

**ORDER OF THE**  
**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**OF FEBRUARY 22, 2011**  
**CASE OF BAENA RICARDO *ET AL* v. PANAMA**  
**MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The judgment on the merits, reparations and costs (hereinafter “the judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on February 2, 2001.

2. The orders on monitoring compliance with judgment issued by the Inter-American Court on June 21, 2002, November 22, 2002, June 6, 2003, November 28, 2005, October 30, 2008, July 1, 2009, and May 28, 2010. In the latter, the Court declared:

1. That, pursuant to the thirteenth and fourteen considering paragraphs of th[e] Order, the State has complied with the delivery the cheques corresponding to the second of the four agreed payments with regard to 262 victims or heirs of the 266 persons who signed the agreements, and with the forwarding of the corresponding receipts (*operative paragraphs 1 and 4(a) of the Order of October 30, 2008*).

2. That, in accordance with sixteenth considering paragraph of th[e] Order, the State has still to comply with its obligation to make an individualized bank deposit and send the corresponding receipts, with regard to those persons who have not signed the agreements or who, having signed them, withdrew their consent (*operative paragraphs 3 and 4(b) of the Order of October 30, 2008*).

**AND DECIDE[D]:**

1. To require the State of Panama to continue adopting all necessary measures to comply effectively and promptly with the pending payments established in the agreements with regard to the victims or heirs who have signed them.

2. To require the State of Panama to adopt al necessary measures to comply effectively and promptly with the bank deposits corresponding to the victims or heirs who did not sign the agreements or who withdrew their consent, as established in the agreements approved by the Court and in the Order of October 30, 2008.

3. To reiterate, with regard to the victims or heirs who did not sign the agreements or who withdrew their consent, that any discrepancy regarding the determination of all the rights arising from the judgment and the amounts of the compensation and reimbursements relating to compliance with the sixth and seventh operative paragraphs of the judgment must be decided in the domestic sphere under the applicable domestic procedures, which includes the possibility of resorting to the domestic authorities such as the domestic courts.

4. To reiterate that the Court will keep the proceeding of monitoring compliance with judgment open with the sole purpose of receiving: (a) the receipts for payment to the victims or heirs who signed the agreements, and (b) the receipts for the bank deposits with regard to

those persons who have not signed the agreements or who subsequently withdrew their consent.

5. To request the State of Panama to present to the Inter-American Court of Human Rights, by November 15, 2010, at the latest, a report indicating the measures adopted to comply with this Order and to forward the documentation of the payments and bank deposits made for the third annual disbursement, and the other information requested in th[e] Order.

[...]

3. The briefs of July 30, September 24 and November 17, 2010, and their attachments, in which the Republic of Panama (hereinafter, the "State" or "Panama") presented its report and additional information on compliance with the judgment.

4. The note of the Secretariat of the Inter-American Court (hereinafter "the Secretariat") of November 19, 2010, in which, on the instructions of the President of the Inter-American Court (hereinafter "the President") and based on the fourth operative paragraph of the Order of May 28, 2010, it requested the State to submit: "(a) an individualized list of the persons who collected the amounts corresponding to the third annual disbursement established in the agreements, indicating the respective amounts, as well as the persons who did not do so, either because they had not signed the agreements or because inheritance procedures remained pending, and (b) copies of the documentation of said payments and the deposit of guarantee certificates."

5. The briefs of November 29 and December 10, 2010, and their attachments, in which the State forwarded "copy of the receipts for the payments made in September 2010, as well as of the bank deposits for those who had not signed the settlement agreements, and of charts with details of the payments made" and "copy of the guarantee certificates corresponding to September 2010 for the three [...] who did not sign the settlement agreement."

6. The brief of February 1, 2011, and its attachments, in which Panama forwarded information additional to its report on compliance with the judgment.

7. The brief of May 17, 2010, and other briefs that had been submitted, in which the *Organización de Trabajadores Víctimas de la Ley 25 de 1990 de la República de Panamá* (hereinafter "*Organización de Trabajadores Víctimas*") referred to compliance with the judgment.

8. The briefs of May 27 and June 3, 4 and 29, 2010, in which the different persons who alleged that they represented the *Organización de Trabajadores Víctimas* clarified "that [they are] lawyers in the Republic of Panama as regards everything relating to [...] domestic law" and "clarified that the [*Organización de Trabajadores Víctimas*] continued to represent" 15 victims in the case.

9. The Secretariat's notes of June 21 and July 6, 2010, in which, on the instructions of the President of the Court, it recalled that the "the Court will only respond to communications that come directly from the *Organización de Trabajadores Víctimas* [...] and that] any other communication the victims represented by the said Organization or their lawyers wish to submit at the domestic level, must be submitted through the said Organization."

10. The brief of January 19, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the State's report and on the observations of the

representatives.

**CONSIDERING THAT:**

1. One of the inherent attributes of the jurisdictional functions of the Court is 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 accepted the compulsory 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". To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.<sup>1</sup>
4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.
5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.<sup>2</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>3</sup>
6. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that

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<sup>1</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Valle Jaramillo v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 21, 2010; third considering paragraph, and *Case of the Ituango Massacres v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 22, 2010; third considering paragraph.

<sup>2</sup> 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 the Miguel Castro Castro Prison v. Peru. Monitoring compliance with judgment*. Order of the acting President of the Inter-American Court of Human Rights of December 21, 2010, sixth considering paragraph, and *Case of Valle Jaramillo v. Colombia, supra* note 1, fourth considering paragraph.

<sup>3</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph; *Case of the Miguel Castro Castro Prison v. Peru, supra* note 2, sixth considering paragraph, and *Case of Valle Jaramillo v. Colombia, supra* note 1, fourth considering paragraph.

the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>4</sup>

7. The States Parties to the Convention that have accepted the Court's contentious jurisdiction have the duty to comply with the obligations established by the Court. This obligation includes the State's duty to inform the Court about the measures it has taken to comply with the rulings of the Court in its decisions. The State's prompt observance of its obligation to inform the Court about how it is complying with each of the aspects ordered by the Court is fundamental for evaluating the status of compliance with the judgment as a whole.<sup>5</sup>

*a) Regarding the payment to the victims or heirs who signed the agreements and the forwarding of the corresponding receipts*

8. Regarding the payment to the victims or heirs who signed the agreements and the forwarding of the corresponding receipts (*first and fifth operative paragraphs of the Orders of October 30, 2008, July 1, 2009, and May 28, 2010*), the State forwarded copy of the cheques corresponding to the third payment (*supra* sixth having seen paragraph). In addition, Panama advised that: (a) "of all the 270 former workers and heirs who benefited from [the] judgment, 264 workers received the payment between September and December [2010]"; (b) two of the victims who had not signed the agreement signed it; and the State presented a copy of the signed agreements, proof of the endorsement and exchange of their guarantee certificates corresponding to the first and second payments, and copy of the cheques corresponding to the third payment; (c) currently, only three of the victims have not signed the settlement; therefore, the amounts of the three payments made by the State "have been deposited in guarantee certificates in the *Banco Nacional de Panama*"; (d) the 17 heirs of the victims who were waiting for the results of the inheritance procedures at the domestic level have received the amounts corresponding to the three payments made to date, and (e) two heirs of the victims are awaiting the declaration of heirs, so that "[t]he cheques [corresponding to the third payment] have not been withdrawn."

9. CEJIL advised that "according [to] information received from the victims, the cheques have been delivered or the deposits made in guarantee certificates for the third payment with regard to all the persons represented by CEJIL," except for one victim "who is the only person represented by CEJIL who has not withdrawn the money" even though "the State has proceeded to deposit it in guarantee certificates".

10. The *Organización de Trabajadores Víctimas* did not present its observations on the State report regarding the third payment made by Panama directly. However, in different briefs, it stated that it opposed the agreements and their approval by the Court, and the payments that are being made. Among other observations, they referred to the different legal actions and claims that have been filed at the domestic level.

<sup>4</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, seventh considering paragraph, and *Case of Valle Jaramillo v. Colombia*, *supra* note 1, fifth considering paragraph.

<sup>5</sup> Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph; *Case of the Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, seventh considering paragraph, and *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, eighth considering paragraph.

11. The Inter-American Commission summarized various requests it had received from some of the victims in this case and added that “during the procedure of monitoring compliance [...it] had received observations from various groups of victims who contested the settlement agreement submitted by the State.” Furthermore, with regard to the purpose of monitoring compliance in the case, it indicated “that [the purpose was] merely for the presentation of the payment receipts, [...] that it [did] not have information regarding possible rapprochements to reach an agreement with the victims who had not signed the settlement and that, regarding the payments made, it ha[d] no observations to make.”

12. The Court recalls that, in the Order of May 28, 2010,<sup>6</sup> it noted that, of the 270 victims in the case, 266 of them or their heirs had signed the agreements, and 265 of them had withdrawn the cheques corresponding to the first payment. Therefore, Panama still needed to confirm whether the remaining five persons had withdrawn their cheques. Regarding this first payment, from the information and documentation presented by the parties, the Court observes that two of these five persons had withdrawn the amount that corresponded to them, because they are victims who had not signed the agreement originally and then signed it over the last year and proceeded to exchange the guarantee certificates issued in their name for the first payment. The State furnished a copy of the signed agreements and of the endorsement of the said guarantee certificates. Consequently, the Court notes that, of the 270 victims in this case, 268 of them or their heirs have signed the agreements and, of these, 267 victims have withdrawn the cheques corresponding to the first payment.

13. Regarding the second payment made by Panama, the Court recalls that, in the Order of May 28, 2010,<sup>7</sup> it noted that 262 of the 266 victims or heirs who had signed the agreement had received their cheques. Also, the Court was awaiting further information from the State regarding: (a) the victim who had signed the agreement and who did not withdraw the cheques for the first and second payment, and in favor of whom two guarantee certificates were issued; and (b) those deceased victims whose payments were not made because the declaration of their heirs was pending. Regarding the second payment, based on the information and documentation provided by the parties, the Court observes that, one victim who signed the agreement has still not exchanged either of the two guarantee certificates issued in his/her favor for the first and second payment. It also observes that two victims who had not signed the agreement originally, signed it during the past year and the guarantee certificates corresponding to the first and second payments have been endorsed in their favor (*supra* twelfth considering paragraph). In addition, it has verified that, in the cases of deceased victims in which the declaration of their heirs was pending, the heirs have been determined and the corresponding payments made. Consequently, the Court notes that, of the 270 victims in this case, 268 of them or their heirs have signed the agreements, and 267 of them have withdrawn the cheques corresponding to the second payment.

14. Regarding the third of the four payments that the State must make, from the documentation and information forwarded by the parties, the Court notes that, to date, one of the victims who signed the agreement has still not withdrawn any of the three

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<sup>6</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, twelfth considering paragraph.

<sup>7</sup> Cf. *Case of Baena Ricardo et al. v. Panama*, *supra* note 6, thirteenth and fourteenth considering paragraphs.

payments (*supra* thirteenth considering paragraph). Consequently, Panama has issued three guarantee certificates corresponding to those payments which are ready to be exchanged and it forwarded copies of them to the Court. The Court also observes that, in two cases of victims who are recently deceased, the declaration of their heirs is pending and thus the cheques for the third payment have not been withdrawn. In this regard, it finds that, to date, 268 victims or their heirs have signed the agreements and 265 of them have received the third payment.

15. Based on the above, the Court considers necessary that, in its next report, Panama refer to the situation of the above-mentioned heirs (*supra* fourteenth considering paragraph) and clarify whether these two people have been able to receive the third disbursement. In addition, the State must submit updated information on the victim who signed the agreement but who, to date, has not withdrawn either of the two cheques in his favor.

*b) Regarding the victims or heirs who did not sign the agreements*

16. Regarding the victims or heirs who have still not signed the agreements (*second and fifth operative paragraphs of the Orders of October 30, 2008; July 1, 2009, and May 28, 2010*), the State was asked to clarify whether the guarantee certificates issued correspond to the deposit of the cheques in favor of the said victims in individualized accounts and to forward the corresponding vouchers.<sup>8</sup> In this regard, Panama advised that it had deposited the individual payments in guarantee certificates in the *Banco Nacional de Panama*. Based on the foregoing, the State presented copies of the guarantee certificates for the three payments, issued in favor of the four victims who had still not signed the agreement.

17. Subsequently, Panama reported that, in March and October 2010, two of the four victims or heirs who had not signed the agreement, signed it and exchanged the guarantee certificates issued in their favor for the first and second payments, and it presented copies of the cheques corresponding to the three payments owed to them.

18. Neither CEJIL, nor the *Organización de Trabajadores Víctimas*, nor the Inter-American Commission submitted observations on this point.

19. The Court has verified that the State has presented copies of the deposit certificates corresponding to the three payments to the victims who have not signed the agreements and that, in their observations, the parties have not raised any objections with regard to the said mechanism for making the payments to the victims who have not signed; consequently, the Court will accept the issue of the said guarantee certificates for these victims who have not signed and for the victim who signed but who has not withdrawn the corresponding amounts.

*c) Regarding other aspects related to compliance with the judgment*

20. With regard to the brief attached by CEJIL to its observations, without making any legal assessment or consideration (*supra* eleventh having seen paragraph and ninth considering paragraph), in which a group of victims or heirs represented by that organization questioned the Court's approval of the agreements and, in general, the measures taken by Panama, the Court notes, as they themselves have indicated, that these are people who have signed the agreements. Regarding these objections and

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<sup>8</sup> Cf. *Case of Baena Ricardo et al. v. Panama*, *supra* note 6, sixteenth considering paragraph.

those made by the *Organización de Trabajadores Víctimas*, most of whose victims had also signed the agreements, the Court considers it appropriate to recall the contents of its previous Orders,<sup>9</sup> and to repeat that the scope and content of the agreements as regards the items paid appears in the instrument signed by the said persons; furthermore, the criteria used by the State were described in its report, which was forwarded to the legal representatives and a summary of which appears in the Order of October 30, 2008.

21. Furthermore, the Court recalls that it will only keep open the procedure to monitor compliance with the judgment in order to receive: (a) the receipts for payment to the victims or heirs who signed the agreements, and (b) the vouchers of the bank deposits for those persons who have not signed the agreements or who withdrew their consent after signing them.<sup>10</sup>

22. The Court values the effort made by the State to make progress in complying with the judgment. In accordance with its powers under the Convention and its Rules of Procedure, the Court will continue monitoring compliance with the judgment in the terms established in its Order of October 30, 2008, and will conclude this case when the State has made all the corresponding payments and deposits as established in the agreements and in the said Order.

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise 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, Articles 25(1) and 30 of its Statute and Articles 31(2) and 69(4) of its Rules of Procedure,<sup>11</sup>

**DECLARES THAT:**

1. In accordance with the provisions of the fourteenth considering paragraph of this Order, the State has complied with delivering the cheques corresponding to three of the four payments agreed in relation to the 265 victims or heirs of the 268 persons who signed the agreements, and forwarding the corresponding receipts.

2. In accordance with the provisions of the thirteenth considering paragraph of this Order, the State has complied with delivering the cheques corresponding to the

<sup>9</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, sixteenth considering paragraph, and *Case of Baena Ricardo et al. v. Panama*, *supra* note 6, seventeenth considering paragraph.

<sup>10</sup> Cf. *Case of Baena Ricardo et al. v. Panama, Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 30, 2008, fourth operative paragraph; *Case of Baena Ricardo et al. v. Panama*, *supra* note 9, fourth operative paragraph, and *Case of Baena Ricardo et al. v. Panama*, *supra* note 6, fourth operative paragraph.

<sup>11</sup> Rules of Procedure of the Court approved during its eighty-fifth regular session, held from November 16 to 28, 2009.

pending payments and forwarding copies of the receipts of the said payments to the heirs of the deceased victims who were waiting for the declaration of the heirs.

3. In accordance with the provisions of the twentieth considering paragraph of this Order, the State has complied with forwarding the vouchers for the guarantee certificates issued for the three payments corresponding to the two victims who have still not signed the agreement and to the victim who, having signed the agreement, has not withdrawn the amounts.

**AND DECIDES:**

1. To require the State of Panama to continue adopting all necessary measures to make the pending payments established in the agreements effectively and promptly to the victims or heirs who signed them.

2. To reiterate, with regard to the victims or heirs who did not sign the agreements or who 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 compensation and reimbursements in relation to compliance with the provisions of the sixth and seventh operative paragraphs of the judgment must be settled in the domestic sphere under the applicable domestic procedures, which includes the possibility of resorting to the competent authorities, such as the domestic courts.

3. To reiterate that the Court will keep the proceeding for monitoring compliance with judgment open with the sole purpose of receiving: (a) the receipts for payment to the victims or heirs who signed the agreements, and (b) the vouchers of the bank deposits for those persons who did not sign the agreements or who withdrew their consent after signing them.

4. To request the State of Panama to present to the Inter-American Court of Human Rights, by December 15, 2010, at the latest, a report indicating the measures adopted to comply with this Order and to forward the documentation on the payments made and the guarantee certificates issued for the fourth annual disbursement.

5. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations on the State's report mentioned in the preceding operative paragraph within two and four weeks, respectively, of receiving it.

6. 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