

**Order of the
Inter-American Court of Human Rights ***
Case of the 19 Tradesmen v. Colombia
of July 10, 2007
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The judgment on merits, reparations, and costs (hereinafter, "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter, "the Court" or "the Inter-American Court") on July 5, 2004.
2. The Order of the Court of February 2, 2006, regarding compliance with judgment, in which it:

DECLARE[D]:

1. That pursuant to the ninth considering clause of this Order, the State has complied with:
 - (a) Locating the next of kin of the victim Alberto Gómez; consequently, it merely remains to deliver the corresponding reparations to them (*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 monitoring compliance with the pending matters in the present case, specifically:
 - (a) "Within a reasonable time, 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 [disseminate] the result of this measure [...] publicly" (*fifth operative paragraph and paragraphs 256 through 263 of the judgment*);
 - (b) "Conduct, within a reasonable time, 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) "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) "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*);

* Judge Diego García-Sayán excused himself from hearing this case, pursuant to Article 19 of the Statute of the Inter-American Court and Article 19 of the Rules of Procedure of the Court. Consequently, he did not participate in the delivery of the judgment or this Order.

- (e) 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, [...] cover the resulting moving costs (*tenth operative paragraph and paragraph 279 of the judgment*);
- (f) Pay special attention to guaranteeing the lives, safety and security of the persons 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) Pay the amounts established in the judgment for the loss of earnings of each of the 19 victims, the expenses in which the next of kin of eleven victims incurred, and compensation for 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) Deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombia 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) Adopt the actions necessary to find the next of kin of Juan Bautista and Huber Pérez (whose second last name was possibly Castaño) and deliver the corresponding reparations to them (*paragraph 233 of the judgment*); and
- (j) Reimburse costs and expenses (*sixteenth operative paragraph and paragraph 285 of the judgment*).

AND DECIDE[D]:

[...]

2. To request the State to present to the Inter-American Court of Human Rights, by May 24, 2006, at the latest, a report in which it indicates all the measures adopted to comply with the reparations ordered by this Court whose compliance is still pending, pursuant to the terms of the tenth considering paragraph and the second declarative paragraph of the [...] Order.

3. To request that the representatives of the next of kin of the victims and the Inter-American Court of Human Rights present observations on the State's report mentioned in the previous operative paragraph, within four and six weeks, respectively, of receiving the report.

4. To continue monitoring compliance with the judgment on merits, reparations, and costs of July 5, 2004.

[...]

3. The brief of May 24, 2006, and its appendixes in which the State of Colombia (hereinafter, "the State" or "Colombia") presented a report on compliance with the judgment, in response to the request made in the second operative paragraph of the above-mentioned Order (*supra* Having seen paragraph 2). In brief, the State indicated the following:

(a) Regarding the obligation to investigate, it reported that "in relation to the criminal proceedings against members of the armed forces under the military criminal justice system, the Office of the Public Prosecutor (*Procuraduría General*) appealed for a review before the Supreme Court of Justice. It asked the Supreme Court to review "the decision taken by the military criminal justice system, and consequently annul the filing of the proceedings decided by the judge of first instance on June 18, 1997, which was endorsed in second instance by the Superior Military Tribunal; and to order the re-opening of the investigation [of several soldiers], with strict respect for the principle of the 'natural judge.'" The decision on the admissibility of this appeal remains pending;

(b) Regarding the search for the remains of the victims, it referred to a procedure undertaken in November 2005 when it ordered the exploration of the area where, according to relevant probative elements, the bodies of the 19 tradesmen had been abandoned. It also indicated the names of those who had taken part in the procedure and the security support provided;

(c) Regarding the obligation to erect a monument to the memory of the victims, it indicated that, at a meeting held on May 19, 2006 "the procedure for the erection of the monument had been agreed upon," and named the city chosen by the victims' next of kin for the location of the monument;

(d) Regarding the medical and psychological treatment, it indicated that, during the meeting held on May 19, 2006, "the Colombian Commission of Jurists submitted basic information on some of the victims' next of kin and said that the public system did not have the capacity to provide them with the necessary care." It also indicated that a meeting had been arranged with Carlos Beristain to "determine in greater detail the type of psychological treatment these persons need, in order to establish whether this treatment could be provided by the public system or [whether] it was necessary to seek the collaboration of private entities";

(e) Regarding the need to pay special attention to guaranteeing the live, safety and security of the persons who testified before the Court and their next of kin, it indicated that "it has no information that the life of any of the individuals who testified before the Court [...] is in danger or that there is a need for any special measure of protection [and that] should it be informed of such a situation, it would take appropriate action";

(f) Regarding the payment of the compensation established in the judgment, it referred to the State entities that have been instructed to make the payments and indicated that, "owing to the complex budgetary procedure that the payment of this compensation represents for the State, 10% of the amount is currently pending";

(g) It made no mention in the report to the adoption of the actions necessary to locate the next of kin of Juan Bautista and Huber Pérez (whose second surname is possibly Castaño) and to deliver the reparations which correspond to them; and

(h) Regarding the reimbursement of costs and expenses, it indicated that it had made the payment to the Colombian Commission of Jurists and the Center for Justice and International Law (CEJIL) on April 7, 2006.

4. The brief of July 18, 2007, and its appendixes, with which the representatives forwarded a copy of a communication sent to them by the Ministry of Defense concerning payment of the compensation to the permanent companion of the victim Carlos Arturo Riatiga Carvajal, together with a copy of their reply. In the latter, they indicated, *inter alia*, that "since February [2006, they had sent] two extrajudicial statements to the Ministry confirming that Rosmira Arias Ortega had been his permanent companion."

5. The notes from the Secretariat of the Court of August 4 and 16, 2006, in which, on the President's instructions, it requested the representatives and the Inter-American Commission on Human Rights (hereinafter "the Commission") to submit their observations on the State's report of May 24, 2006, as soon as possible, given that the allocated time had already expired (*supra* Having seen paragraphs 2 and 3).

6. The brief of September 26, 2006, in which the representatives forwarded their observations on the State's report of May 24, 2006. In summary, they indicated the following:

(a) Regarding the obligation to investigate: that the "appeal for review submitted by the Office of the Public Prosecutor" had been admitted by the Supreme Court of Justice on May 19, 2006. However, the soldiers had not been notified of this decision. They stated that, even though "the processing [of the appeal would take] a long time and depended on several steps involving long time limits," it could lead to the effective and genuine investigation of the State agents who participated in the events, [and is] one of the measures that gives most hope to the next of kin of the victims." They also indicated that "the information on this issue provided by the State is inadequate," since they "are unaware of any progress made" in the other investigations that might lead to the elucidation of the events;

(b) Regarding the search for the remains of the victims, they "were present at the first search procedure undertaken in this case in November 2005." "The judicial commission and those who participated in the procedure inspected the property and the places where a search or retrospective survey [would possibly be carried out] in an initial procedure." Even though it had been agreed to obtain the title of the property, the Prosecutor's Office (*Fiscalía*) had failed to do this. "To date the exploration procedure has not been carried out, and the Prosecutor's Office has argued that it lacks the necessary resources." The next of kin sent a communication to the Office of the Prosecutor General (*Fiscalía General*) "in order to insist directly that the search procedure continue." To the surprise of the representatives, this "was remitted to [the Prosecutor 17 of Bucaramanga, in other words] a different official to the one in charge of the investigation"; moreover, [the representatives] do not understand] "why and for what purpose a new investigation was opened";

(c) Regarding the monument to the memory of the victims, they stated that, on October 5, 2006, a meeting would be held to hear the proposal of an artist who had received the "34 proposals of the next of kin" regarding the monument at a previous meeting, and that the Bucaramanga Mayor's Office had mentioned "a site where the monument could be erected";

(d) Regarding the medical and psychological treatment:

- i. On June 27, 2006, a meeting was held with representatives of the Ministry of Social Security, the Vice President of the Republic, the representatives of the next of kin, and the expert witness Carlos Martín Beristain, who the type of treatment that was required in order to achieve its objective as a reparation;
- ii. "The representatives of the Ministry of Social Security recognized that the basic health programs were very limited as regards psychosocial treatment, that the Ministry's personnel needed training, and that it was necessary to form a coordinating team, but that at the moment the Ministry did not have one, and lacked the necessary resources." The Colombian Commission of Jurists made several proposals regarding ways in which a diagnosis of the beneficiaries of the measure could be made in order to determine how to implement it;
- iii. At a meeting on September 18, 2006, the representatives of the Ministry of Social Security informed the representatives of the victims that psychosocial treatment would commence in the municipality of La Dorada, where a large family group was located, and that "it had not been able to hold the meeting with all the next of kin owing to lack of resources." The representatives

expressed their "concern because the proposed method of treatment will not allow the [health] professionals to have the complete frame of reference of the case and of the next of kin in order to be able to design an adequate holistic treatment strategy." They indicated that the Ministry had undertaken to carry out several measures, which it had failed to implement;

(e) Regarding the creation of conditions for the return of the family of Mr. Florez Contreras, the representatives stated that the State must comply with what it agreed upon at the first follow-up meeting as regards the assessment of the risk and threat level of a certain town in Colombia. They also indicated that they agreed with the Inter-American Commission that only the effectiveness and fruitful conclusion of the investigations into the facts of the case would "have a substantial impact on the risk factors that [...] caused" the said next of kin to go into exile;

(f) Regarding the measures of protection for the individuals who testified before the Court, they indicated that the State's comments "are surprising" (*supra* Having seen paragraph 3(e)), given that the provisional measures have been expanded and continue in force; and

(g) Regarding the payment of compensation to the next of kin of the victims, they stated that "90% was effectively paid to and received by the beneficiaries" and that payment of the remaining 10% of the compensation remained pending.

7. The briefs of August 16 and October 6, 2006, in which the Inter-American Commission presented its observations on the State's report of May 24, 2006 (*supra* Having seen paragraphs 2 and 3). In summary, it indicated the following:

(a) Regarding the obligation to investigate: "it is significant that, over the period covered by the report (more than one year), [the filing of the appeal before the Supreme Court of Justice] is the only significant action taken by the mechanisms entrusted by the State with fulfilling its obligation to investigate." This situation "leads to the presumption that the level of compliance with this obligation is unsatisfactory" and that it will not be complied with within a reasonable time;

(b) Regarding the obligation to seek and deliver the remains of the victims, it indicated that the procedure undertaken in November of 2005 "did not produce conclusive results, and no follow-up measure had taken place after nearly a year." As a result, "the actions undertaken do not have the necessary force and were not of the required nature to comply with this obligation within a reasonable time";

(c) Regarding the creation of the conditions that would permit the return of the next of kin of the victim Flores Contreras, it "regret[ted] the absence in the State's report of studies detailing the risk to which this family would be subjected, as well as a proposed strategy to counter such risk" since, without these elements, the family will not be able to "make an informed decision about their return";

(d) Regarding the erection of a monument to the memory of the victims, it "appreciate[d] the measures taken and the particular emphasis on collaboration with the injured parties, and hoped that this measure would be completed soon";

(e) Regarding the placing of a commemorative plaque, it stated that it "underst[ood] that the parties consider this to be secondary to the erection of the monument";

(f) Regarding the medical and psychological treatment for the victims' next of kin, it "regret[ted] that there has been no significant progress in compliance with this important obligation," and stated that "the nature of the damage to be repaired by this means is incompatible with the degree of progress revealed in the State's report";

(g) Regarding the obligation to trace the next of kin of three of the victims, it observed that "the State d[id] not report" on the measures it had adopted to locate the next of kin of two of the victims, whose whereabouts remain unknown;

(h) Regarding the payment of the compensation ordered for the victims' next of kin, it noted that "the injured parties confirm that 90% of the compensation has been paid," and that the State is "making every effort to resolve some problems" concerning the payment of the remaining 10%.

(i) Regarding the setting up of bank investments in favor of the beneficiaries who are minors, it indicated that the State had made no mention of this in its report; and

(j) Regarding the payment of costs and expenses, it indicated that "the State had indicated that [this] had been made on April 7, 2006."

8. The briefs of August 11 and September 26, 2006, in which the representatives submitted a copy of communications they had sent to the Ministries of Foreign Affairs and of Social Security in relation to the reparation concerning medical and psychological treatment for the victims' next of kin.

9. The brief of July 3, 2007, and its appendix, in which the Colombian Commission of Jurists consulted the Court about "the payment of the compensation ordered in favor of Jorge Enrique Pineda Bedoya, brother of the victim, R[U]BEN EMILIO PINEDA BEDOYA," who is a beneficiary of compensation ordered by the Court in its judgment. The representatives indicated that Jorge Enrique Pineda Bedoya had died on November 15, 2005, after the judgment had been delivered, and that the compensation that corresponded to him "had already been delivered by the Colombian State to the Colombian Commission of Jurists for it to make the corresponding payment." The representatives stated that, according to paragraphs 230 and 231 of the judgment, they considered that "if any beneficiary of the compensation was deceased at the time of the judgment, it was understood that his share would be distributed among the other beneficiaries in the same category[; i]n this case, among the siblings." The representatives asked about "the appropriate interpretation of the judgment in relation to the distribution of the compensation ordered in favor of Jorge Enrique Pineda Bedoya," and "whether it increased the compensation to his siblings, as established in paragraph 231 of the judgment, or whether it should be distributed among his successors, which would correspond to those who prove that they are his children."

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the Court's compulsory jurisdiction on June 21, 1985.

3. That Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the States must ensure the implementation of the Court’s rulings at the domestic level.¹

4. That, in view of the final and unappealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State.

5. That the obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of States Parties are binding on all State powers and organs.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the Court’s compulsory jurisdiction must comply with the obligations established by the Court. In this regard, Colombia must adopt all necessary measures to comply effectively with the decisions of the Court in the judgment of July 5, 2004 (*supra* Having seen paragraph 1), as well as in this Order on the status of compliance with that judgment. This obligation includes the State’s duty to report on the measures adopted to comply with the rulings of the Court in that judgment. The prompt implementation of the State’s obligation to report to the Court on how each element ordered by the Court is being complied with is essential to assess the status of compliance in the case.⁴

*

¹ Cf. *Case of the Sawhoyamaya Indigenous Community*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, second considering paragraph; *Case of Yatama*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 29, 2006 third considering paragraph; and *Case of Cesti Hurtado*. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, third considering paragraph.

² Cf. *Case of the Sawhoyamaya Indigenous Community*. Compliance with Judgment, *supra* note 1, third considering paragraph; *Case of Yatama*. Compliance with Judgment *supra* note 1, fifth considering paragraph; and *Case of Cesti Hurtado*, Compliance with Judgment, *supra* note 1, seventh considering paragraph.

³ *Case of the Sawhoyamaya Indigenous Community*. Compliance with Judgment, *supra* note 1, fourth considering paragraph; *Case of Yatama*. Compliance with Judgment, *supra* note 1, sixth considering paragraph; and *Case of Cesti Hurtado*, Compliance with Judgment *supra* note 1, eighth considering paragraph.

⁴ OAS General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session held on June 5, 2007, entitled: “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights.”

* *

8. That, when monitoring the State's full compliance with judgment in the instant case, and after examining the information provided by the State, the representatives, and the Inter-American Commission regarding compliance with the reparations, the Court has ascertained the reparations ordered in the judgment that have been complied with partially by Colombia, and those that remain pending.

9. That Colombia has complied with the payment of "90%" of the amounts established in the judgment (*supra* Having seen paragraphs 3 and 6(h)) for the loss of earnings of each of the 19 victims, the expenses incurred by the families of eleven victims, and the 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*), so that Colombia still needs to pay the remaining 10% of the compensation.

10. That, in addition, the Court notes that in its report (*supra* Having seen paragraph 3(g)), the State indicated that it had already made the payment for reimbursement of costs and expenses to the Colombian Commission of Jurists and CEJIL. The representatives did not mention this compliance in their observations. The Court considers it pertinent to ask the representatives to refer to completion of this aspect, so that it may declare it fully complied with by the State.

11. That the Court considers it essential that the State submit updated information about the following matters that remain pending:

(a) That, within a reasonable time, it 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 [disseminate] the result of this measure [...] publicly (*fifth operative paragraph and paragraphs 256 to 263 of the judgment*). The Court appreciates the progress made by the decision taken on the appeal for review by the Office of the Public Prosecutor in relation to the investigation into the possible responsibility of law enforcement personnel (*supra* Having seen paragraph 3(a) and 6(a)). The Court considers that Colombia must report upon the procedures carried out and the results obtained following that decision and submit detailed and complete information on the other actions being taken to investigate the facts. Regarding the method of complying with this obligation, the Court reiterates its findings in 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*). The Court requests that the State remit information on the concrete results of the search procedure carried out in November 2005 (*supra* Having seen paragraph 3(b) and 6(b)) and the measures taken thereafter;

(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*). The Court appreciates the progress made in order to comply with this

measure of reparation, which has included various meetings and coordination between the State authorities and the representatives (*supra* Having seen paragraph 3(c) and 6(c)), and hopes that this reparation will soon be fully complied with;

(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*). The Court notes with concern that the victims' next of kin have still not begun to receive the medical and psychological treatment that could contribute to the reparation of the damage suffered. The Court appreciates that the State held a meeting with Mr. Carlos Beristain, the expert who has evaluated or treated many of the victims' next of kin, in order to reach a better understanding of the nature of the psychological care required by the victims' next of kin. The Court recalls that, based on this expert's professional opinion, it established in the judgment that "psychological treatment must be provided that takes into account the particular circumstances and needs of each of the next of kin, so that they can be provided with collective, family or individual treatment, as agreed with each of them and following individual assessment." The Court reiterates that, to comply with this measure adequately, the State must take into account the concerns of the next of kin and ensure that the professionals responsible for providing treatment have the specific skills required. Furthermore, the State cannot allege the lack of available resources as an obstacle to satisfactory compliance with the reparations ordered by the Court;

(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*). The Court notes that the State did not refer to compliance with this measure in its report (*supra* Having seen paragraph 3). The Court reiterates the observations in its Order of February 2, 2006, to the effect that the State must report on the completion of a risk and threat-level assessment in order to determine the measures it will implement so that those family members who so wish can return. In this regard, the representatives indicated that they had reached an agreement with the State regarding the city in Colombia that would be the subject of the study, and the representatives had informed the State in which country the said next of kin of the victim Flórez Contreras were living currently (*supra* Having seen paragraph 6(f)). The representatives have also stated that they consider the investigation into the facts of this case to be a determining factor for reducing the risk and the possible return of these next of kin (*supra* Having seen paragraph 6(f));

(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*). In this regard, the representatives referred to their observations concerning the provisional measures ordered by the Court in this case;

(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*). According to the ninth considering paragraph of this Order, the State still has to pay the remaining 10% of the compensation. In

addition, the Court has observed that some difficulties have arisen concerning payment to the permanent companion of the victim Carlos Arturo Riatiga Carvajal (*supra* Having seen paragraph 4). According to the communication that the representatives sent to the State, this victim's permanent companion is "Rosmira Arias Ortega." Given that the judgment delivered by this Court indicated that the name of the permanent companion of Carlos Arturo Riatiga Carvajal was "Luz Marina (o María) Arias Ortega,"⁵ this Court considers that the representatives and the State should indicate whether there is any dispute on this matter.

(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*). The Court notes that no specific information on this matter has been included in the two reports submitted by the State during the phase of monitoring compliance with judgment;⁶ nor did the representative refer to it in their observations on the State's report of May 24, 2006 (*supra* Having seen paragraph 6); and

(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. To this end, among other measures, Colombia must broadcast on a radio station and a television channel and publish in a newspaper, all with national coverage, an announcement indicating that it is trying to locate the next of kin of these victims to provide them with a reparation in relation to the facts of this case (*paragraph 233 of the judgment*). The Court notes that the State did not refer to this matter in its report of May 24, 2006 (*supra* Having seen paragraph 3); nor did the representatives (*supra* Having seen paragraph 6). Nevertheless, the Court observes that resolutions issued on February 22 and 24, 2006, by the Ministries of National Defense, the Interior, and Justice, copies of which were provided by the State as appendixes to its report, state that "after the announcements ordered in the judgment to identify the next of kin of the victims JUAN BAUTISTA and HUBER PEREZ had been made, no one came forward proving that they were the legitimate successors. Consequently, the compensation corresponding to the victim will be recognized, and the State will apply the provisions contained in the twenty-first operative paragraph of the judgment" of the Court. In this regard, the Court considers that the State must report upon its compliance with this element and, in particular, present detailed information on how the announcements ordered in paragraph 233 of the judgment were publicized; and

12. That the Court will consider the general status of compliance with the judgment on merits, reparations, and costs of July 5, 2004, when it has received the relevant information about the measures pending compliance.

*
* *

⁵ *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 108(b).

⁶ *Cf. Case of the 19 Tradesmen. Compliance with judgment*. Order of the Inter-American Court of Human Rights of February 2, 2006, considering paragraph 10(h).

13. That the representatives have consulted the Court about “the distribution of the compensation ordered in favor of Jorge Enrique Pineda Bedoya,” who died after the judgment had been delivered, and who was a brother of the victim, Rubén Emilio Pineda Bedoya (*supra* Having seen paragraph 9).

14. That, the Court considers it advisable to elucidate the matter raised by the representatives in order to contribute to the proper execution of the judgment. To respond to the inquiry, the Court will refer to: (1) the distribution of the compensation ordered by the Court for the pecuniary and non-pecuniary damage to the victim, Rubén Emilio Pineda Bedoya,⁷ and what should be done with the amount that would have corresponded to Jorge Enrique Pineda Bedoya, as a brother of the said victim; and (2) the distribution of the compensation that the Court ordered in favor of Jorge Enrique Pineda Bedoya, derived from the non-pecuniary damage that he himself suffered.⁸ In its reply to this inquiry, the Court will base itself on the provisions of paragraphs 230 and 231 of the judgment.

15. That, regarding the first point above, paragraph 230 of the judgment establishes how “the compensation for loss of earnings and non-pecuniary damage that corresponds to the 19 victims shall be distributed among their next of kin.” In the judgment, the Court established that the next of kin of the victim, Rubén Emilio Pineda Bedoya were his mother, father, and eleven siblings, one of whom was Jorge Enrique Pineda Bedoya;⁹ in other words, Rubén Emilio had neither a wife nor children. Consequently, in order to distribute the amount corresponding to Rubén Emilio as compensation for loss of earnings and non-pecuniary damage, the provisions of paragraph 230(d) of the judgment should be respected. This stipulates that “in the case of the victim who did not have either children or spouse or permanent companion, the compensation shall be distributed as follows: fifty per cent (50%) to his parents and the remaining fifty per cent (50%) to be shared in equal parts among his siblings.” The question that now arises concerns what happens to the amount that Jorge Enrique should have received when the 50% was shared out among the 11 siblings. In their brief, the representatives affirm that they understand that his part should be distributed among the other siblings (*supra* Having seen paragraph 9). However, this cannot be inferred from any of the subparagraphs of paragraph 230, as can be inferred, for example, in the case of the death of the father or the mother, in which case it is expressly stipulated that “if one of the parents has died, the part that corresponded to him or her shall accrue to the other.” Regarding the provisions of paragraph 230(e), this is applicable “if there are no next of kin in one or some of the categories defined in the previous subparagraphs,” which is not applicable in this case, since the victim, Rubén Emilio Pineda Bedoya, had next of kin in the categories of both “parents” and “siblings.” Consequently, to determine what to do with the amount that would have corresponded to Jorge Enrique when the said 50% was shared among the 11 siblings, it is necessary to refer to the provisions of paragraph 231 of the judgment.

16. That paragraph 231 of the judgment establishes what to do if any of the next of kin of the victims, who have a right to compensation “has died,” in the understanding that “has died” refers to before payment of the respective compensation and is not limited to the next of kin who have died before the delivery of the Court’s judgment. This paragraph stipulates

⁷ Cf. *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, paras. 240, 243 and 252.

⁸ Cf. *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 252 *in fine*.

⁹ Cf. *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 235.

that "the criteria for the distribution of the compensation indicated in paragraph 230 of th[e] judgment shall apply.

17. That, consequently, the distribution criteria established in the said paragraph 231 should be applied, both to determine what to do with the amount that Jorge Enrique would have received when the said 50% was shared between the 11 siblings, and for distribution of the compensation that the Court ordered in favor of Jorge Enrique for his own non-pecuniary damage. To this end, it is necessary to determine whether Jorge Enrique had any children, spouse or permanent companion, and whether his parents are still alive, in order to proceed to distribute these amounts according to the provisions of subparagraphs (a), (b), (c) and (e) of paragraph 230 of the judgment; and only if Jorge Enrique had neither children nor spouse or permanent companion, would paragraph 230(d) of the judgment be applicable; this stipulates that the compensation shall be shared among the parents and siblings.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECLARES:

1. That, pursuant to the ninth considering paragraph of this 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*);

(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 this Order.

AND DECIDES:

1. To require the State to adopt all necessary measures to implement effectively and promptly the matters pending compliance ordered by the Court in its judgment on merits, reparations, and costs of July 5, 2004, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit a report to the Inter-American Court of Human Rights by September 28, 2007, at the latest, describing all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, as indicated in the eleventh considering paragraph of this Order.

3. To request the representatives of the victims' next of kin, and the Inter-American Commission Human Rights to submit their observations on the State's report mentioned in the preceding operative paragraph, within four and six weeks, respectively, of receiving the report, taking into consideration the indications contained in considering paragraphs 10 and 11(g) and in the third declarative paragraph of this Order.

4. To continue monitoring the aspects of the judgment on merits, reparations, and costs of July 5, 2004, that are pending compliance.

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

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary