

**Order of the
Inter-American Court of Human Rights*
Of August 5, 2008
Case of the Constitutional Court
(Aguirre Roca, Rey Ferry and Revoredo Marsano)
v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") on January 31, 2001, whereby it:

1. F[ound] that the State violated the right to a fair trial embodied in Article 8 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

2. F[ound] that the State violated the right to judicial protection embodied in Article 25 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

3. F[ound] that the State failed to comply with the general obligation of Article 1(1) of the American Convention on Human Rights, with regard to the violation of the substantive rights indicated in the previous operative paragraphs of the [...] Judgment.

4. Decide[ed] that the State must order an investigation to determine the persons responsible for the human rights violations referred to in this judgment and also publish the results of this investigation and punish those responsible.

5. Decide[ed] that the State must pay the amounts corresponding to the arrears of salary and other benefits that, by law, correspond to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, in the terms of paragraphs 121 and 128 of the [...] Judgment.

6. Decid[ed] that, in fairness, the State must reimburse the victims in the instant case, for costs and expenses, in the way and under the terms set out in paragraphs 126 and 128 of [the] judgment, the following amounts: Manuel Aguirre Roca, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; Guillermo Rey Terry, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; and Delia Revoredo Marsano, US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made.

2. The Order of the Court of November 27, 2003 regarding the compliance with the Judgment on the merits, reparations and costs (hereinafter, the "Judgment") in the instant case, by which it was ordered:

* Judge Diego García-Sayán, due to its nationality, considered it was necessary to disqualify himself from hearing the case, and therefore he did not take part in the deliberation and signature of this Order.

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7. [...] in supervising comprehensive compliance with the judgments on the merits and on reparations issued in the instant case, and after analyzing the information supplied by the State, by the victims, and by the Inter-American Commission, the Court [...] verif[ied] that the State ha[d] paid the compensations for costs and expenses of the victims before the Court, pursuant to operative paragraph six of the Judgment on reparations.
8. [...] after analyzing the information provided by the State, the victims and the Inter-American Commission, the Tribunal consider[ed] it is essential that the State inform the Court regarding the compliance with the following aspects:
- a) the outcome of the investigations to identify and punish the responsible for the human rights violations committed against the victims of the instant case [...] (*Operative paragraph four of the Judgment of November 27, 2003*); and
 - b) The payment of the amounts corresponding to the arrears of salaries and other benefits that, in accordance with the domestic law, correspond to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano (*Operative Paragraph five of the Judgment of November 27, 2003*).

In this regard, the Tribunal decided:

3. To urge the State to adopt the measures that are necessary to promptly and effectively comply with the reparations ordered in the Judgment of January 31, 2001 and that are still pending compliance, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

3. The Order of the Court of November 17, 2004 regarding the compliance with the Judgment of the instant case, in which the Court decided:

[...]

8. [In the process of overseeing comprehensive compliance with the January 31, 2001 Judgment, and after analyzing the documents supplied by the State, by the representatives of the victim and by the Commission in their briefs on compliance with reparations (...), the Court note[d] that it d[id] not have sufficient information on the following points currently pending compliance:

the current status of the investigations to identify and punish the persons responsible for the human rights violations committed against the victims in the case (*operative paragraph four of the January 31, 2001 Judgment*); and

b) Payment of the back pay and other benefits due, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano (*operative paragraph five of the January 31, 2001 Judgment*).

9. [...] This Court [...] assert[ed] that the State that is found responsible and is in arrears regarding payment of the compensation ordered by the Court must pay interest on the amount owed. It is an obligation of the State found responsible to pay the compensation ordered by the Court within the term set for this purpose, and non-compliance with this obligation entails consequences for the State. When it pays after the deadline, the State incurs the obligation to pay interest on the amount owed, so as to maintain the value of the compensation and ensure that that said amounts retain their purchasing power. The Court [...] declare[d] that the States have said obligation to pay interest even when the judgment in which the Court ordered the reparations did not explicitly state said obligation.

[...]

In this regard, the Tribunal decided:

[...]

2. To order the State to fix and pay, in accordance with the domestic legislation most favorable to the victims and respecting due process guarantees, the interest due from the time it incurred in arrears regarding payment of the back pay and other benefits of Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

3. To ask the State to submit a detailed report, no later than January 31, 2005, on the current status of investigations to identify and punish the persons responsible for the human rights violations committed against the victims in this case –as well as regarding steps taken to pay the back pay, other benefits and interest due, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano – as set forth in Whereas eight and nine of the [...] Order.

[...]

4. The Order of the Court of February 7, 2006 regarding the compliance with the Judgment of the instant case, in which the Court declared:

1. That the State has complied with the totality of payment of the compensations for the arrears of salary and other benefits that, pursuant to domestic legislation, correspond to Messrs. Manuel Aguirre Roca, Guillermo Rey Terry y Delia Revoredo Marsano de Mur (*fifth operative paragraph of the Judgment of January 31, 2001*).

2. That it will maintain the procedure of supervision of compliance of the pending matters in the present case open, specifically:

a) The investigation to determine the people responsible for the violations of human rights against the victims of the case and their punishment (*fourth operative paragraph of the Judgment of January 31, 2001*), and

b) the determination and payment, pursuant to the most favorable domestic legislation applicable to the victims and observing the guarantees of the due process, of the interests generated during the time in which it incurred in delay regarding the payment of the arrears of salary and other benefits of Messrs. Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano (*fifth operative paragraph of the Judgment of January 31, 2001 and ruling of Compliance with Judgment of November 17, 2004*).

In this regard, the Tribunal decided:

1. To urge the State to adopt all the measures necessary to give effect and prompt compliance to the matters pending of compliance that were ordered by the Tribunal in the Judgment of January 31, 2001, as well as that stated in the Rulings of November 27, 2003 and November 17, 2004 (*supra* Considerations 1 through 3) and the Eighth to Fourteenth Whereas Clauses of the [...] Ruling, pursuant to that stipulated in Article 68(1) of the American Convention on Human Rights.

2. To request the State to present, no later than May 24, 2006, a detailed report on the status of compliance of the pending matters mentioned.

5. The notes¹ of the Court's Secretariat (hereinafter, the "Secretariat") of July 11 and September 1, 2006, January 24, February 5, March 6, March 11, April 18 and June 25, 2007, January 22, February 22, March 14, May 19 and June 24, 2008 by which, following the instructions of the President of the Court at that moment and the current President, the State was requested to forward the State's report in order to inform the Court, in detail, on the measures adopted to comply with the pending operative paragraphs of the Judgment delivered in the instant case (*supra* Having Seen 1). In the Order of February 7, 2006, the Court requested the State the submission of the report of May 24, 2006. However, on several occasions, the term for its submission was extended but the last term granted for presentation expired on March 10, 2008 and the State has not still submitted the report up to the moment.

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Peru has been a State Party to the American Convention since July 28, 1978, and that it accepted the binding jurisdiction of the Court on January 21, 1981.

3. That the obligation to comply with the decisions of the Court's judgments conforms to a basic principle of the international responsibility of the State, supported by international case law, according to which a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*).²

4. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions

¹ Cf.. Note IACHR-11.760/399 of the Secretariat of July 11, 2006 (record of Monitoring Compliance with Judgment, Volume III, page 1144); note IACHR -11.760/403 of the Secretariat of September 1, 2006 (record of Monitoring Compliance with Judgment, Volume III, page 1155); note IACHR-11.760/406 of the Secretariat of January 24, 2007 (record of Monitoring Compliance with Judgment, Volume III, page 1173); note IACHR-11.760/412 of the Secretariat of February 5, 2007 (record of Monitoring Compliance with Judgment, Volume III, page 1184); note IACHR-11.760/418 of the Secretariat of March 6, 2007 (record of Monitoring Compliance with Judgment, Volume III, page 1197); note IACHR-11.760/421 of the Secretariat of March 27, 2007 (record of Monitoring Compliance with Judgment, Volume III, page 1200); note IACHR-11.760/424 of the Secretariat of April 18, 2007 (record of Monitoring Compliance with Judgment, Volume III, page 1205); note IACHR-11.760/427 of the Secretariat of June 25, 2007 (record of Monitoring Compliance with the Judgment, Volume III, page 1210); note IACHR-11.760/437 of the Secretariat of January 22, 2008 (record of Monitoring Compliance with the Judgment, Volume III, page 1247); note IACHR-11.760/442 of the Secretariat of February 22, 2008 (record of Monitoring Compliance with the Judgment, Volume IV, page 1254); note IACHR-11.760/449 of the Secretariat of March 14, 2008 (record of Monitoring Compliance with the Judgment, Volume IV, page 1264); note IACHR -11.760/457 of the Secretariat of May 19, 2008 (record of Monitoring Compliance with the Judgment, Volume IV, page 1275); and note IACHR-11.760/461 of the Secretariat of June 24, 2008 (record of Monitoring Compliance with the Judgment, Volume IV, page 1280).

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of September 9, 1994, para. 35; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of May 7, 2008; Considering Clause five; *Case of Raxcacó Reyes v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 9, 2008, Considering Clause four.

of human rights treaties (*i.e.* those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.³

5. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. This obligation includes the State's duty to report on the measures adopted to comply with such decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.⁴ Furthermore, the General Assembly of the OAS repeated that, in order for the Court to fully meet its obligation to report to the General Assembly on compliance with its judgments, the States Parties need to provide, in time fashion, the information requested by the Court.⁵

6. That, the Secretary of the Court sent notes to the States on several occasions (*supra*, Considering Clause 5), reminding it of the obligation to report on the measures adopted to comply with the Judgment.

7. That, pursuant to section 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, section 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 treaty obligations of States Parties are binding on all the States' powers and organs.⁶

8. That, the Peruvian State has not reported on the compliance with the Judgment and, therefore, had failed to fulfill its conventional obligation.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Mayagna (Sumo) Awas Tingni Community*, *supra* note 2, Considering clause six and *Case of Raxcacó Reyes*. *supra* note 2, Considering clause forty-three.

⁴ Cf. *Case of Barrios Altos v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005; Considering Clause seven; *Case of Claude Reyes et al v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 2, 2008; Considering Clause seven and *Case of Gómez- Paquiyauri Brothers v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering Clause seven.

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

⁶ Cf. *Case of Baena Ricardo et al v. Panamá*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of February 8, 2008; Considering Clause fifty-four and *Case of the Indigenous Community of Yakye Axa v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 8, 2008, third Considering forty-nine.

9. That, without the proper information submitted by the State, this Court cannot exercise its role to oversight compliance with the Judgments delivered by it. That, for the sake of safeguarding and guaranteeing the application of the measures of reparations so delivered, this Tribunal must be able to verify execution of the Judgment and count with information related thereto. As a consequence, the Court considers it is necessary that the State informs on the status of compliance with the determination and payment in full of the amounts corresponding to the interest accrued during the time the State incurred in arrears with respect to the payment of the back salaries and other benefits of Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, as has been established in the operative paragraph five of the Judgment. In relation to the other aspects of the Judgment so delivered, the Court reserves the possibility of duly assess them in a possible public hearing to be convened to such end.

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10. That, when monitoring full compliance with the Judgment delivered in the instant case (*supra* Having Seen 1), the Court considers it is vital that the State submits information on the operative paragraphs pending compliance in accordance with the provisions of this Order (*supra* Considering clause 9).

11. That the Court will assess the general status of compliance with such Judgment, once it is provided with relevant information on the operative paragraphs related to the reparations of economic nature that are still pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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 the provisions of Considering Clauses No.6 to 10 of this present Order, the State has not fulfilled the obligation of informing this Court on the measures adopted to comply with the terms set forth in the Judgment on the merits, reparations and costs, issued by the Tribunal on January 31, 2001.

2. That it will maintain open the procedure to monitor compliance with those operative paragraphs pending compliance of the Judgment of January 31, 2001, reserving the possibility of convening a public hearing in due time in order to assess the compliance with such Judgment.

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending operative paragraphs ordered by the Court in the Judgment on the merits, reparations and costs of the case at hand, pursuant to the terms of this Order and the provisions of Article 68(1) of the American Convention on Human Rights.

2. To order the State to submit to the Inter-American Court of Human Rights, not later than September 26, 2008, a report describing all the measures adopted to comply with the decisions ordered by this Court.

3. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary