibitory decision has been made as a result of the inappropriate formulation of the charges and, subsequently, a structurally equal

claim is filed to the previous one.

For this Tribunal, in those cases in which (i) there is an inhibitory sentence of the Constitutional Court adopted in development of its functions of abstract control, (ii) a new lawsuit is filed against the same rule and (iii) the content of the lawsuit clearly coincides with the argumentation formulated in the previous one, the Court must again inhibit itself.

In this case, reasons based on the right to equality (art. 13), the obligation to ensure a responsible exercise of the political right established in numeral 7 of article 40 of the Constitution and legal certainty (art. 1) justify admitting that the previous decision constitutes, at least in principle, an examination of the suitability of the positions. Thus, the inhibition adopted by the Court does not prevent the charge of unconstitutionality of the rule in question from being reformulated with a new discursive basis; but it does determine the inadmissibility of a new claim with an identical charge of unconstitutionality based on the same argument.

3.2. Scope and effects of the inhibitory decisions adopted in Judgment C-280 of 2013.

In Judgment C-280 of 2013 the Court refrained from issuing a substantive pronouncement with respect to several of the expressions accused at that time and which are now being re-defended. This occurred in respect of (i) some paragraphs accused of the first, second and third paragraphs of Article 61, (ii) of the expression "*of restitution*" included in the title of Article 123 and (iii) of the defendant expressions of Article 132.

Such a decision obliges the Court to establish whether, in view of the similarity between the claims filed, even submitted by the citizens who subscribe to the one now being reviewed by the Court, a new inhibition is appropriate or whether, on the contrary, a substantive examination should be undertaken.

In order to answer this question, the Court compared in detail the line of argument followed in the lawsuit that gave rise to Judgment C-280 of 2013 with the one raised by this new pronouncement. After such an analysis, the Court has reached the following conclusions.

3.3. Provenance of a discretionary decision with respect to the charge made against the first paragraph of article 61 of Law 1448 of 2011.

Despite this, the new allegation - in the same way that it occurred on the previous occasion - is based on an obviously incorrect premise. This premise consists in affirming that even in events of force majeure or fortuitous case, the term fixed to render the declaration required for inclusion in the registry of victims will expire after two years.

The first paragraph of the third paragraph of article 61 states that *in cases of force majeure which has prevented the victim of forced displacement from making the declaration within the time limit laid down in this article, the declaration shall be counted from the moment when the circumstances giving rise to such impediment cease to exist*. The premise on which the office is based does not correspond to an existing rule in the legal system which, on the contrary, provides for a flexible rule in this area.

The plaintiffs base their disagreement on the rigidity of the regulation regarding the calculation of the time limit. They do not specifically address the scope of the above-mentioned normative statement, which includes force majeure as an event limiting the application of the time limit for persons covered by article 61 to give effect to their declaration.

It is therefore a defect in the formulation of the charge insofar as its starting point lacks the minimum certainty required to make possible a pronouncement by the Court. In addition, the references made to the absence of the effectiveness of the rule as a consequence of the non-advance of disclosure campaigns constitute an argument, prima facie impertinent in the abstract control of constitutionality and, consequently, do not have the ability to activate the competence of the Court to adopt a substantive decision.

3.4. Provenance of a deferral of the charge against the second and third paragraphs of Article 61 of Law 1448 of 2011

In relation to the *second and third* paragraphs *of Article 61,* the Court will refrain from issuing a substantive pronouncement since the arguments presented at this time -and which were synthesized in section 2.4.3 of the precedents of this Order- substantially coincide with the reasoning presented at the previous opportunity. To that extent, judgment C-280 of 2013 had already assessed the suitability of the newly-formulated charges.

3.5. Provenance of a discretionary decision on the charge against the expression "restitution" in Article 123 of Law 1448 of 2011.

The same decision will be taken in relation to the charge against the expression "*of restitution*" included in the title of article 123 of Law 1448. In effect, although the plaintiffs, since the citation of judgement T-821 of 2007, of some of the Guiding Principles on Internal Displacement and of the Guiding Principles on Housing Restitution, as well as some additional references to the doctrine, seek to demonstrate the violation of the so-called principle of distinction in the matter of reparation, their argument is at its core, coinciding with that which was the object of analysis in judgement C-280 of 2013. In addition, the general reference to article 51 of the Constitution, warning of the universal nature of the right to housing, is not sufficient to demonstrate the violation of the principle of distinction.

The line of argument of the plaintiffs does not therefore differ in a central way from that raised in the previous opportunity and, consequently, it is appropriate to adopt a decision inhibiting the suitability of the positions had already been the subject of scrutiny by this Court.

3.6. Provenance of a deferral decision with respect to the charge made against the expression "family nucleus" in the third paragraph of article 132 of Law 1448 of 2011 and proceeding to issue a substantive pronouncement with respect to the other contested statements of the same provision.

3.6.1. In both cases, an accusation is made against the expression "family nucleus", since it is considered to be unknown that reparation also proceeds individually and, to that extent, it would violate the right to reparation and the right to access to the administration of justice. The lawsuit presented in this opportunity offers some additional reasoning aimed at demonstrating that: measure (i) is disproportionate insofar as the purpose assigned to it - economic stability of the State - is not sufficient to establish the restriction; (ii) it ignores the situation of women affected by displacement, especially protected under the Corporation's 2008 Auto 092; and (iii) it opposes the indicators of effective enjoyment that have been defined during the Court's follow-up of compliance with T-025 of 2004.

In spite of this additional effort, in the Court's view, the lawsuit fails to overcome a basic deficit in order to make possible its admission with regard to the term "*family nucleus*". In fact, the applicants do not sufficiently demonstrate that the expression "*family nucleus*" implies the non-application of administrative reparation measures with respect to the persons individually considered. In this case, it was necessary to demonstrate that what was established by using the expression "*family nucleus*" implied the impossibility of accessing individual reparation, even more so when the starting point for such a provision, as follows from its first paragraph, consisted of the definition of the conditions for the regulation of the *procedure, procedure, mechanisms, amounts and other guidelines for granting individual compensation through administrative channels to victims*.

It should be noted at this point that some of the interventions warn that the interpretation given by the applicants is incorrect. Thus, for example, in the intervention of the Ministry of Finance it is stated that "[*i*]*n no way, an objective reading of the norm demanded leads to such an interpretation. Evidently, the law establishes that administrative compensation, referred to in Chapter VII of Law 1448 of 2011, to which persons displaced by violence have the right, shall be delivered by family nucleus, which does not mean that it shall be delivered to displaced persons as long as they are part of a family nucleus.* "

Thus, the charge does not succeed in demonstrating that the interpretation on which it is intended to be based is that which follows from the accused expression. In view of the wording of the article to which the defendant standard is a party, a precise explanation of the reasons why the expression "family nucleus" precludes individual reparation was required of the plaintiffs. Thus, following the precedent defined in Judgment C-280 of 2013 regarding the suitability of this position, the Court will refrain from issuing a pronouncement with respect to the accused expression.

3.6.2. Article 132 also contains provisions setting out the mechanisms that can be used to provide administrative compensation for displaced persons. The accusation at this time differs in some respects from that which gave rise to judgment C-280 of 2013 and, to that extent, a substantive pronouncement is warranted.

In effect, the position is now complemented (i) by stating that some subsidies currently offered by the State in the area of land and housing are not assigned the status of forms of reparation and (ii) by indicating that special attention to the displaced population derives from the special duties that followed Judgment T-025 of 2004 and therefore cannot be considered

reparation measures.

3.6.2.1 The Court should note that considering the mechanisms set forth in paragraph three of article 132 of Law 1448 of 2011 - subsidies, acquisition or adjudication of land, among others - as possible forms of administrative compensation is not contrary to the Constitution. Such a qualification would be unconstitutional only if it led to a confusion of the administrative compensation to be paid in cash with the State's obligation to provide the social services for which it is responsible. To that extent, Congress, within the limit referred to above, has a relative configuring freedom to specify the legal nature of the actions it undertakes with respect to a population whose members are considered as victims.

The aforementioned restriction was recently profiled by this Corporation. In effect, judgment SU254 of 2013 indicated the following:

> (...) in the opinion of this Corporation, the provisions of Article 132 of Law 1448 of 2011, paragraph 3. and Article 149 of Decree 4800 of 2011, which provides for the means by which administrative compensation will be paid to victims of forced displacement, must be interpreted in harmony with the difference between what constitutes administrative compensation as reparation and social care or assistance, in accordance with Law 1448 of 2011 in its aforementioned Article 154, and in harmony with the rules established by constitutional jurisprudence and the IACHR. In this way, the Court finds that the amount of administrative compensation must be paid in additional form and not accumulated or deducted from the integral subsidy of lands, from the exchange of land, from the acquisition and adjudication of lands, from the adjudication and titling of vacant lots for displaced population or from the subsidy of rural and urban social interest housing referred to in Article 149 of Decree 4800 of 2011.
>
> This is the National Government's own interpretation of article 132 of Law 1448 of 2011 and of article 149 of Decree 4800 of 2011 that regulates it, which has been brought to the attention of this Court - and is public knowledge - since it was presented by the Director of the Special Administrative Unit for Integral Attention and Reparation to Victims, and by other Ministers of the office, during the hearings on forced displacement that took place on December 15, 2011 and January 26, 2012 with control bodies and during the hearing held on February 13, 2012 with the National Government (...).
>
> Thus, the National Government has clearly and expressly expressed to this Corporation, through the Special Chamber for the Follow-up of Displaced Population, that in accordance with the provisions of Law 1448 of 2011 and in harmony with the jurisprudence of this Court, Article 149 of Decree 4800 of 2011, which consecrates the amount for administrative compensation to displaced persons, must be interpreted by making a clear distinction between this administrative compensation, as a component of integral reparation and social care and assistance, in such a way that the seventeen (17) minimum wages covered by this article are additional and not deductible from the subsidies

covered by that same regulation. On the contrary, to confuse social care or assistance with administrative compensation as part of integral reparation, that is, to consider that the measures that are part of the State's social policy, aimed at satisfying the minimum basic material needs of the population in a situation of poverty, exclusion and inequity -such as subsidies- can be taken as reparation measures for serious violations of human rights and IHL, such as forced displacement, would be inadmissible and openly unconstitutional. "(Underscores are not part of the original text)

In interpreting Article 132 of Law 1448 of 2011, the Court stressed the importance of not confusing compensatory measures with the State's obligation to ensure basic living conditions for people from the weakest population groups. This precedent therefore requires the exclusion of any interpretation that may have the effect of assimilating the mechanisms enunciated in the third paragraph of article 132 of Law 1448 of 2011 with the administrative compensation to be paid in cash. Accordingly, although the Corporation considers that the term "administrative compensation" may be used by the legislator to group together various forms of State action, including those set forth in the aforementioned paragraph, this may not imply the affectation or reduction of the administrative compensation that must be granted to the victims in cash.

In view of the foregoing, the Court shall declare the expressions "*and through one of the following mechanisms, in the amounts defined for this purpose by the National Government: I. Integral land subsidy; II. Exchange of land; III. Acquisition and allocation of land; IV. Adjudication and titling of vacant lots for displaced population; V. Subsidy of Housing of Rural Social Interest, in the modality of improvement of housing, construction of housing and basic sanitation, or VI. Subsidy of Housing of Urban Social Interest in the modalities of acquisition, improvement or construction of new housing*", contained in paragraph 3 of article 132 of Law 1448 of 2011, in the understanding that such mechanisms are additional to the amount of administrative indemnity that must be paid in money.

This conditioning, on the one hand, recognizes the margin of configuration that protects the decision of Congress to qualify as administrative compensation forms of state action that favor the victims and, on the other hand, follows the precedent derived from the SU254 judgment of 2013 in which it was established the inappropriateness of compensating the administrative compensation that must be delivered in cash with the value assigned to the mechanisms set forth in the third paragraph of Article 132 of Law 1448 of 2011.

3.6.2.2. The prohibition of indistinction between reparation and State social services leads to the final paragraph of paragraph 3 of article 132 being constitutionally problematic. Under this rule, it would be possible to consider administrative compensation deductible from that paid in cash, the difference between the ordinary amount in which the mechanisms contemplated are offered -subsidies, acquisition or allocation of land, among others- and the greater value in which they are offered to displaced persons.

This Corporation considers that the rule defined by the final paragraph of the third paragraph of article 132 ignores the principle that requires not to confuse the duty to make reparation

with the duty to offer social assistance in compliance with the constitutional duties assigned to the State. This principle has been recognized by constitutional jurisprudence not only in the unification judgment cited above but also in judgment C-1199 of 2008. This is where the Court stood:

> "As explained by the plaintiffs, and as the Court now verifies, the link created by the rule under attack has the effect that the reparation owed to the victims may be reduced by the social services of which they have benefited, to the point that in specific cases some victims may not receive any sum or benefit for reparation, and even that some of them may be, paradoxically, debtors of the government that provided the aforementioned services. Any of these situations would injure the victims' right to integral reparation, within a transitional justice context.
>
> Moreover, the Court emphasizes that the expression *"are part"*, used in the norm demanded, is of an imperative character and not purely eventual or permissive, which considerably paves the way for the protection of this norm to try, in specific cases, to avoid or have significantly reduced the obligations related to the reparation of the victims, under the pretext that they have already been repaired through the social services that the Government must generally provide.
>
> On the other hand, it should be noted that, as the actors and several of the interveners emphasized, social services and reparation actions are the responsibility of clearly differentiated subjects, since the former attend to the fulfillment of state obligations, while the latter correspond to the subjects responsible for the crimes whose commission gives rise to the need for reparation, and subsidiarily to the State. To such an extent, it is inappropriate to state that government action, in the development of general duties incumbent upon the State, may replace the reparatory action that falls primarily upon the perpetrators of the crimes, and that even though it may ultimately be complied with by the State from its position of guarantor, it has an ostensibly different nature.
>
> On the basis of these reflections, the Court considers that the rule in question directly violates the victims' rights to full reparation recognized by international law, the Constitution and jurisprudence, a situation that, without a doubt, highlights the unconstitutionality of the precept that contains it."(Underscores are not part of the original text).

3.6.2.3. The precedent that follows from the previous pronouncements makes present the unconstitutionality of the last paragraph of the third paragraph of article 132 of Law 1448 of 2011. In fact, the specialty that the mechanisms set forth in the paragraph under consideration acquire with respect to the displaced population, and which may be manifested in their granting for a value greater than that in which they are offered to the population in general, is a manifestation of the fulfilment of accentuated social obligations by the State inasmuch as it is a specially protected group.

This special protection is based on the fulfilment of the State's social duties aimed at ensuring minimum living conditions. Although the Court, as stated above, accepts the possibility that the measures referred to in paragraph three of Article 132 of Law 1448 of 2011 are qualified by the legislator as forms of administrative compensation, this does not authorize, as defined in SU254 of 2013, the reduction or affectation of administrative compensation in cash provided for in other regulations.

4. Reason for the decision.

4.1. Summary of the case.

4.1.1 On the basis of the grounds giving rise to res judicata, the Court found that in connection with the charges brought against article 3 (partial), article 51 (partial), article 60 (partial), article 66 (partial), article 67 (partial), article 123 (partial) and article 125 of Law 1448 of 2011, this phenomenon had occurred, as decided in judgments C-781 of 2012 and C-280 of 2013.

4.1.2. In view of its indispensable link with provisions declared enforceable in Ruling C-280 of 2013 for the same charges, the Court, following the precedent established therein, determined that they were in accordance with the Constitution, for the charges analyzed, the expression "*With the purpose of guaranteeing comprehensive care to victims of forced displacement who voluntarily decide to return or relocate, under favorable security conditions,*" contained in the first paragraph of Article 66 of Law 1448 of 2011, and the expression "*always*" of the first paragraph of Article 51 of Law 1448.

4.1.3. Considering (i) that several of the charges brought in the proceedings leading to the 2013 C-280 decision were dismissed for their inability to make a substantive pronouncement, and (ii) that in the action giving rise to the present decision they were raised in substantially the same manner, the Court considers that it is imperative that new decisions to stay the proceedings be taken. This is the case for Articles 61 (partial), 66 (partial), 123 (partial) and 132 (partial). However, in the case of the latter, in light of the new arguments put forward in the lawsuit, the Court considered that it was possible to adopt a substantive decision and, to that end, it examined whether the regulation established there regarding the different forms of administrative compensation ignored the obligation to differentiate between social assistance measures and reparation measures.

Grounds for the decision.

4.2.1. Various provisions of Law 1448 of 2011 are sued on the basis of different arguments. With respect to substantially equal charges, the Constitutional Court ruled in Ruling C-280 of 2013.

4.2.2. The constitutional res judicata is configured (art. 243 C-P. and article 21 of Decree 2067 of 1991) and the Court must be in accordance with what was previously resolved when: (i) there is a prior pronouncement with respect to the same standard demanded and (ii) the accusation before the Court substantially coincides with that addressed in the preceding

decision.

4.2.3. In cases in which the prior declaration of enforceability does not include certain expressions which are subsequently charged for the same reasons and which are inextricably linked to those previously declared enforceable, it is possible to follow the previous one and take an identical decision.

4.2.4. The suppositions that give rise to the adoption of inhibitory sentences in matters of abstract control of constitutionality are associated with: (i) the object of the control; (ii) the substantiation of the charges in the complaint; (iii) the jurisdiction of this Tribunal; (iv) evidentiary deficiencies that prevent a substantive pronouncement. In those cases in which there is an inhibitory sentence of the Constitutional Court adopted in development of its functions of abstract control, a new lawsuit is filed against the same rule and the content of the complaint coincides with the arguments formulated in the previous one, the Court must again inhibit itself.

4.2.5 Considering the mechanisms of article 132, paragraph 3, as a form of administrative compensation is not contrary to the Constitution, given that the legislature has a relative margin of discretion in this matter and, in itself, such a qualification does not disregard the rights of the displaced population. However, the last paragraph of such paragraph does oppose the Constitution since accepting that the greater value of the mechanisms established therein constitutes a form of compensation that can be compensated with that granted in cash, ignores the fact that the specialty of attention to the displaced population is based on the fulfillment of social duties of the State with respect to a population that is especially protected given its situation of manifest weakness.

III. DECISION.

In view of the foregoing, the Constitutional Court of the Republic of Colombia, administering justice in the name of the People and by mandate of the Constitution,

RESOLVE:

First. BE IT RESOLVED in Judgment C-781 of 2012 in relation to the expression *"occurred on the occasion of the internal armed conflict"* contained in Article 3 of Law 1448 of 2011.

Second. BE IT RESOLVED in Judgment C-280 of 2013 in relation to the expression "*when these do not have the resources for payment*" of the first paragraph of Article 51 of Law 1448 and declare EXEQUIBLE the expression *"always"* of the same paragraph.

Third. BE IT RESOLVED in Judgment C-280 of 2013 in relation to the expression "*that do not contravene the present law*" of the second paragraph of Article 60 of Law 1448 of 2011.

Quarter. BE IT RESOLVED in Judgment C-280 of 2013 as it relates to the second paragraph of paragraph 1 of Article 60 of Law 1448 of 2011.

TO BE RESOLVED in Judgment C-280 of 2013 in relation to the paragraphs of the second paragraph of Article 60 of Law 1448 of 2011.

Sixth - Declare INHIBITED to decide on the charge against the defendants of paragraphs 1, 2 and 3 of Article 61 of Law 1448 of 2011.

Seventh - In relation to the first paragraph of article 66 of Law 1448 of 2011:

(i) BE IT RESOLVED in Judgment C-280 of 2013 as it relates to the excerpts of the first paragraph of Article 66 of Law 1448 of 2011.

(ii) Declare EXEQUIBLE, for the charge analyzed in this judgment, the expression "*For the purpose of guaranteeing comprehensive care to victims of forced displacement who voluntarily decide to return or relocate, under favorable security conditions,*" contained in the first paragraph of Article 66 of Law 1448 of 2011.

(iii) Declare itself INHIBITED to decide on the constitutionality of the expression "*through the design of special accompaniment schemes*" of the first paragraph of Article 66 of Law 1448 of 2011.

Eighth - THE RESOLVED in sentence C-280 of 2013 in relation to the second paragraph of article 66 of Law 1448 of 2011.

NINTH: TO BE RESOLVED in sentence C-280 of 2013 in relation to article 67 of law 1448 of 2011.

Tenth - Declare INHIBITED to decide on the charge directed against the expression *"restitution"* in Article 123 of Law 1448 of 2011.

Eleventh - BE IT RESOLVED in Judgment C-280 of 2013 as it relates to Article 125 of Law 1448 of 2011.

Twelfth - In relation to the third paragraph of article 132 of Law 1448 of 2011:

(i) Declare itself INHIBITED to issue a pronouncement on the expression "*per family nucleus*", contained in the first paragraph of the third paragraph of article 132 of Law 1448 of 2011.

(ii) Declare EXEQUIBLE the expressions "*and through one of the following mechanisms, in the amounts defined for this purpose by the National Government: I. Integral land subsidy; II. Exchange of land; III. Acquisition and allocation of land; IV. Adjudication and titling of vacant lots for displaced population; V. Subsidy of Housing of Rural Social Interest, in the modality of improvement of housing, construction of housing and basic sanitation, or VI. Subsidy of Housing of Urban Social Interest in the modalities of acquisition, improvement or construction of new housing*", contained in paragraph 3 of article 132 of Law 1448 of 2011, in

the understanding that such mechanisms are additional to the amount of administrative indemnity that must be paid in money.

(iii) Declare INEXEQUIBLE the expressions "*The sum that is additional to the amount that for the non-displaced population is established in other norms for the mechanisms indicated in this paragraph, shall be understood that it is delivered in the form of compensation*" contained in the third paragraph of paragraph 3 of article 132 of Law 1448 of 2011.

Copy, notify, communicate, insert yourself in the Constitutional Court Gazette and file the file. Comply.

JORGE IVÁN PALACE PALACE
Chairman

MARIA VICTORIA CALLE CORREA Magistrate *With partial salvage of vote* *With clarification of vote*	MAURICIO GONZÁLEZ CUERV Magistrate *With partial salvage of vote*
LUIS GUILLERMO GUERRERO PÉREZ Magistrate *With clarification of vote*	GABRIEL EDUARDO MENDOZA Magistrate
NILSON ELÍAS PINILLA PINILLA Magistrate	JORGE IGNACIO PRETELT CHAL Magistrate
ALBERTO RED RIVERS Magistrate	LUIS ERNESTO VARGAS SILV Magistrate *With partial salvage of vote* *With clarification of vote*

MARTHA VICTORIA SACHICA MENDEZ

Secretary GeneralSALVAMENTO **PARCIAL DE VOTO DEL MAGISTRADO MAURICIO GONZALEZ CUERVO TO JUDGMENT C-462/13**

INTEGRAL ATTENTION, ASSISTANCE AND REPAIR LAW FOR VICTIMS OF THE INTERNAL ARMED CONFLICT-Measures of performance content if they can be assimilated to a reparation measure (Partial Rescue of Vote)

Reference: File D-9362.

Complaint of unconstitutionality against various expressions contained in articles 3, 51, 60, 61, 66, 67, 123, 125 and 132 of Law 1448 of 2011, "by which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other dispositions are dictated".

Actors: Franklin Castañeda and others.

Magistrate Rapporteur: MAURICIO GONZÁLEZ CUERVO.

Except partially my vote against the Judgment of constitutionality C-462 of 2013, approved by the Plenary Chamber in session of seventeen (17) July of two thousand thirteen (2013), for the following reasons:

1. My disagreement arises with regard to the twelfth point of the operative part of the judgment, in its separate (iii). In this section, the following expression is declared unconstitutional: *"The amount that is additional to the amount that for the non-displaced population is established in other norms for the mechanisms indicated in this paragraph, shall be understood to be delivered in the form of compensation",* contained in the third paragraph of paragraph 3 of article 132 of Law 1448 of 2011.

2. I agree that the State's obligations with regard to reparation are different from those relating to humanitarian aid, social assistance measures or social services. However, I disagree with the assertion that social assistance measures or social services, insofar as they imply a higher level of provision than that given to other persons in respect of whom they are taken or provided, as the case may be, *"cannot in any way be assimilated to reparation measures".*

My discrepancy is not based on the state of inequality or vulnerability of the displaced, which justifies their priority attention. It is based on the fact that since displaced persons, as victims, are not the only persons in a state of inequality or vulnerability and, therefore, exclusive recipients of social assistance measures or social services, if the measures or services aimed at or provided to them have a benefit content greater than that provided to other persons who are also in a state of inequality and vulnerability, it is not even possible

to consider that the plus, i.e., the benefit content greater than normal and common in these events, can be assimilated to a reparation measure.

4. The State has the duty to adopt social assistance measures or social services for the benefit of the displaced population, but it does not have the duty to do so with a greater benefit content than such measures or services have for the benefit of the rest of the population in a state of inequality and vulnerability.

Respectfully,

MAURICIO GONZALEZ CUERVO
Magistrate **PARTIAL** SALVAMENT **AND VOTE CLARIFICATION**
OF THE MAGISTRATE MARIA VICTORIA CALLE CORREA
TO JUDGMENT C-462/13

RETURNS AND REUBICATIONS IN ATTENTION LAW, ASSISTANCE AND INTEGRAL REPAIR OF VICTIMS OF ARMED CONFLICT-Obligation imposed on victims of forced displacement is disproportionate and unreasonable (Partial Rescue of vote)

In Ruling C-280 of 2013 I expressed my disagreement with the decision adopted regarding the conditioning of the second paragraph of Article 66 of Law 1448 of 2011, which I now reiterate, which imposes on the victim of forced displacement the obligation to declare before the Public Prosecutor's Office the facts that evidence the absence of security conditions to remain in the place chosen for their return or relocation, insofar as such conditioning is disproportionate and unreasonable.

MEASURES IN EDUCATION IN ATTENTION LAW, ASSISTANCE AND INTEGRAL REPAIR OF VICTIMS OF THE ARMED CONFLICT-Comprehens standard of protection of the right to free public education, which includes exemption from payment of academic fees and supplemental services (Clarification of vote)

Reference: file D-9362

Application against Articles 3 (partial), 51 (partial), 60 (partial), 61 (partial), 66 (partial), 67 (partial), 123 (partial), 125 and 132 (partial) of Law 1448 of 2011.

Magistrate Rapporteur:
MAURICIO GONZÁLEZ CUERVO

With the customary respect for the decisions of the Chamber, I form partial salvage of vote with respect to the decision adopted in numeral eight of the operative part of the sentence, which determines to be as resolved in sentence C-280 of 2013 in relation to the charge formulated against paragraph 2 of article 66 of Law 1448 of 2011. I also clarify my vote on some of the grounds set forth to support the decision taken in relation to the charge brought against article 51 of the aforementioned law.

Ruling C-280 of 2013 declared the conditioned exequibilidad of the second paragraph of Article 66 of Law 1448 of 2011, in the sense that the provisions therein will not affect the enjoyment of rights recognized by law to victims of forced displacement, including the possibility of being relocated again in a safe place. On that occasion I expressed my disagreement with this decision, considering that such a condition does not correct the disproportion and lack of reasonableness of the obligation imposed on the victim of forced displacement to testify before the Public Prosecutor's Office the facts that show the absence of security conditions to remain in the place chosen for their return or relocation, which may generate a new displacement and may aggravate the situation of threat and danger for that person. Discrepancy that I now reiterate in relation to the decision adopted in the eighth resolution of this ruling, which orders to be as resolved in sentence C-280 of 2013 in relation to the charge brought against paragraph 2 of Article 66 of Law 1448 of 2011.

I would also like to clarify my vote in relation to the second resolution of the judgement, relating to the charge made against article 51 (partial), in which the exemption of victims from the payment of educational costs in official establishments is conditioned on the fact that the victims do not have the resources to pay for them. On this occasion, the Court decided to abide by the decision of Judgment C-280 of 2013, which declared EXEQUIBLE the expression "*and when they do not have the resources for payment*" contained in Article 51 of Law 1448 of 2011 and declare EXEQUIBLE the expression *"always"* contained in the same paragraph. In the recitals of this judgment, it is recognized that the current standard of protection of the right to free public education goes even beyond the minimum requirements established in article 67 of the Constitution since, according to the provisions of Decree 4087 of 2011, this includes one year of preschool and nine years of basic education (art. 1) and includes not only exemption from the payment of academic fees but also of complementary services (art. 2).

It is in these terms that I accompany the decision taken by the Chamber with regard to this article. However, I consider it necessary to specify that a special rule, such as that established in article 51 of the Victims Act, can in no case be interpreted in the sense of ignoring the current standard of protection of the right to free public education and the advances that may be established in the future.

Date ut supra,

MARIA VICTORIA CALLE CORREA
Magistrate