

Order of the
Inter-American Court of Human Rights
of July 8, 2009
Case of the 19 Tradesmen v. Colombia
Monitoring Compliance with Judgment
and
Provisional Measures

Having seen:

A) *Monitoring Compliance with Judgment*

1. The Judgment on the merits, reparations and costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on July 5, 2004.

2. The Order of monitoring compliance with the Judgment delivered by the Tribunal on February 2, 2006, by which it was:

DECLARE[D]:

1. That pursuant to that stated in the ninth Whereas clause of the [...] Ruling, the State has complied with:

a) locating the next of kin of the victim Alberto Gómez, thus what remains is that it deliver to them the corresponding reparations (*paragraph 233 of the Judgment*); and

b) organizing a public act to acknowledge its international responsibility for the facts of this case and to make amends to the memory of the 19 tradesmen" (*eighth operative paragraph and paragraph 274 of the Judgment*)

2. That it will maintain open the procedure of supervision of compliance of the pending matters in the present case [...].

3. The Order of monitoring compliance with the Judgment delivered by the Tribunal on July 10, 2007, in which it was:

DECLARE[D]:

1. That, pursuant to the ninth considering paragraph of [...] Order, the State has paid 90% of the amounts established in the judgment as reparations for the loss of earnings of each of the 19 victims, expenses incurred by the next of kin of eleven victims, and compensation for non-pecuniary damages (*twelfth to fifteenth operative paragraphs of the judgment and paragraphs 230, 231, 233, 234, 235, 240, 241, 242, 243, 248, 249, 250, 251 and 252 of the judgment*); hence payment of the remaining 10% of the compensation remains pending, as ordered.

2. That the Court will maintain open the procedure of monitoring compliance with the aspects that remain pending in this case, which are:

a) That, within a reasonable time, the State investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly (*fifth operative paragraph and paragraphs 256 to 263 of the judgment*);

b) That, within a reasonable time, it conduct a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin (*sixth operative paragraph and paragraphs 270 and 271 of the judgment*);

c) That it erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, place a plaque with the names of the 19 tradesmen (*seventh operative paragraph and paragraph 273 of the judgment*);

d) That it provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*ninth operative paragraph and paragraphs 277 and 278 of the judgment*);

e) That it create all the necessary conditions for the members of the family of the victim Antonio Flórez Contreras who are in exile to return to Colombia, if they so wish, and cover the moving costs they may incur (*tenth operative paragraph and paragraph 279 of the judgment*);

f) That it pay special attention to guaranteeing the lives, safety and security of those who testified before the Court and their next of kin, and provide them with the necessary protection from any persons, bearing in mind the circumstances of this case (*eleventh operative paragraph and paragraph 280 of the judgment*);

g) That it pay the amounts established in the judgment for loss of earnings for each of the 19 victims, the expenses incurred by the next of kin of eleven victims, and non-pecuniary damages (*twelfth, thirteenth, fourteenth and fifteenth operative paragraphs and paragraphs 230, 231, 233, 234, 235, 240, 241, 242, 243, 248, 249, 250, 251 and 252 of the judgment*);

h) That it deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombian banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors (*twenty-second operative paragraph and paragraph 290 of the judgment*);

i) That it adopt the necessary measures to locate the next of kin of Juan Bautista and Huber Pérez (whose second surname is possibly Castaño) and deliver the corresponding reparations (*paragraph 233 of the judgment*); and

j) That it reimburse costs and expenses (*sixteenth operative paragraph and paragraph 285 of the judgment*).

3. That, regarding the inquiry made by the representatives, they should distribute the compensation ordered by the Court for pecuniary and non-pecuniary damage to the victim, Rubén Emilio Pineda Bedoya, and the compensation ordered in favor of Jorge Enrique Pineda Bedoya for his own non-pecuniary damage, according to the provisions of the thirteenth and seventeenth considering paragraphs of [...]. Order.

[...]

4. The briefs submitted on January 17, May 28, June 24, July 19 and September 24, 2008 by means of which the State of Colombia (hereinafter, the "State" or "Colombia") informed on the progress made in complying with said Judgment.
5. The brief submitted by the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") on September 11, 2008 by which the Commission made observations to the State's reports.
6. The Secretariat's notes of September 18 and 26 and of October 17, 2008 by means of which it informed the parties that the term for the representatives to submit their observations to the State's report of May 28, 2008 expired on July 25, 2008 and that the Secretariat has still not received such observations. Therefore, following the instructions of the Court's President, the representatives were requested to forward such observations as soon as possible.
7. The Order issued by the President on November 26, 2008 by which the Commission, the State and the representatives of the victims' next-of-kin and of the beneficiaries of the provisional measures were convened to a private hearing to be held at the seat of the Court on January 20, 2009. The purpose of the hearing was for the Court to obtain information from the State on the compliance with the Judgment, listen to the comments of the Inter- American Commission and the representatives in relation to the latter and accept information on the implementation and effectiveness of the provisional measures, as well as the request to rescind them presented by the State.
8. The brief of December 3, 2008 by means of which the State requested the Tribunal, among other things, to urge the Inter-American Commission and the representatives to forward the corresponding observations as soon as practicable and, in any event, before the hearing convened.
9. The Secretariat's note of December 11, 2008 by which it was mentioned that said hearing was convened precisely to obtain information on the compliance with the Judgment and the implementation of the provisional measures. Nevertheless, on the President's instructions, for the purposes of a more efficient development of the hearing, the representatives and the Commission were requested to forward, in writing, the observations to the State's reports that were pending, no later than January 9, 2009. Said observations were not received.
10. The private hearing held on January 20, 2009 during the LXXXII Period of Ordinary Sessions of the Tribunal at its seat¹, as well as the documentation received at said hearing.

¹ The following people participated in the hearing: on behalf of the Colombian State, Luz Marina Gil, Executive Director of the Military Criminal Courts, Ministry of National Defense; Ángela Margarita Rey, Director of Human Rights and International Humanitarian Law, of the Ministry of Foreign Affairs ; Carlos Franco, Director of the Presidential Program on Human Rights; Fernando Arévalo; Director of Legal Defense of the Nation, Ministry of Interior and Justice; Francisco Javier Echeverri Lara, Director of International Affairs of the Solicitor General's Office; Sandra Janeth Castro Ospina, Coordinator of the Human Rights Unit of the Solicitor General's Office; Colonel Juan Carlos Gómez, Human Rights Director, Ministry of National Defense; Colonel Efraín Oswaldo Aragón, Human Rights Coordinator, National Police; Gloria Beatriz Gaviria; Human Rights Coordinator, Ministry of Social Protection; Juana Acosta López, Coordinator of the Interinstitutional Operative Group, Ministry of Foreign Affairs; Miguel Soto, Coordinator of the Information, Precautionary and Provisional Measures Area , Ministry of Foreign Affairs; Santiago

11. The Secretariat's notes of February 12, 2009 by means of which the requests made by the Judges at the end of said hearing were repeated. In particular, it was repeated to the State that it should present a written report, no later than March 2, 2009 regarding the compliance with the Judgment and the issues discussed during the hearing, including a schedule or calendar with the plan and term of the activities agreed upon in order to comply with operative paragraph six and seven of the Judgment. Furthermore, the State should inform, in relation to operative paragraph ten of the Judgment, on the reasons for the delay in the investigations. The representatives should present their observations within a term of 15 days, as of the receipt of the State's report. Moreover, the representatives were requested to clarify, in relation to the term to pay the compensatory amounts, whether the main reason for the disagreement is the distribution or the fact that the amounts ordered in the Judgment have not been paid. In addition, the Commission should forward the respective observations within a term of 15 days, as of receipt of the representatives' observations.

12. The brief of March 6, 2009 by means of which the State forwarded additional information in response to the request made during the hearing (*supra* Having Seen clause 11).

13. The brief of April 16, 2009 by means of which the representatives forwarded, once the extension was granted, their observations to the State's report of March 6, 2009.

14. The brief of April 22, 2009 in which the State presented a "document of the agreements entered into in the meeting held on January 20, 2009 between the parties." The following agreements were stipulated in said document:

1. Regarding the measure to search the mortal remains

- The Prosecutor undertook to present a search plan by April 30, 2009.
- Taking into account the discontent of the victims' representatives with that date and the proposal made by them, the possibility of expediting the process will be analyzed, with the support of the Search Commission.

2. Regarding the measure to erect a monument

- Three pending administrative procedures (environmental permit, permit from the Planning Office and hiring of the artist) shall be followed before April 30, 2009.
- In February 2009, the State (represented by Carlos Franco and Margarita Rey, esq.) and the victim's representatives (represented by Luz Marina Monzón, esq.) shall travel to Bucaramanga to meet with the Governor and the Mayor in order to request them to expedite the administrative procedures.

3. Regarding the measure to provide medical and psychological treatment

Arteaga, Prosecutor of the Human Rights Unit of the Solicitor General's Office; Generoso Hutchinson, Prosecutor of the Human Rights Unit of the Solicitor General's Office; Ltn. Com. Enoc Salcedo, advisor to the Human Rights Division, Ministry of National Defense; Natalia Salamanca, advisor of the Human Rights Division, Ministry of Foreign Affairs; Diana Bravo R, advisor of the Human Rights Division, Ministry of Foreign Affairs, and General Jorge Rodríguez, Chief of the Joint Institutional Defense Office of the Military Forces; on behalf of the Inter-American Commission, Elizabeth Abi-Mershed, Deputy Executive Secretary; Juan Pablo Albán Alencastro, and Lilly Ching Soto, advisors; and on behalf of the victims' representatives and of the next-of-kin and beneficiaries, Luz Marina Monzón, Gustavo Gallon Giraldo, Jahel Quiroga Carrillo, and María Victoria Fallón, of Colombian Jurists Commission [Comisión Colombiana de Juristas (CCJ)]; Michael Camilleri and Francisco Quintana, of the Center for Justice and International Law (CEJIL).

- The diagnosis made shall be delivered and analyzed in the first week of February 2009.
- The Ministry of Social Protection shall issue a directive about urgent health care during the last week of January and the text of such directive shall be previously discussed with the representative organizations of the victims.
- The State shall make its best efforts not to suspend the care already provided by private entities.
- The treatment shall begin between March and April, 2009.

