

**Order of the
Inter-American Court of Human Rights*
of July 1, 2009
Case of Castañeda Gutman v. Mexico
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter referred to as "the Judgment") of August 6, 2008, whereby the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", "the Court," or "the Tribunal") ruled, *inter alia*, as follows:

[...]

6. The State shall, within a reasonable time, complete the adaptation of its domestic law to the Convention, in order to adapt the secondary legislation and the norms that regulate the action for the protection of the rights of the citizen to the provisions of the constitutional reform of November 13, 2007, so that, using this remedy, citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected, in the terms of paragraphs 227 to 231 of th[e] judgment.

7. The State shall publish once in the official gazette and in another daily newspaper with widespread circulation, paragraphs 77 to 133 of th[e] judgment, without the footnotes, and its operative paragraphs within six months of notification of th[e] judgment, in the terms of paragraphs 232 to 235 [t]hereof.

8. The State shall pay Jorge Castañeda Gutman the amount established in paragraph 244 of th[e] judgment, for reimbursement of costs and expenses, within six months of notification of th[e] judgment.

9. The Court will monitor full compliance with th[e] judgment, in the exercise of its attributes and in compliance with its obligations under the American Convention, and will close this case when the State has complied fully with its terms. Within one year from notification of th[e] judgment, the State shall provide the Court with a report on the measures adopted to comply with the judgment.

[...]

2. The brief of March 2, 2009 and the appendixes thereto, whereby the United Mexican States (hereinafter, "the State" or "Mexico") reported on compliance with the Judgment.

* On May 7, 2007, Judge Sergio García Ramírez disqualified himself from hearing the instant case under Articles 19(2) of the Statute and Article 19 of the Rules of Procedure in force at the time of the case, on account of his Mexican nationality, and the Tribunal allowed that disqualification. Accordingly, Judge García-Ramírez was not involved in the deliberations or the signing of the Judgment or this Order.

3. The briefs of October 19, 2008 and May 7, 2009, whereby, respectively, the victim's representatives (hereinafter, "the representatives") requested information on the reimbursement of costs and expenses ordered in the Judgment and submitted their observations to the information provided by the State.

4. The brief of April 21, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") submitted its observations to the information reported by the State.

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That Mexico has been a State Party to the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") since March 24, 1981, and that it acknowledged the contentious jurisdiction of the Court on December 16, 1998.

3. That Article 68(1) of the American Convention provides 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." For such purpose, the States must guarantee that the decisions of the Court are implemented domestically.¹

4. That, in view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, such judgments should be complied with fully and promptly by the State.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.² The State Parties' obligations under the Convention bind all State branches and organs.³

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Cantoral-Huamani and García-Santa Cruz V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 28, 2009, Considering clause No. 3; and *Case of Chaparro-Álvarez and Lapo-Íñiguez V. Ecuador*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 29, 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 Cantoral-Huamani and García-Santa Cruz V. Peru*, *supra* note 1, Considering clause No. 5, and *Case of Chaparro-Álvarez and Lapo-Íñiguez V. Ecuador*, *supra* note 1, Considering clause No. 5.

³ Cf. *Case of Castillo-Petruzzi et al. v. Peru*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering clause No. 3; *Case of Cantoral-Huamani and García-Santa Cruz V. Peru*, *supra* note 1, Considering clause No. 5, and *Case of Chaparro-Álvarez and Lapo-Íñiguez V. Ecuador*, *supra* note 1, Considering clause No. 5.

6. That the States Parties to the Convention must guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic-law level. This principle applies not only in connection with the substantive provisions of human rights treaties (in other words, those addressing the protected rights), but also in connection with their procedural provisions, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.⁴

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to comply with the obligations imposed by the Court. Such obligation includes the State's duty to report to the Court on the measures taken to comply with the Court's orders contained in the aforementioned Judgment. Timely fulfillment of the State's obligation to report to the Court on how it is complying with each of the aspects ordered by the latter is essential to assess the status of compliance in a given case.⁵

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8. That, as regards the obligation to publish certain paragraphs of the Judgment in the Official Gazette and in another daily newspaper with widespread circulation set in the seventh operative paragraph thereof, the State reported that "paragraphs 77 to 133, without the footnotes[,] and the operative portion of the [J]udgment were published in the Official Gazette of the Federation on January 2, 2009," and that "on January 14, 2009, the relevant parts of the [J]udgment were featured on page 7 of the Excelsior newspaper." The State provided a copy of both publications.

9. That the representatives acknowledged "compliance with the obligations contained in the [seventh] operative paragraph of the Judgment."

10. That the Commission positively assessed the information submitted by the State on the publications.

11. That, based on the information submitted by the parties, the Tribunal finds that the State has complied with its obligation to publish in the Official Gazette and in another daily newspaper with widespread circulation the relevant portions of the Judgment within a period of six months.

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12. That, as regards the obligation to reimburse the victim for the costs and expenses as ordered in the eighth operative paragraph of the Judgment, the State

⁴ Cf. *Case of Ivcher-Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Cantoral-Huamaní and García-Santa Cruz V. Peru*, *supra* note 1, Considering clause No. 6, and *Case of Chaparro-Álvarez and Lapo-Iñiguez V. Ecuador*, *supra* note 1, Considering clause No. 6.

⁵ Cf. *Case of Barrios Altos v. Peru. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; *Case of Cantoral-Huamaní and García-Santa Cruz V. Peru*, *supra* note 1, Considering clause No. 7, and *Case of the Miguel Castro-Castro Prison V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 28, 2009, Considering clause No. 7.

reported that "on March 2, 2009, [...] it gave [Mr.] Castañeda-Gutman [a] check for USD 7,000.00 (seven thousand dollars of the United States of America)."

13. That the representatives "acknowledge[d] compliance, on the deadline day, of payment of the amount established in the [eight] operative [paragraph] of the Judgment."

14. That the Commission "t[ook] note of the information submitted by the State on the payment said to have been made to the victim in the instant case on March 2, 2009."

15. That, based on the information submitted by the parties, the Tribunal finds that the State has complied with its obligation to pay the amount owing to the victim on account of costs and expenses within a period of six months.

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16. That the State's report did not address the State's obligation to complete the adaptation of its domestic law to the Convention, as ordered in the sixth operative paragraph of the Judgment.

17. That the representatives noted that Mexico "has not shown any signs of its willingness to fully comply with its obligations under the [sixth] operative [paragraph] and paragraphs 227 to 231 of the Judgment, which deal with the adaptation of the domestic law concerning the implementation of the effective, useful remedy guaranteeing the right to judicial protection for those citizens who, not being nominated by a political party, claim that their fundamental right to be voted for has been violated." They stated that, even though several sections of the Law on the System of Mechanisms for Contesting Electoral Matters were amended on July 1, 2008, the substantive part which the Court found to be in violation of the Convention remained unchanged.

18. That the Commission argued that the State "did not address the actions taken with a view to complying with its obligation to complete the adaptation of its domestic law to the Convention," and it thus awaited further information.

19. That the Inter-American Court would like to recall that, in the sixth operative paragraph of the Judgment, it ordered the State to complete the adaptation of its domestic law to the Convention within a reasonable period of time. That, on the other hand, in the ninth operative paragraph of the Judgment, it ordered the State to submit its first report on compliance with the measures of reparation within one year from the date of notification of said Judgment. That, even though the State has already reported on the implementation of two measures of reparation, the Court has noted that the deadline set for the State to submit its report on the entire set of measures provided for in the Judgment has not yet expired. Accordingly, the Court will examine and rule on compliance with the measure of reparation ordered in the sixth operative paragraph of the Judgment once the deadline set expires and once it has received the State report originally provided for by the Tribunal.

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20. That the Inter-American Court appreciates the fact that the State has fully complied with two of the measures of reparation ordered in the Judgment on preliminary objections, merits, reparations and costs of August 6, 2008.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That, in accordance with Considering clauses Nos. 11 and 15 of this Order, the State has fully complied with the operative paragraphs of the Judgment in which the State was ordered to:

a) publish once in the Official Gazette and in another daily newspaper with widespread circulation paragraphs 77 to 133 of this Judgment, without the footnotes, and its operative paragraphs within six months of notification of this Judgment (*seventh operative paragraph of the Judgment*).

b) pay to Jorge Castañeda-Gutman the amount established in paragraph 244 of the Judgment, for reimbursement of costs and expenses, within six months of notification thereof (*eighth operative paragraph of the Judgment*).

2. That, in accordance with Considering clause No. 19 of this Order, the Tribunal shall keep open the procedure for monitoring compliance with the sixth operative paragraph of the Judgment, under which the State was given a reasonable period of time to complete the adaptation of its domestic law to the Convention, in order to adapt the secondary legislation and the norms that regulate the action for the protection of the rights of the citizen to the provisions of the constitutional reform of November 13, 2007, so that, using this remedy, citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected, in the terms of paragraphs 227 to 231 of the Judgment (*sixth operative paragraph of the Judgment*).

AND DECIDES:

⁶ Rules of Procedure approved by the Court on its XLIX Regular Period of Sessions, celebrated from November 16 to 25, 2000, and partially reformed during its LXXXII Regular Period of Sessions, celebrated from January 19 to 31, 2009, in conformity to Articles 71 and 72 thereof.

1. To declare that the measures of reparation ordered by the Inter-American Court of Human Rights in the seventh and eighth operative paragraphs of its Judgment on preliminary objections, merits, reparations and costs of August 6, 2008 have been complied with, in accordance with Considering clauses Nos. 11 and 15 and the first declarative paragraph of this Order.

2. To request that the State of Mexico, as ordered in the ninth operative paragraph of the Judgment on preliminary objections, merits, reparations and costs of August 6, 2008, submit to the Inter-American Court of Human Rights by September 4, 2009 a report stating the measures taken to comply with the reparation ordered by the Tribunal in the sixth operative paragraph of said Judgment, which is yet to be complied with.

3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit their comments on the report of the State referred to in the preceding operative paragraph, within four and six weeks, respectively, of receipt of the aforementioned report.

4. To continue monitoring compliance with the sixth operative paragraph of the Judgment on preliminary objections, merits, reparations and costs of August 6, 2008, which has yet to be complied with.

5. To ask the Secretariat of the Court to serve notice of this Order upon the State of Mexico, the Inter-American Commission on Human Rights and the representatives of the victim.

Cecilia Medina-Quiroga
President

Diego García-Sayán

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