

**Order of the
Inter-American Court of Human Rights
February 6, 2008
Case of Loayza Tamayo v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on the merits of this case delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on September 17, 1997.
2. The judgment on reparations in this case, delivered by the Inter-American Court on November 27, 1998.
3. The judgment on interpretation of the judgment on reparations in this case, delivered by the Inter-American Court on June 3, 1999.
4. The orders delivered by the Inter-American Court on November 17, 1999, July 1, 2001, November 27, 2002, November 27, 2003 and March 3, 2005.
5. The order delivered by the Inter-American Court on September 22, 2006, in which it declared:
 1. That it will keep open the proceeding for monitoring compliance with the aspects pending fulfillment in the instant case, namely:
 - a) The reinstatement of María Elena Loayza-Tamayo in the teaching sector in public institutions, on the understanding that the amount of her salary and other benefits is to be equal to the remuneration she was receiving for these activities in the public and private sector at the time of her detention;
 - b) The guaranteeing of her full retirement benefits, including those owed for the period transpired since the time of her detention;
 - c) The adoption of all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Loayza-Tamayo in the civil courts has any effect whatsoever;
 - d) The adoption of the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention, and
 - e) The investigation of the facts of the instant case, identifying and punishing those responsible for those acts, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged.
 - [...]
6. The briefs of February 16, 2007 and July 23, 2007, in which the State of Peru (hereinafter "the State") reported on the status of compliance with the judgment on reparations in the instant case.

7. The communications of October 23, 2006, March 16, 2007 and October 11, 2007, in which the representative of the victim (hereinafter "the representative") submitted her comments on the reports of the State (*supra* Having seen No. 6).

8. The briefs of April 26, 2007 and November 16, 2007, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed its reaction to the reports submitted by the State (*supra* Having seen No. 6).

9. The order delivered by the President of the Inter-American Court on December 13, 2007 in which, exercising the powers of the Court to monitor compliance with its decisions, and in consultation with the other judges of the Court, he ordered the Inter-American Commission, the victim and her representative and the State to attend a private hearing on February 1, 2008, for the purpose of obtaining information from the State on actions it has taken to comply with pending items from the judgment on reparations delivered in the instant case (*supra* Having seen No. 5), and for receiving comments to this effect from the Inter-American Commission and the victim and her representative.

10. The private hearing held by the Court at its seat in San Jose, Costa Rica, on February 1, 2008, in which the State, the representative of the victim, the victim and the Commission discussed compliance with still-pending items in the instant case.¹

11. The plea made in that hearing by Judge Cecilia Medina Quiroga, President of the Inter-American Court (hereinafter "the President"), inviting the victim, her representative and the State to agree together on measures and actions needed to bring about full compliance with the judgment on reparations in the instant case.

12. The memorandum signed by the victim, her representative and the State in the presence of the Inter-American Commission and submitted to the Court on February 1, 2008, following the private hearing in this case (*supra* Having seen No. 10).

CONSIDERING:

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

2. That Peru has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978 and accepted the binding jurisdiction of the Court on January 21, 1981.

3. That in accordance with the provisions of Article 67 of the American Convention, the State must comply promptly and fully with the judgments of the

¹ In accordance with Article 6(2) of the Rules of Procedure, the Court held the hearing with the following judges: Judge Cecilia Medina Quiroga (President); Judge Sergio García Ramírez; Judge Leonardo A. Franco; Judge Rhadys Abreu Blondet and Judge Margarete May Macaulay. The following parties appeared at the hearing: a) for the Inter-American Commission: Elizabeth Abi-Mershed, Delegate, and Manuela Cuví, Advisor; b) for the representative of the victim: Carolina Loayza Tamayo, Representative, and María Elena Loayza Tamayo, Victim; c) for the State of Peru: Ángel María Lozada, Agent; Alberto Gutierrez La Madrid, Ambassador of Peru in Costa Rica, and Mr. Miguel Guzmán, Embassy Counselor.

Court. Moreover, 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."² For such purpose, the States are required to guarantee that the Court's orders are implemented in decisions made at the domestic level.³

4. That the obligation to comply with the Court's judgments conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*).⁴ The States Parties' Convention-based obligations to comply promptly with the decisions of the Court are binding on all branches and organs of State.⁵

5. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) within their own domestic laws. This principle is applicable not only to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights) but also 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.⁶

*

* *

6. That in the private hearing, the State discussed reinstating María Elena Loayza Tamayo into the educational service and supplied information on actions it had undertaken to comply with this item of the judgment on reparations (*supra* Having seen nos. 2 and 5).

7. That María Elena Loayza Tamayo, victim in the instant case, stated that at the time she was seized, she had been working in three different educational institutions: *Centro Educativo 2057 "José Gabriel Condorcanqui;"* the *Escuela Nacional de Arte Dramático*, where she carried a 24-hour teaching load, and the San Martín de Porres University with a 20-hour load. Mrs. Loayza Tamayo reported that she had been

² Cfr. *Case of Baena-Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, par. 60; *Case of Gómez Palomino.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering clause 7; *Case of Blake.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 27, 2007, Considering clause 3.

³ Cfr. *Case of Baena-Ricardo et al.* Competence, *supra* note 2, par. 131.

⁴ 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, par. 35; *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 6; *Case of Molina Theissen.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering clause 3.

⁵ Cfr. *Case of Baena-Ricardo et al.* Competence, *supra* note 2, par. 60; *Case of Gómez Palomino.* Monitoring Compliance with Judgment, *supra* note 2, Considering clause 7; *Case of Blake.* Monitoring Compliance with Judgment, *supra* note 2, Considering clause 4.

⁶ Cfr. *Case of Ivcher Bronstein.* Competence. Judgment of September 24, 1999. Series C No. 54, par. 37; *Case of Blake.* Monitoring Compliance with Judgment, *supra* note 2, Considering clause 5; and *Case of Gómez Palomino.* Monitoring Compliance with Judgment, *supra* note 2, Considering clause 4.

reinstated in two of these institutions, the *Centro Educativo 2057* and the *Escuela Nacional de Arte Dramático*. She added, however, that she had not been reinstated in the *Escuela Nacional de Arte Dramático* under the same employment conditions she had enjoyed at the time she was apprehended, but through a contract for non-personal services with no eligibility for labor benefits, so that the State could terminate her whenever it so desired [...]; even though she worked under the same conditions and with the same schedule as other faculty members at the national drama school, her salary had been cut by 50 percent. Finally, Mrs. Loayza Tamayo explained that, regarding reinstatement to her faculty position at the San Martín de Porres University, she "[had] received no reply as to the outcome of that procedure, and in fact, certain employees of the Ministry of Justice [had told her that] the State [could] not intervene in any private university." María Elena Loayza Tamayo reiterated the obligation of the State to "bring about [her] reinstatement to the *Centro Universitario* [...] or any other public system, if necessary, with all due salary, benefits and pensions." Finally, Mrs. Loayza Tamayo explained that "...when I was a university teacher, I earned an average of US\$500 in 1993, but today a professor hired with a 20-hour teaching load at San Martín de Porres University earns US\$1200." Because she was hesitant to thwart any possibility of reinstatement to San Martín de Porres University after so much time had passed, Mrs. Loayza Tamayo informed the Court that she had "made no attempt to collect [her] benefits for years of service, that is, for the years [she] had worked at the university, from 1982 through February 6, 1993, the day [she] was seized."

8. That the Commission pointed out that "the judgment of the Court stated that remuneration must be calculated at present value." The Commission emphasized that "this measure of redress calls for present value, and that is what needs to be evaluated."

9. That the State added that "in this specific case, with the mediation of the Court, [it wanted] to work out a fair solution with a clear interpretation of what [it needed] to do and what [it would] do in this sense."

10. That the Memorandum of the Meeting (*supra* Having seen no. 12), states that the parties agreed "to hold a meeting in the city of Lima, Peru, within two months of this date [February 1, 2008], in which the agent of the State will inform Mrs. Loayza Tamayo of measures taken to comply with the matters discussed in [Operative points 1 and 2 of the judgment on reparations]." Moreover, the State undertook to "report [...] on measures taken to incorporate [María Elena Loayza Tamayo] into the teaching service of a public institution in accordance with the provisions of the judgment on reparations and the orders of the Inter-American Court."

*

* * *

11. That regarding the duty to ensure the victim's full retirement benefits, the State reported in the private hearing that "bearing in mind that Mrs. Loayza would be receiving an unemployment pension from the Ministry of Health under the system of Decree-Law 20,530, her right to a pension would be guaranteed." The State added that "Mrs. Loayza may also receive a pension under the system of Decree-Law 19,990 [...] in her capacity as a teacher, so long [as] the national pension system authenticates her eligibility and that the period of employment [does] not include

time spent working in an entity of the State, given the unemployment benefits granted by the Ministry of Health."

12. María Elena Loayza Tamayo explained that she was eligible for two pensions because she had retired from the Ministry of Health and, following that retirement, she had initiated a second period of employment as a teacher. She therefore said that "she [was] eligible for a fair retirement because [... she had] worked since 1990 under the system of law 19,990." She also pointed out that "the new law 19,990 states that [workers must] be 65 years old in order to retire, and that [their pension would depend] on the contribution [...] made to build up a retirement fund; [and] it should be understood that if contributions have not been paid in, then those particular years of service will not be figured in for retirement, which would detract from the benefits when [she] retires at the age of 65." María Elena Loayza Tamayo added that "the general rule is to avoid the perception that anyone is receiving more than one government pension, except for the case of teachers, who in Peru may hold two different kinds of job, both in the administrative area and in teaching."

13. That the Commission asked that, "the years that Mrs. Loayza Tamayo was in detention be included [and] that this factor not [...] injure her pension benefits." It also stated, "...given that the victim has described three jobs she held at the time she was seized, [the] State [should] describe how it will ensure her right to retirement with regard to this, because it is quite clear that the unemployment pension from the Ministry of Health has nothing to do with what is being discussed at this point."

14. That with regard to this obligation, the Memorandum of the Meeting (*supra* Having seen no. 12) says, "...the State should inform Mrs. Loayza Tamayo about actions taken to comply with this point at the meeting that will take place in the city of Lima, Peru two months from today [February 1, 2008]."

*

* *

15. That with regard to the adoption of all measures of domestic law to ensure that no adverse decision delivered in proceedings against Mrs. Loayza Tamayo in the civil courts has any legal effects whatsoever, the State noted that it had already submitted "certifications from the offices of police records, criminal records and judicial records, giving reliable assurance that neither the police department, the criminal department nor the courts has any provision [or] administrative record that would circumscribe her rights."

16. That in this regard, the representative of the victim asked that "the State specify whether an administrative record has this legal effect and guarantees the right of María Elena Loayza [...] not to suffer any legal consequences from the judgment delivered against her in the regular courts." The Commission made no comments in this regard.

17. That according to the Memorandum of the Meeting (*supra* Having seen no. 12) the State agreed "to take all necessary steps to obtain judicial documentation or an order from the competent courts asking government offices to remove all criminal

records against Mrs. Loayza Tamayo, so that the victim can examine the order and determine whether the State has complied with this point of the judgment."

*

* *

18. That with regard to the adoption of measures of domestic law necessary for adapting Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention, the State noted that measures of domestic law had already been adopted.

19. That the representative of the victim stated, "...it is clear that if the Constitutional Court abolished Decree-Law 25,659, this guarantees that the principle of *non bis in idem*, that was violated in the case of María Elena Loayza, will be upheld." In this regard, she added that "...the fact of the matter is that the State has complied at least with regard to the principle of *non bis in idem*."

20. That the Commission stated that it was "...currently processing a number of petitions and cases alleging violation of the American Convention that had occurred even though the amendments outlined by the State were on the books and that, in keeping with its Convention-based powers, it would continue to analyze and monitor the object of this obligation."

21. That as stated in the Memorandum of the Meeting (*supra* Having seen no. 12), "...the victim and the agent of the State agree that the legislative reform bars any trials that violate the principle of *non bis in idem* for crimes of terrorism and high treason criminalized under these Decree-Laws [25,475 and 25,659], as occurred in the instant case." In this regard, the Court takes note of statements by the victim, her representative and the State.

*

* *

22. That with regard to the investigation of the facts of the case, identifying and punishing the perpetrators, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged, the State reported, "On October 31, 2007, the 21st Criminal Court of Lima set aside case number 155-03 against Juan Briones Guerra et al. for crimes against life, person and health, severe injury and rape, as ordered in summary proceedings by the Third Chamber of Defendants on Bail (*Tercera Sala de Reos Libres*) of Lima, order dated July 27, 2007, declaring on its own motion that the statute of limitations had run out and terminating the criminal action." The State also reported that the ruling handed down on July 27, 2007 by the Third Chamber of Defendants on Bail stated that "due to factors beyond the control of this court, [...] the statute of limitations on this criminal action has run out, putting an end to the action and terminating the power of the State to try and sanction the criminal offense committed; this in consideration of the maximum criminal liability for crimes against freedom and crimes of rape, against

life, person and health and serious injury, the fact that 12 years is the maximum term for extinguishment, and considering [further] that this case entails the joint commission of multiple serious crimes." In this regard, it claimed to be "carrying out very thorough monitoring of the investigation, but that unfortunately there are limits because the judicial branch has full independence to interpret the facts and decide on the types of crimes and the application of certain measures of defense, in this case the statute of limitations."

23. That the representative of the victim noted that "...the State [...] is not only the Executive Branch, but each and every one of the branches of government [and] that each one of them is under obligation to abide by the judgments of the [Inter-American Court]." She also pointed out that a number of "irregularities [had been committed] in the proceedings against these individuals [Briones and Alvarado], all of it intended to favor them and give them the opportunity to file challenges." Moreover, the representative stated that "...in his report, the Prosecutor took no position whatsoever regarding the expert opinions of psychologists that appeared in the case file, and failed to consider the context of systematic violation of human rights that existed in Peru at the time María Elena Loayza was seized." The representative closed by saying, "It is unfortunate that the State itself declared on its own motion that the statute of limitations had run out on the hideous crimes committed against María Elena Loayza[.] In its July 27, 2007 decision, the Third Chamber of Defendants on Bail in Lima responded to the two acquittals of defendants Laguna, Manrique, Briones and Aliaga. It reversed the part of the sentence that dismisses as groundless the objection of *res judicata* as well as the part that acquitted the defendants, and amended the decision, declaring on its own motion that the criminal action had lapsed and ordering that the case files be closed." Finally, the representative explained that "the State cannot declare that the statute of limitations on the criminal action has run out, because this is part of the obligation to redress that the State of Peru acquired as a consequence of the judgment handed down by this Court."

24. That the Commission stated that this was a particularly important matter, as one of the objectives of the Inter-American Human Rights system was to guarantee that perpetrators were investigated and punished, which was one of the main reasons why victims appealed to this [...] Court. It therefore asked the Court to judge as it had on other occasions and insist [...] that provisions for amnesty, for statutes of limitations and for creating releases from responsibility were inadmissible when their purpose was to interfere with the investigation and punishment of those responsible. Moreover, it asked the Court to remind the State of Peru that it was under obligation to move swiftly to carry out the orders given by the Court in its judgment.

25. That the Memorandum of the Meeting (*supra* Having seen no. 12) verifies that the State delivered "a copy of document no. 023-2007-CDH no. 10.435/AML on this point that it had submitted to the judicial branch at the request of the victim." However, the document was not submitted to this Court. The Court deems it necessary for the State to provide information on the procedures and other actions being taken for the purpose of complying with this obligation.

*

* *

26. That the Court applauds the State's assertion in the Memorandum of the Meeting (*supra* Having seen no. 12) of its willingness to comply with still-pending operative points of the judgment on reparations (*supra* Having seen nos. 1 and 2), for which purpose it undertook to conduct a variety of procedures (*supra* Considering clauses 10, 14, 17, 21 and 25). It therefore encourages State authorities to proceed with the meeting as scheduled (*supra* Considering clause 10) and awaits reports from the parties on the outcome of the meeting and actions taken to complete the still pending items of the judgment, as the State has agreed to do.

27. That the States Parties to the American Convention that have recognized the binding jurisdiction of the Court have the duty to fulfill obligations set by the Court. This includes the duty of the State to inform the Court of measures it has taken to comply with orders given by the Court in its judgment. Prompt submission by the State of required reports informing the Court of its progress in complying with each of the Court-ordered obligations is critical for assessing the state of compliance in the instant case.⁷ Moreover, the General Assembly of the OAS has repeatedly stated that, in order for the Court to discharge fully its obligation to inform the General Assembly about compliance with its judgments, the States Parties need to provide information requested by the Court in a timely manner.⁸

28. That the Court will examine the general degree of compliance with its judgment on reparations once it has received relevant information on the items of the judgments for which compliance is still pending.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES,

1. That it will keep open the proceeding for monitoring compliance with the still-pending items in the instant case, namely:

- a) The reinstatement of María Elena Loayza-Tamayo in the teaching sector in public institutions, on the understanding that the amount of her

⁷ Cfr. *Case of Barrios Altos*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause 7; *Case of Cantoral Benavides*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights, December 14, 2007, Considering clause 12; *Case of García Asto*. Monitoring Compliance with Judgment, *supra* note 4, Considering clause 8.

⁸ General Assembly, Resolution AG/RES.2292 (XXXVII-0/07) approved in the fourth plenary session on June 5, 2007, "Observations and Recommendations on the Annual Report," Operative point 4 .

salary and other benefits is to be equal to the remuneration she was receiving for these activities in the public and private sector at the time of her detention (*Operative point 1 of the judgment on reparations, November 27, 1988*);

b) The guaranteeing of her full retirement benefits, including those owed for the period transpired since the time of her detention (*Operative point 2 of the judgment on reparations, November 27, 1998*);

c) The adoption of all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Loayza-Tamayo in the civil courts has any effect whatsoever (*Operative point 3 of the judgment on reparations, November 27, 1998*);

d) The adoption of the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention (*Operative point 5 of the judgment on reparations, November 27, 1998*), and

e) The investigation of the facts of the instant case, identifying and punishing those responsible for those acts, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged (*Operative point 6 of the judgment on reparations, November 27, 1998*).

AND DECIDES:

1. To order the State of Peru to adopt all measures necessary for effective, prompt compliance with the operative points of the judgment on reparations handed down in the instant case, in accordance with the obligation given in Article 68(1) of the American Convention on Human Rights, which is binding on all branches and institutions of State as a whole.

2. To urge the State of Peru to hold the meeting scheduled in the memorandum signed by the State, the victim and her representative and to honor the other commitments acquired in the meeting that took place between the parties upon completion of the private hearing held in the instant case, in keeping with Considering clauses 10, 14, 17, 21, 25 and 28 of this order.

3. To ask the State of Peru to submit, by April 28, 2008 at the latest, a detailed report describing all measures taken to comply with still-pending reparations ordered by this Court. In particular, the State should inform the Court concerning the outcome of the meeting and, if possible, submit a plan of action for complying with any outstanding items from the judgment on reparations in the instant case.

4. To require the victim or her representative, within four weeks of being notified of the State's report, to advise the Inter-American Court of Human Rights of any observations they deem pertinent.

5. To require the Inter-American Commission on Human Rights, within six weeks of being notified of the report by the State of Peru, to advise the Inter-American Court of Human Rights of any observations it may deem pertinent.
6. To continue monitoring items still pending compliance from the November 27, 1998 judgment on reparations.
7. To order the Secretary of the Inter-American Court of Human Rights to notify the State of Peru, the Inter-American Commission on Human Rights and victim or her representative of this order.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary