

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012**

**CASE OF JUAN HUMBERTO SÁNCHEZ v. HONDURAS
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on preliminary objection, 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 June 7, 2003, in this case.
2. The orders on monitoring compliance with the judgment issued by the Court on November 17, 2004, September 12, 2005, and November 21, 2007. In the latter, the Court decided that it would keep open the proceedings on monitoring compliance with regard to the measures pending compliance in this case:
 - a) To pay the compensation ordered for non-pecuniary damage in favor of Julio Sánchez (*subparagraph (h) of the ninth operative paragraph of the judgment*);
 - b) To continue investigating the facts in the instant case in order to identify those responsible, both perpetrators and instigators, as well as any possible accessories after the fact, and to impose criminal or administrative sanctions, as appropriate; that the victim's next of kin must have full access and legal standing at all stages and levels of these investigations in keeping with domestic law and the provisions of the American Convention on Human Rights, and that the results of these investigations be publicized (*tenth operative paragraph of the judgment*); and
 - c) To create a record of detainees that permits controlling the legality of detentions (*twelfth operative paragraph of the judgment*).
3. The order of May 22, 2009, of the President of the Court at the time, in which she summoned the Republic of Honduras (hereinafter also "Honduras" or "the State"), the representatives of the victims (hereinafter "the representatives"), and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to a private hearing on monitoring compliance.
4. The notes of the Secretariat of the Court (hereinafter also "the Secretariat") of June 29, 2009, in which, on the instructions of the President of the Court at the time in consultation with the other judges, it informed the parties of the decision to suspend the private hearing scheduled in this case.
5. The note of the Secretariat of June 24, 2011, in which, on the instructions of the President of the Court, the State was asked to present, by August 19, 2011, at the latest, an updated report indicating all the steps taken to comply with the measures of

reparation pending compliance. This request was reiterated to the State, on the instructions of the Court in plenary, on November 22, 2011. At the time this order is issued, the State's report has not been received.

CONSIDERING, THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Honduras has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since September 8, 1977, and it accepted the binding jurisdiction of the Court on September 9, 1981.

3. As established in Article 67 of the American Convention, the judgments of the Court must be complied with fully and promptly. In addition, 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 States must ensure implementation of the Court's decisions in its judgments at the domestic level.¹

4. The States Parties to the Convention that have accepted the binding jurisdiction of the Court have the duty to comply with the obligations established by the Court. This obligation includes the State's duty to inform the Court of the measures adopted to comply with the orders of the Court in its decisions. Prompt observance of the State's obligation to advise the Court of the way in which it is complying with each aspect ordered by the Court is essential to assess the status of compliance with the judgment as a whole.²

5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of international law, 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 domestic law as justification for its failure to assume the pre-established international responsibility. The treaty obligations of the States Parties are binding for all the powers 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 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 the

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Gutierrez Soler v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 8, 2012, third considering paragraph.

² 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, and *Case of Castañeda Gutman v. Mexico. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of January 18, 2012, sixth considering paragraph.

³ 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. Series A No. 14, para. 35, and *Case of Castañeda Gutman*, *supra* note 2, fourth considering paragraph.

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

7. The Court asked the State to provide updated information on compliance with the measures that remain pending, to be submitted no later than August 19, 2011, and the Court repeated this request for information on November 2011 (*supra* having seen paragraph 5). Despite these requests and the fact that six months have passed since the initial time frame expired and three months since the Secretariat's last communication, the State has not submitted the requested information. Consequently, the Court lacks updated information on progress in compliance with the pending measures.

8. This omission by the State is contrary to its obligation to comply and inform the Inter-American Court about the steps taken to implement, in the domestic sphere, the measures of reparation decided by the Court and, in turn, denies the right of access to international justice of the victims and beneficiaries of the said reparations.⁵

9. In this regard, Honduras must take all the necessary steps to comply immediately and effectively with the decisions of this Court in the judgment. This obligation includes the State's obligation to report on the measures taken to comply with the terms of the judgment. The Court finds it necessary to emphasize and reiterate that prompt observance of the State's obligation to inform the Court of the way in which it is complying with each measure ordered by the Court is essential to assess the status of compliance with the judgment as a whole. This is not satisfied with the mere formal presentation of a document to the Court; rather, it is a two-fold obligation that requires, for its effective compliance, the formal presentation of a document within the respective time frame presenting specific, true, current and detailed information with regard to the issues covered by the obligation.⁶

10. Without the appropriate information from the State, this Court cannot exercise its function of monitoring the implementation of its judgments. It is pertinent to recall that providing sufficient information on the measures adopted is a State obligation established by this Court.⁷ The General Assembly of the Organization of American States has reiterated "the need for the States Parties to provide, in a timely fashion, the information requested by the Court in order to enable it to meet fully its obligation to report on compliance with its judgments."⁸

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Gutiérrez Soler v. Colombia*, *supra* note 1, fourth considering paragraph.

⁵ Cf. *Case of Bámaca Velásquez. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, eleventh considering paragraph, and *Case of Loayza Tamayo v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2006, tenth considering paragraph.

⁶ Cf. *Case of Bámaca Velásquez*, *supra* note 5, seventh considering paragraph, and *Case of the Yean and Bosico Girls v. Dominican Republic Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 10, 2011, fifteenth considering paragraph.

⁷ Cf. *Case of the Five Pensioners v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of Blanco Romero v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22 2011, thirty-eighth considering paragraph.

⁸ Cf. *inter alia*, General Assembly, Resolution AG/RES. 2587 (XL-O/10) approved at the fourth plenary session, held on June 8, 2010, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights," fourth operative paragraph, and General Assembly, Resolution AG/RES. 2652 (XL-O/11) approved at the fourth plenary session, held on June 7, 2011, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights," fifth operative paragraph.

11. In this case, in order to monitor compliance with the judgment, it is imperative that the State submit a detailed, complete and updated report on the steps taken to comply with the measures of reparation ordered in the judgment that remain pending.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions pursuant to Articles 62(1), 62(3) and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. As indicated in considering paragraphs 1 to 11 of this order, the State is not complying with its obligation to inform this Court of the measures taken with regard to the operative paragraphs of the judgment on preliminary objection, merits, reparations and costs delivered on June 7, 2003, that remain pending compliance.

2. The Court will keep open the proceedings on monitoring compliance with regard to the following pending measures:

a) To pay the compensation ordered for non-pecuniary damage in favor of Julio Sánchez (*subparagraph (h) of the ninth operative paragraph of the judgment*);

b) To continue investigating the facts in the instant case in order to identify those responsible, both perpetrators and instigators, as well as any possible accessories after the fact, and to impose criminal or administrative sanctions, as appropriate; that the victim's next of kin must have full access and legal standing at all stages and levels of these investigations in keeping with domestic law and the provisions of the American Convention on Human Rights, and that the results of these investigations must be publicized (*tenth operative paragraph of the judgment*); and

c) To create a record of detainees that permits controlling the legality of detentions" (*twelfth operative paragraph of the judgment*).

AND DECIDES:

1. To reiterate the requirement that the State of Honduras adopt all necessary measures to comply promptly and effectively with the aspects that remain pending, indicated in the second declarative paragraph, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request Honduras to submit to the Inter-American Court of Human Rights, by May 21, 2012, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, in accordance with the second declarative paragraph this order.

3. 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 four and six weeks, respectively, of notification of the said report.

4. To require the Secretariat of the Court to notify this order to the Republic of Honduras, the Inter-American Commission on Human Rights, and the representatives of the victims.

Judge Vio Grossi informed the Court of his Concurring Opinion, which accompanies this order.

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

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
WITH THE ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012
CASE OF JUAN HUMBERTO SÁNCHEZ v. HONDURAS
MONITORING COMPLIANCE WITH JUDGMENT**

With this opinion, the undersigned expresses his agreement with the order indicated above (hereinafter "the order"), in the understanding that, in keeping with the relevant norms and in view of the extended, and consequently more than prudent or reasonable, time that has elapsed since the delivery of the judgment in this case without the State concerned (hereinafter "the State") having complied with its fundamental elements, the Inter-American Court of Human Rights (hereinafter "the Court") must inform the General Assembly of the Organization of American States (hereinafter "OAS General Assembly") of this situation.

The foregoing is based on the following elements: (a) the specific provisions of the American Convention on Human Rights¹ and the Statute of the Court;² (b) the State concerned must comply with the judgments of the Court³ and the adoption of the pertinent measures in the event of non-compliance is the responsibility of the OAS General Assembly, the political authority;⁴ (c) once it has delivered the "*final and non-appealable*" judgment,⁵ the Court has no further powers other than the authority to deliver the judgment on reparations and costs, if it has not already done so,⁶ to interpret both judgments,⁷ to rectify any obvious mistakes, clerical errors, or errors in calculation in which it has incurred,⁸ to monitor compliance with the judgment,⁹ and to inform the OAS General Assembly in case of non-compliance;¹⁰ (d) it is not incumbent upon the Court to substitute for the possible inadequacies of the mechanism established in the Convention for cases of non-compliance with its judgments, but rather, in this eventuality, to submit to the OAS General Assembly "*proposals or recommendations on ways to improve the inter-American system of human rights,*"¹¹ and it corresponds to the States to adopt the amendments or modifications they deem appropriate;¹² (e) it is not admissible to transform the regulatory mechanism of monitoring compliance with a "*final and non-appealable*" judgment,¹³ into the prolongation of the case: (f) it is not a question of invoking the *pro homine* principle in this regard,¹⁴ because the mechanism of monitoring compliance with judgments is not a right recognized in the Convention, but rather an instrument established by the Rules of Procedure to allow the Court to improve its compliance with the obligation to inform the OAS General Assembly of non-compliance with its judgments, and (g) in accordance with the meaning of the term "*monitor/supervise*"¹⁵ and the provisions of the Rules of Procedure,¹⁶ the mechanism of monitoring judgment entails obtaining information on the latter, in order to inform the General Assembly of any eventual failure to comply with it.

¹ Art. 65.

² Art. 30.

³ Art. 68(1) of the Convention.

⁴ Art. 65 of the Convention.

⁵ Art. 67 of the Convention.

⁶ Art. 66 of the Rules of Procedure of the Court.

⁷ Art. 67 of the Convention. Art. 68 of the Rules of Procedure of the Court.

⁸ Art. 76 of the Rules of Procedure of the Court.

⁹ Art. 69 of the Rules of Procedure of the Court.

¹⁰ Art. 65 of the Convention. Art. 30 of the Statute of the Court.

¹¹ Art. 30 of the Statute.

¹² Arts. 76 and 77 of the Convention.

¹³ Art. 67 of the Convention.

¹⁴ Art. 29 of the Convention.

¹⁵ Diccionario de la Lengua Española, Real Academia Española, edición 2001: *supervisar*: "*ejercer la inspección superior en trabajos realizados por otros*" [oversee the work performed by others].

¹⁶ Art. 69.

A more extensive version of the foregoing, taking into consideration, as I have indicated previously,¹⁷ on the one hand, that strict respect by the Court for the norms that govern it is a requirement *sine qua non* for the proper safeguard of human rights and, on the other hand, case law as a subsidiary means for the determination of the rules of law¹⁸ and its obligatory nature only for the parties to the litigation and with regard to the case that has been decided,¹⁹ so that, consequently, it can be modified in other cases, can be found in the undersigned's Concurring Opinions to the orders of the Inter-American Court of Human Rights of November 22, 2011, *Case of Blanco Romero et al. v. Venezuela* and *Case of Servellón García et al. v. Honduras*, and of November 23, 2011, *Case of the Saramaka People v. Suriname*, *Monitoring compliance with judgment*.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

¹⁷ Dissenting Opinions with regard to the judgment of the Inter-American Court of Human Rights, Merits, reparations and costs. *Case of Barbani et al. v. Uruguay*, of October 13, 2011, III. General considerations.

¹⁸ Arts. 62(1) and 3 of the Convention and 38(1) of the Statute of the International Court of Justice.

¹⁹ Arts. 63(1) of the Convention and 59 of the Statute of the International Court of Justice.