4. Return of the Flores Family to Colombia

- The victims' representatives shall contact the family to know whether they would want to return to Colombia and to what place or city.
- Based on the previous information, the State shall determine the conditions/guarantees it may offer."

In addition, the State clarified that "this document was submitted for consideration of the victims' representatives for their comments, [but] the Colombian Jurists Commission [*Comisión Colombiana de Juristas*] did not present any comment."

15. The brief of June 2, 2009 by means of which the representatives forwarded "the communication presented by some of the next-of-kin of the case" in relation to the erection of a monument as a measure of reparation.

16. The brief of June 17, 2009 by means of which the Commission submitted the observations to the State's report of March 6, 2009.

17. The brief of June 30, 2009 in which the representatives informed on "steps taken before the Colombian authorities to achieve compliance with the measure of reparation in relation to the search of the disappeared people."

B) *Provisional Measures*

18. The Order issued by the Inter-American Court on September 3, 2004 by means of which it decided, *inter alia*, "to ratify the July 30, 2004 Order of the President [...], in the terms set forth in Whereas fifteen of the [...] Order, regarding protection of Sandra Belinda Montero Fuentes and her son Juan Manuel Ayala Montero" and "to order the State to: a) maintain the necessary measures to protect the rights to life and to humane treatment of Sandra Belinda Montero Fuentes and her son Juan Manuel Ayala Montero; and b) adopt, forthwith, such measures as may be necessary to protect the rights to life and to humane treatment of minor María Paola Casanova Montero, who is 7 years old, the daughter of Sandra Belinda Montero Fuentes." Said measures were adopted in view of the fact that the person mentioned had testified about the facts of the case before the Court during the public hearing on the merits and possible reparations and costs, held on April 21, 2004 and after she received a telephone threat.

19. The Order issued by the Court on July 4, 2006 in which it was decided, *inter alia*, to "to ratify the Order of the President of the [...] Court [...] of April 28, 2006 in its entirety and, accordingly, to call upon the State of Colombia to keep in place any and all such measures as it may have adopted and to immediately adopt such further

measures as may be required to protect the rights to life and humane treatment of Messrs. Salomón Flórez-Contreras and Luis José Pundor-Quintero and Ana Diva Quintero-Quintero de Pundor, and their respective families.” When ordering provisional measures for said beneficiaries, the Court took into account that on April 21, 2004, when rendering a statement before the Court at the public hearing on the merits and possible reparations and costs in the instant case, the witness Salomón Flórez Contreras, brother of the victim Antonio Flórez- Contretas, expressed his fear for testifying before the Tribunal; that Messr. Luis José Pundor Quintero and Ana Diva Quintero-Quintero de Pundor are the brother and mother of the victims Israel Pundor Quintero; and that on the Judgment of July 5, 2004, when the Court ordered the reparations for the violations so declared, it also ordered, *inter alia*, that the State should pay certain compensatory amounts in favor of Messrs. Salomón Flórez Contreras and Luis José Pundor - Quintero and Ana Diva Quintero- Quintero de Pundor; coupled with the fact that these people were threatened and harassed for being beneficiaries of the reparations ordered by the Court. Besides, the Court decided “to call upon the State, once again, to adopt and keep in place such measures as may be required to protect the rights to life and humane treatment of Sandra Belinda Montero-Fuentes and their children, Juan Manuel Ayala-Montero and María Paola Casanova-Montero.”

20. The Order issued by the Court on May 12, 2007, by which it was decided:

1. To ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of February 6, 2007.
2. To require the State of Colombia to maintain any measures it has already adopted and to adopt, forthwith, the necessary measures to protect the rights to life and personal integrity of Wilmar Rodríguez Quintero and Yimmy Efraín Rodríguez Quintero and their next of kin: Nubia Saravia, wife of Yimmy Rodríguez Quintero; Karen Dayana Rodríguez Saravia and Valeria Rodríguez Saravia, both daughters of Yimmy Rodríguez Quintero; William Rodríguez Quintero, brother of Wilmar and Yimmy Rodríguez Quintero; and Jhon Carlos Rodríguez Quintero, nephew of Wilmar and Yimmy Rodríguez Quintero.
3. To reiterate to the State that it must adopt and maintain the necessary measures to protect the rights to life and personal integrity of Sandra Belinda Montero Fuentes, and her children, Juan Manuel Ayala Montero and María Paola Casanova Montero; and Salomón Flórez Contreras, Luis José Pundor Quintero and Ana Diva Quintero Quintero de Pundor, and their respective families.
4. To require the State to investigate the facts that gave rise to the adoption of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.
5. To require the State to allow the beneficiaries of these measures or their representatives to take part in the planning and implementation of the measures and, in general, keep them informed of progress in their execution.

[...]

21. The briefs submitted on June 8, September 4, 11 and 25, November 8 and 9, 2007 by means of which Colombia informed on the implementation of the provisional measures.

22. The brief presented on July 3, 2007 by which the representatives of the beneficiaries submitted observations to the implementation of the provisional measures.

23. The Secretariat's note of September 5, 2007 in which the State was reminded that, by means of Order of May 12, 2007 (*supra* Having Seen clause 20) the State was requested to inform "on the measures adopted to comply with [said Order]" and specially, to present updated, clear and precise information on the situation of risk of the beneficiaries and the effective measures of protection adopted. In view of the fact that the Secretariat did not receive such report, the State was requested to forward it no later than September 24, 2007.

24. The brief of the State received on February 8, 2008 by means of which the State informed on the alleged seizure of the weapon of Messr. Jimmy Efraín Rodríguez Quintero and requested the Court "to advise the beneficiaries of the present measures on the proper use they should make of the weapons that were provided for their protection."

25. The brief presented on February 18, 2008 by means of which the State requested this Tribunal to "consider the possibility of ordering the rescission and filing of the instant provisional measures in relation to the beneficiaries [Jimmy Efraín Rodríguez Quintero and Wilmar Efraín Rodríguez Quintero]."

26. The brief of April 21, 2008 by which the Inter-American Commission requested, *inter alia*, the Court to keep the provisional measures ordered by this Tribunal in force.

27. The brief of April 28, 2008 by which the representatives presented observations to the request to rescind the measures presented by the State and to the State's reports already mentioned. In said brief, they requested the Court, *inter alia*, "not to accept the request to rescind [said] provisional measures."

28. The Order to convene a hearing, as well as said hearing held on January 20, 2009 (*supra* Having Seen clauses 7 and 10).

29. The brief of May 19, 2009 by means of which the representatives of the beneficiaries forwarded a copy of a "communication addressed to [...] the Colombian government on [that] day [...]" in relation to the alleged grenade throw at the residence of one of the beneficiaries.

30. The Secretariat's note of May 22, 2009 by which, on the President's instructions, the State was requested to inform on the incident mentioned by the representatives no later than May 29, 2009.

31. The brief of May 26, 2009 by means of which the representatives forwarded a brief about the "facts related to the situation of safety of Rodríguez Quintero family."

32. The brief of May 29, 2009 by which the State referred to the information requested (*supra* Having Seen clause 30).

33. The brief of June 1, 2009 by which the representatives forwarded a brief containing "requests filed with the Solicitor General's Office in order to shed light on the [alleged] facts of gravity that jeopardize the life and personal integrity of Yimmy and Jhon Carlos Rodríguez Quintero."

34. The brief of June 27, 2009 by which the representatives of the beneficiaries informed, *inter alia*, that Messr. Jhon Carlos Rodriguez Quintero, one of the beneficiaries of the provisional measures, was murdered on June 26, 2009 at, approximately, 9 P.M. in the city of Ocaña.

35. The Secretariat's note of June 29, 2009 in which, following the instructions of the Court, the State was requested to, on a priority basis and no later than July 3, 2009, refer to this fact informed by the representatives (*supra* Having Seen clause 34) and to present a detailed report in order to indicate all the protective measures that, in compliance with the Order of the Court of May 12, 2007, it has implemented in favor of Rodríguez Quintero family.

36. The brief of July 3, 2009 by means of which the State referred to the request made in the above mentioned note (*supra* Having Seen clause 35).

37. The communications of July 3, 2009 by means of which the representatives forwarded two briefs addressed to the State and requested the implementation of urgent protective measures in favor of Rodríguez Quintero brothers.

Considering:

A) *Monitoring Compliance with Judgment*

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

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

3. That, pursuant to section 67 of the Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, section 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level².

4. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their

² Cf. *Case of Baena Ricardo et al. V Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Gómez Palomino v. Perú.*, Monitoring Compliance with Judgment. Order of the Court of July 1, 2009, considering clause 3; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) V. Peru*. Monitoring Compliance with the Judgment. Order of the President of the Court of June 8, 2009; considering clause 3.

municipal laws to escape from their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.³

5. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁴

6. That the Tribunal emphasizes that during the stage of monitoring compliance with the Judgment, the Court's Secretariat, following the instructions of the President of the Court, has addressed to the representatives on several occasions (*supra* Having Seen clauses 6 and 9) to request them to forward their observations to the State's reports. The representatives have not forwarded the information that was requested to them within the term established to such end; therefore the Court deems that they did not comply with the duty to inform the Tribunal in time fashion.

7. That, upon monitoring compliance with the pending aspects of the instant case, and also determining the provisional measures where pertinent, the Court values the relevance of the hearing held to such end, which is represented by the good will and spirit of cooperation shown by the parties. In particular, the Tribunal values that the State, the Commission and the representatives have organized meetings evidencing the common purpose and commitment to achieve compliance with the pending aspects.

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* *

8. That as to the obligation to investigate effectively the facts of this case, in a reasonable time, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed (*operative paragraphs five and paragraphs 256 to 263 of the judgment*), the State requested the Tribunal not to mention the information forwarded by the parties in relation to the investigation conducted into those facts and the search for the mortal remains of the victims in any public document, in view of the fact that the case is at the stage of preliminary proceedings. The foregoing implies that the proceedings conducted by the Human Rights Division "must be known only by the parties within the proceeding and that the non-observance of this provision not only gives rise to penalties for the officers

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N° 14, para. 35; *Case of Gómez Palomino V. Peru*, *supra* note 2, considering clause 5 and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) V. Peru*, *supra* note 2, considering clause 4.

⁴ Cf. *Case of Ivcher Bronstein V. Peru. Competence*. Judgment of the Inter-American Court of Human rights of September 24, 1999. Series C N° 54, para. 37; *case of Gómez Palomino V. Peru*, *supra* note 2, considering clause 6; and *Case of Sawhoyamaxa Indigenous Community V. Paraguay*, Monitoring Compliance with the Judgment. Order of the President of the Court of May 20, 2009; considering clause 6.

who fail to comply with it but also entails risks for the investigation based on the disregard of the right to due process and the good name of the people being investigated." In addition, as to certain aspects mentioned by the representatives, such as the alleged lack of accusation for the crime of torture or association of certain persons with the investigation, the State consider that it was essential to discuss those aspects within the scope of the criminal procedure and using the appropriate procedural remedies, inasmuch as the representatives play the role of 'partie civile' in the action by virtue of which they have the possibility of presenting requests and complaints about the proceedings that are being conducted. It also mentioned that, unless violation of the due process is alleged, this Tribunal is not allowed to analyze in depth and decide on the procedural actions, in respect for the right to due process of the accused, which include the right not to discuss matters that may adversely affect them without their participation and because this is within the scope of the domestic procedure and, in this case, of the prosecutor in charge of the investigation, who, according to the information of the case file, shall make the appropriate legal decisions. Otherwise, according to the State, the success of an objective and sound investigation may be jeopardized, inasmuch as the accused may request the dismissal of the investigation and may succeed.

9. That the representatives stated that the determination of the facts subject-matter of the investigation and the debate over the way in which the State is or is not complying with its obligation to investigate form part of the allegations that they are allowed to present in their capacity as legal representatives, but that this does not impede them from informing the Court in order to assess the status of compliance. They do not consider that this shall adversely affect the accused in the investigation.

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

11. That during the processing of the merits, when the State was held responsible for alleged violations of the American Convention and other applicable treaties, in recent cases the State has alleged the reservation of information during the stage of investigations, in order not to present to the Court certain documentation requested regarding domestic criminal procedures. In this case, the Tribunal deemed that the State had to forward the documentation so required, by informing about the reservation and the need, expediency or relevance of keeping the due confidentiality of the information. In those cases, the Court considered that the State's refusal to submit the documents cannot be held to the victims' detriment, but to the State's; therefore the Tribunal could consider as proven the facts that were only provable by means of the evidence the State denied to forward.⁵

12. That during the procedure of monitoring compliance with the Judgment, the role of the Tribunal is no longer to determine the facts of the case and its

⁵ Cf. Case of Ríos *et al.* V. Venezuela. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 98 to 100. See also, *mutatis mutandi*, Case of González *et al.* ("Cotton Field") V. Mexico. Court's Order of January 19, 2009 (request for expansion of alleged victims and refusal to forward documentary evidence), para. 59.

consequences, but to verify only the compliance with the obligations stipulated in the ruling by the responsible State. Therefore, the Court needs to have the necessary information, which must be provided by the State, the Commission and the victims or their representatives. Furthermore, the General Assembly to the OAS repeated that, in order for the Tribunal to fully meet its obligation to report to the General Assembly on compliance with its judgments, the States Parties to the Convention need to provide, in time fashion, the information requested by the Court.⁶ In this way, for the sake of complying with its role in monitoring compliance with the measures of reparation regarding the violations committed to the detriment of the victims and in the presence of both parties to an action, the Court shall assess, in each case, the need, convenience or relevance of maintaining the confidentiality of the information furnished in relation to its use in the order but not in relation to the parties' access to it.

13. That in the instant case, Colombia has submitted certain information related to the investigations, which has been transmitted and learnt by the representatives and the Commission, but the State requests the Tribunal not to publish such information in the monitoring compliance orders. The Court shall take into account all the information provided and shall include in this order only the essential part of such information, in order to determine the level of compliance with this operative paragraph. As to the other allegations of the State (*supra* Considering clause 8), the Court has pointed out, as in previous cases, that it is not a criminal court which can analyze the criminal responsibility of individuals,⁷ and therefore, the Court shall not analyze in this stage all the dimensions of the investigations and internal proceedings, but only the level of compliance with the order established in the Judgment.

14. That, the State informed that on March 6, 2008, the Criminal Cassation Division of the Supreme Court of Justice handed down an unprecedented decision in the country regarding the appeal for review filed by the 24th Prosecutor's Office in Criminal Judicial Matters II, in relation to the criminal proceedings conducted against members of law enforcement agencies who are allegedly associated with facts of the instant case at the military criminal courts.⁸ Afterwards, the State referred to proceedings as part of the investigations conducted by the Human Rights Unit, such as the gathering of statements, judicial inspections, commissions to different parts of the country and requests for justice and peace filed with prosecutors. In addition, as

⁶ General Assembly, Order AG/ RES 2408 (XXXVIII-O/08 adopted at the fourth plenary session, held on June 3, 2008, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights."

⁷ Cf. *Case of Velásquez Rodríguez V. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4 para. 134*; *Case of Yvon Neptune V. Haití. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 37*; *Case of Suárez Rosero V. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 37*. See also, *Case of Boyce et al. V. Barbados. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, footnote 37 and case of Zambrano Vélez et al. V. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 93.*

⁸ In this decision, the Supreme Court decided to declare the proceedings conducted at the military criminal court to be unfounded, as to the decision to close the investigation and the order to discontinue the proceedings in favor of several people, both of the year 1997. The Supreme Court decided to remit the proceedings to the Human Rights and International Humanitarian Law Unit of the Solicitor General's Office in order to continue with the investigations, which have been interrupted since the Solicitor General's Office was forced to decline jurisdiction according to the decision made by the Superior Council of Judicature in 1996. The State mentioned that said judgment constitutes "an important step towards the protection of human rights in Colombia and that it complies with the decisions of the Inter-American Court."

to certain issues mentioned by the representatives, such as the alleged lack of accusation for the crime of torture or the association of certain people with the investigation, the State considered that those issues should be laid before a criminal court and that it is an exclusive authority of the prosecutor to assess such matters (*supra* Considering clause 8). As to other results, the State mentioned that it was not possible to take the extension of the preliminary examination statement made by an accused former officer at the hospital due to his health condition; therefore, the prosecutor's office shall request an expert assessment to confirm what was informed. Besides, the State pointed out that it has brought charges of forced disappearance against two state officers, based on what was determined in the Judgment. As to the delay in the investigation, the State observed that this is a complex procedure and that the prosecutor in charge of the case is dealing with important challenges due to the passage of time, the different versions of the witnesses, the lack of identification of other possible participants, among other situations. Moreover, it pointed out that steps are being taken to include in the court file the information furnished at the proceedings conducted before the Justice and Peace Unit. Finally, the State requested the Court to declare that the State is complying with this measure of reparation.

15. That the representatives stated that they acknowledge and value the judgment of March 2008 of the Supreme Court. Nevertheless, the appeal for review was filed more than one year after the delivery of the Judgment and the decision upheld up to that moment. After the delivery of such decision, no other decision has been made in order to determine the level of responsibility of the members of the law enforcement agencies regarding the facts of the case, there are no accusations or arrest orders and only two military officers have rendered preliminary examination statements; therefore, little progress has been made. Moreover, they considered it is essential that the criminal investigations clarify whether torture has been committed among those facts and that the information resulting from the application of the Justice and Peace Law [*Ley de Justicia y Paz*] be entered into the case, since the statements made by former demobilized paramilitary officers would reveal information related to paramilitary officers who could be accused in this case. Furthermore, the representatives asserted that "the lack of seriousness, efficacy and promptness in the investigations keeps adversely affecting the rights of the victims and the determination of the truth which is a right enjoyed by the entire Colombian society."

16. That the Commission repeated several of the allegations made by the representatives and stated that "it acknowledges and values the importance of the ruling of the [Supreme Court of Justice] in order to obtain justice in the case at hand" by establishing the competent tribunal without discussing the specific case. In addition, it mentioned that, however, no information was furnished on the disciplinary and criminal proceedings that are being conducted before the ordinary courts; therefore, it considered it was necessary for the State to inform, in detail, on the total administrative and judicial proceedings carried out in relation to the people who could be held responsible in the instant case.

17. That this Court values the aforesaid decision of March 6, 2008 handed down by the Criminal Cassation Division of the Supreme Court of Justice, by which it was declared all the proceedings conducted before the military criminal court in this case to be unfounded and it was ordered the reopening of the investigation before the ordinary court. The Tribunal acknowledges the judicial value of this decision in

Colombia and considers that it constitutes an important step towards the fight of impunity as noted in this case, since it has allowed, even though several years have passed since the occurrence of the facts and the delivery of the Judgment of this Tribunal, the continuation of the investigations and it has also opened the door for determining, where applicable, the criminal responsibilities of the members of the law enforcement agencies for the crime of forced disappearance.

18. That it is necessary to recall⁹ that the victims of human rights violations, or their next-of-kin or representatives must have ample opportunity to take part and be heard, both in the elucidation of the facts and the punishment of those responsible and in the quest for fair compensation. Nevertheless, the effective search for the truth falls upon the State and does not depend on the procedural initiative of the victim or next-of-kin or on the submission of evidentiary elements.

19. That according to the terms of the Judgment,¹⁰ the State must publicly disseminate the result of this process, so that Colombian society may know the truth about what happened. Therefore, that publication is closely related to the promptness with which the investigations should have been conducted since the massacre occurred and, particularly, since the delivery of the Judgment of this Court. Based on the foregoing, the Tribunal shall continue waiting for the results of the investigations in order to determine what may correspond in relation to this aspect.

20. That, furthermore, this Tribunal deems it is necessary for the State to continue presenting thorough and updated information on the total proceedings conducted as a result of the investigation into the facts.

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21. That, as to the obligation to conduct, within a reasonable time, a genuine search of the remains of the victims and, if possible, return them to their next of kin (*operative paragraph six and paragraphs 270 and 271 of the Judgment*), the State referred to actions taken and the progress made in the investigations conducted by the Solicitor General's Office, though it requested reservation and confidentiality of the proceedings (*supra* Considering clause 8). Moreover, it mentioned that the delay in complying with this measure of reparation is the result of the complexities of the investigation in itself, the passage of time, the different versions as to the whereabouts of the remains, the conditions of the land, the change of the geographic characteristics of the possible places, as well as the very specialized technical and human resources required to intervene in such quests. The State also pointed out that the court file does not contain sufficient material to do another research; consequently, it has ordered the taking of other testimonies. By reaffirming its will to take any action necessary to comply with this operative paragraph, and according to what was agreed upon with the representatives (*supra* Considering clause 14), the State undertook to provide the economic resources, adopt the necessary security measures, search for the support of the Commission to Search for Disappeared People [*Comisión de Búsqueda de Personas Desaparecidas*] and speed up the

⁹ Cf. *Case of the 19 Tradesmen V. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C N. 109, para. 186 and 263.

¹⁰ Cf. *Case of the 19 Tradesmen V. Colombia*, *supra* note 9, para. 263.

process to formulate a search plan, which would be presented by the Prosecutor on April 30, 2009, based on the information contained in the court file, the national protocol to search for disappeared people and the participation of the plaintiff.

22. That the representatives stated that the only search was conducted in November 2005, a year after the delivery of the Judgment and 18 years after the occurrence of the facts, and that the search has not been taken up again by the authorities in charge of the investigation due to the lack of resources. The representatives do not accept that the next-of-kin be summoned to render a statement if they do not know the purpose of said testimony, since they have presented the information they already know to the authorities and they do not know the whereabouts of their loved ones. On March 3, 2009 the Prosecutor in charge of the case ordered some measures tending to conduct a search for the disappeared people; for this reason, the Prosecutor requested the Technical Bureau of Investigations of the Solicitor General's Office the appointment of a "special and exclusive" team to plan the search in the case at. Progress has been made in the design of the search plan with the contribution of the representatives in their capacity as plaintiffs, who presented a proposal for the formulation of a strategic search plan made up by the *Colombian Interdisciplinary Team for Forensic Work and Psychosocial Services (EQUITAS)*. In this regard, the representatives emphasized that this project is the result of the hearing convened by the Court; therefore, it is essential for the State to continue with the procedure, providing the Prosecutor in charge with all the necessary technical, economic and scientific resources and to order security measures to carry out the research in the field.

23. That the Commission valued the will expressed by the State. It pointed out that it is vital to devise and execute a search plan, based on the necessary resources to carry out all actions and it also called for responsiveness and execution in this process of search that has been practically bogged down since November 2005.

24. That this Court notes that only one search procedure has been carried out since the delivery of the Judgment in the instant case in the year 2004 and that since November 2005, no other procedure has been conducted. Therefore, upon the acknowledgment of the commitments made by the State in this sense, the Tribunal considers it is of vital importance to devise and develop, as practicable as possible, a plan to search for the mortal remains, pursuant to specialized technical and scientific parameters, since the passage of time hinders the effective execution of this measure of reparation. Furthermore, the State cannot seek protection in the lack of economic resources in order not to expedite the investigation and search of the remains. In this regard, the Court has not received information on the presentation of said plan by the Prosecutor, which should have been submitted by April 30, 2009, according to the own commitments made by the State (*supra* Having Seen clause 14). Therefore, in the next reports, the State, the Commission and the representatives shall have to provide updated information in this respect.

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25. That in relation to the obligation to erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, to place a plaque with the names of the 19 tradesmen (*operative paragraph seven and*

paragraph 273 of the Judgment), the State informed that it organized meetings with the victims' next-of-kin in order to consider a monument proposal and, in accordance with the opinion stated by 15 of the 18 families of the victims as to the specific place to locate the monument and the sculpture, "the State has taken administrative actions at the national and regional level to build and locate the monument" in Parque de los Niños, in the city of Bucaramanga. In a meeting held after the hearing, it was agreed upon a schedule and some actions for the central Government to facilitate the administrative proceedings at the local level and begin with the building of the monument at the earliest convenience (*supra* Having Seen 14).

26. That according to the representatives, this measure has encountered obstacles in its compliance and little action of the authorities. The next-of-kin of the victims expressed their agreement and consent to the proposal presented by the artist in charge of the creation of the monument in October 2007. In April 2008, the Mayor's Office of Bucaramanga communicated them that the initial place agreed upon to locate the monument – the "Luis Carlos Galán" Park- was not longer viable and that, after several meetings, they accepted that the monument be located in Parque de los Niños and defined the exact place in December 2008. Since that time, no progress has been made since the State informs that is still processing the hiring of the artist and the permits of the local authorities. Furthermore, the State undertook to establish a regular follow-up mechanism to learn and solve the impediments that might appear, which has not been elaborated. The representatives requested the State to undertake to carry out the effective execution of the monument in this year.

27. That the Commission valued the participation given to the victims in the election of the place, emphasized the need to overcome the obstacles that have appeared and urged the State to finish the monument as soon as practicable.

28. That this Tribunal values the actions taken and progress made to comply with this obligation, as well as the will to look for agreement shown by the state authorities and the victims' next-of-kin and their representatives. Nevertheless, it considers that the central and local authorities must conduct coordination activities in order to finish the building and location of said monument in order to fully comply with this measure of reparation as soon as practicable and, if possible, during this year.

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29. That as to the obligation to provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*operative paragraph nine and paragraphs 277 and 278 of the Judgment*), the State acknowledged that this measure was late executed and submitted information on the proceeding carried out to hire an institution to provide the necessary treatment for the next-of-kin. The State communicated that this aspect is being complied with together with other Judgments delivered by the Court; for this reason, it made reference to what was informed in the procedure to monitor compliance in the case of Pueblo Bello Massacre. It pointed out that it entered into a technical cooperation agreement with the United States Development Program

(UNDP), in order to execute the measure of reparation together with the Ministry of Social Protection. In this sense, consulting services were hired where experts assessed the technical capacity of the private entities proposed by the victims' representatives to execute this measure of reparation. This consulting service gave rise to a report that established that the private entities had the technical capacity to make the diagnosis and assessment but that the treatment phase needed the support of the Republic of Health. After this report, they contacted the private entities in order to show them the Judgment of the Court and the purpose of this measure of reparation and, finally, different agreements for each one of the Judgments of the Court against Colombia were entered into with the private entities, according to the geographic area. Besides, "in view of the fact that some people could require urgent medical and psychological treatment, the Ministry of Social Protection offered the victims' next-of-kin special and immediate assistance for those who really need it", but no assistance has been required so far.

30. That the State specified that this is a psychosocial process that needs to be executed in two phases: the first phase of diagnosis and assessment, and a second phase of treatment. For this case, the Two Worlds foundation [*Fundación Dos Mundos*] was hired. In February 2009, an international workshop was organized to learn about the results of the diagnosis of all the judgments, to make the victims' next-of-kin and their representatives aware of it and to listen to other experiences. By March 2009, the phase of diagnosis as to 69 beneficiaries of the Judgment had ended and, in a meeting held after the hearing, some agreements about the schedule to execute this measure were entered into. According to the State, the treatment phase shall begin in a combined and parallel manner: on the one hand, the medical treatment shall be provided by the Republic of Health; on the other side, the psychosocial treatment shall be provided by the private entities that participated in the diagnosis and international organizations. At the hearing, the State mentioned that the Ministry of Social Protection was going to issue, upon consultation with the representatives, a circular containing precise instructions for the entire health system in order to provide the victims with preferential treatment, that is, priority, thorough and comprehensive treatment and medicines.

31. That the representatives indicated that progress has been made. After the agreement entered into between the State and the UNDP in 2008, the disagreements and the lack of coordination with said organization adversely affected the process of selection and proposals of the organizations that would be in charge of making the diagnosis, which were made in a very short period, that is, between November and December 2008. The victims were not totally diagnosed and several people went through a psychological non-medical assessment; other people were not interviewed; therefore, they consider that the diagnosis phase has not concluded and the results of the analysis made by the appointed organizations still need to be reviewed and discussed. The representatives deem it is essential for the Ministry of Social Protection to issue a guideline or directive for all the sectors of the Colombian health network in order to inform them on the State's obligation to appropriately, effectively and promptly respond to the victims of these cases. Such guideline or directive should stipulate criteria and conditions for the State to provide health care in order to make reparations. Moreover, they considered it was primary to guarantee the immediate continuation of the treatment to the victims and that the organizations that made the diagnosis continue with this phase. However, by April 2009 the victims had not heard again from the organizations that made the diagnosis in order to continue with the treatment, which "jeopardize the progress in terms of

trust and elaboration of the facing process of the victims, which began at the diagnosis phase.”

32. That the Commission acknowledged the fact that this measure of reparation must be seen from a psychosocial perspective, it observed the delay in the diagnosis phase and it considered it was necessary to allocate resources to the treatment phase. It also considered it was important to learn about a schedule to conclude the diagnosis, to begin with the treatment and the logistic aspects of the implementation.

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

34. That, in addition, the Court notes that the appropriate treatment for the victims’ next-of-kin was an obligation of immediate compliance on the part of the State; therefore, the delays previously mentioned are not positive. This Tribunal notes that a great part of the next-of-kin of the victims in this case has already been diagnosed and, as a result, it urges the State to conclude the diagnosis procedure of all next-of-kin that require so and begin with the treatment phase by means of specialized institutions, as soon as practicable, in order not to affect the process that is being developed and gain the confidence of the victims in the health institutions in charge of providing the treatment. Moreover, without detriment to the measures the State shall adopt within the framework of the general health system, it is necessary for the State to provide, free of charge, the victims of the instant case with thorough and comprehensive preferential treatment, including the medicines they may require. Certainly, the consent and cooperation of the beneficiaries of these measures are essential for the effective provision of the treatment owed to them. To this end, it is important that the State authorities continue having the cooperation of the representatives to include the rest of the people. Bearing in mind the commitments made by the State, the State shall continue informing, occasionally, on the progress made and the results obtained in the implementation of this measure.

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35. That as to the obligation to establish the necessary conditions for the members of the family of the victim, Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and cover the costs they incur as a result of their return (*operative paragraph ten and paragraphs 279 of the Judgment*) the State repeated its willingness to conduct the necessary studies on security and risk in relation to the members of the family. However, it considered it was necessary for the Colombian Jurists Commission to provide information on the willingness of the

members of the Flórez Contreras family to return to the city of Ocaña. According to the State, this measure of reparation should focus on the evaluation of the risk in relation to the families and not the city, since the State considers that "the city of Ocaña is a safe place for all its inhabitants."

36. That the representatives consider that the State must comply with the necessary conditions so that said family returns, that is, that the State must show it has satisfied the necessary conditions in the city of Ocaña for their return.

37. That in the previous Orders, the Court indicated that "it is necessary for the State to inform on the commission of a study on the risk and threat, in a way to determine the necessary measures it will implement for the return of the members of said family if they so wish." (*supra* Having Seen 2 and 3)

38. That this Court notes that the State mentioned that "the risk analysis of the members of [...] [Flórez family] must be made once they have expressed their will to return"; therefore, there would be a discrepancy in the manner to execute this measure, specifically, as to whether the risk analysis must be made in relation to the city of Ocaña or in relation to the members of the family once they express their will to return.

39. After the hearing, the State informed that it agreed with the representatives "on a way to begin with the activities tending to such compliance." However, the representatives mentioned that they had to resume the conversations with the State in that respect and they also asserted that the State has to prove it has created an efficient situation to make their return possible. Moreover, the Commission considered it was necessary for the State to inform on the steps taken to create the necessary conditions for the return of the next-of-kin if they so wish.

40. That this Court values that the State and the representatives had tried to come to an understanding to proceed with the compliance with this obligation. Certainly, there are several ways to comply with this provision, in view of the possible risks there exist for those people. Hence, it is necessary for the national authorities to learn on the willingness of said family to return to Colombia, as well as the conditions required and, finally, the place they would return to. It falls upon the State the obligation to take the necessary actions to determine the above mentioned and the representatives must fully cooperate with it. As has been established in the Judgment, the State must establish and ensure the necessary conditions for the members of the family, who are in exile, to return to Colombia, if they so wish. If that is the will of the victims, the State shall inform on the specific and precise measures adopted or to be implemented to establish the appropriate conditions for the return of the Flórez Contreras family, taking into account the risk they may face in relation to the place they wish to return to in Colombia.

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41. That in relation to the obligation to pay special attention to guaranteeing the lives, safety and security of the persons who made statements before the Court and their next of kin, and provide them with the necessary protection from any persons, bearing in mind the circumstances of this case (*operative paragraph eleven and*

paragraph 280 of the Judgment), the State has pointed out that it referred to this aspect within the procedure of the provisional measures ordered by this Court (*supra* Having Seen clauses 4 and 20).

42. That in the hearing, the State mentioned that this aspect does not have to do with a measure of reparation, but to the protection of witnesses and next-of-kin for having given their testimony in the proceeding before the Court, which constitute duplication of proceedings. The State also asserts that the people who are protected by the Judgment in paragraph 280, and who are not included in the provisional measures, have not declared a situation of exceptional risk and, as a result, would not need special protective measures. In addition, the State considers that the mechanism of the provisional measures is the appropriate one to monitor the protective measures, due to the fact that the provisional measures are adopted as the result of a risk that meets the conventional and regulatory characteristics, while a measure of reparation is adopted as the result of the commission of an international illegal act, of the subsequent international responsibility of the State, of the damage and the purpose of that reparation would be to return the situation to its previous state or compensate the violations as better as possible. Furthermore, the processing of the provisional measures, due to its own nature, is designed to follow up the protection of the people who are in danger; therefore, it is the suitable mechanism. Besides, the processing of the provisional measures calls for the sufficient flexibility required by the protective measures, whereas the measures of reparation are of a different nature; in practice, the follow-up of the situation of risk is done by means of the procedure of provisional measures. In this sense, the State requested the Court to maintain "the follow-up the protection of the people by means of the mechanism of the provisional measures", which the State considers to be more suitable and to declare that the State is not obliged to inform on this aspect in the procedure to monitor compliance with the Judgment.

43. That the representatives contend that the Court, when ordering this measure of reparation, was aware of the fact that, due to the particularities of the case and the statements made, the next-of-kin were exposed to a great risk. They consider that this aspect constitute a measure of reparation based on a non-repetition approach, which consists in the duty to protect the people who rendered a statement and their next-of-kin and that such duty must be taken up by the State in a permanent way, in order not to cause them any damage in their lives and personal integrities; therefore, they deem the measure should be maintained and must be subjected to follow-up. In view of the fact that the protective measure ordered as a reparation in a Judgment is the result of a trial and supporting evidence, the representatives claim, such measure takes priority over the provisional measure where the evidence is summarily assessed. Moreover, they pointed out that not all the beneficiaries of the provisional measures are covered by the measure of reparation. They consider that the fact the follow-up of the protective measures is done within the procedure to monitor compliance does not affect the purpose of the measure of reparation.

44. That the Commission limited to mention that the measures of reparation established in the Judgment and the provisional measures ordered "supplement and offer feedback among themselves" and that the benefit of maintaining both mechanisms is justified by the nature of the situation in the case at hand.

45. That considering the State's argument, it falls upon the Tribunal to determine whether there exist a duplication of proceedings to monitor the implementation of the protective measures ordered in favor of a group of people who are, at the same time, victims of human rights violations or beneficiaries of reparations, according to what was declared in the Judgment, and in some cases, also beneficiaries of provisional measures. The Court notes that the last terms of operative paragraph eleven of the Judgment are, in effect, similar to the terms of the provisional measures ordered in this case, which could have a bearing on the procedure or means by which the execution and implementation of the protective measures are monitored.

46. That Article 1(1) of the Convention embodies the general duty of States Parties to respect the rights and liberties recognized in said treaty and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms. In accordance with that rule, it is a responsibility of States to adopt security measures to protect all persons under its jurisdiction, especially to preserve the life and integrity of those people whose rights could be threatened.¹¹ This duty is even more evident in connection with persons involved in proceedings before the bodies responsible for protection under the American Convention,¹² all the more if there are victims, next-of-kin or witnesses who rendered a statement before the Court regarding a case.

47. That based on the foregoing, in the paragraph 280 of the Judgment, the Court ordered the State to take special measures to guarantee the life, safety and security of those who made statements before the Court and their families, as well as provide them with all necessary protection from any person, bearing in mind the circumstances of the instant case and in view of the fact that most of the victims' next-of-kin who rendered statements before the Tribunal and notary public, expressed their fear of reprisals against them.

48. That after the Judgment, some of the beneficiaries of the compensatory amounts ordered therein informed the Tribunal that they were subjected to acts of threat and harassment. The Tribunal considered that these persons and their family groups were *prima facie* in a situation of extreme gravity and urgency, since their lives and personal integrities were threatened and in serious danger due to the statements rendered during the proceeding before this Tribunal and the compensatory amounts paid to them. Therefore, the Court ordered, in order to avoid irreparable damage to people, provisional measures in favor of Wilmar Rodríguez Quintero and Yimmy Efraín Rodríguez Quintero and their next-of-kin, namely: Nubia Saravia, wife of Yimmy Rodríguez Quintero; Karen Dayana Rodríguez Saravia, and Valeria Rodríguez Saravia, both daughters of Yimmy Rodríguez Quintero; William Rodríguez Quintero, brother of Wilmar and Yimmy Rodríguez Quintero; and Jhon Carlos Rodríguez Quintero, nephew of Wilmar and Yimmy Rodríguez Quintero; of

¹¹ Cf. *Case of Luisiana Ríos et al.* Provisional Measures regarding Venezuela. Order of the Court of September 8, 2004; Considering Clause six. *Matter of Monagas Judicial Confinement Center ("La Pica")* Provisional Measures. Order of the Court of February 9, 2006, Considering clause 9; *Matter of Colotenango* Provisional Measures regarding Guatemala. Order of the Court of July 12, 2007, considering clause 4.

¹² Cf. *Case of Luisiana Ríos et al.*, *supra* note 11, considering clause 6; *Case of Bámaca Velásquez*. Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considering clause 44 and *Case of Mayagna (Sumo) Awas Tingni Community*. Provisional Measures regarding Nicaragua. Order of the Court of November 26, 2007, Considering clause 4.

Mrs. Sandra Belinda Montero Fuentes, of her children Juan Manuel Ayala Montero and María Paola Casanova Montero; of Messrs. Salomón Flórez Contreras and Luis José Pundor Quintero and of Mrs. Ana Diva Quintero Quintero de Pundor, and their respective families.

49. That, while in the Judgment, the Court emphasized the general duty to protect that falls upon the States as to the people related to the case before the Tribunal, when ordering said provisional measures in the instant case, the Court deemed that there was a situation that met *prima facie* the conditions of "extreme gravity" and "urgency", as well as the need to "avoid irreparable damage", and ordered the State the implementation of certain protective measures.

50. That due to the extreme gravity of risk verified in this case, the Tribunal deems pertinent to continue monitoring the implementation of the protective measures in favor of the beneficiaries of such measures within the framework of the provisional measures.

51. That, nevertheless, the need to maintain the protective measures calls for an evaluation of the existence of situations of extreme gravity and urgency in order to avoid irreparable damage that gave rise to those measures, which the Court shall do *infra*.

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52. That as to the State's obligation to pay the amounts established in the Judgment as compensation for pecuniary and non-pecuniary damage (*operative paragraphs twelve, thirteen, fourteen and fifteen and paragraphs 230, 231, 233, 234, 235, 240, 242, 243, 248, 249, 250, 251 and 252 of the Judgment*), the State communicated that the compensatory amounts have been fully paid. In particular, "about the payment of the remaining 10% of the compensatory amounts ordered, the Ministry of Interior and Justice informed that, in the month of July 2006, an inter-administrative agreement was entered into with the Superior Council of Judicature, in order to pay the balance due to the victims' next-of-kin." In addition, it informed that "by means of Resolution 2582 of October [18], 2006, it was decreed the payment of 10% of the compensatory amounts to the Colombian Jurists Commission", which has already been paid. As to the payment to the partner of Messr. Carlos Arturo Riatiga, Mrs. Luz María Arias Ortega, the State informed that by means of Resolution 151 of February 22, 2006 the Ministry of Defense ordered the deposit of the payment in her favor and, later on, Mrs. Rosmira Arias Ortega provided evidence of the capacity as permanent partner of the victim and therefore, it was requested to deliver the sum deposited in an account of the Colombian Jurists Commission.

53. That the representatives put on notice over three aspects by which they understand that the Court should not consider this aspect to be complied with:

- a) In the first place, they alleged the "lack of payment to the next-of-kin who, even though they are not included in the judgment, demonstrate the same capacities of those who were recognized as beneficiaries in such judgment and in respect of which several requests have been submitted to the State."

Specially, regarding this first aspect, they requested to the Court to, based on the Judgment, authorize the State to proceed with the payment of the compensatory amounts to certain relatives, children or siblings of the victims, since the payment of the compensatory amounts in their favor must be also recognized on an equal footing;

b) In the second place, they alleged "the lack of rectification of the compensatory amounts distributed by the Solicitor General's Office." In this respect, the representatives indicated that there was a mistake in the first payments made when distributing the amounts that corresponded to the families with regard to whom the parents of the victims had already died, since "the Government distributed the moneys that corresponded to the parents of the victims in equal parts among: the siblings of the victim, the wife or partner of the victim and the victim's children." According to the representatives, this affected the distribution of the victims' siblings, who should have really inherited from their parents. The representatives pointed out that such alleged mistake was discussed with the government and amended in relation to the payments made by the Ministry of Defense and the Ministry of Interior and Justice; however, the payment made by means of the Solicitor General's Office was not amended, therefore they claim that "such mistake needs to be corrected and the moneys needs to be delivered in the proportion that may correspond to the relatives, siblings of the victims."

c) in the third place, they mentioned that a mistake occurred as to the amount of the payment for one of the sisters; therefore, they requested "to complete the payment of the part that corresponds to Mrs. Myriam Mantilla since there is no other reason or ground that could justify or explain the different treatment in the determination of the amount to be paid."

54. That, in relation to these issues, at the hearing the State mentioned that the Court had already considered the State fulfilled the payment of 90% of the compensatory amounts, which included the payment made by the Solicitor's General Office. Nevertheless, the State asserted that it was at the representatives' disposal to clarify what may correspond. As to the people who were not acknowledged in the Judgment as beneficiaries, the State request the Court's requirement to make those additional payments and it mentioned that even though such requirement is untimely, the State shall respond to what the Court decides in that respect.

55. That as to the representatives' request for the Court to acknowledge Mrs. María Antonia and Leonor Sauza Suárez and Messrs. Diego Andrés Fernández Tejada, Juan de Dios Pineda Bedoya, and Rafael Antonio and Carlos Arturo Riatiga Carvajal as beneficiaries, since they are not expressly included in the Judgment, this Tribunal recalls that in such judgment, the Court included as next-of-kin and beneficiaries of the victims all the people mentioned as such by the Inter-American Commission, according to information provided during the international proceeding, as well as the persons determined based on the evidence furnished to the Tribunal. In this sense, it is not appropriate to reopen the stage on merits and reparations. In addition, the Tribunal has already decided on a request similar to the one filed in this opportunity, in the sense that the Judgment established, in the separate paragraph on beneficiaries, all the people that would be considered as such for the compensatory payments.

56. That in the Judgment, the Court ordered, only regarding the next-of-kin of three of the victims concerning whom the information needed to identify them is not available, specific measures to identify them and maintained open the possibility of considering them when monitoring compliance with the judgment¹³. However, this Court notes that the next-of-kin mentioned by the representatives, on this occasion, are not related to those three victims, namely, Juan Bautista, Alberto Gómez or Húber Pérez. As a result, the people referred to by the representatives shall be able to consult with the competent Colombian authorities to assert what they consider to be their rights in relation to the victims of the instant case.

57. That in relation to the alleged incorrect distribution of the payments in case of death of one of the beneficiaries, this Tribunal notes that the representatives have timely confirmed that the State had made 90% of the payments, which was declared by this Court in the Order of July 10, 2007 (*supra* Having Seen clause 3). Furthermore, this Tribunal recalls that the distribution of the compensatory amounts among the next-of-kin of the victims should be done in accordance with the criteria and terms established in the Judgment, pursuant to the provisions of paragraphs 230 and 231 thereof.

58. That as to the payment made to Mrs. Myriam Mantilla Sánchez, this Court considers that the State should review such payment and grant her what may correspond in relation to the decision made in the Judgment or otherwise, provide an explanation of the case.

59. That, subject to prior compliance with this aspect, the Court deems pertinent to require detailed information regarding these last two aspects (*supra* Considering clauses 57 and 58) mentioned by the representatives.

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60. That, as to the obligation to deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment, while they are minors (*operative paragraph twenty-two and paragraph 290 of the Judgment*), the State mentioned that "there were no children in the payment of this judgment and therefore, the payment was made to all the beneficiaries in the same manner." Nor the representatives or the Commission presented observations in this respect.

61. That the Court verifies that the disagreements expressed by the representatives regarding the payments made did not refer to this situation. Considering that the parties have not contested this aspect and in view of the available information, the Tribunal considers this aspect to be without effect and therefore, it shall close the procedure to monitor compliance in relation to this aspect.

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¹³ Cf. Case of the 19 Tradesmen V. Colombia, *supra* note 9, para. 233 and 234.

62. That as to the obligation to take the necessary measures to find the next of kin of Juan Bautista and Huber Pérez (whose second last name was possibly Castaño) and to deliver the corresponding reparations to them (*paragraph 233 of the Judgment*), the State made reference to three publications printed in "El Tiempo" newspaper, the newspaper with more national coverage, on June 16, 18 and 20, 2005. Furthermore, at the hearing the State furnished documentation evidencing such publications, as well as two certifications proving the publications broadcasted in a television station on June 15, 17 and 20, 2005 and in a radio station on June 16, 17 and 20, 2005.

63. That, in spite of the obligation of the parties to provide the necessary information so that the Tribunal is able to conduct an effective oversight and assessment of the progress made in the compliance with the Judgment, the representatives and the Commission did not present observations in that regard.

64. That the Court notes that the State has complied with the publications and the deposit of the compensatory amounts in favor of Messrs. Bautista and Pérez, pursuant to the terms of operative paragraph twenty-one of the Judgment; therefore the Court deems that the State has adopted sufficient measures to comply with this obligation and so declares it.

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65. That as to the reimbursement of the costs and expenses (*operative paragraph sixteen and paragraph 285 of the Judgment*), the State requested the Court to declare this aspect to be fulfilled, since "it has previously informed on the payment [on April 7, 2006] of the costs ordered in the Judgment." Furthermore, at the hearing the State furnished an authorization to make a disbursement in favor of the Colombian Jurists Commission and a letter from CEJIL where it authorized the former organization to receive the reparations owed to the latter.

66. That this Court required the representatives in the Order of July 10, 2007 "to refer to the compliance with this aspect, in order to consider it fully complied with by the State" (*supra* Having Seen clause 3). Likewise, in the Order to convene a hearing, the President deemed "essential for the representatives to confirm whether the reimbursement of the costs and expenses was made and, if applicable, for the parties to furnish the respective receipts in order to determine the full compliance with this measure of reparation" (*supra* Having Seen clause 7). Nevertheless, nor the representatives or the Commission have presented observations in that regard, despite the multiple requests of this Tribunal. Moreover, it spring from the court file that the State furnished receipts of the payment of the costs to the Colombian Jurists Commission and CEJIL. As a result, this Tribunal considers that the State has fully complied with this aspect.

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67. That the Court considers the general status of compliance with the pending aspects of the Judgment delivered in the instant case, upon the receipt of the pertinent information, as well as the effective implementation of the provisional measures.

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B) Provisional Measures

68. That the provisional measures ordered in the Court's Order on May 12, 2007 (*supra* Having Seen clause 20) are in force.

69. That according to article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures, namely: i) "extreme gravity"; ii) "urgency" and iii) when necessary to avoid "irreparable damage to people." These three conditions coexist and must be present in every situation where the intervention of the Tribunal is required. By the same token, the conditions above mentioned must continue to exist in order for the Court to maintain the protection so ordered. If one of them is no longer in force, it falls upon the Tribunal to assess the relevance of continuing with the so ordered protection.

70. That by ordering protective measures, the Tribunal, or the person presiding it, does not require, in principle, evidence of the facts that *prima facie* would seem to comply with the requirements of article 63(2) of the Convention. On the contrary, the need to maintain the protective measures calls for an evaluation of the existence of situations of extreme gravity and urgency in order to avoid irreparable damage that gave rise to those measures,¹⁴ based on the evidence.

71. That, in order to determine whether the situation of extreme gravity and urgency in order to avoid irreparable damage continues to exist, the Court may assess the set of political, historical or cultural factors or circumstances, or of other nature, that affect the beneficiary or his rights or place him in a situation of vulnerability in a certain moment. This situation may increase or decrease in time depending on a great number of variables, but as has been mentioned, only extreme and urgent situations shall call for protection by means of provisional measures.

72. That during the oversight of the implementation of the provisional measures, the Secretariat, following the instructions of the President, has addressed, on several occasions, to the representatives and the Commission to request them to forward their observations to the State's reports.¹⁵ Nor the representatives or the

¹⁴ Cf. *Matter of the Indigenous Community of Kankuamo Provisional Measures Regarding Colombia* Order of the Court of April 3, 2009, Considering clause 7.

¹⁵ Cf. Notes of the Secretariat of November 12, 2007, by means of which it was verified that on October 16 and 30, 2007 the time limits granted to the beneficiaries of these measures or their representatives and the Inter-American Commission, respectively, to present observations to the state's reports of September 4, 12 and 24, 2007, expired; therefore, they were informed that, on the instructions of the Court's President, they could present the observations to the state reports of September 4, 12 and 24 and November 7 and 9, 2007 within an additional term of three and five weeks, respectively. Furthermore, see the notes of the Secretariat of January 11, February 13 and 21, 2008 by means of which it was verified that on December 3 and 17, 2007 the time limits granted to the beneficiaries or their

Commission forwarded the information required within the terms established to that end; therefore they have not complied with their duty to timely inform the Tribunal.

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73. That the State has informed, on some occasions, on investigations conducted, measures of protection and temporary relocation adopted regarding the beneficiaries, as well as the actions conducted by the National Police to protect the beneficiaries from the armed groups.

74. That the representatives indicated in their briefs that they have lost contact with Mrs. Sandra Montero and her family and that the Flórez family continued being threatened and harassed by armed groups.

75. That, during the hearing, the State recalled that, by mutual agreement of the petitioners, it has implemented, since they were ordered, six measures to support transport, twelve measures to relocate, six national tickets, three means of communication and two tracking systems. On August 28, 2008 a follow-up meeting was held, in which the State made several commitments, such as to conduct a meeting with an officer of the Presidential Program on Human Rights and some of the beneficiaries of the provisional measures, in Ocaña- which was held on October 24 that year-, as well as to do three studies on risk of the three families that the petitioners informed that live in Ocaña, which were done in December. In the case of Mr. Salomón Flórez, the State mentioned that he has returned to the country in December 2006 and that no recent incident occurred, only one in the year 2007 and another in May 2008, which did not call for a change in the assessment of risk. The State brought to the Court's attention the situation of the families who have not declared the need of special measures of protection.

76. That as to the conditions of safety in the area of Ocaña, the State pointed out that it is an area of cocaine production, which is near the border and it is used to transport outside the country. Moreover, it referred to delinquent activities related to said production.

representatives and the Commission, respectively, to present said observations to the state reports, expired; therefore, following the instructions of the Court's President, they were requested to present such observations as soon as practicable. Also see the notes of the Secretariat of March 4 and April 7, 2008, in relation to the request of the Inter-American Commission to have an additional term to present their observations to the request to rescind the measures filed by the State and to its reports. In those notes, it was informed that, considering that at the moment of said request for an extension, the term above mentioned had not yet expired, in case the representatives failed to present their observations upon the expiration of the term, as has previously occurred with the observations that they should have presented to the state reports, an additional time limit would be established for the Inter-American Commission to present the corresponding observations. Considering that by April 7, 2008 the Court did not receive the observations of the representatives, following the instructions of the Court's President, they were requested to present them, as soon as possible; the additional time limit requested by the Commission was granted until April 21, 2008 and it was noted that the time limit granted did not depend on the forwarding of the observations of the representatives. Finally, see, the Secretariat's notes of April 24, 2008 by means of which it was informed that up to that date, the Court had not received the observations of the representatives to the request to rescind the measures filed by the State and to its reports; therefore, following the instructions of the President, they were requested to present them as soon as practicable.

77. That, in addition, the representatives expressed that they are not familiar with the studies on the risk or the results of the interviews conducted with the next-of-kin. They also mentioned that there still exists a situation of risk, despite the permanent presence of paramilitary groups in the area. It falls upon the State to prove that such risk has disappeared, which has not been done yet.

78. That the Commission considered it was necessary to learn about the security plan and the measures adopted regarding such beneficiaries.

79. That as to the situation of the beneficiaries of the provisional measures, the Tribunal notes that the little information furnished does not allow for a clear assessment on the need to maintain the provisional measures or the way in which such measures have been implemented. In this case, the little information furnished has hindered the determination of the real situation of the beneficiaries of the measures, which has given rise to a situation of uncertainty in certain periods, which, in turn, is inconsistent with the preventive and protective nature of the provisional measures and, therefore, hinders the monitoring of the implementation of them.

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80. That the representatives indicated in their briefs that Mrs. Ana Diva Quintero-Quintero de Pundor and her son are living outside Colombia, "for this reason, in this moment, they have no specific situation of security." In this regard, the State mentioned that it would be useful to review whether the situation of such family abroad calls for the maintenance of the measures. In addition, the Commission showed concern about the fact that two family groups have left the country or the area.

81. That, as to Mrs. Ana Diva Quintero- Quintero de Pundor and her son, who left the country, there is no information to determine the manner in which they have benefited from the enforcement of these measures. No information has been received to indicate that they will return soon to Colombia or that they wish to do so. Considering that the beneficiaries have left the State that was supposed to protect them, the provisional measures in their favor have become ineffective¹⁶.

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82. That the representatives pointed out, in their briefs, that the family of Jimmy and Filmar Rodríguez Quintero returned to the city of Ocaña and assumed all the risks.

83. That the State mentioned that during the enforcement of these provisional measures, two people were subjected to a proceeding for extortion, who were

¹⁶ Cf. Matter of Lysias Fleury. Provisional Measures regarding Haiti. Order of the Court of November 25, 2008, Considering clause 18.

surprised at the residence of Messr. Jimmy Rodríguez trying to deliver some money to them; one of them was subjected to a "plea bargain."

84. That in February 2008, the State requested the Tribunal to consider the possibility of rescinding the provisional measures regarding Messrs. Jimmy and Wilmar Rodríguez Quintero, after considering that they made a bad use of the weapons delivered to them (*supra* Having Seen clauses 24 and 25). Nevertheless, at the hearing, the State reconsidered such request, upon studying the observations of the petitioners and the Commission, based on the fact that the bad use of the means delivered to the person for his protection called for a change in the provisional measure but not a rescission of it; therefore, the State requested the Court to consider the results of the report on the risk and the arguments of the beneficiaries of the measure.

85. That, according to information provided after the hearing, the representatives pointed out that Messr. Yimmy Rodríguez and his brother Jhon Carlos Rodríguez have been frequently subjected to acts of intimidation and harassment by members of the National Police of Ocaña. Moreover, they informed that on May 19, 2009 a grenade was thrown at the residence and machine shop of Yimmy Rodríguez and that on May 9, 2009, some men, who identified themselves as members of DAS [Security Administrative Department] entered said establishment pointing the weapons at them. As a result of such facts, on May 22, 2009 a meeting was held with the Ministry of Interior and Justice, in which it was informed the actions taken at the local level by the National Police. In addition, it was launched an inquiry into the facts related to the grenade before the District Prosecutor's Office of Cúcuta, and certain protective measures were agreed on, namely: the State would conduct a study on the risk of the Rodríguez Quinteros brothers; a permanent control station would be set up at the residence of Jimmy Rodriguez until the results of the study on the risk were made public and the investigations against the members of the National Police would be assigned to the Solicitor General's Office, on application of the preferential power [*poder preferente*]. As to the investigations into the facts previously informed, such investigations are in the power of the internal control office of the Police in the city of Cúcuta and no important progress has been made in that regard; they also mentioned that the distance between Ocaña and said city has hindered the compliance with the subpoenas served on Yimmy Rodríguez; therefore, it was requested that such matter be also considered by the Solicitor General's Office. The representatives emphasized that the facts "demonstrate the intent of the National Police of Ocaña to track down, harass and intimidate, in spite of the special duty to protect those persons." Finally, "the situation of risk of Rodríguez Quinteros brothers is the result of the direct action of the agents of the State itself, who have been entrusted with their protection."

86. That the State confirmed the information furnished as to the agreements entered into in the meeting of May 22, 2009 and pointed out that once the new study on the risk and level of threat is completed, the Human Rights Division of the Ministry of Foreign Affairs shall convene a new meeting to follow-up and agree on the appropriate measures, considering the study to be done, the last facts informed and the particular considerations of the beneficiaries and their representatives.

87. That on June 26, 2009 the representatives informed that Jhon Carlos Rodríguez was deprived of his life that day in the city of Ocaña, as a result of multiple gunshots fired by two people who were riding a motorcycle and who, later

on, escaped. Furthermore, they brought to the attention of the Court that on previous days, Jhon Carlos Rodríguez Quintero had been recorded and photographed by a police patrol while he was at a public establishment of games terminals. They indicated that, according to what was informed by members of the Police, it was a control activity carried out at a place and not in relation to the person. Besides, the representatives declared that they were unaware of whether the State had implemented the measures agreed upon in the meeting of May 22, 2009 in time fashion. Finally, they repeated that Yimmy Rodríguez Quintero is exposed to constant acts of harassment, intimidation and arbitrary detentions by members of the police. Regarding these facts, the representatives considered that the State has not complied with the provisional measures ordered and neither has it adopted the urgent measures required to remedy "the irregularities of the police that caused and aggravated the situation of risk of Jhon Carlos Rodríguez." Likewise, they stated that, in spite of the contact established with the authorities, no clear actions have been taken to protect the surviving brothers and to guarantee that the police will stop harassing and intimidating them, neither that the perpetrators of the attack committed in the month of May will be detained and will not represent a danger for Yimmy and Wilmar Rodríguez Quintero.

88. That the State deeply regretted what happened to Messr. Rodríguez Quintero and presented, "by means of the Tribunal", its condolences to the family. Moreover, the State categorically denied the murder of Jhon Carlos Rodríguez Quintero and repeated its commitment to adopt the necessary protective measures for the rest of the beneficiaries. The State submitted detailed information on the time, place and manner in which the facts occurred: It pointed out that the patrol officer that was inspecting the residence of Yimmy flocked to the scene, where gunshots were fired with the two persons in the motorcycle and so, he warned it to the radio central, from where it was ordered to close the road, after which the suspects were tracked down. In a certain moment, there was a new exchange of gunshots in another place, after which the suspects abandoned the motorcycle and escaped. The State mentioned that Mr. Yimmy Rodríguez fired its own weapon and began tracking down the aggressors. The State also indicated that it initiated an investigation that is going to be assigned to the Prosecutor.

89. That as to the protective measures implemented, the State repeated what it informed about the individual measures adopted between the years 2004 and 2007 in favor of Yimmy and Wilmar Rodríguez Quintero, who decided to return to Ocaña in November 2007 (*supra* Considering clause 82). It pointed out that in August 2008, a meeting was held in which, according to the State, the representatives did not request protective measures and, in October 2008, the State undertook to conduct the reevaluation of the Studies on the Level of Risk and Threat, which was finally done in December 2008. In addition, the Police carry out constant inspections of the residence of Rodríguez Quintero family and the members of such family are included in the "Godfather Plan" [*Plan Padrino*], that is, a specific police unit and police officer are assigned to them in order to conduct permanent inspections of their place of residence. Furthermore, self-protection manuals were delivered to the beneficiaries. Moreover, the State repeated what it informed as to other general measures adopted to improve the situation of security in the municipality. As to the measures agreed upon in the meeting of May 22, the State informed that it would appoint a permanent liaison officer between Messr. Yimmy Rodríguez Quintero and the Police Command of Ocaña; it would maintain the permanent police post at the residence of the beneficiaries in Ocaña, stipulating the rank, names and surnames, work order and report of the officer who gives the service; the communication equipments that

the beneficiaries currently have would be changed and for this, it would be necessary for them to deliver the previous ones; it would investigate into the grenade that was thrown at the residence of Messr. Yimmy Rodríguez and protective service work would be provided at the residence during the day and night. The State claimed that such permanent police post was in operation at the moment the facts occurred to the detriment of Messr. Jhon Carlos Rodríguez Quintero. Furthermore, it communicated that the regional Ombudsman of Ocaña gave support to the Rodríguez Quintero family for their relocation to the city of Bucaramanga on July 1, 2009. In addition, the Police Mayor of Ocaña was contacted in order to be on permanent alert for said transfer, since the beneficiaries refused the protection of law enforcement officers. Rodríguez Quintero brothers returned to Ocaña that same day and stayed in contact with the Regional Ombudsman.

90. That according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*). These orders imply a special duty to protect the beneficiaries of the measures, insofar as they are in force, and any breach thereto may trigger international responsibility of the State.¹⁷

91. That from the information provided, it spring that the protective measures ordered in favor of Rodríguez Quintero family, since the moment they were ordered, have not been effective neither sufficient, as to its planning as well as its implementation in relation to the need of protection. In addition, considering the evident risk implied in certain alleged acts of threat and harassment committed against the next-of-kin of the person deprived of life, in particular, the alleged grenade that was thrown at the residence and machine shop of Messr. Yimmy Rodríguez a few weeks ago and the alerts that, in that respect, the representatives declared, the Tribunal deems that, in spite of the coordination meeting held on May 22 this year, some of the measures agreed upon have not been effective and timely implemented. Nevertheless, as to the specific fact of the death of Messr. Rodríguez, the information furnished does not allow concluding whether the state authorities made their best efforts to protect the beneficiaries or whether, under the circumstances of the moment, they acted diligently and timely.

92. That it spring from the information provided by the representatives and the State that, in spite of the fact the State adopted certain measures tending to protect the members of Rodríguez Quintero family, there persists a situation of extreme gravity and urgency, inasmuch as there are facts that may cause irreparable damage to the rights to life and humane treatment of Messrs. Yimmy and Wilmar Rodríguez Quintero and their next-of-kin. They continue being subjected to threats and harassment, and one of the members of such family, beneficiary of the protective

¹⁷ Cf. Case of Perozo *et al.* V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 70; Case of Hilaire, Constantine and Benjamin *et al.* V. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 196 to 200. See also Case of the Communities of Jiguamiandó and Curbaradó. Provisional Measures. Order of the Court of February 7, 2006, Considering clause 7; Case of James *et al.* Provisional Measures. Order of May 25, 1999. Series E No. 2, Operative Paragraph 2(b); Orders of June 14, 1998 and August 29, 1998 and May 25, 1999 and August 16, 2000. Series E No. 3, having seen clause 1 and 4; and Order of November 24, 2000. Series E No. 3, having seen 3. Matter of the Mendoza Prisons. Provisional Measures. Order of the Court of March 30, 2006, Considering clause ten.

measures, in his capacity as next-of-kin of the people protected by the Judgment of the Court and beneficiary of the provisional measures himself, has died; therefore this Tribunal deems it is appropriate to maintain the provisional measures in favor of such persons. The Court expressed its dismay at the deprivation of life of Messr. Jhon Carlos Rodríguez Quintero.

93. That the Court considers that it is essential for the State to implement and adopt, in an immediate and effective manner, the measures necessary to protect the rights to life, humane treatment and personal security of the members of Rodríguez Quintero family, in a way to guarantee that facts as the ones described may never be repeated. The adoption, by the State, of certain protective measures is not enough; it is necessary that such measures and their implementation be effective in a way to stop the threats and acts of harassment, and for the beneficiaries to develop their usual life, without fear. The State must adopt the measures necessary for that family to continue living at their usual residence and also, the State must allow the full participation of the beneficiaries or their representatives in the planning and implementation of such measures,

94. That Article 1(1) of the Convention embodies the general duty of States Parties to respect the rights and liberties recognized in said treaty and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms. In consequence, regardless of the existence of specific provisional measures, the State is specially obliged to guarantee the rights of the people in situation of risk and must expedite the investigation necessary to shed light on the facts, followed by the consequences established by the appropriate legislation.¹⁸

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95. That, based on the foregoing findings, the Court considers it is essential for the State and the representatives to submit, within the term established in the operative paragraphs of this Order, specific and detailed information on the situation of the beneficiaries of the provisional measures, Messrs. Wilmar Rodríguez Quintero, Yimmy Efraín Rodríguez- Quintero, Nubia Saravia, Karen Dayana Rodríguez-Saravia, Valeria Rodríguez- Saravia, William Rodríguez- Quintero, Sandra Belinda Montero-Fuentes, Juan Manuel Ayala Montero and María Paola Casanova- Montero, as well as of Salomón Flórez Contreras and Luis José Pundor-Quintero and their respective next-of-kin. That information shall contain an evaluation on the situations of risk, as well as the definition of sufficient, appropriate and specific measures and means of protection. To such end, the beneficiaries and their representatives shall have to work in collaboration with the State and facilitate the assessment.

96. That, furthermore, this Tribunal deems it is appropriate for the beneficiaries to submit to the Court a list of the next-of-kin of the beneficiaries of the provisional

¹⁸ Cf. *Case of Velásquez Rodríguez*. Provisional Measures Regarding Honduras. Order of the Court of January 15, 1988; considering clause 3; *Matters of "La Nación" and "Así es la Noticia" newspapers*. Provisional Measures regarding Venezuela. Order of the Court of February 25, 2008, Considering clause 39; *Case of López Álvarez et al. Provisional Measures regarding Honduras*. Order of the Court of January 26, 2009, Considering clauses 28 and 29.

measures, Salomón Flórez- Contreras and Luis José Pundor Quintero, who would require protective measures.

Therefore:

The Inter-American Court of Human Rights,

by virtue of the authority granted by Article 63(2), 67 and 68(1) of the American Convention on Human Rights, Article 25(1) and 25(2) of the Statutes of the Court and Articles 15(1), 26(7), 30(2) and 63 of the Rules of Procedure of the Court,

Declares:

Monitoring Compliance with Judgment

1. That, in addition to what has been established in previous orders (*supra* Having Seen clauses 2 and 3), the State has complied with the obligations prescribed in the following operative paragraphs of the Judgment on the merits, reparations and costs delivered by this Tribunal on July 5, 2004:

a) Deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombian banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors (*twenty-second operative paragraph and paragraph 290 of the judgment*);

b) Adopt the necessary measures to locate the next of kin of Messrs. Juan Bautista and Huber Pérez (whose second surname is possibly Castaño) and deliver the corresponding reparations (*paragraph 233 of the judgment*); and

c) Reimburse costs and expenses (*sixteenth operative paragraph and paragraph 285 of the judgment*).

2. That it will keep open the procedure to monitor compliance with the following aspects pending compliance, to wit:

- a) Within a reasonable time, the State shall investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly (*fifth operative paragraph and paragraphs 256 to 263 of the judgment*);
- b) Within a reasonable time, the State shall conduct a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin (*sixth operative paragraph and paragraphs 270 and 271 of the judgment*);
- c) The State shall erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, [...] place a plaque with the names of the 19 tradesmen (*seventh operative paragraph and paragraph 273 of the judgment*);
- d) The State shall provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*ninth operative paragraph and paragraphs 277 and 278 of the judgment*);
- e) The State shall create all the necessary conditions for the members of the family of the victim Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and cover the moving costs they may incur (*tenth operative paragraph and paragraph 279 of the judgment*);
- f) The State shall pay the amounts established in the judgment for loss of earnings for each of the 19 victims, the expenses incurred by the next of kin of eleven victims, and non-pecuniary damages (*twelfth, thirteenth, fourteenth and fifteenth operative paragraphs and paragraphs 230, 231, 233, 234, 235, 240, 241, 242, 243, 248, 249, 250, 251 and 252 of the judgment*);

And Decides:

A) *Monitoring Compliance with Judgment*

1. To require the State of Colombia to adopt all the measures necessary to, effectively and promptly, comply with the aspects pending compliance of the Judgment on the merits, reparations and costs delivered in the case of the 19 Tradesmen, as mentioned in declarative paragraph two.

2. To order the State of Colombia to submit to the Inter-American Court of Human Rights, not later than October 15, 2009, a report describing all the measures adopted to comply with the reparations so ordered by this Court, which are still pending compliance, in accordance with the terms of considering clauses 20, 24, 28, 34, 40 and 59.

3. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as of the date of receipt of the report.

B) Provisional Measures

4. To continue monitoring compliance with the obligation to guarantee the life, safety and security of Carmen Rosa Barrera Sánchez, Lina Noralba Navarro Flórez, Luz Marina Pérez Quintero, Miryam Mantilla Sánchez, Ana Murillo de Chaparro, Sunez Dinora Jauregui Jaimes, Ofelia Sauza de Uribe, Rosalbina Suárez de Sauza, Marina Lobo Pacheco, Manuel Ayala Mantilla, Jorge Corzo Vivescas, Alejandro Flórez Pérez, Luz Marina Pinzón Reyes and their next-of-kin, according to the terms of operative paragraph eleven of the Judgment, within the framework of the implementation of the provisional measures, under the terms of considering clauses 41 to 50 of this Order.

5. To reiterate to the State of Colombia that it should maintain the measures it had adopted and that it must adopt the measures necessary to protect the rights to life and humane treatment of Messrs. Wilmar Rodríguez Quintero, Yimmy Efraín Rodríguez Quintero, Nubia Saravia, Karen Dayana Rodríguez Saravia, Valeria Rodríguez Saravia, William Rodríguez Quintero, Sandra Belinda Montero Fuentes, Juan Manuel Ayala Montero and María Paola Casanova Montero, as well as of Salomón Flórez Contreras and Luis José Pundor Quintero and their respective next-of-kin, for which the State shall allow the participation of the beneficiaries of these measures or their representatives in the planning and implementation of such measures and, in general, keep them informed on the progress of their execution, under the terms of considering clauses 73 to 79 and 82 to 94 of this Order.

6. To declare that the provisional measures ordered by the Inter-American Court in favor of Mrs. Ana Diva Quintero- Quintero de Pundor and her next-of-kin, have become ineffective by virtue of the fact that these people have left Colombia, under the terms of considering clauses 80 and 81 of this Order.

7. To require the State and the representatives to submit, no later than August 7, 2009, the information mentioned in considering clauses 95 and 96 of this Order.

8. To require the Secretariat of the Court to notify this Order to the State of Colombia, the Inter-American Commission on Human Rights and the representatives of the victims' next of kin and the beneficiaries.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga

President

Pablo Saavedra Alessandri
Secretary