

**Order of the
Inter-American Court of Human Rights*
of April 28, 2009
Case of Cantoral-Huamaní and García-Santa Cruz v. Perú
(Monitoring of Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on preliminary objection, merits, reparations and costs (hereinafter "the Judgment") issued on July 10, 2007, whereby the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") unanimously decided that:

[...]

9. The State shall immediately investigate the facts that generated the violations in the present case, and identify, prosecute, and sanction those responsible, in the terms of paragraphs 189 to 191 of this judgment. The results of these proceedings shall be publicized by the State, so that the Peruvian people may know the truth about the events and those responsible in this case.

10. The State shall, within six months of the notification of this Judgment, publish once, in the Official Gazette and in another national daily newspaper, chapters VII to X of this Judgment, without the corresponding footnotes, together with its operative paragraphs.

11. The State shall, within six months of the notification of this Judgment, publicly acknowledge its international responsibility for the violations declared in this Judgment, to make reparation to the victims and to provide satisfaction to their next of kin, in a widely publicized public ceremony attended by authorities representing the State, and the next of kin who have been declared victims in this Judgment, in the terms of paragraph 193 of this Judgment.

12. The State shall provide a study grant to a public institution for Ulises Cantoral- Huamaní, Pelagia Mélida Contreras-Montoya de Cantoral, and the children of Saúl Cantoral- Huamaní, that covers all their educational expenses, from the moment the beneficiaries request this of the State until the conclusion of their advanced technical or university studies, in the terms of paragraph 194 of this Judgment.

13. The State shall provide for the continuation of the psychological treatment currently being received by Vanessa and Brenda Cantoral-Contreras for the necessary period, and provide immediate psychological treatment to the other next of kin who have been declared victims free of charge and for the necessary period, in the terms of paragraphs 195 to 202 of this Judgment.

* On January 22, 2007, Judge Diego García-Sayán excused himself from this case, "pursuant to Article 19 of the Statute and 19 [currently 20] of the Rules". The President of the Court at the time, in consultation with the judges of the Court, decided to accept the recusation in view of the provisions of such Articles and the analysis of the reasons put forward by Judge García-Sayán. Therefore, said Judge did not take part in the debate and signing of the Judgment or of this Order.

14. The State shall pay the amounts established in this Judgment for pecuniary damages, non pecuniary damages, and reimbursement of costs and expenses within one year of notification of this judgment, to the persons indicated in paragraphs 159 and 160 and in the manner stipulated in paragraphs 161, 171, 172, 174, 177, 180 to 183, 205 and 206 to 209 hereof.

[...]

15. It shall monitor full compliance with this Judgment and close the instant case when the State has fully complied with all its provisions. Within one year of notification of this Judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 210 of this judgment.

2. The Interpretation of the Judgment on preliminary objection, merits, reparations and costs issued by the Inter-American Court on January 28, 2008.

3. The note of the Inter-American Court's Secretariat (hereinafter "the Secretariat") of November 20, 2008, wherein, pursuant to instructions from the Court's President, the Republic of Perú (hereinafter "the State" or "Perú") was reminded that, under operative paragraph No. 15 of the Judgment and since such Judgment was notified on August 3, 2007, the term within which to submit the first compliance report expired on August 3, 2008, and that such report had not been received by the Tribunal within such term. Therefore, the State was requested to submit the report as soon as possible.

4. The communication of January 15, 2009 and its annex, whereby the State reported that "Delia Muñoz-Muñoz, Esq., Specialized Supranational Public Prosecutor, has been appointed as Official Attorney for the Peruvian State in all proceedings before that [...] Court". Pursuant to supreme resolution No. 008-2009-JUS, such appointment was made within the framework of the State Legal Defense System, created "with the aim to strengthen, unify and modernize the legal defense of the State at a [...] supranational and international level".

5. The Secretariat's note of February 2, 2009, whereby the State was once again requested to submit its first compliance report, since "the term within which to do so expired six months ago" and the term was extended to February 16, 2009.

CONSIDERING:

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

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

3. That Article 68(1) of the American Convention sets forth 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.” To that end, the States must ensure the implementation at a domestic level of the Court’s orders set out in its decisions.¹

4. That, pursuant to the final and unappealable nature of the Court’s decisions under Article 67 of the American Convention, these must be promptly complied by the State in full.

5. That the duty to comply with the Court’s decision constitutes a basic tenet of international responsibility of a State as supported by international case law, according to which States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and, as already pointed out by this Court and set forth by Article 27 of the 1969 Vienna Convention on the Law of Treaties, those States for domestic reasons may not avoid the already established international responsibility. The conventional obligations of the States Parties are binding upon all State powers and entities.²

6. That the States Parties to the American Convention must ensure compliance with the conventional provisions and their inherent effects (*effet utile*) at the level of their respective domestic legal systems. This principle applies not only in relation to the substantive provisions of human rights treaties (that is, those which embody rules on the protected rights), but also to procedural rules, such as those concerned with compliance with this Court’s decisions. These obligations must be interpreted and enforced so that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.³

7. That the States Parties to the American Convention who have acknowledged the binding jurisdiction of the Court have the duty to satisfy the obligations imposed by the Tribunal, which includes the State’s duty to inform the Court of the measures adopted in compliance with the Court’s orders in the Judgment. Prompt compliance with the State’s obligation to inform the Tribunal on how it is complying with each of the operative paragraphs in the Court’s judgment is essential to assessing the status of compliance of the case.⁴ Additionally, the General Assembly of the Organization of American States has stated again that, in order for the Court to fully comply with its

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Court of April 3, 2009, considering clause No. 3; and *Case of Baldeón-García v. Perú*. Monitoring Compliance with Judgment. Order of the Court of April 4, 2009, Considering clause No. 3.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 1, Considering clause No. 5, and *Case of Baldeón-García*, *supra* note 1, Considering clause No. 5.

³ Cf. *Case of Ivcher-Bronstein v. Perú. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 1, Considering clause No. 6, and *Case of Baldeón-García*, *supra* note 1, Considering clause No. 6.

⁴ Cf. *Case of Barrios Altos v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; *Case of Suárez-Rosero v. Ecuador*. Monitoring Compliance with Judgment. Order of the President of the Court of March 20, 2009, Considering clause No. 5, and *Case of Baldeón-García*, *supra* note 1, Considering clause No. 7.

duty to inform it on compliance with its decisions, the States Parties must promptly provide the Court with such information as is required by it.⁵

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8. That the term within which to submit the first report on the status of compliance with the reparation measures ordered in the Judgment expired on August 3, 2008; that is, more than eight months ago.

9. That, through notes sent by the Court's Secretariat, pursuant to instructions given by the President (*supra* Having Seen clauses No. 3 and 5), the State was reminded of its duty to report on the measures adopted to comply with this Judgment.

10. That the State has had an adequate and reasonable term within which to comply with its obligation to prepare and submit the first compliance report as ordered in the Judgment, and has even been granted a term extension by the Court to submit such report (*supra* Having Seen clause No. 5).

11. That, notwithstanding the foregoing, Perú has failed to inform of the status of compliance with the Judgment and has therefore failed to comply with its duty to inform.

12. That, in order to ensure the execution of the Judgment, this Court must be able to verify and have information about the implementation of the reparation measures ordered therein. Therefore, it is essential for the State to submit, without further delay, its first report on compliance with the reparation measures ordered by the Court in its Judgment.

13. That the Court will take into account the overall status of compliance with the Judgment once it receives Perú's report as ordered and the observations of the victims' representatives and of the Inter-American Commission on Human Rights. In the event of a new non-compliance by the State, the Court will assess the possibility of calling a hearing for monitoring compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions, in conformity with Article 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 30 and 63 of its Rules of Procedure,⁶

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

⁶ Rules adopted by the Court in its 49th Regular Session held from November 16 to 25, 2000, as partially amended during the 82nd Regular Session held from January 19 to 31, 2009, pursuant to Articles 71 and 72 thereof.

DECLARES:

1. That, pursuant to Considering clauses No. 8 to 13 of this Order, the State has failed to comply with its obligation to inform this Court on the measures adopted to comply with the provisions in the Judgment on preliminary objection, merits, reparations and costs issued on July 10, 2007.

2. That it will keep the monitoring proceeding open as regards all of the operative paragraphs of the Judgment of July 10, 2007, reserving the power to call a hearing for monitoring compliance to assess the compliance with such decision.

AND DECIDES:

1. To require the State to adopt all such measures as are necessary to promptly and effectively comply with all of the operative paragraphs of the Judgment on preliminary exception, merits, reparations and costs in this case pursuant to the facts considered in this Order, and to Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit to the Inter-American Court of Human Rights, no later than June 1, 2009, its first report, stating all the measures adopted to comply with the Court's orders.

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

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel 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