

**Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of Cesti-Hurtado v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits issued by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on September 29, 1999, in which it unanimously decided:
 1. to rule that the Peruvian State violated Articles 7(6) and 25 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 123 to 133 of th[e] judgment, and to order that the decision of the Chamber of Public Law of Lima on the petition for *habeas corpus* filed by Gustavo Adolfo Cesti Hurtado, of February 12, 1997, should be complied with;
 2. to rule that the Peruvian State violated Articles 7(1), 2 and 3 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 140 to 143 of th[e] judgment;
 3. to rule that the Peruvian State violated Article 8(1) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 151 of th[e] judgment;
 4. to rule that, in the instant case, it was not proved that the Peruvian State violated Article 8(2) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 152 of th[e] judgment;
 5. to rule that, in the instant case, it was not proved that the Peruvian State violated Article 5(2) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 160 of th[e] judgment;
 6. to rule that the Peruvian State violated Articles 1(1) and 2 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 166 to 170 of th[e] judgment;
 7. to rule that in the instant case it was not proved that the Peruvian State violated Articles 11 and 21 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 177, 178 and 183 of th[e] judgment;
 8. to rule that the proceeding against Gustavo Adolfo Cesti Hurtado under the military justice system is incompatible with the American Convention on Human Rights and to order the State to annul this action and all the effects that may derive from it;
 9. to rule that the Peruvian State is obliged to pay fair compensation to Gustavo Adolfo Cesti Hurtado and to indemnify him for any expenses that he may have incurred in steps related to this proceeding, and
 10. to order that the reparations stage should be opened and to authorize its President to duly adopt the appropriate measures.

2. The Judgment on interpretation of the Judgment on the merits, issued by the Court on January 29, 2000, in the operative paragraphs of which it unanimously decided:

1. That only the first, second, third and fourth points of the request for interpretation of the judgment of September 29, 1999, in the Cesti Hurtado case, filed by the State of Peru, [we]re admissible.

2. That the first and eighth rulings of the judgment of September 29, 1999, in which the Inter-American Court of Human Rights ordered the State to comply with the decision of the Chamber of Public Law of Lima of February 12, 1997, and to annul the proceeding, as well as all the effects deriving from it, were of an obligatory nature and, therefore, should be complied with immediately, although this did not impede the competent authorities from making decisions on Mr. Cesti Hurtado's criminal responsibility with regard to the illegal acts that are attributed to him.

3. That the eighth ruling of the judgment of September 29, 1999, by which the Inter-American Court of Human Rights ordered the annulment of the proceeding against Mr. Cesti Hurtado, implied the invalidation of all the legal effects of this, including, among others, annulment of the embargoes decreed on his property.

4. That it is not in order for the Inter-American Court of Human Rights to make a pronouncement on the applicability of its judgments in hypothetical future situations and that, in this case, the appropriateness of the remedy of *habeas corpus* as a procedural channel to define whether the detention of Mr. Cesti Hurtado was of an arbitrary nature was clearly and duly established by the Court in its judgment of September 29, 1999.

3. The Judgment on reparations issued by the Court on May 31, 2001, in the operative paragraphs of which it decided:

[...]

1. to order the State of Peru to compensate Gustavo Adolfo Cesti Hurtado for the pecuniary damage he was caused by the violations declared in the judgment on merits of September 29, 1999, and that, following the pertinent national procedures, it [wa]s in order to establish the corresponding compensatory amounts, so that he m[ight] receive them within a reasonable period of time, if there [were] cause for them[;]

[...]

2. to order the State of Peru pay Gustavo Adolfo Cesti Hurtado a compensation of US\$ 25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian currency, for non-pecuniary damage[;]

[...]

3. to order the State of Peru to pay Carmen Cardó Guarderas de Cesti a compensation of US\$ 10,000.00 (ten thousand United States dollars), Margarita del Carmen Cesti Cardó de Lama a compensation of US\$ 5,000.00 (five thousand United States dollars), and Gustavo Guillermo Cesti Cardó a compensation of US\$ 5,000.00 (five thousand United States dollars) or the equivalent in Peruvian currency, for non-pecuniary damage[;]

[...]

4. to order the State of Peru to pay Gustavo Adolfo Cesti Hurtado, as compensation for the costs and expenses generated in the internal jurisdiction and in the inter-American jurisdiction, the sum of US\$ 20,000.00 (twenty thousand United States dollars) or the equivalent in Peruvian currency, an amount that includes professional fees[;]

[...]

5. to order the State of Peru to investigate the facts of the instant case, identify and punish those responsible and adopt any provisions of domestic law that may be necessary to ensure compliance with this obligation[;]

[...]

6. to order the State of Peru to make the payments indicated in operative paragraphs 2, 3 and 4 within six months of the notification of this judgment.

[...]

7. to order that the payments for pecuniary and non-pecuniary damage established in this judgment shall be exempt of any charge or tax that exists or that may exist in the future.

[...]

8. to monitor compliance with this judgment and to close this case once the State of Peru has fully applied all its provisions.

4. The Ruling on Interpretation of the Judgment on reparations, issued by the Court on November 27, 2001, in the operative paragraphs of which it unanimously decided:

1. That the request for interpretation of the May 31, 2001 judgment in the Cesti Hurtado case, filed by Gustavo Adolfo Cesti Hurtado, [wa]s admissible.

2. That the request for a public hearing on the request for interpretation of the judgment on reparations made by Mr. Cesti [wa]s not in order.

3. That the State of Peru [should] set the indemnification due to Gustavo Adolfo Cesti Hurtado for material damages caused, for which purpose it [should] facilitate, in good faith, access by Mr. Cesti to the appropriate domestic legal procedures for the victim to obtain the aforementioned indemnification, if it were in order, within a reasonable time.

5. The report on compliance with the judgment on reparations submitted by the State of Peru (hereinafter "the State" or "Peru") on February 11, 2002, in which it stated that the Public Prosecutor's Office had accused former members of the Supreme Council of Military Justice complaint before the Supreme Court for their acts in the Cesti case, and that the proceeding was ready for "a ruling to be issued;" in connection with the pecuniary damages, it found that Mr. Cesti had access to the judiciary path to initiate the respective actions; and regarding moral damages, legal costs and expenses, it asserted that the State set up a special fund to manage the monies unlawfully obtained to the detriment of Peru (*Fondo Especial de Administración del Dinero Obtenido Ilícitamente en Perjuicio del Perú*, hereinafter "FEDADOI") to make the respective payments.

6. The March 13, 2002 brief, in which the Commission (hereinafter "the Commission" or "the Inter-American Commission") pointed out that, according to information supplied by the petitioners, the Peruvian State had not complied with any of the provisions of the ruling on reparations issued by the Court (*supra* Having Seen 3).

7. The March 13, 2002 brief and its attachments, in which the victim and his representative submitted their comments on compliance by the State with the judgments on the merits and on reparations. In said brief, they asserted that the State had not complied with the judgments. They specifically pointed out that Mr. Cesti had not been notified by any State agency that an investigation was being conducted in connection with the facts pertaining to himself as a victim of those facts, and that he had only been asked to appear as a witness and not as an injured party in a proceeding against former members of the Supreme Council of "Military

Justice." Regarding payment of the amount due for moral damages, legal costs and expenses, they stated that they had received no formal communication from the Ministry of Justice, but that they did receive one from the Supreme Council of Military Justice, in official letter No. 0107 S-CSJM 1.V.E. of December 5, 2001, explaining that a request had been filed for "the procedure to be channeled before the competent authority" for payment of compensation. Regarding the compensation for pecuniary damages, the representatives pointed out that the "Multi-Sector Committee entrusted with studying possible mechanisms [...] to fulfill the responsibility of the State derived from judgments of Supra-National Courts" had submitted no report, despite the fact that the deadline to do so had expired. They also pointed out that the domestic legal system provides for alternative conflict resolution mechanisms, such as Settlement and Arbitration, which were not even attempted and much less furthered by the State. On the other hand, the victim and his representative pointed out that Peru "has not been complying with the orders of the Court set forth in the Judgment on the Merits but rather[,] in violation of the provisions of said judgment, it had continued with a second criminal proceeding and was in the investigative phase of a third complaint for the same facts that were heard under military venue." They specifically stated that the new complaint filed by the Public Prosecutor's Office against Mr. Cesti Hurtado "is based on precisely the same facts that were heard in the proceeding under regular military venue that [...] was overruled by Inter-American Court, together with [nullification] of all its legal consequences." Finally, they referred to a third complaint being processed by the Second Anti-Corruption Prosecutor's Office, regarding which "Gustavo Cesti was able to ascertain that the facts addressed in this new investigation are the same as in the proceeding against him under military venue [...] and they are the same facts currently being investigated by the 15th Criminal Court."

8. The March 27, 2002 brief, in which the Commission submitted to the Court its comments on "the March [13] 2002 communication by Mr. Cesti Hurtado regarding compliance with the judgment of the [...] Court". In this brief, the Commission pointed out that the State had only complied with the order to release Mr. Cesti Hurtado. It added that the inter-disciplinary body established to settle the financial compensations ordered had reached no decision regarding Mr. Cesti Hurtado's case. It also pointed out that the State had not complied with the order to investigate and punish those responsible for Mr. Cesti Hurtado's indictment. With respect to renewal of criminal prosecution against Mr. Cesti Hurtado, the Commission pointed out that due process was being breached, as the victim was being criminally prosecuted for the third time for the same facts. The Commission also asked the Court to find that Peru had not fully complied with the judgments issued in the case. Finally, with respect to the compensations that should have been set by the State, the Commission asked the Court to order that "they be established by experts appointed to definitively resolve this matter."

9. The November 6, 2002 letter by the Secretariat of the Court, in which, under instructions by the President, it asked the State to submit a new report on compliance with the May 31, 2001 judgment (*supra* Having Seen 3).

10. The November 28, 2002 brief by the State, in which it reported that payment of US\$ 65,000.00 (sixty-five thousand United States dollars) was pending, and that it had asked FEDADOI for this amount (*supra* Having Seen 5).

11. The December 6, 2002 report by the State, in which it explained that evaluation of Mr. Cesti Hurtado's request for the amount of compensation for moral

damages to be established through arbitration was pending, as arbitration is an optional rather than a mandatory procedure. The State also pointed out that it began proceedings against Guido Guevara and Raúl Talledo Valdivieso for abuse of authority and failure to denounce a crime in connection with disregard for the order of the Judiciary to release Mr. Cesti Hurtado.

12. The February 26, 2003 communication by the Secretariat, in which, under instructions by the full Court, it informed the Commission that its request for the Court to appoint experts to determine compensation was rejected because it was out of order (*supra* Having Seen 8), since “both the judgment on reparations and the ruling on the request for interpretation of the former established the appropriate mechanism for Mr. Cesti to file his claims in accordance with domestic Law.” The Secretariat also asked the parties to provide information on compliance with operative paragraph two of the May 31, 2001 judgment of the Court (*supra* Having Seen 3).

13. The April 14, 2003 brief by the State, in which it reported that it had paid US\$ 65,000.00 (sixty-five thousand United States dollars) ordered as compensation in the judgment on reparations, and that this payment was made at the seat of the Ministry of Justice of Peru on April 2, 2003.

14. The May 28, 2003 brief in which the Commission reported that, according to the information provided by the representative of the victim, the State had complied with operative paragraph two of the judgment on reparations, regarding payment of US\$ 25,000.00 (twenty-five thousand United States dollars) as compensation for moral damages.

15. The June 17, 2003 brief by the representatives of the victim, in which they pointed out that the State had not fully complied with the judgments of September 29, 1999 and May 31, 2001 (*supra* Having Seen 1 and 3). They specifically mentioned that regarding identification and punishment of those responsible, “there ha[d] been no change with respect to what they pointed out in [their] March 9, 2002 report, as they [had] received no communication from the Peruvian State regarding progress in the judicial proceedings against some of the former members of the Supreme Council of Military Justice for their actions in the Cesti Hurtado case, among others. [They added that] the fact that Mr. Cesti Hurtado ha[d] been called as a witness rather than being considered an injured party in the proceedings ha[d] not changed.” With respect to payment of the compensation ordered for moral damages, they pointed out that the State delayed payment twenty months beyond the deadline set by the Court, for which reason they argued that the State should have paid interest on those arrearages, and it did not do so when it made the payment. They also reported that an Arbitration Agreement was yet to be signed, and that arbitrators had not been appointed for the arbitration proceeding to begin. Finally, they stated that a second criminal proceeding had continued against Mr. Cesti Hurtado and that a third complaint regarding the same facts heard in the military trial was in the investigative phase.

16. The October 13, 2003 brief in which the Secretariat, under instructions by the President of the Court, asked the State to submit detailed information on the status of compliance with the judgment in the instant case, especially with respect to progress of the investigation, “renewal of criminal prosecution against Mr. Cesti Hurtado,” and payment of interest on arrearages, which according to the

representatives of the victim is due in connection with payment of compensation for moral damages.

17. The November 11, 2003 report by the State, in which it pointed out that “the *Vocalía de Instrucción* issued a judgment convicting Raúl Aurelio Talledo Valdivieso to four years in prison for the crime of abuse of authority in the case of Gustavo Cesti Hurtado”. It also reported that said judgment was appealed and its review was pending before the Special Criminal Chamber of the Supreme Court. The State also informed the Court that Mr. Guevara Guerra had been declared a contumacious defendant. With respect to the pecuniary damages, it stated that Ministerial Order No 190-2003-JUS authorized acceptance and processing of the arbitration procedure. In this regard, the Arbitrators were instated on September 4, 2003, setting the respective rules for the development of the proceeding. Subsequently, on September 17, 2003, the application filed by Mr. Cesti Hurtado in the arbitration proceeding was forwarded to the Attorney General’s Office and answered on September 29, 2003. With respect to the interest on arrearages derived from payment of compensation for moral damages on April 2, 2003, the State pointed out that once the amount due was established, it would request payment of said amount by FEDADOI (*supra* Having Seen 5). Finally, the report asserted that “[a]ccording to the information supplied by the Judiciary, Mr. Cesti Hurtado’s pending cases ha[d] been set aside.”

18. The January 14, 2004 brief and its attachments, in which the victim submitted his comments on the report by the State, reiterating that “[t]here ha[d] not been full compliance with the May 31, 2001 Judgment.” He specifically pointed out that the “third investigation” regarding the same facts was still open before the Twenty-fourth Public Prosecutor’s Office, and that Mr. Cesti Hurtado continued to be considered a witness rather than an injured party in the proceedings against the former members of the Supreme Council of Military Justice. He also stated that payment of the interest on arrearages due to late payment of moral damages was still pending. Finally, he mentioned that an arbitration proceeding had begun, to establish the material damages.

19. The August 11, 2004 brief in which the State submitted information on compliance “with paragraph three of the operative section of the November 27, 2001 Judgment that interpreted the Judgment on Reparations” in the Cesti Hurtado case. It specifically pointed out that, once Ministerial Order No. 188-2003-JUS was issued, authorizing the Public Prosecutor’s Office to accept and process the arbitration, the parties reached an Arbitration Agreement. Peru added that, in his application, Mr. Cesti demanded US\$ 23,778,350.57 (twenty-three million seven hundred and seventy-eight thousand three hundred and fifty United States dollars and fifty-seven cents), that the parties submitted evidence, that there was a hearing with oral reports, written reports and pleadings, and that the proceedings were in the stage prior to issuing the arbitrators’ decision.

20. The September 20, 2004 brief in which the victim submitted his comments on the latest report by the State and pointed out that the arbitrators had issued their award on September 14, 2004, and that this award was not yet definitive and that the parties had not yet expressed their acceptance. In said brief, he asked the Court to request information from the State regarding the budgetary item or special fund that would be used to comply with said award, and to do this in as expedite a manner as possible, since almost five years had passed since the judgment. He added that compliance with the arbitrators’ award would not constitute full

satisfaction, as the matter of punishment of those responsible is still pending, together with that of "putting an end to all uncertainty regarding [his] rights, constantly under attack due to almost uninterrupted renewal of criminal prosecution against [him], for the same facts." He also stated that it was absolutely impossible for him to pay the attorneys' fees for his defense in the process of following up on compliance with the judgment of the Court.

21. The October 4, 2004 brief in which the Commission submitted its comments on the latest report by the State and pointed out that because "Mr. Cesti Hurtado now has direct access to the Court, and the Commission, in this case, "has no other independent source of information on compliance," it would be an unnecessary duplication to repeat the information that he had already supplied to this Court. The Commission also pointed out that "the actions of the State and appraisal of the attorney's fees by the Court [...] have left [Mr. Cesti Hurtado] without the services of a defense counsel in this key stage of compliance with the judgment."

22. The October 17, 2004 brief in which the victim requested that the arbitral award of September 14, 2004 be included "in the Court's Judgment on Reparations for it to be an integral part of it." On October 28, 2004 the victim forwarded said arbitration award pursuant to which the State must pay Mr. Cesti Hurtado US\$ 3,065,085 (three million sixty-five thousand and eighty-five United States dollars), composed of the following items: US\$ 3,000,000 (three million United States dollars) for loss of value of the business and US\$ 65,085 (sixty-five thousand eighty-five United States dollars) for lost earnings of Mr. Cesti Hurtado in the period from July 1997 to December 1999.

WHEREAS:

1. Oversight of compliance with its decisions is an authority inherent to the judicial functions of the Court.
2. Peru has been a State Party to the American Convention since July 28, 1978, and it accepted the adjudicatory jurisdiction of the Court on January 21, 1981.
3. Article 68(1) of the American Convention sets forth that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For this, the States must ensure domestic implementation of the orders issued by the Court in its rulings.¹
4. In view of the final and unappealable nature of the judgments of the Court, pursuant to Article 67 of the American Convention, the State must fully and promptly comply with them.
5. The obligation to comply with the orders issued by the Court in its rulings is in accordance with a basic principle of Law regarding the international responsibility of the State, backed by international jurisprudence, according to which the States must carry out their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has stated and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they may not refuse to undertake the

¹ See *Case of Baena-Ricardo et al.. Competence*. November 28, 2003 Judgment. *Series C* No. 104, para. 131.

international responsibility already set forth by arguing domestic reasons.² The treaty obligations of the States Party are binding for all the branches and bodies of the State.

6. The States Party to the Convention must ensure compliance with the treaty provisions and their effective application (*effet utile*) in their respective domestic legal systems. This principle applies not only to substantive provisions of the human rights treaties (that is, those containing provisions regarding the rights protected), but also with respect to the procedural provisions, such as those pertaining to compliance with the decisions of the Court. These obligations must be interpreted and applied in a manner that ensures that the right protected is truly practical and effective, taking into account the special nature of human rights treaties.³

7. The States Party to the Convention that have accepted the adjudicatory jurisdiction of the Court have the duty to obey the obligations established by the Court. In this regard, the State must report on steps taken to comply with the orders issued by the Court in said rulings. Timely observance of the obligation of the State to inform the Court of how it is complying with each of the points ordered by the Court is fundamental to assess overall compliance by the State with the Judgment.

8. According to the information forwarded to the Court by the State (*supra* Having Seen 17) "Mr. Cesti Hurtado's pending cases ha[d] been set aside." The representatives of the victim, in turn (*supra* Having Seen 7, 15 and 18), and the Commission (*supra* Having Seen 7) asserted that there are still ongoing criminal proceedings against Mr. Cesti Hurtado, regarding the same facts as the military proceeding that was annulled by the September 29, 1999 judgment of the Court (*supra* Having Seen 1).

9. According to the information forwarded by the representatives of the victim (*supra* Having Seen 7 and 15), the State is investigating the facts in connection with the instant case, but in said proceedings Mr. Cesti Hurtado is not considered a victim but rather a witness (*supra* Having Seen 7, 15 and 18).

10. While overseeing comprehensive compliance with the Judgments on the merits and reparations issued in the instant case, and after analyzing the information supplied by the State (*supra* Having Seen 10), by the representatives of the victim (*supra* Having Seen 14 and 15), and by the Inter-American Commission on Human Rights (*supra* Having Seen 14), this Court has found that the State paid US\$ 65,000.00 (sixty-five thousand United States dollars) that were due according to the

² See *Case of Baena-Ricardo et al.*, *supra* note 1, *para.* 128; *Case of Barrios Altos*. Compliance with Judgment. November 28, 2003 Order of the Inter-American Court of Human Rights, Whereas six; and *Case of Bámaca-Velásquez*. Compliance with Judgment of November 27, 2003, Whereas five.

³ See *Matters of: Liliana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. May 4, 2004 Order of the Inter-American Court of Human Rights, Whereas twelve; *Case of Baena-Ricardo et al.*. Competence, *supra* note 1, *para.* 66; *Case of the Constitutional Court. Competence*. September 24, 1999 Judgment. *Series C* No. 55, *para.* 36; and *Case of Ivcher-Bronstein. Competence*. September 24, 1999 Judgment. *Series C* No. 54, *para.* 37. Also see, *inter alia*, *Case of the "Juvenile Reeducation Institute"*. September 2, 2004 Judgment. *Series C* No. 112, *para.* 205; *Case of the Gómez-Paquiyaui Brothers*. July 8, 2004 Judgment. *Series C* No. 110, *paras.* 150 and 151; and *Case of Bulacio*. September 18, 2003 Judgment. *Series C* No. 100, *para.* 142. Likewise, see *Klass and others v. Germany, (Merits) Judgment of 6 September 1978, ECHR, Series A no. 28, para. 34*; and *Permanent Court of Arbitration, Dutch-Portuguese Boundaries on the Island of Timor, Arbitral Award of June 25, 1914*.

provisions of operative paragraphs two, three and four of the May 31, 2001 Judgment (*supra* Having Seen 2). The Court also noted that the interest owed for arrearages in payment of the reparations is yet to be paid.

11. Based on the information forwarded to the Court by the State (*supra* Having Seen 19) and the representatives (*supra* Having Seen 20 and 22), an arbitral award was issued on September 14, 2004, which established that the State must pay Mr. Cesti Hurtado US\$ 3,065,085 (three million sixty-five thousand eighty-five United States dollars), composed of the following items: US\$ 3,000,000 (three million United States dollars) for "loss of value of the business," and US\$ 65,085 (sixty-five thousand eighty-five United States dollars) for lost earnings of Mr. Cesti Hurtado from July 1997 to December 1999 (*supra* Having Seen 22), with respect to the provisions of operative paragraph one of the May 31, 2001 Judgment (*supra* Having Seen 3).

12. After analyzing the documents supplied by the State, by the representatives of the victim and by the Commission, the Court notes that it does not have sufficient information on the following points pending as regards compliance:

- a) payment of the interest owed in connection with compensation for moral damages (*Operative Paragraphs two, three, four and six of the May 31, 2001 Judgment*);
- b) investigation of the facts of the instant case and punishment of those responsible (*Operative Paragraph five of the May 31, 2001 Judgment*);
- c) payment of material damages (*Operative Paragraph one of the May 31, 2001 Judgment*); and
- d) annulment of the military proceedings and all their effects (*Operative Paragraph eight of the September 29, 1999 Judgment*).

13. The Court will consider the general status of compliance with its Judgments on the merits and reparations once it receives said report by the State and the respective comments by the representatives of the victims and of the Commission.

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NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its authority to oversee compliance with its decisions, pursuant to 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,

FINDS:

1. That it will continue to oversee compliance with the points currently pending compliance, namely:

- a) Payment of the interest due on the compensation for moral damages (*Operative Paragraphs two, three, four, and six of the May 31, 2001 Judgment*);
- b) Investigation of the facts of the instant case and punishment of those responsible (*Operative Paragraph five of the May 31, 2001 Judgment*);
- c) payment of the pecuniary damages (*Operative Paragraph one of the May 31, 2001 Judgment*); and
- d) annulment of the military proceeding and all its effects (*Operative Paragraph eight of the September 29, 1999 Judgment*).

AND DECIDES:

1. To order the State to take such steps as may be necessary, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, to put into effect and promptly comply with those orders issued by the Court in the Judgments on the merits (September 29, 1999) and on reparations (May 31, 2001) with respect to which compliance is pending.

2. To ask the State to submit to the Inter-American Court of Human Rights, no later than January 31, 2005, a detailed report stating all the steps taken to comply with the duty to investigate the facts with the aim of identifying and punishing those responsible for the human rights violations addressed in the judgment on the merits, and to comply with the other reparations ordered by this Court with respect to which compliance is pending, as pointed out in Whereas twelve of the instant Order.

3. To ask the victim, or his representative, if he has one, and the Inter-American Commission on Human Rights to submit their observations on the report by the State that was mentioned in the previous operative paragraph, within four and six weeks, respectively, of when they receive said report.

4. To continue overseeing those points of the Judgments of September 29, 1999 (merits) and May 31, 2001 (reparations) with respect to which compliance is pending.

5. To notify the instant Order to the State, to the Inter-American Commission on Human Rights, and to the victim.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary