

**Order of the President of the
Inter-American Court of Human Rights
of February 11, 2008
Case of Baena Ricardo *et al.*
(270 Workers v. Panama)
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations and costs issued by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal") in the case of Baena Ricardo *et al.*, February 2, 2001 (hereinafter "the Judgment").

2. The Orders on monitoring compliance with the Judgment issued by the Court on June 21, 2002; November 22, 2002; June 6, 2003; and November 28, 2005. In the latter Order, the Tribunal:

DECLAR[ED]:

1. That in accordance with Considering paragraph 27 of the [...] Order, the State has fully complied with the obligation of paying the 270 victims the lump sum of US\$ 100,000.00 (one hundred thousand dollars of the United States of America) as reimbursement for expenses, as well as US\$ 20,000.00 (twenty thousand dollars of the United States of America) for the reimbursement of costs (*ninth operative paragraph of the Judgment of February 2, 2001*).

2. That in accordance with Considering paragraph 28 of the [...] Order, the Inter-American Commission reimbursed the victims and their representatives to the amount of US\$ 120,000.00 (one hundred and twenty thousand dollars of the United States of America), paid by the State for costs and expenses, as of which the ninth operative paragraph of the Judgment of February 2, 2005, has been fully complied with.

3. That in accordance with Considering paragraph 29 of the Order, the State has partially complied with:

a) the payment to the 270 victims of the amounts corresponding to lost salaries and other employment rights that they had claim to according to law, payment that, in the case of workers who may have passed away, should be made to their next of kin (*sixth operative paragraph of the Judgment of February 2, 2001*); and

b) the payment to the 270 victims of the amount of US\$ 3,000 (three thousand dollars of the United States of America) for non-pecuniary damages (*eighth operative paragraph of the Judgment, February 2, 2001*).

4. That the procedure for the monitoring of compliance will remain open with regard to the operative paragraphs of the Judgment still pending compliance in the present case, in accordance with Considering paragraph 30 of the Order, namely:

a) payment to to the 270 victims of the amounts that correspond to the lost salaries and other employment rights that they had claim to according to law, payment that, in the event that some workers have passed away, should be made to their next of kin (*sixth operative paragraph of the Judgment of February 2, 2001*);

b) the reinstatement of the 270 victims in their original positions, and if that is not possible, the offering of alternative employment that meets the conditions, salaries, and compensation they had at the moment of being fired. In the event that this is not possible either, the State must proceed with the payment of compensation that corresponds to the termination of employment, in keeping with internal labor laws. In the same way, the State must provide to

heirs of victims who have passed away compensation by way of a pension or retirement that applies (*operative paragraph seven of the Judgment dated February 2, 2001*); and

c) the payment to each of the 270 victims the amount of US\$ 3,000 (three thousand dollars of the United States of America) for non-pecuniary damages (*eighth operative paragraph of the Judgment, February 2, 2001*).

AND RESOLVE[D]:

1. To require that the State take all necessary measures to effectively and promptly comply with the operative paragraphs still pending compliance that were ordered by the Tribunal in the Judgment on the merits, reparations, and costs of February 2, 2001, as well as laid out in the Orders on compliance with the Judgment of November 22, 2002, and June 6, 2003, and in the [...] Order, in keeping with the stipulations of Article 68(1) of the American Convention on Human Rights.

3. The briefs from January 4, March 23 and 31, and November 29, 2006; and January 22, 2007, through which the State of Panama (hereinafter, "the State") addressed the status of compliance with the Judgment rendered in this case.

4. The briefs from June 13, 2006, and April 5, 2007, through which the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted its comments on the briefs sent by the State and assessed the status of compliance with the Judgment in this case.

5. The briefs presented by the victims or their representatives, in which they present their comments on the briefs sent by the State and addressed the status of compliance with the Judgment in this case.

6. The Order of monitoring compliance with the Judgment of November 28, 2005, and the communication of October 10, 2006; January 26, July 17, and October 12, 2007, through which the Tribunal requested that the State submit information on the operative paragraphs of the Judgment still pending compliance.

CONSIDERING:

1. That monitoring the compliance with its decisions is an inherent jurisdictional power of the Court.

2. That Panama is a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") as of June 22, 1978, and recognized as binding the jurisdiction of the Court on May 9, 1990.

3. That by virtue of the final and non-appealable nature of the Judgments of the Court, as established in Article 67 of the American Convention, they must be promptly complied with by the State in their entirety.

4. That 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 of prompt compliance with the Court's decisions binds all the powers and organs of the State.

5. That for the sake of fulfilling its mandate to monitor compliance with the commitments made by States Parties according to Article 68(1) of the Convention, the Court must learn the degree to which its decisions are observed. Therefore, the Tribunal must monitor to assure that the States comply with the reparations ordered.¹

6. That States Parties to the Convention that have recognized the binding jurisdiction of the Court have the duty to comply with the obligations established by the Tribunal. This obligation includes the duty, on behalf of the State, to inform the Court of measures adopted in order to comply with what the Tribunal has ordered in its decisions. The timely observance of the State's obligation to indicate to the Tribunal how it is complying with each of the points ordered is fundamental for evaluating the status of compliance with the Judgment in its entirety.

7. That in the Order issued by the Tribunal on November 28, 2005, in monitoring the full compliance with the Judgment on the merits, reparations, and costs issued in this case, the Court found the obligation related to the reimbursement of costs and expenses fulfilled. On the other hand, the Tribunal found that the remaining measures of reparation that had been ordered were still pending compliance and found it necessary to keep open the procedure for the monitoring of compliance. Therefore, the Tribunal ordered that the State adopt all the measures necessary to allow prompt and effective observance of the outstanding points and requested the presentation of a report indicating which measures were adopted in order to comply with operative paragraphs six, seven and eight of the Judgment (*supra* Having Seen paragraph 2).

8. That this Presidency observes that on several occasions during the procedure of monitoring compliance, the State has expressed its intention to comply with the Judgment and submitted information on efforts made to that effect, such as the establishment of a high-level commission in charge of moving the execution of the Judgment forward; the making of certain payments; the offer to make new payments; and the processing of a number of public-sector posts for the re-inscription of the victims on the public payroll, among other measures.

9. That the Inter-American Commission, for its part, stressed the lack of specific information on the various aspects of the measures ordered in the Judgment, such as the criteria used to determine the amount of damages to be paid, as well as the amounts of new payment proposals, and on the specific actions and achieved advances in the compliance of the Judgment.

10. That the victims and their representatives presented, on several occasions, comments on the information provided by the State; they requested explanations of the criteria used to estimate reparations payments; they expressed their disagreement regarding the payments made; they presented information on the status of compliance with the different reparations measures and requested a public hearing to monitor the compliance with the Judgment.

¹ Cfr. ICHR. *Baena Ricard et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, paragraph 101.

11. That the Tribunal believes that the written information provided up to this point does not allow effective evaluation of the State's compliance with the outstanding operative paragraphs of the Judgment in this case.

12. That with seven years passed since the Court issued the Judgment and more than 16 years since the occurrence of the relevant events in this case, it is essential that the Tribunal be informed, in greater detail, of the measures the State has adopted in complying with the Judgment, to the end that it may assess their implementation. Therefore, it is the State's responsibility to demonstrate to the Inter-American Court that it has undertaken, with all due diligence, its obligations established in operative paragraphs six, seven, and eight of the Judgment.

13. That given the aforementioned, this Presidency considers it imperative that, in the opportunity mentioned in operative paragraph one of this Order, the State present detailed and current information on:

a) the payment to the 270 victims of the amounts corresponding to loss of salaries and other employment rights for which they qualify according to legislation, payment that, in the case of workers who have passed away, should be made to their heirs (*operative paragraph six of the Judgment, February 2, 2001*). In that regard, the Tribunal requires information, including the necessary source documentation, on:

i) specific action taken by the State and the advances toward compliance with this obligation;

ii) the details of the payments made in the way of lost salaries and other labor rights to each one of the victims; the amount still outstanding for each of the victims; and if any of the victims has been fully compensated;

iii) the proposal of a payment of 20 million balboas mentioned by the State in communication dated November 29, 2006, and January 22, 2007, the parts of the Judgment this proposal refers to, the method of its distribution, the method of payment, and the details of the amount of compensation that each of the victims would receive;

iv) the return to the victims or their heirs of the amount that the State has deducted from their compensation for income tax, in accordance with paragraph 30.a) of the Order on monitoring compliance, issued by the Tribunal on November 28, 2005; and

v) the names of the victims who have passed away and the state of payments to their heirs, specifically those who have received payment and those who are still owed.

b) the reinstatement of the 270 victims in their positions or, if that is not possible, the provision of alternative employment that equals the conditions, salaries, and compensation that they had at the time they were fired. In the event that this is not possible either, the State must proceed with the payment of compensation that corresponds to the termination of

employment, in keeping with internal labor laws. In the same way, the state must provide compensation to heirs of victims who have passed away by way of a pension or retirement that applies (*seventh operative paragraph of the Judgment dated February 2, 2001*). In that regard, the Tribunal requires information on:

- i) the specific actions carried out by the State and the advances toward the observance of this obligation;
- ii) the total number of, and names of, the victims that have been reinstated in their old positions, that of those who have been placed in other employment, that of those who have received compensation in return for the termination of the work relationship, and the names of those victims who do not fit in any of the aforementioned categories, together with the corresponding documentation; and
- iii) if the heirs of victims who have passed away have received compensation by way of pension or retirement;

C) the payment of the interest generated for having carried out the payment of compensation for non pecuniary damages after the expiration of the deadline set by the Judgment and the payment of non pecuniary damages compensation to the heirs of victims who have passed away (*eighth operative paragraph of the Judgment, February 2, 2001; fourth operative paragraph of the Order on monitoring compliance with Judgment, November 22, 2002; fourth operative paragraph of the Order on monitoring compliance with Judgment, November 28, 2005*). In that regard, the Tribunal requires information on specific actions taken by the State in complying with this point, regarding payments made to each victim and payments to the heirs of victims who have passed away.

14. That the monitoring of compliance with the judgments issued by the Inter-American Court has taken place through a written process in which the State must present reports that the Tribunal requires. In response, the Inter-American Commission and the victims or their legal representatives should submit their comments. Notwithstanding the aforementioned, the Court itself has recognized that, when considered convenient and necessary, it can call the parties to a hearing in order to listen to their arguments on compliance with the Judgment, as has been done in previous cases.²

15. That as to hearings, Article 14(1) of the Rules of Procedure provides that:

² Cfr. ICHR. *Case of Caballero Delgado and Santana v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of December 10, 2007; ICHR. *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of December 10, 2007; ICHR. *Case of the "Juvenile Reeducation Institute" v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of December 10, 2007; ICHR. *Case of Blake v. Guatemala. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of October 29, 2007; ICHR. *Case of Garrido and Baigorria v. Argentina. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of October 29, 2007; and *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of October 29, 2007.

[h]earings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these cases, however, minutes shall be kept in the manner prescribed in Article 43 of these Rules.

16. That at this time it is convenient and necessary to call a private hearing so that the Inter-American Court can receive from the State complete and current information on the compliance with outstanding points of the Judgment issued in this case, as well as hear the comments of the Inter-American Commission and the representatives of the victims.

NOW THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions, in consultation with the Judges of the Tribunal, and in keeping with Articles 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) of Statute 14(1) and 29(2) of its Rules of Procedure,

RESOLVES:

1. To call the State of Panama, the Inter-American Commission of Human Rights, and the representatives of the victims from the Center for Justice and International Law and the Organization of the Workers Victim of Law 25 of 1990 of the Republic of Panama, to a private hearing to take place in the Seat of the Inter-American Court of Human Rights in San José, Costa Rica, on May 3, 2008, at 0900, so that the Tribunal may obtain information from the State on its compliance with the outstanding operative paragraphs of the Judgment on the merits, reparations and costs issued in this case, and receive the comments of the Inter-American Commission of Human Rights and of the representatives of the victims as well.

2. To notify the State, the Inter-American Commission of Human Rights, and the representatives of the victims of this Order.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary