

**Order of the
Inter-American Court of Human Rights*
of November 23, 2007
Case of De La Cruz-Flores v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations, and costs rendered by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") on November 18, 2004, in which it was decided:

[u]nanimously, that:

1. [t]he State violated the right to freedom from *ex post facto* laws embodied in Article 9 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of María Teresa De La Cruz Flores, as set forth in paragraphs 78, 83, 87 to 93, 102, 103 and 106 to 109 of [the] Judgment[;]

2. [t]he State violated the rights to personal liberty and to a fair trial embodied in Articles 7 and 8, respectively, of the American Convention on Human Rights, in relation to Articles 9 and 1(1) thereof, to the detriment of María Teresa De La Cruz Flores, as set forth in paragraphs 112 to 114 of [the] Judgment[, and]

3. [t]he State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas de De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz, and Danilo Alfredo Blanco De La Cruz, as set forth in paragraphs 126, 130, 131, 135 and 136 of [the] Judgment.

AND DECIDE[D]:

[u]nanimously, that:

1. [t]he State shall observe the right to freedom from *ex post facto* laws embodied in Article 9 of the American Convention and the requirements of due process in the new proceeding brought against María Teresa De La Cruz Flores, as set forth in paragraph 118 of [the] Judgment[;]

2. [the] Judgment constitutes in and of itself a form of reparation, in accordance with paragraph 159 [thereof;]

3. [t]he State shall pay the amounts specified in paragraphs 152 to 154 of [the] Judgment to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas, widow of De La Cruz, and Alcira Isabel De La Cruz Flores as compensation for pecuniary damage, as set forth in those paragraphs[;]

4. [t]he State shall pay the amounts specified in paragraphs 161 to 163 of [the] Judgment to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas, widow of De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz, and Danilo Alfredo Blanco De La Cruz as compensation for non pecuniary damage, as set

* Judge Diego García-Sayán, a Peruvian national, recused himself from hearing this case, pursuant to sections 19(2) of the Statute and 19 of the Rules of Procedure of the Court.

forth in said paragraphs[;]

5. [t]he State shall provide medical and psychological care to the victim through the State's health services, including the provision of free medication, as set forth in paragraph 168 of [the] Judgment[;]

6. [t]he State shall reinstate María Teresa De La Cruz Flores to the job that she was performing as a medical professional in public institutions at the time of her detention, as set forth in paragraph 169 of [the] judgment[;]

7. [t]he State shall provide María Teresa De La Cruz Flores with a grant for training and professional development, as set forth in paragraph 170 of [the] judgment[;]

8. [t]he State shall re-enter María Teresa De La Cruz Flores in the relevant retirement register, as set forth in paragraph 171 of [the] Judgment[;]

9. [t]he State shall publish in the Official Gazette and in another daily newspaper with national circulation the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of [the] Judgment, in accordance with paragraph 173 [thereof;]

10. [t]he State shall pay the amount specified in paragraph 178 of [the] Judgment to María Teresa De La Cruz Flores for costs and expenses, as set forth in said paragraph[;]

11. [t]he State shall pay the compensation, reimburse the costs and expenses, and adopt the measures ordered in paragraphs 168 to 171 and 173 of [the] Judgment, within one year following notice thereof, as indicated in paragraph 179[;]

12. [t]he State shall deposit the compensation awarded to the minor, Danilo Alfredo Blanco De La Cruz, in a bank investment in his name, in a reputable Peruvian institution, in United States dollars or in the currency of the State, at the discretion of the minor's legal representative, within one year, and under the most favorable financial terms permitted by law and banking practice, while he remains a minor, as set forth in paragraph 183 of [the] Judgment[;]

13. [t]he State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the currency of the State, at the New York, USA, exchange rate between both currencies, as quoted on the day prior to the day payment is made, as set forth in paragraph 184 of [the] Judgment[;]

14. [t]he amounts awarded in [the] Judgment as compensation for pecuniary and non pecuniary damage and for costs and expenses shall not be affected, reduced, or conditioned by tax reasons, now existing or hereafter arising, as set forth in paragraph 185 [thereof;]

15. [s]hould the State fall into arrears, interest shall be paid on any amount due at the Peruvian bank default interest rate, as set forth in paragraph 186 of [the] Judgment[;]

16. [i]f the beneficiaries of compensation are unable to receive the payments ordered within the specified one-year period due to causes attributable to them, the State shall deposit said amounts into an account or certificate of deposit in the name of the beneficiaries with a reputable Peruvian financial institution, as set forth in paragraph 182 of [the] Judgment[, and]

17. [...] shall monitor full compliance with [the] Judgment and the instant case shall be closed once the State has fully complied with the provisions laid out [t]herein. Within one year of the date of notice of [the] Judgment, the State shall furnish the Court with the first report on the measures adopted in compliance therewith, as set forth in paragraph 187 of [said] Judgment.

2. The communications submitted by the State of Peru (hereinafter "the State" or "Peru") on February 25, 2005, February 2, 2006, April 4, 2006, April 25, 2006, September 4, 2006, January 25, 2007 and November 6, 2007, reporting, *inter alia*, that:

a) in regards to the duty to comply with the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding pending against Ms. De La Cruz Flores:

i. on July 10, 2006 the *Sala Penal Nacional* (National Criminal Chamber) rendered judgment in the second criminal proceeding brought against Ms. De La Cruz Flores, whereby she was found guilty of "the crime against Public Peace - Terrorism - Affiliation, to the detriment of the State" and sentenced to eight years, two months and eleven days in prison, which were deemed served; in addition, she was suspended from the practice of medicine for one year following said judgment of conviction and was ordered to pay a fine of approximately PEN300;

ii. the second criminal proceeding instituted against Ms. De La Cruz Flores is still pending given that the decision was appealed; therefore, non-compliance may not be argued in relation to this point insofar as the plaintiff had all due process guarantees at her disposal and access to available appeal remedies;

iii. the Peruvian State has not violated any constitutional right or law or due process guarantee whatsoever during the new criminal proceeding pending against Ms. De La Cruz Flores;

iv. the right to freedom from *ex post facto* laws was not violated in the new criminal proceeding inasmuch as criminal statutes in force at the time of the events were applied. The classification of the offense of which Ms. De La Cruz Flores was convicted is based on Section 288 - C of the 1924 Criminal Code, which was introduced by means of Law No. 24651, as amended by Law No. 24953, and on Section 322 of the 1991 Criminal Code and Section 5 of Decree Law No. 25475;

v. the factual findings against Ms. De La Cruz were based on the fact that she belonged to the terrorist group *Sendero Luminoso*, which conforMs. to the statutory definition set out in Section 5 of Decree Law No. 25475, which provides that the mere affiliation with or membership in a terrorist group is a punishable offense; therefore, there was no violation of the right to freedom from *ex post facto* laws, and

vi. the facts alleged by the representative were considered by the Court prior to rendering Judgment in the instant case. The Court provided an analysis of the new criminal proceeding in paragraphs 73(39) to 73(52) of the Judgment of November 18, 2004 and no irregularity was found in the criminal proceeding pending against her.

b) in regards to the obligation of the State to pay the amounts specified in the Judgment as compensation for pecuniary and non pecuniary damage and costs and expenses:

i. the State has complied with its obligations to pay the compensation awarded in the instant case to Ms. De La Cruz Flores and her next of kin;

ii. it has established a trust fund in the name of the minor, Danilo Alfredo Blanco De La Cruz, in the amount of USD30,000, and

iii. has reimbursed Ms. De La Cruz Flores for costs and expenses.

c) in regards to the duty to provide medical and psychological care to the victim through the State's health services, including the provision of free medication, the State did not provide any information.

d) in regards to the obligation to reinstate Ms. De La Cruz Flores to the job she was performing as a medical professional in public institutions at the time of her detention:

i. Ms. De la Cruz currently holds the position of general doctor; Level P-1, receiving a salary equivalent to the one she earned at the time of her detention;

ii. although Ms. De La Cruz Flores states that she has not been reinstated to the Pediatric Unit, it does not constitute non-compliance with the measures ordered by this Court in the Judgment. At the time of her detention, Ms. De La Cruz was working as a general doctor, and there is no record of any specialized degree in pediatrics in her file. Therefore, ESSALUD, the Peruvian Social Health Insurance, is not required to reassign her to a position in which she is not a specialist, and

iii. the State has complied with this obligation through ESSALUD, insofar as the Judgment orders that she be reinstated to a similar position and not necessarily to the same position she held, which is impossible given the amount of time that has elapsed and the vacancies available.

e) in regards to the duty to provide Ms. De La Cruz Flores with a grant for training and professional development, the State did not provide any information.

f) in regards to the duty to re-enter Ms. De La Cruz Flores in the relevant retirement register, the State did not provide any information.

g) in regards to the obligation to publish the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette and in another daily newspaper with national circulation, the State published the pertinent sections of the Judgment in *El Comercio* newspaper, a nationwide newspaper, on December 30, 2005.

3. The communications submitted by the representative of the victim (hereinafter "the representative") on February 2, 2005, April 29, 2005, June 20, 2005, May 18, 2006, July 13, 2006, August 2, 2006, August 8, 2006, September 20, 2006, December 21, 2006, February 24, 2007, and October 19, 2007 stating, *inter alia*, that:

a) in regards to the duty to comply with the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding pending against Ms. De La Cruz Flores:

i. on July 11, 2006, the *Sala Nacional de Terrorismo* (National Chamber on Terrorism) rendered judgment in the second criminal proceeding, and sentenced Ms. De La Cruz Flores to a prison term equivalent to the period of time she was held in custody until she was released in July 2004. Neither she nor her defense counsel was able to get a copy of said decision, which nevertheless the defendant moved to vacate at the sentencing hearing;

ii. on July 11, 2006, the Superior Assistant Prosecutor filed a motion to vacate the judgment with regard to, *inter alia*, the decision to deem the prison term imposed on Ms. De La Cruz Flores served;

iii. even though the *Corte Suprema* (Supreme Court of Peru) has not ruled on the motions filed against the judgment of conviction rendered in the second proceeding pending against Ms. De La Cruz Flores, due process violations have already taken place throughout the proceeding that resulted in her conviction for medical acts and her suspension from the practice of medicine for one year;

iv. the State violated the right to freedom from *ex post facto* laws and due process of law in the new criminal proceeding pending against Ms. De La Cruz Flores when it prosecuted the victim for acts that the Inter-American Court found in its Judgment to be "essentially lawful" — medical acts—, and when it continued to maintain as valid procedural steps that the Inter-American Court found to be invalid. Moreover, the State prosecuted her twice for the same acts by applying different statutory provisions, i.e. Section 5 of Law No. 25475, and the 1921 and 1991 Criminal Codes, as amended;

v. court procedures in the second criminal proceeding exceeded a reasonable time for the commencement of the trial. Furthermore, due to delays and suspensions of the trial hearings Ms. De La Cruz Flores's job was adversely affected;

vi. the State failed to comply with its duty to observe the right to freedom from *ex post facto* laws insofar as during the second proceeding no new evidence was introduced to prove Dr. De la Cruz Flores's membership in the terrorist organization *Sendero Luminoso* and other evidence gathered during the preliminary investigation, which was favorable to her, was not taken into account by the *Sala Nacional de Terrorismo* (National Chamber on Terrorism) in the judgment of conviction. None of the witness statements include a detailed or express accusation of having engaged in conduct outside the scope of standard medical practice;

vii. such National Court based its finding of liability on the content of the statements made by witness Code No. A2230000001 and Jacqueline Aroni-Apcho and Elisa Mabel Mantilla-Moreno, offered in the first proceeding. By automatically introducing said evidence into the second

proceeding, without giving the possibility to Ms. De La Cruz, or her defense attorney, to cross-examine the witnesses, with the exception of the confrontation with Aroni Apcho, the due process violation committed by the Court in the first proceeding extended to the current proceeding;

viii. on September 8, 2006 the *Segunda Sala Penal Transitoria de la Corte Suprema* (Second Provisional Criminal Chamber of the Supreme Court) declared the criminal proceeding related to the first detention of Ms. De La Cruz Flores null and void, and found that the criminal action was barred by the statute of limitations. Said decision "was not only unnecessary, but also contrary to the spirit of the decision rendered by the *Tribunal Constitucional* (Peruvian Constitutional Court) in January 2003, which held that convicted persons, whose due process rights had been violated as a result of the application of the anti-terrorist legislation, should be compensated by granting them the possibility of a new proceeding which ensures, at a minimum, the right to a fair trial. Clearly, this form of reparation does not apply to those who were acquitted or to those whose cases were dismissed, as was the case of María Teresa de la Cruz." A different interpretation would entail a violation of the principle *ne bis in idem* and of the right to humane treatment as a result of the additional suffering caused by "fear of further persecution" on the part of the State. Therefore, the State has once more violated the right not to be prosecuted twice for the same offense.

b) in regards to the obligation of the State to pay the amounts specified in the Judgment as compensation for pecuniary and non pecuniary damage and costs and expenses:

i. the State has complied with the obligation to pay the compensation awarded to Ms. De La Cruz Flores and her next of kin;

ii. on December 28, 2005, 18 days after the expiration of the one-year term, the State paid the compensation for pecuniary and non pecuniary damage to Ms. De La Cruz Flores and the members of her family;

iii. in regards to the minor, Danilo Blanco De La Cruz, son of Ms. De La Cruz Flores, the State deposited USD30,000 into a trust fund in the *Banco de la Nación* (National Bank), which ended on May 2006, when the child reached the age of majority, and

iv. on December 28, 2005, 18 days after the expiration of the one-year term, the State reimbursed the costs and expenses to Ms. De la Cruz Flores.

c) in regards to the duty to provide medical and psychological care to the victim through the State's health services, including the provision of free medication:

i. the State has failed to adopt the necessary measures for Ms. De La Cruz Flores to receive medical and psychological care, and

ii. after being reinstated to her job and after three months of contributing to the social security system, she has been able to receive medical care for health problems, but not for those related to the violations she suffered.

d) in regards to the obligation to reinstate Ms. De La Cruz Flores to the job she was performing as a medical professional in public institutions at the time of her detention:

i. the State has not adopted any measure in order to comply with this obligation; the reinstatement of Ms. De La Cruz Flores to work was the result of her own efforts in dealing with ESSALUD, with the support of the medical workers' union to which she belongs, and

ii. on March 29, 2005, by means of Administrative Management Resolution No. 618-GA-RAR-ESSALUD-2005, Ms. De La Cruz Flores was reinstated to ESSALUD, to the position she had at the time of her detention; however, she was not reassigned to the same pediatric unit, where she worked before she was detained.

e) in regards to the duty to provide Ms. De La Cruz Flores with a grant for training and professional development:

i. no direct or indirect measures have been adopted by the State in connection with this obligation; and De La Cruz has not been informed about any steps taken, if any, in this regard;

ii. on August 18, 2005, Ms. De La Cruz Flores applied for a one-year training program in the pediatric unit in order to seek specialized accreditation in pediatrics; however, she was informed that the internship requested "must be part of the 2006 Training Program of the Hospital; the maximum period of training is 3 months, and upon completion of such training program a certificate will be issued, which in no way will serve as specialized accreditation;"

iii. Ms. De La Cruz Flores has unsuccessfully tried to secure training and professional development, but due to the State's inaction, she has sought, through her own means, such training and professional development in connection with the tasks assigned to her after her reinstatement; i.e. older adult care. In this regard, Ms. De La Cruz Flores has been admitted to the Postgraduate Program in Anti-Aging Medicine at the Department of Postgraduate Medicine of the *Universidad Autónoma de Barcelona*, Spain, and has borne the cost of the registration fee;

iii. on September 5, 2007, Ms. De La Cruz Flores notified the State that she was interested in attending the aforesaid postgraduate program from November 2007 to June 2008 and sent information on the course of study and its cost, which amounted to approximately €7,825.00 and, so far, she has received no answer from the State, and

v. given that the program began on November 9, 2007, she requested an urgent ruling by the Court, ordering the State to comply with the Judgment and provide her with a grant for training as well as to adopt any other necessary measures for her to pursue training and professional development, such as authorization to leave the country.

f) in regards to the duty to re-enter Ms. De La Cruz Flores in the relevant retirement register, the State has failed to comply with this duty and, therefore, with the payment of the contributions to the social security system for the years she was arbitrarily held in custody.

g) in regards to the obligation to publish the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette and in another daily newspaper with national circulation, on December 29, 2005, the pertinent sections of the Judgment were published in *El Comercio* newspaper. However, she was not notified on time of such publication by the State; rather, she learned about it through third parties.

4. The communications submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on February 16, 2005, July 3, 2006 and May 7, 2007, pointing out, *inter alia*, that:

a) in regards to the duty to comply with the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding pending against Ms. De La Cruz Flores:

i. in relation to the second proceeding, evidence suggests that the fundamental principles and rights emphasized by the Inter-American Court in its Judgment have not been observed in said proceeding. First, in the judgment of conviction of July 10, 2006, reference was made to evidence obtained during the first proceeding conducted by "faceless judges." Secondly, there was no indication of the time of the acts giving rise to the charges of membership in a terrorist organization against Ms. De La Cruz Flores or the criminal legislation in force at that time, which affects the punishment to be imposed as well as the running of the statute of limitations for the criminal action. In addition, Decree Law No. 25475 was applied again in the aforesaid judgment, which application the Court had already found contrary to the right to freedom from *ex post facto* laws;

ii. the Commission trusts that the *Corte Suprema* (Supreme Court of Peru), in its ruling on the remedies pending before it, will hold the criminal action barred by the statute of limitations, and

iii. with regard to the first detention and proceeding, the State has given no reasons to justify a second criminal prosecution for a crime of which the victim had been finally acquitted in 2000, and that such final judgment should have been *res judicata*.

b) in regards to the obligation of the State to pay the amounts specified in the Judgment as compensation for pecuniary and non pecuniary damage and

costs and expenses, the Commission appreciates the efforts made by the Peruvian State to comply with these obligations.

c) in regards to the duty to provide medical and psychological care to the victim through the State's health services, including the provision of free medication:

i. the Commission expresses concern over the fact that the State failed to provide information in this regard. The State has not fulfilled its obligation to report to the Court on the measures ordered, compliance with which is at issue here, and

ii. the information submitted by the representative indicates that Ms. De La Cruz Flores receives some sort of medical care; however, such medical care is not the result of measures taken by the State, in connection with the instant case, to provide medical care and free medication.

d) in regards to the obligation to reinstate Ms. De La Cruz Flores to the job she was performing as a medical professional in public institutions at the time of her detention, the Commission appreciates that the Peruvian State has, through ESSALUD, reinstated Dr. De La Cruz Flores to the practice of medicine.

e) in regards to the duty to provide Ms. De La Cruz Flores with a grant for training and professional development, the Commission expresses concern over the fact that the State failed to provide any information. Based on the information available at this time, the State has not complied with this obligation; therefore, it has failed to comply with its duty to report to the Court on the measures adopted in this regard.

f) in regards to the duty to re-enter Ms. De La Cruz Flores in the relevant retirement register, the Commission expressed concern over the fact that the State failed to provide information. Based on the information available at this time, the State has not complied with this obligation; therefore, it has failed to comply with its duty to report to the Court on the measures adopted in this regard.

g) in regards to the obligation to publish the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette and in another daily newspaper with national circulation, the Commission appreciates the State's partial compliance with this reparation by having published the relevant sections in *El Comercio* newspaper on December 30, 2005.

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That Peru has been a State Party to the American Convention since July 28,

1978 and that it accepted the contentious jurisdiction of the Court on January 21, 1981.

3. That, pursuant to Article 68(1) of the American Convention, “[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 such purpose, States are required to guarantee implementation of the Court’s rulings at the domestic level.¹

4. That, given that the Court’s judgments are final and not subject to appeal, as set out in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the Law of International Responsibility of States, upheld by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*).

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.²

7. That the States Parties to the American Convention which have accepted the contentious jurisdiction of the Court are under a duty to fulfill the obligations imposed by this Court. This obligation includes the State’s duty to report on the measures adopted to comply with the orders of the Court. Timely fulfillment of the State’s obligation to report to the Court on the manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the level of compliance with the Judgment as a whole.³ Moreover, the General Assembly of the Organization of American States has reiterated that, in order to enable the Court to fully meet its obligation to report to the General Assembly on compliance with its judgments, it is

¹ Cf. *Case of Baena-Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Molina-Theissen*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering clause No. 2; and *Case of García-Asto and Ramírez-Rojas*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering clause No. 4.

² Cf. *Case of Ivcher-Bronstein*. Competence. Judgment of September 24, 1999, para. 37; *Case of Gómez-Palomino*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering clause No. 4; and *Case of Molina-Theissen*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 4.

³ Cf. *Case of Barrios Altos*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; *Case of Gómez-Palomino*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 5; and *Case of García-Asto and Ramírez-Rojas*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 8.

necessary for the State Parties to provide, in a timely fashion, the information requested by the Court.⁴

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8. That having examined the communications submitted by the parties, this Court finds that the information and documentation provided shows that the State has complied with its obligation to pay the amounts specified in the Judgment as compensation for pecuniary and non pecuniary damage and to reimburse the costs and expenses to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas, widow of De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz, and Danilo Alfredo Blanco De La Cruz, respectively (*supra* Having Seen clauses No. 2(b), 3(b) and 4(b)).

9. That in relation to the reinstatement of Ms. De La Cruz Flores to the job she was performing as a medical professional in public institutions at the time of her detention, the Judgment in the instant case specified that “[s]he [had to] be reincorporated, at least, at the level she had attained when she was detained.”⁵ The information and documentation submitted by the parties reveals that Ms. De La Cruz Flores has been reinstated to ESSALUD, the Peruvian social health insurance, to a position equivalent to the one she held at the time of her detention, although she was not assigned to the same pediatric unit where she worked at the time (*supra* Having Seen clauses No. 2(d), 3(d) and 4(d)). This Court appreciates that she has been reinstated to an equivalent position and finds that said obligation has been complied with.

10. That the State has partially complied with the obligation to publish the section entitled “Proven Facts” as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette and in another daily newspaper with national circulation, insofar as the State only published said sections in *El Comercio* newspaper on December 30, 2005. However, this Court may not find that the State has fully complied with this obligation inasmuch as there is no information available regarding the publication in the Official Gazette of Peru (*supra* Having Seen clauses No. 2(g), 3(g) and 4(g)).

11. That in regards to the duty to observe the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding pending against Ms. De La Cruz Flores, the Court has noted that the *Corte Suprema* (Supreme Court of Peru) has not ruled on the motions to vacate filed with said Court by the defense and the prosecution against the judgment delivered on July 10, 2006 by the *Sala Nacional de Terrorismo* (National Chamber on Terrorism) in the second criminal proceeding brought against the victim, which resulted in Ms. De la Cruz Flores’s conviction for the crime of affiliation with terrorism, for which she was sentenced to a prison term

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

⁵ *Case of De La Cruz-Flores v. Peru*. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, para. 169.

equivalent to the period of time she was held in custody, until she was released in July 2004 (*supra* Having Seen clauses No. 2(a), 3(a) and 4(a)). Therefore, this Court deems appropriate to issue no ruling on the State's compliance with this measure pending the decision of the Supreme Court of Peru.

12. That the Peruvian State has not provided any information regarding compliance with operative paragraphs number five, seven, and eight of the Judgment rendered in the instant case, related to the obligation to provide medical and psychological care to the victim through the State's health services, including the supply of free medication; to provide the victim with a grant for training and professional development, and to re-enter the victim in the relevant retirement register. Without appropriate information furnished by the State, this Court cannot exercise its power to monitor compliance with judgments. For the purpose of ensuring compliance with the reparations ordered, the Court must be able to verify and obtain information regarding compliance with the Judgment, which is "the materialization of the protection of the right recognized in the court's ruling by the proper application of said ruling."⁶

13. That it is essential that the State submit up-to-date information on the following obligations set out in the Judgment, which remain unfulfilled, in order for the Court to be able to determine whether they have been effectively and fully complied with:

- a) compliance with the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding brought against Ms. De La Cruz Flores;
- b) provision of medical and psychological care to the victim through the State's health services, including the supply of free medication;
- c) provision of a grant to Ms. De La Cruz Flores for training and professional development;
- d) re-entry of Ms. De La Cruz Flores in the respective retirement register, and
- e) publication of the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette;

14. That the Court will determine the general level of compliance with the Judgment on the merits, reparations, and costs of November 18, 2004, once the relevant information on the measures that have not yet been adopted is submitted to the Court.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

⁶ *Case of Baena-Ricardo et al.*, *supra* note 1, para. 73; and *Case of Gómez-Palomino*, *supra* note 2, Considering clause No. 8.

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

DECLARES:

1. That, in accordance with Considering clauses number eight, nine, and ten of this Order, the State has complied with its obligation to:

a) pay the amounts specified in the Judgment as compensation for pecuniary and non pecuniary damage and as reimbursement of costs and expenses to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas, widow of De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz, and Danilo Alfredo Blanco De La Cruz, respectively (*third, fourth, tenth, eleventh, and twelfth operative paragraphs of the Judgment of November 18, 2004*);

b) reinstate Ms. De La Cruz Flores to the job that she was performing as a medical professional in public institutions at the time of her detention (*sixth operative paragraph of the Judgment of November 18, 2004*), and

c) publish the section entitled "Proven Facts" as well as operative paragraphs one to three of the declaratory part of the Judgment in a newspaper with national circulation (*ninth operative paragraph of the Judgment of November 18, 2004*).

2. That the Court will keep the proceedings open to monitor compliance with the following obligations that remain unfulfilled, to wit:

a) compliance with the right to freedom from *ex post facto* laws and the requirements of due process in the new proceeding brought against Ms. De La Cruz Flores (*first operative paragraph of the Judgment of November 18, 2004*);

b) provision of medical and psychological care to the victim through the State's health services, including the supply of free medication (*fifth operative paragraph of the Judgment of November 18, 2004*);

c) provision of a grant to Ms. De La Cruz Flores for training and professional development (*seventh operative paragraph of the Judgment of November 18, 2004*);

d) re-entry of Ms. De La Cruz Flores in the respective retirement register (*eighth operative paragraph of the Judgment of November 18, 2004*);

e) publication of the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette (*ninth operative paragraph of the Judgment of November 18, 2004*);

AND DECIDES:

1. To call upon the State to adopt all such measures as may be necessary to fully and promptly comply with any pending measures ordered by the Court in the Judgment on the merits, reparations, and costs of November 18, 2004, in accordance with Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter-American Court of Human Rights, by February 15, 2008, a report specifying such measures as may have been adopted to comply with the reparations ordered by this Court and which have not been fulfilled, as set out in Considering clause No. 13 and second declaratory paragraph of this Order.
3. To call upon the representatives of the victim and the Inter-American Commission on Human Rights to submit comments on the State report mentioned in the foregoing operative paragraph, within a period of four and six weeks respectively following receipt of the report.
4. To continue monitoring compliance with the obligations, ordered by this Court in the Judgment on the merits, reparations, and costs of November 18, 2004, which have not been fulfilled yet.
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 victim's next of kin.