

**Order of the
Inter-American Court of Human Rights
of July 10, 2007
Case of Suárez Rosero v. Ecuador
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on merits issued by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court" or "the Tribunal") on November 12, 1997, in which it:

Unanimously,

[...]

6. Decide[d] that Ecuador must order an investigation to determine the persons responsible for the human rights violations referred to in this judgment and, where possible, punish them.

7. Decide[d] that Ecuador is obliged to pay a fair indemnity to the victim and his relatives and to compensate them for any expenses incurred in their representations relating to this proceeding.

8. Order[ed] the initiation of the Reparations Stage, for which purpose it authorize[d] the President to adopt in due course such measures as may be necessary.

2. The Judgment of reparations issued by the Court on January 20, 1999, in which it:

Unanimously,

1. Order[ed] the State of Ecuador not to collect the fine levied on Mr. Rafael Iván Suárez Rosero and to remove his name from the Register of Criminal Records, as well as from the Register maintained by the National Council on Narcotic Drugs and Psychotropic Substances, as to the facts concerned in the present proceeding, in accordance with the terms of paragraph 76 of [the] judgment.

unanimously,

2. Order[ed] the State of Ecuador to pay, in the manner and under the conditions set forth in paragraphs 101 to 112 of [the] judgment, a total amount of US\$ 86,621.77 (eighty-six thousand, six hundred twenty-one dollars of the United States of America and seventy-seven cents) or its equivalent in Ecuadorian currency, distributed in the following manner:

a. US\$ 53,104.77 (fifty-three thousand, one hundred four dollars of the United States of America and seventy-seven cents) or the equivalent in Ecuadorian currency to Mr. Rafael Iván Suárez Rosero;

b. US\$ 23,517.00 (twenty-three thousand, five hundred seventeen dollars of the United States of America) or the equivalent in Ecuadorian currency to Mrs. Margarita Ramón Burbano; and

c. US\$ 10,000.00 (ten thousand dollars of the United States of America) or the equivalent in Ecuadorian currency to the minor Micaela Suárez Ramón.

unanimously,

3. Order[ed] the State of Ecuador to pay costs and expenses, in the manner and conditions prescribed in paragraphs 101 to 112 of this judgment, the sum of US\$ 6,520.00 (six thousand, five hundred twenty dollars of the United States of America), or the equivalent in Ecuadorian currency, to Alejandro Ponce Villacís, and the sum of US\$ 6,010.45 (six thousand, ten dollars of the United States of America and forty-five cents), or the equivalent in Ecuadorian currency to Richard Wilson.

[...]

unanimously,

5. [Decided to s]upervise the fulfillment of [the] judgment.

3. The Judgment on the interpretation of the Judgment on reparations issued May 29, 1999, in which the Court unanimously decided:

1. That the request filed by the State of Ecuador for interpretation of the January 20, 1999 Judgment delivered in the Suárez Rosero Case [was] admissible.

[...]

3. That the payment that the Inter-American Court of Human Rights ordered for the minor Micaela Suárez Ramón in the judgment in question, sh[ould] be deposited in full to the trust fund mentioned in paragraph 107 of the judgment and that said amount sh[ould] not be subject to any tax at the time the trust fund is set up or to any tax withholdings.

[...]

4. The Order issued by the Court on December 4, 2001, in relation to compliance with its Judgments, through which it decided:

1. That, as ha[d been] state[d] in the judgment on reparations in the present case, the State sh[ould] create the trust in favor of Micaela Suárez Ramón, which implied that the State sh[ould] cover the expenses generate[d] by this trust and not the beneficiary of the reparation.

[...]

5. The Order issued by the Court on November 27, 2003, regarding the compliance of its Judgments, in which:

[IT] DECLAR[ED]:

1. That the State has complied with the provisions of the 1, 2(a), 2(b), and 3 operative paragraphs of the judgment on reparations delivered by the Court on January 20, 1999, as regards:

a) Non-enforcement of the fine imposed on Rafael Iván Suárez Rosero, as stated in subparagraph (a) of the [...] Order;

b) Elimination of the name of Rafael Iván Suárez Rosero from the Register of Criminal Records of the National Police and the Register of the National Council of Narcotic Drugs and Psychotropic Substances, as stated in subparagraph (a) of the [...] Order;

c) The payments ordered in favor of Mr. Rafael Iván Suárez Rosero and Mrs. Margarita Ramón Burbano, as stated in subparagraph (b) of the [...] Order; and

d) Payment of the costs and expenses ordered in favor of Messrs. Alejandro Ponce Villacís and Richard Wilson, as stated in subparagraph (c) of the [...] Order

2. That it will keep the proceeding on monitoring compliance in this case open, with regard to the following matters that are pending compliance:

- a) The setting up of a trust fund in favor of the minor, Micaela Suárez Ramón [...]; and
- b) The investigation and punishment of the persons responsible for the human rights violations declared by the Court, as stated in the sixth considering clause, subparagraph (e) of the [...] Order.

6. The different reports of the State of Ecuador (hereinafter “the State”) regarding its progress in the compliance of the Judgments on merits and reparations (*supra* Having Seen paragraphs 1 and 2).

7. The observations of the representatives of the victim and his next of kin (hereinafter “the representatives”) and of the Inter-American Commission of Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) to the state’s report on compliance (*supra* Having Seen paragraph 6).

CONSIDERING:

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

2. That Article 68(1) of the American Convention establishes 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.” Consequently, the State must ensure the implementation of the decisions in the Court’s judgments at the domestic level.¹

3. That the obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law, according to which a State must fulfill 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 assume a previously established international responsibility.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

4. 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 with regard not only to the substantive norms of human rights treaties (that is, those that include stipulations on the protected rights), but also to the procedural norms, such as those referring to compliance with the

¹ Cfr. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Sawhoyamaya Indigenous Community*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering Clause number 2, and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 3.

² Cfr. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2005, Considering clause number 3 and *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 5.

decisions of the Court. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

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5. That the States Parties to the Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations ordered by the Court. This obligation includes the State's duty to report to the Court on the measures adopted to comply with the measures ordered by the Court in its decisions. The reporting obligation is twofold in nature and effective compliance requires the formal presentation of a document within the allotted time and with specific, true, current and detailed information on the issues to which this obligation refers. The State's prompt compliance with this obligation to inform the Court about the measures it is taking to comply with each element ordered by the Court is fundamental for assessing the status of compliance with the judgment as a whole.⁴

6. That the General Assembly of the OAS has reiterated that, in order for the Tribunal to be able to comply fully with the obligation of informing it of compliance with its judgments, it is necessary that the States Parties deliver the information required by it from them in a timely manner.⁵

7. That the Tribunal points out that during the stage of monitoring compliance with the Judgments, the Secretariat of the Court, following the instructions of the President of the Court, has addressed the State⁶ and the representative⁷ on several occasions

³ *Cfr. Case of Ivcher Bronstein. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2005, Considering clause number 4, and *Case of Yatama.* Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering Clause number 6.

⁴ *Cfr. Matter of Liliانا Ortega et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering Clause number 12; *Matter of Luis Uzcátegui.* Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering Clause number 12, and *Case of Bámaca Velásquez,* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 03, 2005, Considering Clause number 7.

⁵ General Assembly, Resolution AG/RES. 2292 (XXXVII-0/07) approved in the fourth regular session, held on June 5, 2007, titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights.

⁶ *Cfr. Note of the Secretariat of April 6, 2004, reiterated June 3, 2004, through which it asked the State to present its report on compliance with judgment, since the term to do so had expired on April 1, 2004. The report was presented on June 4, 2004; Note of the Secretariat of June 29, 2004, through which it asked the State to send legible copies of the annexes to its report of June 4, 2004. Up to this date, the documents have not been presented; Note of the Secretariat of December 3, 2004, reiterated on February 21st, March 29th, June 7th, June 29th, August 17th, and September 28, 2005, through which it requested that the State inform of the advances made with regard to compliance. Said information was partially provided by the State on June 27, 2005 and completely on January 20, 2006; Note of the Secretariat of August 9, 2006, reiterated on September 20th, October 30th, and December 20, 2006, through which it asked the State forward the missing document of its report of August 8, 2006. Said document was sent on November 30, 2006, still illegible, and sent again on March 9, 2007; Note of the Secretariat of February 1, 2007, through which it asked the State to present, no later than March 6, 2007, a new report on compliance with the Judgments, and the notes of the Secretariat of March 14th and April 26, 2007, reiterating the request for the presentation of that report. Said report has not yet been presented.*

⁷ *Cfr. Note of the Secretariat of November 5, 2004, through which it confirmed receipt of a brief presented by the representative on that same day, which should have been presented on August 30, 2004; Note of the Secretariat of January 23, 2006, through which it asked the representative to present its*

asking them to forward different information. That the State and the representatives have not forwarded the information requested within the terms set for that effect.

8. That due to that stated in the previous Considering Clause the Court considers that the State and the representatives have not complied with the duty to inform the Tribunal in a timely manner.

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9. That on August 8, 2006 the State indicated, *inter alia*, that it signed a contract for the constitution of a trust with Corporación Financiera Nacional (hereinafter "the CFN") in benefit of the girl Micaela Suárez Ramadán, but that the text of said contract was revised by the representative of the victim and there are still disagreements regarding the execution of this operative paragraph of the Judgment on reparations (*supra* Having Seen paragraph 2). Regarding the document provided by the State, the representative of the victim argued that (f. 880):

- a) the trust in reference should not be civil but commercial;
- b) the CFN does not have the legal capacity to manage the trust in favor of a beneficiary who is an individual;
- c) it is evident from the text of the Judgment on reparations that the administration of the trust may not be in the hands of a State entity;
- d) the contract in question includes the obligation to pay a commission on the amount with which the trust is created, which should be paid directly by the State, and
- e) the contract includes a mediating clause that attributes the competence to solve conflicts regarding the contract to the Chamber of Commerce of Quito, which would violate the judgment issued by the Court, since according to the latter, the monitoring of compliance with its decision constitutes an attribution of the Tribunal itself.

10. That the State requested that the Court analyze said contract in order to evaluate if it meets the parameters ordered in the Judgment on reparations.

11. That on January 20, 2006 the State acknowledged that the late compliance in the constitution of the trust has generated due interests.

12. That the Commission considered that "[the] State's delay" in compliance with this paragraph of the Judgment "[...] is inexcusable".

observations to a State's report, no later than February 23, 2006, request that was reiterated on March 16, 2006. Said brief was received on April 20, 2006; Note of the Secretariat of February 1, 2007, reiterated on March 14th and April 26, 2007, through which it asked the representative to present its observations to the last State report, having the term granted for it expired on January 18, 2007. The brief of observations has not yet been presented.

13. That pursuant to recent jurisprudence of the Tribunal, payment of the compensations ordered in favor of minors may be deposited by the State in a national solvent financial institution under the name of the minor.⁸

14. That due to the long period of time that has gone by without the girl Micaela Suárez Ramadán receiving the corresponding compensation (*supra* Having Seen paragraph 2), the discrepancies between the State and the representative, and taking into account the jurisprudence of this Tribunal (*supra* Considering Clause number 13), the Court considers it appropriate to authorize the State to deposit, as soon as possible, the amount that corresponds to the girl, plus the respective interests, in a solvent national financial institution, to the minor's name, in the most favorable financial conditions allowed by the banking legislation and practices. Said amount may be withdrawn by her when she becomes of legal age or before that, if it is in the child's best interest, to be determined by a competent judicial authority.

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15. That regarding the investigation and punishment of those responsible the State informed that: a) on November 6, 2003 the Fifth Criminal Judge of Pichincha issued a provisional discontinuance of the process and stated that "for the time being the assertion of the case could not be continued;" b) on March 10, 2004 the Second Criminal Chamber of the Superior Court of Quito confirmed the decision of the lower court, issuing a provisional discontinuance of the proceedings "as those responsible for the crimes committed" against Mr. Suárez Rosero "had not been individually identified;" c) the Attorney General of the State presented a legal report, seeking to revoke said court order and reopen the preliminary criminal proceedings for having omitted the realization of essential procedural steps towards discovery of the authors of the violations in detriment to the victim; d) the victim has not collaborated with the investigations, and e) the judicial proceedings will be restarted once the judge can have more evidence that leads to the identification of the authors of said violations.

16. That the representatives indicated that: a) the State has not taken any measure of a civil, administrative, or criminal nature to comply with that stated by the Inter-American Court; b) the victim's intervention is not necessary for the Public Prosecutors' Office to investigate the facts, since the State must *ex officio* start the investigations; c) in the criminal proceedings there is a list of the names of the officials and agents that should have been punished, which was provided by Mr. Suárez Rosero; d) the judicial decision to declare the provisional discontinuance is a behavior tending towards impunity, shown by the fact that some of the alleged responsible parties continue as active members of the National Police or other judicial bodies, and e) the Judge of First Instance himself acknowledged that the National Police has abstained from sending the list of officials that participated in the arrest and investigation of the victim.

17. That the Commission held that since the provisional discontinuance of the criminal proceedings, the State has not adopted specific measures to ensure that justice be made, or to clarify, judicially and administratively, the facts and the responsible parties for the violations against the human rights of Mr. Suárez Rosero.

⁸ Cfr. Case of the "Panel Blanca" (Paniagua Morales et al.). Judgment of May 25, 2001. Series C No. 76, para. 223; Case of Servellón García. Judgment of September 21, 2006. Series C No. 152, para. 208; and, Case of the Ituango Massacres, Judgment of July 1, 2006. Series C No. 148, para. 422.

18. That pursuant to the documentation forwarded by the State, the Fifth Criminal Court of Pichincha decided on November 6, 2003 to provisionally discontinue the process since "there was no evidence [...] to determine the authors, accomplices, and accessories of the crime." The Judge justified the lack of evidence indicating that "during the preliminary criminal stage official letters addressed to the Head of Personnel of the National police and the Head of Antinarcotics of Pichincha were sent, [...] requesting the list of the Officials that participated in the arrest and investigation of Rafael Iván Suárez Rosero[, and] they did not comply with said requirement."

19. That the State itself, through an official letter of the Attorney General of the State addressed on April 15, 2004 to the senior judges of the Second Criminal Chamber of the Superior Court of Justice of Quito, acknowledged that "essential procedural acts in the determination of those responsible for the violations committed have been omitted."

20. That pursuant to the jurisprudence of this Court, "the State, in order to comply with its investigative duty, must guarantee that all public institutions offer the facilities necessary to the regular court" that hears the case for the violation of human rights declared by the Tribunal.⁹

21. That in the present case, the Court observes that the police authorities did not collaborate with judicial authorities in the request made by the latter to the first (*supra* Considering Clause number 18). That is, it is state agents who are making the investigations of the facts of this case difficult. That it is the State's duty to avoid this from happening and to make sure that all public institutions collaborate with judicial authorities.

22. That with regarding to the State's argument regarding the fact that the victim had not collaborated with the investigations, the Tribunal reiterates that the "investigation must be carried out by all legal means available and oriented to the determination of truth and the persecution, capture, prosecution, and imprisonment of all perpetrators, intellectual and physical, of the facts, especially when state agents are or may be involved. During the investigation and the judicial proceedings the victims or their next of kin must have ample opportunities to participate and be heard, both in the elucidation of the facts and the punishment of those responsible, and in the search of a fair compensation, according to domestic legislation and the American Convention. However, the investigation and the proceedings must have a purpose and be assumed by the State as its own juridical duty and not as a mere process of personal interest, that depends on the procedural initiative of the victims or their next of kin or on the private contribution of evidentiary elements."¹⁰

23. That in virtue of all of the above, the Court considers that the State has not taken the steps necessary to comply with that stated in operative paragraph six of the Judgment on merits (*supra* Having Seen paragraph 1). That, therefore, the State must reopen the investigations of the present case and make sure that all public institutions offer the information required by the judicial authorities.

⁹ *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 156.

¹⁰ *Cfr. Case of Velásquez Rodríguez.* Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of the Rochela Massacre.* Judgment of May 11, 2007. Series c No. 163, para. 195, and *Case of the Miguel Castro Castro Prison.* Judgment of November 25, 2006. Series C No. 160, para. 255.

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24. That the matters that have not yet been complied with must be fulfilled by the State as soon as possible. Therefore, it is necessary that Ecuador forward a report on the matters pending compliance indicated by the Court (*infra* second declarative paragraph), and that subsequently the representative of the victim and his next of kin, as well as the Inter-American Commission, present their observations to the State's report.

25. That the Court will consider the general status of compliance with its judgments on merits of November 12, 1997, and on reparations of January 20, 1999, when it has received the State's report and the corresponding observations.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That pursuant to that stated in Considering Clauses number 7 and 8, the State of Ecuador, the representative of the victim and his next of kin, have failed to comply with the duty to adequately inform the Tribunal.

2. That it will keep the proceeding on monitoring compliance in this case open, as regards the following matters that are pending compliance:

a) payment of the corresponding compensation to the minor Micaela Suárez Ramadán (*second operative paragraph of the Judgment on reparations*), and

b) the investigation and punishment of the people responsible for the human rights violations declared by the Court (*sixth operative paragraph of the Judgment on merits*).

AND DECIDES:

1. To urge the State of Ecuador, pursuant to that exposed in Considering Clause number 14, to deposit as soon as possible the compensation that corresponds to the minor Micaela Suárez Ramadán, plus the corresponding interests, in a national solvent financial institution, to the minor's name.

2. To urge the State, pursuant to that exposed in Considering Clauses number 15 through 23, to reopen the investigations within the domestic jurisdiction in order to determine the people responsible for the human rights violations declared in the Judgment on merits (*supra* Having Seen paragraph 1) and, eventually, punish them.

3. To urge the State to adopt all measures necessary to offer an effective and prompt compliance to the matters pending compliance that were ordered by the Tribunal in the Judgments on Merits and Reparations (*supra* Having Seen paragraphs 1

and 2), as well as that stated in the orders issued in the present case (*supra* Having Seen paragraphs 4 and 5), pursuant to that stated in Article 68(1) of the American Convention on Human Rights.

4. Request that the State present to the Inter-American Court, no later than September 28, 2007, a detailed report in which it indicates the measures adopted to comply with all the reparations ordered by this Court that are still pending compliance (*supra* second declarative paragraph), and present the corresponding support documentation.

5. To call upon the representative of the victim and his next of kin, and the Inter-American Commission on Human Rights to present their observations to the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, calculated as of their receipt.

6. To continue monitoring the matters pending compliance of the judgments on merits and reparations.

7. To order the Secretariat of the Tribunal to notify this Order to the State, the Inter-American Commission on Human Rights and the representative of the victim and his next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary