

**Order of the
Inter-American Court of Human Rights***
of February 7, 2008
Case of Huilca Tecse v. Peru
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on the merits, reparations and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") on March 3, 2005, in which the Court:

DECIDE[D]:

[u]nanimously,

1. To admit the entry and search carried out by the State on September 7, 2004, pursuant to paragraphs 63, 79, and 83 of the [...] Judgment.
2. To partially approve the agreement regarding the methods of and deadlines for compliance with the reparations signed on December 6, 2004, between the State and the representatives of the victims and their next of kin, pursuant to paragraphs 40 and 58, 92, 95, 100, 111 to 116, 118, and 119 of the [...] Judgment.

DECLARE[D]:

[u]nanimously, that:

1. The conflict that originated the [...] case [had] ceased.
2. In keeping with the terms of the entry and search carried out by the State, the State violated the rights enshrined in Articles 4(1) (Right to Life) and 16 (Freedom of Association) of the American Convention on Human Rights, and failed in its obligation, established in Article 1(1) (Obligation to Respect Rights) of the same, in detriment to Mr. Pedro Huilca Tecse, pursuant to paragraphs 64 through 79 of the [...] Judgment.
3. In keeping with the terms of the entry and search carried out by the State, the State violated the rights enshrined in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, and failed in its obligation established in Article 1.1 (Obligation to Respect Rights) of the same, in detriment to the following family members of Mr. Pedro Huilca Tecse: Mrs. Martha Flores Gutiérrez, partner of the victim; their sons, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, José Carlos Huilca Flores, and Indira Isabel Hilca Flores, as well as Julio César Escobar Flores, step-son of the victim and son of Martha Flores Gutiérrez, pursuant to paragraphs 80 through 83 of the [...] Judgment.

* Judge Diego García-Sayán, of Peruvian nationality, declined to hear the Monitoring Compliance in this case, in accord with Articles 19(2) of the Statute and 19 of the Rules of Order of the Court. In addition, for reasons of Force Majeure, Judge Manuel Ventura Robles did not participate in the deliberation and signing of this Order.

4. [The] Judgment itself is a form of reparation, pursuant to paragraph 97 of the [...] Judgment.

AND ORDER[ED]:

[u]nanimously that:

1. The State must:

- a) effectively investigate the facts of the [...] case in order to identify, prosecute, and punish the intellectual and material authors of the extrajudicial execution of Mr. Pedro Huilca Tecse. The result of the process must be released to the public, pursuant to paragraphs 10 and 108 of the [...] Judgment;
- b) carry out an act of public recognition of responsibility in the [...] case, and publicly issue an apology to the next of kin of the victim, pursuant to paragraph 111 of the [...] Judgment;
- d) establish a subject or course on human rights and labor rights, to be known as the "Cátedra Pedro Huilca", pursuant to paragraph 113 of the [...] Judgment;
- e) on official holiday May 1 (labor day), recall and praise the work of Mr. Pedro Huilca Tecse and the union movement of Peru, pursuant to paragraph 114 of the [...] Judgment
- f) erect a bust in memory of Mr. Pedro Huilca Tecse, pursuant to paragraph 115 of the [...] Judgment;
- g) offer psychological treatment and attention to the next of kin of the victim, pursuant to paragraph 116 of the [...] Judgment;
- h) pay the amounts set by paragraphs 98 and 99 of the [...] Judgment to the next of kin of the victim in this case, for non-pecuniary damages, pursuant to paragraphs 92, 100, 101, 120, and 121 of the [...] Judgment;
- i) pay the amount set in paragraph 94 of the [...] Judgment for pecuniary damage to Mrs. Martha Flores Gutiérrez, pursuant to paragraphs 95 and 120 of the [...] Judgment; and
- j) deposit the damages allocated to minors Indrira Isabel Huilca Flores and José Carlos Huilca Flores in a bank investment under their names, in a solvent Peruvian institution, in dollars of the United States of America or in local currency, at the discretion of the person who legally represents them, within a time period agreed upon by both parties, and under the most favorable conditions permitted under the law and banking practices, while they are minors, pursuant to the paragraphs 120.3 and 121 of the [...] Judgment.

2. Insofar as the agreement [had] been approved by the [...] Judgment, any conflict or disagreement that arises will be resolved by the Tribunal, in accordance with paragraph 122 of the [...] Judgment.

3. The State must submit to the Inter-American Court of Human Rights a report on compliance with the Judgment within the time period of one year, beginning from the notification of the Judgment, in accordance with paragraph 123 of the [...] Judgment.

4. [The Court w]ill monitor the State's compliance with the obligations established in the [...] Judgment and consider the case closed once the State has fully complied with it.

2. The Order issued by the Inter-American Court on September 22, 2006, through which it:

DECLARE[D]:

1. That, in accordance with Considering clause No. 10 of [the] Order, the State has complied with its obligation to:

- a) organize a public act acknowledging its responsibility in relation to the [...] case and offer a public apology to the victim's next of kin (*first operative paragraph, subparagraph b, of the Judgment of March 3, 2005*);
 - b) publish in the Official Gazette and in another national newspaper both the section entitled "Proven Facts" and the operative paragraphs of the Judgment (*first operative paragraph, subparagraph c, of the Judgment of March 3, 2005*); and
 - c) pay the amounts established in paragraphs 92, 94, 95, 98, 99, 100, 101, 120, and 121 of the Judgment for non-pecuniary and pecuniary damage to Martha Flores-Gutiérrez, José Carlos Huilca-Flores, Indira Isabel Huilca-Flores, Flor de María Huilca-Gutiérrez, Katiuska Tatiana Huilca-Gutiérrez, Pedro Humberto Huilca-Gutiérrez and Julio César Escobar-Flores (*first operative paragraph, subparagraphs h, i and j, of the Judgment of March 3, 2005*).
2. That it will keep open the proceeding for monitoring compliance with the aspects pending fulfillment, namely the obligations to:
- a) effectively investigate the facts of the [...] case in order to identify, prosecute and punish the perpetrators and masterminds of the extrajudicial execution of Pedro Huilca-Tecse (*first operative paragraph, subparagraph a, of the Judgment of March 3, 2005*);
 - b) establish a course or subject on human rights and labor law, called the "Cátedra Pedro Huilca" (*first operative paragraph, subparagraph d, of the Judgment of March 3, 2005*);
 - c) recall and praise the work of Pedro Huilca-Tecse in favor of the trade union movement in Peru during the official celebrations of May 1 (Labor Day) (*first operative paragraph, subparagraph e, of the Judgment of March 3, 2005*);
 - d) erect a bust in the memory of Pedro Huilca-Tecse (*first operative paragraph, subparagraph f, of the Judgment of March 3, 2005*); and
 - e) provide psychological care and treatment to the next of kin of Pedro Huilca-Tecse (*first operative paragraph, subparagraph g, of the Judgment of March 3, 2005*).

AND DECIDE[D]:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending measures ordered by the Court in the Judgment on the merits, reparations and costs of March 3, 2005, pursuant to Article 68(1) of the American Convention on Human Rights.
2. To request that, by January 19, 2007, the State submit to the Inter-American Court of Human Rights a report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance, as established in Considering clause No. 11 and the second declarative paragraph of this Order.
3. To call upon the representatives of the victim's next of kin and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

[...]

3. The letters from the Secretary of the Court (hereinafter "the Secretary") dated June 22, July 19, September 25, October 29, and November 16, 2007, through which, following the instructions of the President of the Court, it was requested that the State submit detailed information on the measures adopted toward complying with the operative paragraphs still pending compliance in the Judgment on the merits, reparations, and costs of this case (*supra* first Having Seen paragraph). The

deadline for the submission of said report expired on July 10, 2007, without the State submitting the requested information.

CONSIDERING:

1. That monitoring the compliance with its decisions is an inherent jurisdictional power of the Court.
2. That Peru is a State Party to the American Convention on Human Rights as of July 28, 1978, and recognized as binding the jurisdiction of the Court on January 21, 1981.
3. That the obligation to comply with the decisions of the Court is a basic principle of law regarding the international responsibility of the State, which is supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*).¹
4. That the States Parties to the Convention must guarantee the compliance with provisions under the convention and their own effects (*effet utile*) at the internal level. This principle applies not only with regard to the substantive provisions of the human rights treaties (that is to say, those which express provisions regarding the protected rights,) but also with regard to the procedural rules, such as those referring to the compliance with the decisions of the Court. These obligations must be interpreted and applied so that the protected guarantee is truly practical and efficient, taking into account the special nature of the human rights treaties.²
5. That the States Parties to the American Convention that have recognized the binding jurisdiction of the Court must comply with the obligations established by the Tribunal. This obligation includes the State's duty to inform the Court of the measures adopted toward with the orders of the Tribunal in said Judgments. The State's timely observance of its obligation to inform the Tribunal of how it is complying with each of the operative paragraphs ordered by the latter is fundamental for the evaluation of the status of compliance of the case.³ Likewise, the General Assembly of the OAS has reiterated that, with the purpose that the Tribunal be able to fully carry out its obligation to report on compliance with its decisions, it is

¹ See the Cases of *Castillo Páez, Loayza Tamayo, Castillo Petrucci et al., Ivcher Bronstein and of the Constitutional Court v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, June 1, 2001, second *Considering* paragraph; *Case of the Yean and Bosico Girls v. the Dominican Republic*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, November 28, 2007, sixth *Considering* paragraph, and *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, November 30, 2007, fifth *Considering* paragraph.

² See the Case of *Ivcher Bronstein. Competence*. Judgment on September 24, 1999. Series C No. 54, paragraph 37; *Case of the Yean and Bosico Girls V. the Dominican Republic*. Monitoring Compliance with the Judgment, *supra* note 1, sixth *Considering* paragraph.

³ See the Case of *Barrios Altos V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, November 17, 2004, seventh *Considering* paragraph; *Case of Gómez Palomino V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, October 18, 2007, fifth *Considering* paragraph, and *Case of García Asto and Ramírez Rojas V. Peru*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, July 12, 2007, eighth *Considering* paragraph.

necessary for the States Parties to submit in a timely fashion the information that the Tribunal requires of them.⁴

6. That through letters sent by the Secretary of the Court, following the instructions of the President, repeated on several occasions (*supra* Having Seen 3), the State was reminded of its obligation to inform on the measures adopted toward complying with the Judgment.

7. That in keeping with what is established in Article 67 of the American Convention, the judgments of the Court shall be promptly and fully complied with by the State. Likewise, Article 68(1) of the American Convention stipulates that, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” The obligation of States Parties under the Convention to comply promptly with the Court’s decisions is binding to all branches and functions of the state.⁵

8. That without the information that is owed by the State, this Court cannot carry out its role of monitoring the execution of the judgments handed down. That for the sake of supervising and guaranteeing the application of the measures of protection and reparation mandated, the Court should be able to confirm and have information on the execution of the Judgment, which is “the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling.”⁶

9. That the Peruvian State has not informed on its compliance with the Judgment, and therefore has failed to comply with its obligation under the Convention.

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10. That in monitoring for full compliance of the Judgment issued in this case, the Court finds it crucial that the State submit information on each of the orders laid out in the Judgment on the merits, reparations, and costs of March 3, 2005, in this case (*supra* first Having Seen paragraph).

11. That the Court will consider the general status of compliance with the present Judgment only once it has received the pertinent information on the operative paragraphs still pending compliance.

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

⁵ See the *Case of Baena Ricardo et al.* Competence. Judgment November 28, 2003. Series C No. 104, paragraph 60; *Case of Gómez Palomino V. Peru.* Monitoring of Judgment Compliance, *supra* note 3, *Considering* paragraph seven, and *Case of the Sawhoyamaya Indigenous Community V. Paraguay.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, February 2, 2007, third *Considering* paragraph.

⁶ See the *Case of Baena Ricardo et al.* Competence, *supra* note 5, paragraph 73, and *Case of Gómez Palomino V. Peru.* Monitoring Compliance with Judgment, *supra* note 3, eighth *Considering* paragraph.

NOW THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in the exercise of its powers to supervise the compliance with its judgments, 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 the Statute of the Court and Article 29(2) of the Rules of Procedure,

RULES:

1. That pursuant with Considering paragraphs 1 through 11 of this Order, the State has failed to comply with its obligation to inform this Court of the measures taken toward complying with the orders of this Tribunal in the operative paragraphs of the Judgment on the merits, reparations, and costs issued on March 3, 2005, and in the Order issued on September 22, 2006, in this case.
2. That the procedure of monitoring the compliance of the measures of reparation ordered by the Court in this case will remain open in the ones that are still pending compliance.

AND RESOLVES:

1. To require the State to adopt all necessary measures to fully and promptly comply with the Court's orders in the Judgment on the merits, reparations, and costs in this case, as well as the Order issued by the court on September 22, 2006, in keeping with that set forth in Article 68(1) of the American Convention on Human Rights.
2. To request that the State submit a report to the Inter-American Court of Human Rights no later than March 12, 2008, indicating all the measures it has taken to comply with the orders laid out by the Court.
3. To require that the Secretary of the Court notify the State, the Inter-American Commission of Human Rights, and the representatives of the victims and their next of kin of this Order.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary