

**Order of the
Inter-American Court of Human Rights
of October 30, 2008
Case of Baena Ricardo *et al.*
(270 workers *v.* Panamá)
(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") on February 2, 2001, whereby it unanimously decided:

[...]

6. [...] that the State must pay to the 270 workers mentioned in paragraph 4 of th[e] Judgment, the amounts that correspond to unpaid salaries and other labor Rights applicable according to its legislation, which payment must, in the case of deceased workers, be made to their beneficiaries. In accordance with the pertinent national procedures, the State shall fix the respective indemnification, in order for the victims and, if applicable, their beneficiaries, to receive it within a maximum term of 12 months from the date of notification of th[e] Judgment.

7. [...] that the State must reinstate the 270 workers mentioned in paragraph 4 of th[e] Judgment in their positions, and should this not be possible, that it must provide employment alternatives where the conditions, salaries and remunerations that they had at the time that they were dismissed are respected. In the event that, likewise, the latter is not possible, the State shall proceed to pay the indemnity that corresponds to the termination of employment, in conformity with the internal labor law. In like manner, the State shall provide pension or retirement retribution as applicable to the beneficiaries of victims who may have passed away. The State shall comply with the obligations established in th[e] operative item within a maximum term of 12 months from the date of notification of th[e] Judgment.

8. [...] that the State must pay each of the 270 workers mentioned in paragraph 4 of the[e] Judgment the amount of US\$3,000 (three thousand U.S. dollars) for moral damages. The State shall comply with the obligations established in th[e] operative item within a maximum term of 90 days from the date of notification of th[e] Judgment.

9. [...] the State must pay the group of 270 workers mentioned in paragraph 4 of this Judgment the amount of US\$100,000 (one hundred thousand U.S. dollars) as reimbursement for expenses generated by the steps taken by the victims and their representatives, and the amount of US\$20,000 (twenty thousand U.S. dollars) as reimbursement for costs, from internal proceedings and the international proceeding before the Inter-American protection system. These amounts shall be paid through the Inter-American Commission on Human Rights.

[...]

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:

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[...]

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 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*).

[...]

3. The briefs of January 4, March 23 and 31, and November 29, 2006; and January 22, 2007, whereby the State of Panama (hereinafter, "the State" or "Panama") referred to the progress made in complying with the Judgment rendered in this case.

4. The briefs submitted by the victims or their representatives, whereby they submitted their comments on the briefs sent by the State and assessed the progress made in complying with the Judgment in this case.

5. The briefs of June 13, 2006, and April 5, 2007, whereby 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 progress made in complying with the Judgment in this case.

6. The Communications of October 10, 2006, January 26, 2007, July 17, 2007, and October 12, 2007, whereby the Secretariat of the Inter-American Court, following instructions by the Tribunal or the President, requested the State to submit information on the outstanding operative paragraphs of the Judgment.

7. The Order of the President of the Court of February 11, 2008, whereby, upon consultation with the other judges, she called the parties to a private hearing of monitoring compliance so that the Tribunal may obtain information from the State on its compliance with the outstanding operative paragraphs of the Judgment and receive the comments of the representatives and the Inter-American Commission as well.

8. The private hearing of monitoring compliance with the Judgment held on May 3, 2008 at the seat of the Court, whereby the parties referred to the progress made

in complying with the Judgment.¹ At said hearing, Panama and the representatives of the *Organización de Trabajadores Víctimas de la Ley 25 de 1990 de la República de Panamá* (hereinafter "the *Organización de Trabajadores Víctimas de la Ley 25*") submitted reports on the progress made in complying with the Judgment.

9. The briefs of June 5 and June 23, 2008 and other briefs submitted thereafter, whereby the *Centro por la Justicia y el Derecho Internacional* (hereinafter "CEJIL"), the *Organización de Trabajadores Víctimas de la Ley 25*, and the Inter-American Commission on Human Rights forwarded their comments on the report of the State dated May 3, 2008.

10. The briefs of August 13, 2008 and September 12, 2008, and their annexes, whereby the State submitted, respectively, 191 and 11 copies of the "Agreement setting the Conditions for Compliance with Judgment of February 2, 2001 issued by the Inter-American Court of Rights of the Organization for American States (OAS) in the case of Baena-Ricardo *et al.* v. Panama" (hereinafter "the agreements") signed by certain victims or successors in the instant case and the State.

11. The briefs of September 12, 15 and 19, 2008, and their annexes, whereby the *Organización de Trabajadores Víctimas de la Ley 25*, CEJIL and the Inter-American Commission on Human Rights submitted their comments on the aforementioned agreements.

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.

¹ According to Article 6(2) of the Rules of Procedure, the Court held the hearing with a commission of Judges composed by: Judge Cecilia Medina Quiroga, President; Judge Manuel E. Ventura Robles and Judge Margarete May Macaulay. The following persons attended the hearing: a) For the Inter-American Commission: Luz Patricia Mejía, Officer, and Lilly Ching, counsel; b) for the State of Panama: Edwin Salamin, Minister of Labor and Labor Development; Aristides Royo, Ambassador and Permanent Representative of Panama before the OAS; Luis E. Vergara, Ambassador of Panama to Costa Rica; Edgardo Sandoval, Chief of the Human Rights Department of the Ministry of Foreign Affairs; Nisla Lorena Aparicio, Alternate Representative of Panama before the OAS; Manuel Pérez, Internal Auditor of the Ministry of Labor and Labor Development, and Miguel Santizo, Counsel; c) for the representatives of over 240 victims represented by the *Centro por la Justicia y el Derecho Internacional*: Manrique Mejía, Jaime Espinosa, Estebana Nash, Juan O. Sanjur, Soraya Long and Marcela Martino, and d) for the representatives of 23 victims represented by the *Organización de Trabajadores Víctimas de la Ley 25*: Luis Batista, Rolando Gómez Camargo, Rubén Guevara and Cecilia Sanjur. At said hearing and during the written monitoring proceedings, the Inter-American Commission acted as representative of the victims who are not represented by the aforementioned organizations.

3. 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.”

4. 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.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of law of the international responsibility of States, as supported by the international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as already stated by this Court as prescribed in Article 27 of the Vienna Convention on the Law of Treaties of 1969, domestic law may not be invoked to justify non-fulfillment of previously undertaken international obligations. Treaty obligations of the States parties are binding on all State Powers and organs.²

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 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.³

7. 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.⁴

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Goiburú et al. v. Paraguay. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of August 6, 2008, Considering clause 5, and *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 7, 2008, Considering clause 5.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999, Series C No. 54, para. 37; *Case of Goiburú et al. v. Paraguay*, supra note 2, Considering clause 6, and *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, supra note 2, Considering clause 6.

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 7; *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of August 4, 2008, Considering clause 7, and *Case of Gómez-Paquiyaúri v. Peru*. Monitoring compliance with judgment Order of the Inter-American Court of May 3, 2008, Considering clause 6.

8. That the Court expresses its satisfaction over the usefulness of the hearing held in order to monitor compliance with the outstanding paragraphs in the instant case.

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9. That, regarding the outstanding reparations, the State asserted that:

i) the aggregate amount of the reparations is of thirty-two million four hundred fifteen thousand United States dollars (US\$ 32,415,000.00); that so far it paid out several items of the Judgment amounting to eleven million four hundred fifteen thousand United States dollars (US\$ 11,415,000.00), and that the remaining amount to fully comply with the Judgment is of twenty-one million United States dollars (US\$ 21,000,000.00).

ii) in determining the amount of twenty-one million United States dollars (US\$21,000,000.00) the following criteria were used:

1. the months running from dismissal date and reinstatement under similar conditions in the public sector or death;
2. the higher monthly salary (most favorable for the worker) between the average monthly salary of the last six months and the last monthly salary, as set forth in the Labor Code;
3. the salary certificates issued by the Social Security Fund to determine the monthly salary;
4. in calculating interest, a 10% yearly rate was applied and, for surcharges, 10% of the benefits, as set forth in the Labor Code; and
5. interest calculations were made for reinstated workers under similar conditions up to December 31, 2001 and for those who were not reinstated as of December 31, 2006.

iii) regarding the legal criteria used and the discrepancies expressed by the representatives, the State, among other considerations, referred to the amendment to the Labor Code by Law 44 of 1995, which prescribes that in the lawsuits instituted before its effective date up to 5 months of unpaid salaries would be recognized, while in subsequent lawsuits, only 3 months of unpaid salaries would be recognized. It added that the law referred to by the representatives regarding unpaid salaries has been repealed and that the State should only apply in force legislation. However, the State reported that in the instant case 180 and 190 months of unpaid salaries were recognized, plus 10% interest and surcharges; it highlighted that such interest is not currently prescribed in any legislation worldwide. It also stated that it did not

admit "the so-called additional claims of a group of workers which raised the amount of money claims to unattainable levels and that are inconsistent with labor laws in force." The State asserted that "the amounts and totals resulting from this last calculation fully comply with all the obligations established in the Judgment of February 2, 2001."

10. That the representatives of the CEJIL commented that:

i) regarding the information requested by the Court, the State furnished very limited and general information. While the State report submitted at the hearing summarized certain criteria used to calculate the amount of approximately 21 million balboas and detailed the amounts owed to each victim according to its calculations, it failed to furnish supporting documents of said totals. Moreover, they pointed out that "regarding the revision of the first payment and the subsequent calculations, including the proposal made at the hearing, it is evident that the State [...] has failed to submit criteria which are clear, consistent with and incidental to any sum calculation based on the parameters set out by the Court in the Judgment."

ii) regarding the benefits owed by the State, they explained that "[t]he core of the rights prescribed by the Labor Code to which all victims are entitled are unpaid salaries, payment in lieu of vacation, surcharge interest of Article 169, default interest of Article 170, and thirteenth month." However, the State proposal only provides for unpaid salaries, surcharge interest of Article 169 and default interest of Article 170 of the Labor Code, in disregard of vacation and thirteenth month benefits and the rights prescribed in Law 8, including, but not limited to, assessment right, right to allowances and right to union privileges for workers acting as union leaders.

iii) The term for calculating unpaid salaries, under domestic law, should run "from dismissal date to reinstatement date or until the pertinent judgment is executed when indemnification payment for unfair dismissal has been ordered," and if the State has not made any refunds or similar payments, the term to estimate unpaid salaries is not interrupted. They also asserted that in the report the State failed to inform the monthly salary of each worker on which it based the calculation, rendering accuracy verification by the victims impossible. Finally, they stated that "[t]he 10% default interest should be applied to unpaid salaries and further 'labor rights' under the laws in force at the date the events took place" so, as the amounts estimated by the State fail to include these items, they do not comply with domestic laws; they also noted that in the report the State failed to submit an updated list of the deceased victims and the payments made and amounts owed to their successors.

11. That the group of victims represented by the *Organización de los Trabajadores Víctimas de la Ley 25*, in turn, asserted that the State of Panama has followed a procedure which is completely foreign to domestic laws, in violation of its own rules, and that up to date it has not filed a detailed report on the calculations.

The State is firm in maintaining criteria based on case law of the Supreme Court of Justice in contentious-administrative cases and has failed to follow the applicable labor scheme; the calculation and payment procedure is inconsistent with domestic laws in that payments were proposed without discrimination or specification as to the amount of each benefit and in disregard of the adversarial nature of procedural law. They also stated that in the benefit calculations there is no provision for worker-employer allowances, which should be updated pursuant to the salary accrued up to date and paid to the Social Security Fund, and which form part of the assets of the workers and their social rights, even though they are not collectable by the victims. Furthermore, they asserted that the distribution of the twenty millions unilaterally estimated by the State has not been duly carried out and that setting a term of 11 years to pay out all the victims (7 years as from the Judgment and 4 more years for full payment of the agreements) directly affects those workers who have never been reinstated and benefits those who have been employed with the State for more than the 11 years yet to be paid out. They alleged that "the victims who have not been employed with the State and who have been neither reinstated nor indemnified are only recognized salaries for one year and do not earn any income from the State."

12. That the Inter-American Commission highlighted that there are important interpretation differences as to the compliance parameters set out in the Judgment by the Court. Moreover, it stated that the obligations deriving from the Judgment and subsequent payment orders have not been fully honoured and that it is paramount that the State explain how the calculation criteria and the new determination of unpaid salaries and further labor rights conform to domestic laws in force and the Judgment of the Court, and make specifications as to "the controversy under current and applicable domestic law regarding the unpaid salaries calculation and the State proposal exclusion criteria for basic labor rights." It considered it essential to know the details concerning the adoption of effective measures to guarantee the execution of the reparations ordered by the Court, in good faith, forthwith and taking into account the particular situation of each victim.

13. That the Court observes that the State submitted information on the compliance with the obligations deriving from the Judgment, in particular, as to: a) the payments made; b) the amount that, in its opinion, each victim should still collect; c) the information on the payment proposal regarding the twenty million balboas; d) the amount to be collected by each victim or successor; and e) the criteria used to determine such amounts.

14. That the parties expressed significant discrepancies concerning the amounts due and the legal criteria on which the calculations made by the State were based. Notwithstanding the foregoing, a great number of victims signed the reparation agreements proposed by the State; therefore, the Court will address, firstly, said agreements and their effects on the signatory victims or successors and, secondly, the situation of non-signatory persons or those who withdrew their consent after signing.

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15. That after the proposal was made formal through filing of May 3, 2008 report before the Inter-American Court, Panama, between August and September, 2008, forwarded to the Court 202 agreements signed by the State and certain victims or successors, which, in summary, provide for:

1) the amount to be paid to each signatory party "as full reparation for the violations established by the Inter-American Court of Human Rights in the Judgment of February 2, 2001 [...]." Moreover, it details the sum of each agreement including "the unpaid benefits amounting to ONE MILLION NINE HUNDRED THIRTY-TWO THOUSAND THIRTEEN BALBOAS AND THIRTEEN CENTS (B/1,932,013.13)" (first clause);

2) that the victim or, in turn, the successor declares that he/she "understands and consents [...] that the sum [detailed in the first clause] equals the total amount due to [him/her] by THE STATE under the Judgment [...]" and that "payment thereof entails full reparation of the damage caused by the violations attributed to the STATE" (second clause);

3) that each signatory party agrees that the payment completes "in full the rights referred to in the Judgment, [corresponding to] unpaid salaries and further labor rights under Panamanian laws; moral damage, legal costs and expenses and any other amount deriving from the case" (third clause);

4) that the sum will be paid out in four annual installments, as from September 2008 up to September 2011, "once [the agreement] has been approved by the Inter-American Court of Human Rights" (fourth clause);

5) the signatory party declares that "all of [his/her] rights are fully satisfied and [he/she] has no further claims whatsoever, either present or future, with regard to the rights acknowledged in the Judgment" (fifth clause);

6) that "payment by THE STATE of the additional sum for unpaid benefit difference payable in full together with the first installment [...] shall render the Order of the Ministry of Economy and Finance referring to income tax refund ineffective" (sixth clause);

7) that the State shall consign the amounts due to non-signatory victims in separate bank accounts. The State shall allocate the amounts once the victims or successors sign the agreement (seventh clause);

8) that the parties agree that "the Inter-American Court of Human Rights shall monitor the agreement" (eighth clause); and

9) that the State and the signatory party agree "that the agreement shall only be in effect once approved by the Inter-American Court of Human Rights" (ninth clause).

16. That CEJIL stated that "most of the [...] signatory victims are represented by our organization; therefore, we respect their will." However, it pointed out that other victims represented by them were reluctant to sign the agreement (*infra* Considering Clause Number 23).

17. That the Inter-American Commission noted that in spite of the fact that the State failed to submit the requested information, Panama filed the agreements signed by a group of victims and that non-signatory victims expressed their reasons to the Court. The Commission stated that it is necessary to consider "the rights and expectations of the aggravated parties regarding compliance with the Judgment," whether they have signed the agreement or not. Furthermore, it considered it arbitrary to link the rights of signatory victims to those of non-signatory victims, and that the criteria used to determine the amounts set out in the agreements should be known in order to analyze if they conform to the decision of the Court. It also stated that "the each victim's will is key to determining whether the reparation agreed upon in the agreements filed before the Inter-American system is satisfied."

18. That the agreements consisted of a proposal by the State to the victims in the instant case to fully comply with the obligations deriving from the Judgment, so those victims or successors agreeing to the proposal consented to and signed the same.

19. That the Court notes that a significant number of victims and successors, 202 out of 270 victims in the instant case, signed the aforementioned agreements. Later, five signatory victims informed the Court, through their representatives, of their intent to withdraw their consent for not agreeing to the terms of the agreements.

20. That, pursuant to the purpose of the State and most of the victims, this Court considers it encouraging that after almost seven years from the Judgment an agreement to solve all pending issues on reparations has been accorded and adopted between them and is now under the supervision of the Court.

21. That, under these circumstances, the role of the Court is to contribute to solve the dispute between the parties acting within its powers and abiding by Convention provisions. In the instant case, in view of the meeting of minds set out in the documents filed with the Court and the need that the Court delivers a decision rendering the agreements legally effective and that payments are effectively made (Considering Clause 15, paragraphs 4 and 9), the Court deems it convenient to approve the agreements signed between the State and a significant number of victims or successors. Therefore, the State should comply with the obligations under the agreements in due time and manner for the benefit of the victims or successors subscribing thereto. To this respect, the Court will keep the monitoring compliance with Judgment proceedings open in order to receive the receipts of payment to the signatory victims or successors.

22. That, concerning those persons who voluntarily decided not to sign the agreements, any pending dispute will be addressed and solved in a final and prompt

manner under domestic rules, following the parameters outlined in the Judgment of the Court and according to the following.

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23. That, with regard to the decision not to sign the agreements, CEJIL informed of, among others, the following reasons: i) the agreement proposed by the State has not been settled through a conciliatory procedure, it is a State-sided proposal which prevents the victims from getting advise on its provisions from their legal counsels; ii) according to the agreement, the State sets a maximum 11-year term to pay out the unpaid salaries in disregard of the fact that many victims have not been reinstated in similar positions with state agencies; iii) income tax refund is subject to the signing of the agreement, "in disregard of the fact that it is a right of each victim, whether signatory or not;" iv) that the agreement fails to clearly determine the amounts due to the victims and entails a waiver to any past, present or future claim without providing specific and concrete information on the scope of such waiver. They also asserted that the State intends to make the agreement binding on non-signatory victims.

24. That the *Organización de los Trabajadores Víctimas de la Ley 25* expressed similar reasons and pointed out that they deem it unacceptable that the State may take four years to pay out the reparations set out in the Judgment. They noted that "the agreement was drafted without the participation of the Inter-American Commission [...] or [their] organization," so they do not acknowledge the agreements. Finally, they asserted that "no document lacking consent by the victims may be considered an agreement or, in particular, an obligation for them."

25. That the Court notes that this group of victims or successors still have a dispute with the State as to the signing procedure and the contents of the agreements, in particular, as to the criteria used by the State to determine the amount of the reparations ordered by the Court.

26. That, with regard to the dispute on the legal criteria to be used and the amounts of the reparations, the Court deems it convenient to call attention to the Order of November 22, 2005, whereby it decided:

[...] That when the Court ruled on the measures of reparations in the case of Baena-Ricardo *et al.*, it ordered that the State should ensure the enjoyment of rights of the 270 victims mentioned in paragraph 4 of the Judgment [...] and that all of them should be entitled to redress for pecuniary damage [...] Owing to the fact that these determinations entail the analysis of complex issues of Panamanian labor law applicable to each of the 270 victims, the Court deemed it more appropriate that these issues be addressed by domestic courts. In the Judgment of February 2, 2001, the Court ordered that Panama should determine the amount of unpaid salaries and further rights "according to its legislation" and "in accordance with the pertinent national procedures." [...]

[...] That, by virtue of the foregoing paragraph, the Court is not in a position to decide on the allegations of the victims and their representatives regarding the criteria and legislation that should be taken into account by Panama to comply with operative

paragraphs six and seven of the Judgment [...] However, the dispute on the rights, amounts and refunds deriving from operative paragraphs six and seven of the Judgment should be solved in the domestic system in accordance with the pertinent national procedures, which includes the possibility to resort to competent authorities, as is the case of domestic courts. In other words, if the victims or successors find that the calculations made by administrative authorities are unfair, they may resort to domestic competent courts.-[...].⁵

27. That, with regard to non-signatory victims or successors, or to those persons who withdrew their consent after signing the agreement, the Court deems it appropriate to note that the State should consign in separate bank accounts the amounts due to them and undertake the obligation to make payments once the victim or successor has signed the agreement at its sole option, or if a judicial authority so orders in the terms set out thereby.

28. That, in keeping with the foregoing, non-signatory victims or successors or those persons who withdrew their consent after signing should be entitled to resort to competent courts to seek legal redress for the claims they deem relevant.

29. That the State should submit to the Inter-American Court the bank deposit receipts in non-signatory victims' or successors' name as well as in the name of those persons who withdrew their consent after signing. The State should consign said amounts under the most favorable financial conditions possible for those persons. To this respect, the Court shall keep the monitoring compliance with Judgment proceeding open in order to receive the bank deposit receipts. If after ten years the sums remain unclaimed and no judicial action has been instituted by any victim or successor, the sums will return to the State with any accrued interest as established in paragraph 212 of the Judgment.

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30. That, as regards any further allegations made by non-signatory victims or successors, or those persons who withdrew their consent after signing, as to the failure to reimburse the charges and other items provided for in operative paragraph seven of the Judgment, concerning default interest for moral damages under operative paragraph eight of the Judgment and income tax refund of previously paid reparations, the Court notes that the State proposal comprehends all the rights deriving from the Judgment. Therefore, the State should deposit the amounts due to non-signatory victims and successors or those persons who withdrew their consent after signing and, in accordance with the above provisions, the disputes should be solved in the domestic system (*supra* Considering Clause 26 and seq.).

⁵ *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 28, 2005, Considering clauses 13 and 14.

31. That, within the scope of its treaty and regulatory powers, the Court will continue monitoring compliance with the Judgment and the instant case will be closed once the State has made full payment and deposit in accordance with the provisions of the agreements and this Order.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That, pursuant to Considering Clause 21 of this Order, approves the "Agreement setting the Conditions for Compliance with Judgment of February 2, 2001 issued by the Inter-American Court of Rights of the Organization for American States (OEA) in the case of Baena-Ricardo *et al.* v. Panama" entered into by the State and the victims or successors subscribing thereto.

AND DECIDES:

1. To require the State of Panama to adopt the necessary measures to effectively and promptly comply with the payments provided for in the agreements entered into with signatory victims or successors.

2. To order, in relation to non-signatory victims or successors or those persons who withdrew their consent after signing, that the disputes on the determination of the rights deriving from the Judgment and the indemnification amounts and refunds regarding compliance with operative paragraphs six and seven of the Judgment should be solved in the domestic system, in accordance with the pertinent national

procedures, and shall entail the possibility to resort to competent authorities, including domestic courts, under Considering Clause Number 26 and subsequent ones of this Order.

3. To require the State of Panama to adopt the necessary measures to effectively and promptly comply with the bank deposits provided for in this Order with respect to non-signatory victims or successors or those persons who withdrew their consent after signing.

4. That the Court shall keep the monitoring compliance with Judgment proceedings open in order to receive: a) receipts of payment to signatory victims or successors, and b) bank deposit receipts in the name of non-signatory victims or successors or those persons who withdrew their consent after signing.

5. To request the State of Panama to submit to the Inter-American Court of Human Rights, no later than January 30, 2009, a report on the measures adopted in furtherance of this Order and forward the documents evidencing payments and bank deposits made.

6. To request the Inter-American Commission on Human Rights and the representatives of the victims, to submit their comments on the State report mentioned in the previous paragraph, within four and six weeks, respectively, as of service thereof.

7. To request the Secretariat to notify this Order to the State of Panama, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina-Quiroga
President

Diego García-Sayán

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