

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 28, 2010**

CASE OF BAENA RICARDO ET AL. V. PANAMA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits, reparations and legal costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "the Inter-American Court", "Court", or the "Tribunal") on February 2, 2001.
2. The orders on monitoring compliance with the Judgment issued by the Inter-American Court on June 21, 2002, November 22, 2002; June 6, 2003; November 28, 2005; October 30, 2008; and July 1, 2009. In the latter, the Tribunal declared:

1. That, pursuant to Considering clauses No. 12 and 13 of [...] Order, the State has complied with its duty to deliver the checks for the first of the four payments agreed, in relation to 255 victims or successors signatory to the agreements and to the issuance of the payment receipts (*operative paragraphs 1 and 4(a) of the Order of October 30, 2008*). The Court shall wait for confirmation of the situation of the five persons who signed the agreements and who would have withdrawn the check, and with the two persons who signed the agreements but have not withdrawn their checks.

2. That, in accordance with Considering clause No. 14 of [...] Order, the State is yet to comply with its obligation to make a specific bank deposit and send the corresponding deposit slips, in connection with those persons who have not signed the agreements or who, after the signature, withdrew their consent (*operative paragraphs No. 3 and 4(b) of the Order of October 30, 2008*).

AND DECIDE[D]:

1. To require the State of Panama to continue adopting such measures as are necessary to effectively and promptly make the outstanding payments pursuant to the agreements regarding the victims or successors who have signed them.

2. To require the State of Panama to adopt such measures as are necessary to effectively and promptly make the bank deposits to the victims or successors who did not sign the agreements or who withdrew their consent to them, pursuant to the agreements approved by the Court and in the Order of October 30, 2008.

3. To repeat, with regard to the victims or successors who did not sign the agreements or withdrew their consent after signing them, that any discrepancy regarding the determination of all the rights arising from the Judgment and the amounts of the compensations and reimbursements with regard to the compliance with operative paragraphs No. 6 and 7 of the Judgment must be settled by on the domestic sphere pursuant to the applicable domestic procedures, which involves the possibility of resorting to the domestic authorities including the domestic courts.

4. To repeat that the Tribunal will keep the proceedings for monitoring compliance with the Judgment open with the sole purpose of receiving: (a) the receipts of payment to the victims or successors who signed the agreements, and (b) the receipts of the bank deposits to those persons who did not sign the agreements or who withdrew their consent after signing them.

5. To require the State of Panama to submit to the Inter-American Court of Human Rights, no later than October 30, 2009, a report stating the measures adopted pursuant to this Order and the documents of the payments and bank deposits made as the second annual disbursement, and the receipts of bank deposits for the first annual disbursement which are pending submission, and the remaining information stated in [...] Order.

[...]

3. The communications of November 5 and December 16, 2009, by which the Secretariat of the Inter-American Court (hereinafter, the "Secretariat"), following the instructions of the then President of the Court, requested the Republic of Panama (hereinafter, the "State" or "Panama") to immediately submit the report regarding the compliance with the Judgment.

4. The brief of January 5, 2010, and the annexes thereto, by which the State forwarded the report and furnished "copies of the settlements under Law 25, corresponding to the Ministry of Education, Cemento Bayano, IDAAN, INRENARE, Port Authorities and Ministry of Public Works".

5. The communications of January 26, 2010, by which the Secretariat, following the instructions of the President of the Tribunal (hereinafter, the "President"), requested the State to forward, no later than February 3, 2010, copy of the checks issued in favor of nine victims or their successors corresponding to the second payment; copy of the agreements signed by six victims or their successors and the copy of the guarantee certificates in favor of one victim corresponding to the two payments made.

6. The brief of February 8, 2010, by which Panama furnished the copies of the agreements signed and the checks issued in favor of the victims, which delivery was pending.

7. The briefs of February 3, 13, and 23, 2010, among other briefs submitted, by which the *Organización de Trabajadores Víctimas de la Ley 25 de 1990 de la República de Panamá* (Organization of Workers Victims of Law No. 25 of 1990 of the Republic of Panama, hereinafter, "the Organización de Trabajadores Víctimas de la Ley 25"), referred to the compliance with the Judgment and requested the Tribunal a copy of several documents.

8. The communications of February 12 and March 5, 2010, by which the Secretariat indicated to the *Organización de Trabajadores Víctimas* that the required information had already been delivered and that any observation as to the compliance with the Judgment could be submitted together with the observations to the state report.

9. The briefs of March 9 and 11, 2010, by which the *Organización de Trabajadores Víctimas* referred to the compliance with the Judgment.

10. The brief of March 10, 2010, and the annexes thereto, by which the Center for Justice and International Law (hereinafter, "CEJIL") forwarded its observations to the state report.

11. The communications of March 19, 2010, by which the Secretariat, following the instructions of the President, informed the *Organización de Trabajadores Víctimas* that it had received briefs from different persons who alleged having the legal representation of said Organization; therefore, it requested the corresponding clarification.

12. The brief of March 19, 2010, by which three victims, until such date represented by the *Organización de Trabajadores Víctimas*, appointed two attorneys as their legal representatives.

13. The communications of March 30, 2010, by which the Secretariat, following the instructions of the President, requested said attorneys and the *Organización de Trabajadores Víctimas* to elucidate, no later than April 7 2010, on the scope of the representation of said attorneys. Furthermore, they were informed that, in case of disagreement as to said appointment, the Court could proceed to appoint a common intervener.

14. The briefs of April 22 and 23, 2010, by which the *Organización de Trabajadores Víctimas*, among other aspects, referred to the compliance with the Judgment.

15. The communications of May 4, 2010, by which the Secretariat, following the instructions of the President, confirmed receipt of the briefs submitted by the *Organización de Trabajadores Víctimas* and requested the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or the "Commission") to forward the observations to the state report as soon as possible.

16. The brief of May 5, 2010, by which the Inter-American Commission forwarded the observations to the state report and to the observations forwarded by the victims' representatives.

CONSIDERING THAT:

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

2. Panama has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since June 22, 1978, and that it accepted the binding jurisdiction of the Court on May 9, 1990.

3. 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." Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

¹ See *Case of Baena Ricardo et al. V Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Cesti Hurtado V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 4, 2010, considering clause three and case of *El Amparo V. Venezuela*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause three.

4. In consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

5. The obligation to comply with the rulings of the Tribunal conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill 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 from their pre-established international responsibilities.² The treaty obligations of States Parties are binding on all State powers and organs.³

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

7. 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 whole status of compliance in this case.⁵

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8. Regarding the payment to the victims or their successors signatory to the agreements and to issuance of the payment receipts (*operative paragraph one and five of the Orders of October 30, 2008 and July 1, 2009*), the State forwarded copy of the

² See International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC- 14/94 of December 9, 1994. Series A N°. 14, para. 35; Case of Cesti Hurtado V. Peru, *supra* note 1, Considering clause five; and case of El Amparo V. Venezuela, *supra* note 1, considering clause five.

³ See *Case of Castillo Petruzzi et al V. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C N° 59, considering clause three; Case of El Amparo V. Venezuela, *supra* note 1, considering clause five and Case of the Serrano Cruz Sisters V. El Salvador. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering Clause five.

⁴ See *Case of Ivcher Bronstein V Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; Case of Cesti Hurtado V. Peru, *supra* note 1, Considering clause six; and case of El Amparo V. Venezuela, *supra* note 1, considering clause six.

⁵ See Case of the "Five Pensioners" V. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, considering clause five; Case of Garcia Prieto et al V. El Salvador. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of February 3, 2010, considering clause five; and Case of Ivcher Bronstein V. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, of November 24, 2009; Considering clause seven.

checks for the first two payments (*supra* Having Seen clause 4). Afterwards, (*supra* Having Seen clause 6), Panama clarified that: a) two victims withdrew their respective checks after the submission of the state report; b) in the case of another two deceased victims, the State is waiting for the domestic resolution declaring who the heirs are; c) the check in favor of one victim who recently passed away has not been drawn yet since the State is waiting for the declared heirs to appear, while “the money is deposited in a bank account opened to [such] end”, and d) “checks already issued are good for one year; upon expiration [...] they shall be deposited as guarantee certificates at Banco Nacional de Panama [National Bank of Panama].”

9. CEJIL informed, “after having consulted with the victims by means of agreed procedures[,] that the State has made the bank deposits corresponding to the second payment in relation to the victims [it] represent”. Furthermore, “at the request of a group of *Trabajadores Víctimas*”, it forwarded a note related to the Judgment.

10. The *Organización de Trabajadores Víctimas* did not present exactly its observations to the state report regarding the second payment made by Panama. However, in different briefs, it expressed its disagreements with the agreements and with their approval by the Tribunal. Among other statements, it pointed out that the State “has not complied with the terms established in the [J]udgment [in] operative paragraphs 6, 7 and the tax refund” and it further alleged that the claims made under the domestic legislation have been denied.

11. The Commission summarized several requests it received by some of the victims of the instant case and alleged that “it has received observations from various groups of victims who challenged the agreement- settlement submitted by the State.” Moreover, it stated that “given the court approval of the agreements, the State submitted a copy of the receipts of payment to the signatory victims or their successors and that, with regard to the non-signatory victims, the State has failed to make the deposit or inform about the possible approaches to reach an agreement with them.”

12. The Tribunal recalls that in the Order of July 1, 2009,⁶ the Court noted that 262 out of the 270 victims or their successors signed the agreements and that, in that respect, 255 victims have received their check for the first of the four annual payments. Therefore, Panama still needs to confirm whether the remaining seven persons have withdrawn their checks. In relation to this first payment, from the information and the documentation furnished by the parties, the Court notes that six of these persons have effectively received their checks and that one of them received a guarantee certificate issued by the State for failing to withdraw the corresponding check. Moreover, the State submitted a copy of the agreements signed by four persons who were not included in the Order of July 1, 2009, and who have also withdrawn the corresponding check. As a result, the Tribunal notes that 266 out of the 270 victims or their successors have signed the agreements and 265 victims have withdrawn the check corresponding to the first payment.

13. In relation to the second of the four payments that the State must make, from the documentation and information furnished by the parties, the Tribunal notes that 262 out of the 266 victims or successors who signed the agreement have received their checks. Furthermore, the Tribunal notes that: a) one of the persons who signed the agreement did not withdraw the check for neither of the two payments; therefore,

⁶ See Case of Baena Ricardo et al V. Panama. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 1, 2009, Considering Clause twelve.

the State issued two guarantee certificates in his favor; b) the State issued a check in favor of two deceased victims but it is waiting for the declaration of heirs and, c) and one of the victims recently died for the State has not issued the check and is waiting for the heirs to appear.

14. Based on the foregoing, the Court concludes that, so far, from the 270 victims of the case, 266 persons have signed the agreements, 265 persons have received the first of the four payments and 262 have received the second of the four payments. In relation to the foregoing, the Tribunal considers necessary that in its next report Panama refers to the situation of the successors before mentioned (*supra* Considering clause 13) and specifies whether such persons have effectively received the second payment. Moreover, the State must present updated information in relation to the victim who signed the agreement but has still not withdrawn any of the two checks drawn in his favor.

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15. In relation to the four victims or successors who have not signed the agreements (*operative paragraphs two and five of the Orders of October 30, 2008, and July 1, 2009*), even though the State furnished the Tribunal with a copy of the guarantee certificates issued to them for the first two payments, it failed to submit a copy of the receipts evidencing the bank deposits of such amounts.

16. The Inter-American Court recalls that section 7 of the agreements provides, with regard to the non-signatory victims, that the State shall deposit the amounts in specified bank accounts and that it shall disburse such amounts once the victims or their successors sign the agreement. Based on the foregoing, upon the approval of the agreements, the Inter-American Court established 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."⁷ Given that it was the State who proposed such method of payment in the agreements that were subjected to the Tribunal's approval and that such method was accepted by the Inter-American Court, it is necessary for Panama to clarify, in its next report, whether such guarantee certificates corresponds to the deposit of the checks in favor of these four victims, as well as of the signatory victim who has not withdrawn two checks (*supra* Considering clause 14) in separate accounts, upon the submission of the corresponding receipts according to the procedure proposed by the State and approved by means of Order of October 30, 2008.

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17. Moreover, as regards the brief attached by CEJIL to its observations without making any legal assessment or consideration (*supra* Considering clause 9 *in fine*), in which some persons represented by the organization challenged the approval of the agreements by this Court and, in general, the proceedings carried out by Panama, the Tribunal notes, as they have also indicated, that such persons have signed the agreements. Regarding those challenges and the statements made by the *Organización de Trabajadores Víctimas*, most of the victims of whom have signed the agreements,

⁷ See Case of Baena Ricardo et al V. Panama. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of October 30, 2008, Considering Clause 27.

the Tribunal deems convenient to recall what it indicated in the last Order,⁸ and repeat that the scope and content of the agreements as regards the items paid for is stated on the instrument signed by such persons, and the criteria used by the State were presented in its report, which was referred to the legal representatives and a summary of which appears in the Order of October 30, 2008. Furthermore, pursuant to the agreements signed by such persons:

(a) "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 [...] (first clause);"

(b) "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)"

(c) "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)," and

(d) "the signatory states 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)."

18. In addition, the Court recalls that "any discrepancy regarding the determination of all the rights arising from the Judgment and the amounts of the compensations and reimbursements with regard to the compliance with operative paragraphs No. 6 and 7 of the Judgment must be settled by on the domestic sphere pursuant to the applicable domestic procedures, which involves the possibility of resorting to the domestic authorities including the domestic courts."⁹

19. Furthermore, the Court also recalls that it will keep open the procedure to monitor compliance with the Judgment in order to receive: a) the receipts of payment to the victims or successors who signed the agreements and b) the receipts of the bank deposits to those persons who did not sign the agreements or who withdrew their consent after signing them.¹⁰

20. The Court values the effort made by the State to make headway in complying with the Judgment. In accordance with powers conferred upon it under the convention and its rules of procedure, the Court will continue monitoring compliance with the Judgment pursuant to the terms set forth in its Order of October 30, 2008, and shall deem this case closed once the State has paid in full the amounts and made all deposits pursuant to the provisions of the agreements and the Order already mentioned.

⁸ See Case of Baena Ricardo et al V. Panama, *Supra* note 6, Considering clause sixteen.

⁹ Case of Baena Ricardo et al V. Panama, *supra* note 7. Considering clause fourteen and Case of Baena Ricardo et al V. Panama, *supra* note 6, Operative paragraph third.

¹⁰ See Case of Baena Ricardo et al V. Panama, *supra* note 7. Operative paragraph four and Case of Baena Ricardo et al V. Panama, *supra* note 6, Operative paragraph four.

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21. Lastly, the Court notes that the request made to the *Organización de Trabajadores Víctimas* and to two attorneys who showed up as representatives of some of the victims of said organization (*supra* Having Seen clause 13) to elucidate on the issue of the representation of said organization expired on April 7, 2010, and said information has still not been submitted to the Tribunal. Based on the foregoing, the Court deems necessary that, no later than June 30, 2010, the *Organización de Trabajadores Víctimas* and the victims represented by said attorneys provides clarification to the Court regarding the representation of said Organization.

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, 25(1) and 30 of its Statute, and 31(2) and 69(4) of its Rules of Procedure,¹¹

DECLARES:

1. That, pursuant to Considering clauses No. 13 and 14 of this Order, the State has complied with its duty to deliver the checks for the second of the four payments agreed, in relation to 262 out of the 266 victims or successors signatory to the agreements and to the issuance of the payment receipts (*operative paragraphs 1 and 4(a) of the Order of October 30, 2008*).

2. That, in accordance with Considering clause No. 16 of this Order, the State is yet to comply with its obligation to make a specific bank deposit and send the corresponding deposit slips, in connection with those persons who have not signed the agreements or who, after the signature, withdrew their consent (*operative paragraphs No. 3 and 4(b) of the Order of October 30, 2008*).

AND DECIDES:

1. To require the State of Panama to continue adopting such measures as are necessary to effectively and promptly make the outstanding payments pursuant to the agreements regarding the victims or successors who have signed them.

2. To require the State of Panama to adopt such measures as are necessary to effectively and promptly make the bank deposits to the victims or successors who did

¹¹ Rules of Procedure of the Court approved during its LXXXV Period of Ordinary Sessions, held from November 16 to 28, 2009.

not sign the agreements or who withdrew their consent to them, pursuant to the agreements approved by the Court and in the Order of October 30, 2008.

3. To repeat, with regard to the victims or successors who did not sign the agreements or withdrew their consent after signing them, that any discrepancy regarding the determination of all the rights arising from the Judgment and the amounts of the compensations and reimbursements with regard to the compliance with operative paragraphs No. 6 and 7 of the Judgment must be settled by on the domestic sphere pursuant to the applicable domestic procedures, which involves the possibility of resorting to the domestic authorities including the domestic courts.

4. To repeat that the Tribunal will keep the proceedings for monitoring compliance with the Judgment open with the sole purpose of receiving: (a) the receipts of payment to the victims or successors who signed the agreements, and (b) the receipts of the bank deposits to those persons who did not sign the agreements or who withdrew their consent after signing them.

5. To request the State of Panama to present to the Inter-American Court of Human Rights, no later than November 15, 2010, a report stating the measures adopted in order to comply with this Order and to forward the documentation of the payments and the bank deposits made for the third annual disbursement and the rest of the information requested in this Order.

6. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of two and four weeks, respectively, as from the date of receipt of the report.

7. To request the *Organización de Trabajadores Víctimas de la Ley 25 de 1990 de la República de Panamá* (Organization of Workers Victims of Law No. 25 of 1990 of the Republic of Panama) to provide clarification, no later than June 30, 2010, regarding the representation of said organization.

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

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary