

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

OF JUNE 28, 2012

**CASE OF BAENA RICARDO *ET AL.* v. PANAMA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on Merits, Reparations and Costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "the Inter-American Court" or the "Court") on February 2, 2001.

2. The Orders for 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; July 1, 2009; May 28, 2010 and February 22, 2011. In the latter, the Court declared that:

1. In accordance with the provisions of Considering paragraph 14 of th[e] 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 of the corresponding receipts.

2. In accordance with the provisions of Considering paragraph 13 of th[e] Order, the State has complied with delivering the cheques corresponding to the pending payments and forwarding copies of the receipts of said payments to the heirs of the deceased victims who were awaiting the declaration of the heirs.

3. In accordance with the provisions of Considering paragraph 20 of th[e] 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to the two victims who have still not signed the agreement and to the victim who, having signed the agreement, has not withdrawn the amounts.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 DECIDE[D]:

[...]

3. To reiterate that the Court will keep open the proceeding for monitoring compliance with the Judgment for 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.

[...]

3. The briefs of March 21 and June 20, 2011, and of February 27 and June 6, 2012, in which the Republic of Panama (hereinafter, the "State" or "Panama") forwarded information concerning compliance with the Judgment.

4. The brief of April 19, 2012, in which the Center for Justice and International Law (hereinafter, also "CEJIL") submitted its observations to the information presented by the State.

5. The briefs of January 16, April 14 and May 16, 2012, in which the *Organización de Trabajadores Víctimas de la Ley 25 de 1990 de la República de Panamá* (hereinafter "Organización de Trabajadores Víctimas") presented its observations to the information provided by the State.

6. The communications of May 15 and June 15 2012, in which the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted its observations to the reports of the State and the observations presented by the representatives.

CONSIDERING THAT:

1. It is an inherent attribute 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 accepted the contentious 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, States should ensure the domestic implementation of the provisions set forth in the Court's rulings.¹

4. Pursuant to Article 67 of the American Convention, which stipulates that the judgments of the Court shall be final and not subject to appeal, States must comply fully and promptly with these.

5. The obligation to comply with the Court's rulings conforms to a basic principle of law on the international responsibility of States, supported by international jurisprudence, according to which States must abide by their 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, States cannot, for domestic reasons, neglect their pre-established international

¹ See *Case of Baena Ricardo et al v. Panama*. Jurisdiction. Judgment of the Inter-American Court of Human Rights of November 28, 2003. Series C No. 104, para . 131, and *Case of Kawas Fernández v. Honduras*. *Monitoring Compliance with Judgment*. Judgment of the Inter-American Court of Human Rights of February 27, 2012, Considering paragraph 2.

responsibility.² The treaty obligations of the States Parties are binding for all branches and organs of the State.³

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 applies not only to the substantive provisions of human rights treaties (i.e. those addressing protected rights), but also to procedural provisions, such as those referring to compliance with the Court's decisions. These obligations should be interpreted and applied in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. The States Parties to the American Convention that have accepted the Court's contentious jurisdiction have a duty to comply with the obligations established by the Court. This includes the duty to inform the Court about the measures it has adopted to comply with the Court's rulings in its decisions. The State's prompt observance of its obligation to report to the Court on how it is complying with each of the measures ordered is essential for evaluating the status of compliance with the Judgment as a whole.⁵

a) *Fourth payment to the victims or heirs who signed the agreements*

8. Regarding the fourth and final payment of the amounts established in the agreements, the State reported, *inter alia*, that "of the 270 former workers and heirs who benefited from [the] Judgment, 265 workers received the payments in September 2011, excepting two (2) persons who did not sign the agreement, one (1) person who has not withdrawn the cheque, one (1) person who died while awaiting the results of the inheritance procedures [...] and [one last beneficiary] who received his full entitlement in previous payments, and therefore the amount due to him was settled prior to the last payment." Panama forwarded copies of the respective cheques. Moreover, the State reiterated the criteria that were used to determine the amounts of the settlement and explained that the "income tax refund [...] was paid by means of the first payment of 2008". Panama asserted that "it has complied with the proposal submitted to the Inter-American Court of Human Rights in 2008" and requested that this Court "certify its full compliance with the decision in t[he] Judgment of February 2, 2001."

9. The Center for Justice and International Law reported that "according [to] information from the victims, cheques have been delivered or deposits have been made through guarantee certificates for the fourth and final payment, to all the

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Articles 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N^o.14, para. 35, and *Case of Caballero Delgado and Santana v. Colombia. Monitoring Compliance with Judgment*. Judgment of the Inter-American Court of Human Rights of February 27, 2012, Considering para. 5.

³ Cf. *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, Considering para. 3 and *Case of Caballero Delgado and Santana v. Colombia*, *supra* note 2, Considering para. 5.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999, Series C No. 54, Para. 37, and *Case of Caballero Delgado and Santana v. Colombia*, *supra* note 2, Considering para. 6.

⁵ 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 para. 7 and *Case of Kawas Fernández v. Honduras*, *supra* note 1, Considering para. 3.

persons represented by [said organization]." Furthermore, CEJIL attached a brief signed by some of its clients, in which they expressed their disagreement with the settlement agreements "that are being executed" and advised that they have instituted domestic proceedings to contest them and to demand, among other things, "the refund of the amounts deducted for income tax." Finally, in said attachment, the victims pointed out that if the Court were to declare that the State had fully complied with the Judgment, as requested by the State, this would be used "by the [Panamanian] courts to [dismiss] their claims lodged before the [domestic] courts".

10. The *Organización de Trabajadores Víctimas* did not present any observations to the State's report regarding the fourth payment made by Panama, but stated that it opposed the agreements and their approval by the Court. In addition, it mentioned that certain national authorities had not responded to its requests for information and to the claims filed at the domestic level and expressed its disagreement, among other things, with the fact that the Court had ordered the victims to file claims in the domestic courts. Finally, it expressed concern about the impact that the possible conclusion of the procedure to monitor compliance might have on the domestic proceedings.

11. The Inter-American Commission reiterated that, during the procedure for monitoring compliance, it had continued to receive observations from various groups of victims who objected to the settlement agreements submitted by the State and alleged that there were problems regarding the amounts of the payments made by Panama. Likewise, the Commission noted that the State "presented copies of the receipts for the payments made to the victims or heirs who signed the agreement [...]". In addition, it indicated that "it [had] no observations to make" regarding the payments issued. Finally, the Commission attached a document forwarded by a group of victims.

12. Regarding the fourth and final payment, the Court confirms that, according to the receipts forwarded, of the 268 victims or heirs who signed the agreement, 263 received the cheque corresponding to the fourth payment. Furthermore, the Court notes that neither the representatives nor the Commission mentioned the beneficiary who, according to the State, "due to [an] involuntary error received the full amount of his entitlement in the previous payments," and therefore would not be entitled to the fourth payment. Therefore, this Court considers that the fourth payment has been fulfilled in respect of this last beneficiary.

13. Likewise, regarding various specific situations reported by Panama (*supra* Considering paragraph 8), the Court notes the following points. With respect to the beneficiary who, according to the State, resides in Brazil and therefore would not have withdrawn the cheque corresponding to the fourth payment, neither the representatives nor the Commission commented on this issue. Consequently, this Court awaits the forwarding of the signed cheque or else of the bank deposit made in favor of that person.

14. In addition, the Court notes that one of the victims died on August 16, 2011, that is to say, before the fourth payment was made, and therefore this payment is still pending delivery to his heir or heirs. Neither the representatives nor the Commission made specific reference to that victim. Based on the foregoing, this Court awaits the forwarding of the cheque signed by the heir or heirs or else the bank deposit or guarantee certificate issued in his or their favor.

15. Finally, the Court did not receive proof of the fourth payment to one of the victims who, according to the State's report, which was not disputed by the representatives, had received the fourth payment. Consequently, this Court awaits the forwarding of the respective receipt for this last payment.

16. Based on the foregoing, the Court considers that the State has complied with the payment of the final disbursement stipulated in the agreements and has forwarded the corresponding receipts regarding the 264 victims or their heirs. Furthermore, the Court shall keep open the procedure for monitoring compliance with the fourth payment to: a) the victim residing in Brazil; b) the heir or heirs of the victim who died after the third payment; and c) the victim from whom the Court has not received the receipt of the last payment.

b) Fourth payment to the victims who did not sign the agreement and the victim who has not withdrawn any of the payments

17. The State indicated that "only two (2) persons have refused to sign the agreement and therefore, the amounts of the payments have been deposited in guarantee certificates in the *Banco Nacional de Panamá*", and it attached copy of said certificates. Furthermore, the State forwarded an agreement signed on January 27, 2012 by one of the victims who had not yet signed the agreement and attached the copy of the guarantee certificate corresponding to the last payment.

18. The Center for Justice and International Law reported that all its clients had received the fourth payment.

19. The *Organización de Trabajadores Víctimas* made no specific observations regarding this point.

20. The Inter-American Commission indicated that "with respect to the victims who did not sign the agreement, [Panama] had made the bank deposits in their favor" and that "it does not have information regarding possible rapprochements to reach an agreement with the victims who did not sign the settlement agreement."

21. This Court confirms that one victim signed the agreement on January 27, 2012 and presented copies of the guarantee certificates deposited in the *Banco Nacional de Panama* corresponding to the three previous payments and to the fourth and last payment. Consequently, the Court notes that there is only one victim who has still not signed the agreement and another victim who, despite having signed the agreement, has not withdrawn the certificates. The State presented copies of the guarantee certificates deposited in the *Banco Nacional de Panama* for the fourth and last payment made in favor of the victim who has still not signed the agreement and the victim who, despite having signed it, has not withdrawn any of the payments. The representatives made no specific reference to these guarantee certificates. Based on the information presented, the Court considers that the State has complied with the obligation to deposit the corresponding amounts in a bank account in respect of these victims who had not signed the agreement and of the victim who, despite having signed it, had not withdrawn the cheques.

c) Third payment to the heirs of two victims

22. In its Order of February 22, 2011, this Court indicated that the third payment corresponding to the heirs of the two deceased victims was pending, in respect of whom the Court was awaiting the declaration of heirs. The Court ordered the State to

provide information, in the report on the fourth payment, as to whether the heirs of the two deceased victims had been able to receive the third disbursement.⁶

23. In the reports submitted after that Order, the State did not mention the third payment made to the heirs of these two persons. The representatives and the Commission did not refer specifically to these two cases, though CEJIL reported that all of its clients, which included these two persons, had received the payments.

24. The Inter-American Court has received no proof of payment or any explanation from the State of Panama regarding the third payment to the heirs of those victims. Consequently, the Court orders the State to include, in its next report, the explanations and, if applicable, the proof of the third payment made to the heirs of said victims.

d) Other aspects related to compliance with the Judgment

25. With regard to the brief attached by CEJIL to its observations, without making any legal assessment or consideration (*supra* Considering para. 9), 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 that these persons have signed the agreements. With regard to the questions raised and the statements made by the *Organización de Trabajadores Víctimas*, most of whose clients also signed the agreements, the Court deems it appropriate to recall the points made in its previous Orders⁷, and to reiterate that the scope and content of the agreements as regards the items paid for is set forth in the agreement signed by these persons, and that the criteria used by the State were presented in its report, which was transmitted to the legal representatives, and which is summarized in the Order of October 30, 2008.

26. Furthermore, the Court 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 heirs 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.⁸

27. In this respect, the Court considers that the conclusion of the international monitoring procedure regarding the persons to whom the State has paid the amounts owed has effects on this international proceeding, without detriment to the fact that, under domestic law, some of the victims in this case may, in future, continue with the claims that they have already filed.

⁶ Cf. *Case of Baena Ricardo et al v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 22, 2011 Considering para. 14 and 15.

⁷ 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, Considering para. 16; *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, Considering para.17, and *Case of Baena Ricardo et al v. Panama*, *supra* note 6, Considering para. 20.

⁸ 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, Operative Paragraph 4, and *Case of Baena Ricardo et al v. Panama*, *supra* note 6, Operative Paragraph 3.

28. The Court appreciates the effort made by the State to make progress in complying with the Judgment, which was accomplished through the payment or deposit of the amounts established in the agreements to almost all of the victims in the instant case, or their heirs. In accordance with the powers conferred upon it under the Convention and its Rules of Procedure, the Court shall continue to monitor compliance with the Judgment under the terms established in the Order of October 20, 2008 and shall consider this case closed once the State has paid in full the amounts due and made all the corresponding deposits, in accordance with the provisions of the agreements and the aforementioned Order. To this end, in view of the payments already made by Panama, the Court notes that, hereafter, the purpose of this procedure to monitor compliance with the Judgment shall be limited exclusively to the provisions indicated in Considering paragraphs 16 and 24 of this 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,

DECLARES THAT:

1. In accordance with the provisions of Considering paragraphs 12 to 16 of this Order, the State has complied with the final disbursement stipulated in the agreements, in relation to the 264 victims or heirs of the 269 persons who signed the agreements, and has forwarded the corresponding receipts.

2. In accordance with the provisions of Considering paragraph 21 of this Order, the State has complied by forwarding the vouchers of the guarantee certificates issued for the fourth and final payment corresponding to the victim who has still not signed the agreement, to the victim who, despite having signed it, has not withdrawn any of the four payments and to the victim who signed the agreement on January 27, 2012.

3. In accordance with Considering paragraphs 16 and 24, the procedure for monitoring compliance with the Judgment shall remain open until the Court receives: a) the receipts for the third payment made to the heirs of two victims; b) the receipts for the fourth payment to the beneficiary who is resident in Brazil, to the beneficiary for whom the required proof of payment has not been forwarded, as well as the payment to the heirs of the victim who died after the third payment was made.

AND DECIDES:

1. To require the State of Panama to continue adopting such measures as are necessary to ensure effective and prompt compliance with the outstanding payments

provided for in the agreements, in relation to the victims or heirs who have signed them.

2. To reiterate, with regard to the victims or heirs who did not sign the agreements or who subsequently withdrew their consent after signing, that any disputes over the determination of the rights deriving from the Judgment, and the amounts of the compensations and reimbursements in compliance with Operative paragraphs No. 6 and 7 of the Judgment, must be settled in the domestic sphere, following the relevant domestic procedures, with the possibility of having recourse to the domestic authorities, including the domestic courts.

3. That the Court will keep open the procedure to monitor compliance with the Judgment, pursuant to the provisions of Considering paragraphs 16 and 24 of this Order.

4. To request the State of Panama to submit to the Inter-American Court of Human Rights, no later than October 1, 2012, a report on the measures adopted in compliance with this Order and to forward the documents confirming the payments made to those victims or heirs whose payment is pending.

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

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

Manuel Ventura Robles

Leonardo A. Franco

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