

**Order of the
Inter-American Court of Human Rights
of July 1, 2009
Case of Baena Ricardo *et al.* v. Panama
(*Monitoring Compliance with Judgment*)**

HAVING SEEN:

1. The Judgment on Merits, Reparation and Costs issued on February 2, 2001 (hereinafter, "the Judgment") by the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal").
2. The orders monitoring compliance with Judgment issued by the Inter-American Court on June 21, 2002, November 22, 2002, June 6, 2003, November 28, 2005 and October 30, 2008 (hereinafter, "the Order of October 30, 2008"); in the latter, the Court held that:

1. That, pursuant to Considering Clause 21 of [the] Order, approves the "Agreement setting the Conditions for Compliance with Judgment of February 2, 2001 issued by the Inter-American Court of Rights of the Organization for American States (OEA) in the case of Baena-Ricardo *et al.* v. Panama" entered into by the State and the victims or successors subscribing thereto.

AND DECIDE[D]:

1. To require the State of Panama to adopt the necessary measures to effectively and promptly comply with the payments provided for in the agreements entered into with signatory victims or successors.
2. To order, in relation to non-signatory victims or successors or those persons who withdrew their consent after signing, that the disputes on the determination of the rights deriving from the Judgment and the indemnification amounts and refunds regarding compliance with operative paragraphs six and seven of the Judgment should be solved in the domestic system, in accordance with the pertinent national procedures, and shall entail the possibility to resort to competent authorities, including domestic courts [...].
3. To require the State of Panama to adopt the necessary measures to effectively and promptly comply with the bank deposits provided for in this Order with respect to non-signatory victims or successors or those persons who withdrew their consent after signing.
4. That the Court shall keep the monitoring compliance with Judgment proceedings open in order to receive: a) receipts of payment to signatory victims or successors, and b) bank deposit receipts in the name of non-signatory victims or successors or those persons who withdrew their consent after signing.
5. To request the State of Panama to submit to the Inter-American Court of Human Rights, no later than January 30, 2009, a report on the measures adopted in furtherance of [the] Order and forward the documents evidencing payments and bank deposits made.

[...]

3. The submission of February 4, 2009, in which the Republic of Panama (hereinafter "the State" or "Panama") requested an extended term to send the report on compliance with the Judgment pursuant to the Order of October 30 "as the Ministry of Labor and Labor Development [was] referencing and appendixing the full report [...], including signatures and payments after January 30, 2009".
4. The communication of February 5, 2009, in which the Secretariat of the Inter-American Court (hereinafter, "the Secretariat"), following orders of the President of the Court, informed the State that it was to submit its report with appendixes no later than February 20, 2009.
5. The submission of March 10, 2009 and its appendixes, through which Panama sent the report drawn up by the Ministry of Labor and Labor Development (hereinafter, the "Ministry of Labor") concerning the agreements approved; the payment distribution schedules broken down into institutions and workers; and included copies of most of the agreements, of the checks and the ID cards of the victims or successors who received the first of the agreed payments.
6. The note of March 20, 2009, through which the Secretariat, pursuant to instructions of the President of the Court, required the State that it send copies of the bank deposits made to the victims who did not sign the agreements; copies of the agreements and checks made to the two victims who signed the agreements but failed to withdraw their checks, and of the certificates evidencing the withdrawal of checks by other two persons signing the agreements, which documents had not been received by the Court.
7. The submission of March 27, 2009, through which the State requested an extended term to send the documents required by the Inter-American Court.
8. The writing of April 1, 2009 and its appendixes, through which the State submitted part of the information requested, except that concerning the receipts of the bank deposits made to the persons who did not sign the agreement, as the Ministry of Labor and the National Bank were still processing them. Additionally, the State also attached a copy of the checks of some of the persons who had not signed the agreements.
9. The communication of April 3, 2009, through which the Secretariat, following instructions from the President of the Court, required the State to urgently send the documents not yet received by the Court.
10. The writing of April 23, 2009 and its appendixes, through which the State submitted copies of the agreements signed and of the checks extended to the victims which were pending issuance.

11. The writings of December 29, 2008 and April 30, 2009 and their respective appendixes, submitted by the *Centro por la Justicia y el Derecho Internacional* (Center for Justice and International Justice, hereinafter, "CEJIL"), through which they referred to the compliance with the Judgment and submitted their observations to the information provided by the State.

12. The submissions of November 27, 2008; January 9, 12 and 21; and February 6, 2009 and their respective appendixes, made by 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*"), and other additional submissions, through which they dealt with the compliance with the Judgment.

13. The submission of May 12, 2009, through which the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission"), "owing to circumstances beyond its control", requested a two-week time extension to submit its observations to the State's report.

14. The communication of May 15, 2009, through which the Secretariat, following instructions of the President of the Court, informed the Commission that it should submit its observations no later than May 28, 2009.

15. The writing of June 8, 2009, through which the Inter-American Commission submitted its observations to the State's report.

16. The submissions of some victims to whom the Secretariat, following orders from the President of the Court, ordered that they should be made through their legal representatives, CEJIL, the Organization of Workers Victims of Law No. 25 or the Inter-American Commission, if they deemed it fit.

CONSIDERING:

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

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

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.” To that end, the States must ensure compliance with the Court’s decisions at the domestic level.¹

4. That by virtue of the final and non-appealable nature of the Judgments of the Court, as established in Article 67 of the American Convention, they must be promptly complied with by the State in their entirety.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of law of the international responsibility of States, as supported by the international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as already stated by this Court as prescribed in Article 27 of the Vienna Convention on the Law of Treaties of 1969, domestic law may not be invoked to justify non-fulfillment of previously undertaken international obligations.² Treaty obligations of the States parties are binding on all State Powers and organs.³

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. That States Parties to the Convention that have recognized the binding jurisdiction of the Court have the duty to comply with the obligations established by the Tribunal. This obligation includes the duty, on behalf of the State, to inform the Court of measures adopted in order to comply with what the Tribunal has ordered in its decisions. The timely observance of the State’s obligation to indicate to the Tribunal how it is complying with

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-Huamini 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-Iñiguez 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-Huamini and García-Santa Cruz v. Peru*, *supra* note 1, Considering clause No. 5, and *Case of Chaparro-Álvarez and Lapo-Iñiguez 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-Huamini and García-Santa Cruz v. Peru*, *supra* note 1, Considering clause No. 5, and *Case of Chaparro-Álvarez and Lapo-Iñiguez v. Ecuador*, *supra* note 1, Considering clause No. 5.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C. No. 54, para. 37; *Case of Cantoral-Huamini 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.

each of the points ordered is fundamental for evaluating the status of compliance with the Judgment.⁵

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8. That, with regard to the payment to the signatory victims or successors and the submission of the payment receipts (*operative paragraphs 1 and 4 (a) of the Order of October 30, 2008*), the State initially informed that it had made the first of the four annual payments for 2008, pursuant to the provisions of the agreements which were approved by the Court (*supra* Having Seen clause No. 2). The total amount to be paid to the 270 victims or their successors in this first disbursement was six million, nine hundred and thirty-two thousand, thirteen balboas and thirteen cents (PAB 6,932,013.13), out of which 252 victims received the agreed payments, totaling six million, three hundred and seventy-five thousand, one hundred and thirty-six balboas and forty-five cents (PAB 6,375,136.45). Thus, payment was due to eighteen victims or successors for a total amount of five hundred and fifty-six thousand, eight hundred and seventy-six balboas with sixty-eight cents (PAB 556,876.68). Thereafter, the State informed and submitted documents evidencing payment to other ten persons; it pointed out that only eight victims or successors had yet to sign the agreements and withdraw the checks, and attached copies of the checks for the non-signatories. Finally, it informed that two persons, signatories to the agreements, had failed to withdraw their checks.

9. That CEJIL held that: (i) after a thorough review of the documents submitted by the State, it verified that almost all of the checks for the first payment were delivered, pursuant to the agreements between signatory victims and the States; (ii) the amount of the payments corresponded with the payment distribution schedule attached to the State's report; (iii) notwithstanding the foregoing, one receipt had no signature on it, so there was no proof of whether the amount stated on the check had been effectively received; (iv) in three cases, the names on the checks do not correspond with the names of the receivers as per their ID card, which prevents determining whether those victims effectively received the checks; and (v) in another case, the number on an ID card, a copy of which was included with the signed agreements and the check, differs from the ID number stated on the payment distribution schedule submitted by the State. They requested the Court that it request Panama to clarify the above-mentioned issues and that it continue to monitor the implementation of the measures imposed on the State in the Order of October 30, 2008. Finally, CEJIL attached "the full observations to the State's report made by a group of [its] clients", in which such persons raised certain challenges on the State's report and the scope and content of the payments, and made requests to the Court.

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-Huamini and Garcia-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.

10. That the *Organización de Trabajadores Víctimas de la Ley 25* failed to submit its observations to the State's report. However, in various other submissions prior to the report, they voiced their dissatisfaction with the agreements and with the Court's approval of them. Additionally, they requested that the Court order the State to provide the organization with detailed information about the parameters, formulas and legislation used in calculating the individual amounts for each non-signatory victim. Furthermore, they stated to the Court that they required the Ministry of Labor to provide information on the legislation used to calculate the amount to be paid to the workers who had not signed the agreements, and that they commenced proceedings before the domestic courts, including the application to the Supreme Court of Justice of Panama for a writ of *habeas data* on December 31, 2008, in view of the Ministry of Labor's failure to address said request for information.

11. That the Inter-American Commission pointed out that "it has received observations from various groups of victims who challenged the agreement-settlement submitted by the State". However, it stated that "given the court approval of the agreements, the State submitted a copy of the receipts of payment to the victims or their signatory successors and that, with regard to the non-signatory victims, [Panama] has failed to make the deposit or inform about the possible talks to reach an agreement with them. Thus, with respect to the matter subject to supervision by the Court—that is, only the submission of payment receipts—[the Commission] has no further observations".

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12. Pursuant to the information and documents submitted by the parties, the Tribunal notes that 262 out of the 270 victims or their successors signed the agreements. Two of them have failed to withdraw their checks (*supra* Considering clause No. 8) and, as regards other five, it must be confirmed whether they have withdrawn their check without any hassles (*supra* Considering clause No. 9). Based on the foregoing, the Inter-American Court concludes that 255 victims have received their check for the first of the four annual payments that the State must make, although final conclusions are still due regarding the seven people mentioned above.

13. Based on CEJIL's observations on five of those seven cases (*supra* Considering clause No. 9), the Court notes that those people are represented by CEJIL, so it must be required to submit the information regarding what happened with the withdrawal of those checks. Notwithstanding the foregoing, the Court deems it convenient that Panama in its next report makes reference to this situation and confirms whether the persons mentioned in CEJIL's submission did receive the check for the first annual disbursement. Additionally, the State shall submit updated information about the two persons who signed the agreement but have not yet withdrawn their checks.

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14. That, with regard to the eight victims or successors who have not signed the agreements (*operative paragraphs No. 3 and 4 (b) of the Order of October 30, 2008*), even though the State furnished the Tribunal with a copy of the checks issued to them, it failed to submit a copy of the receipts evidencing the bank deposits of such amounts. The Inter-American Court notes that section 7 of the agreements provides, with regard to the non-signatory victims, that the State shall consign the amounts in specified bank accounts and that it shall disburse such amounts once the victims or their successors sign the agreement. Based on that, in approving the agreements, the Inter-American Court provided 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” (*Considering clause No. 27 of the Order of October 30, 2008*). Given that it was the State itself who proposed the modality in the agreements it subjected to the Court’s approval and that such modality was admitted by the Inter-American Court, the State must inform on the deposit of the checks issued for these eight victims in specific accounts, including the respective receipts pursuant to the procedure proposed by the State and approved by the Court through its Order of October 30, 2008.

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15. Furthermore, the Court observes that some victims requested for information and commenced proceedings before various authorities and courts in Panama, and that there is no indication in the record of the case that their claims were satisfied. The Court repeats (*supra* Having Seen clause No. 2) that any disputes and the claims of the victims or their successors shall be finally settled by the domestic authorities pursuant to their domestic law, in accordance with the guidelines set out in the Judgment and in the Order of October 30, 2008.

16. That, as regards the brief attached by CEJIL to its observations without making any legal consideration or assessment (*supra* Considering clause No. 9 *in fine*), in which some persons represented by the organization raised challenges to the State’s information about the payment items and the proceedings carried out by Panama, the Tribunal notes that such persons have signed the agreements. 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. 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)".

17. That 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 made all deposits pursuant to the provisions of the agreements and the Order.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

⁶ Rules of Procedure as approved by the Court in its XLIX Ordinary Period of Session, held from November 16 to 25, 2000 and partially amended during the LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009, in accordance with Articles 71 and 72 thereof.

1. That, pursuant to Considering clauses No. 12 and 13 of this 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 no. 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 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 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 this Order.

6. To require the representatives of the victims and the Inter-American Commission on Human Rights to submit such observations as they deem fit regarding the State's report mentioned in the above operative paragraph within four and six weeks, respectively, as of receipt of the report.

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

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. 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