

**Order of the
Inter-American Court of Human Rights*
of August 4, 2008
Case of Cesti-Hurtado v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on September 29, 1999.
2. The Judgment delivered by the Court on January 29, 2000 regarding the interpretation of the judgment on the merits.
3. The Judgment on reparations rendered by the Court on May 31, 2001.
4. The Judgment delivered by the Inter-American Court on November 27, 2001 regarding the interpretation of the judgment on reparations.
5. The order on Compliance with judgment of November 17, 2004.
6. The order on Compliance with judgment of November 22, 2006, whereby the Court declared, *inter alia*:
 1. That it [would] keep the proceedings open to monitor compliance with the following points, namely:
 - a) payment of interest on the amount of compensation for moral damage;
 - b) investigation of the facts surrounding this case and punishment of the perpetrators;
 - c) payment of pecuniary damages, and[;]
 - d) annulment of the military proceedings and the effects resulting therefrom.

And decide[d]:

1. To order the State to adopt all such measures as [might] be necessary to promptly and duly comply with the orders of the Court in the Judgment on the merits of September 29, 1999 and in the Judgment on reparations of May 31, 2001 [...]
2. To request the State to submit to the Inter-American Court of Human Rights, by January 19, 2007, a detailed report specifying such measures as [might] have been adopted to comply with the reparations set out in [...]
7. The note of February 1, 2007, whereby the Secretariat of the Court (hereinafter "the Secretariat") reiterated that the State of Peru (hereinafter "the State") should submit a

* Judge Diego García-Sayán, a Peruvian national, did not take part in the deliberations and did not sign this order pursuant to Article 19(2) of the Statute and Article 19 of the Rules of Procedure of the Court.

report on the progress made regarding compliance with the Judgments delivered in the instant case, according to the Order of the Court of September 22, 2006 (*supra* Having Seen clause 6).

8. The brief of March 9, 2007, whereby the State submitted the report requested in the Order of the Court of September 22, 2006 (*supra* Having Seen clause 6).

9. The briefs of January 30 and April 10, 2007, whereby the representatives of the victim (hereinafter "the representatives") furnished information on the progress made regarding compliance with the Judgments delivered in the instant case and submitted comments to their State's report (*supra* Having Seen clause 8).

10. The communication of April 27, 2007, whereby the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted comments to the State's report (*supra* Having Seen clause 8).

11. The notes of April 30, June 26 and December 6, 2007, whereby the Secretariat requested and reiterated that the State should submit a new detailed report on the measures adopted in furtherance of the full compliance with the Judgments delivered in the instant case (*supra* Having Seen clauses 1 and 2). The State failed to furnish the requested report.

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That Peru has been a State Party to the American Convention since July 28, 1978, and it accepted the contentious jurisdiction of the Court on January 21, 1981.

3. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of States, as supported by 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 and 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. Treaty obligations of the States parties are binding on all State powers and organs.¹

4. 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.*

¹ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention of Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Raxcacó-Reyes v. Guatemala*. Monitoring Compliance with Judgment. Order of the Court of May 9, 2008, Considering clause 4; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment. Order of the Court of June 10, 2008, Considering clause 5.

those dealing with the 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.²

5. That the States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. This obligation includes the State's duty to report on the measures adopted to comply with the rulings of the Court in that judgment. The prompt implementation of the State's obligation to report to the Court on how each element ordered by the Court is being fulfilled is essential to assess the status of compliance in the case.³ Moreover, the OAS General Assembly has reiterated that, for the Court to comply fully with its obligation to inform the Assembly about compliance with its rulings, the States Parties must provide it with the information it requests promptly.⁴

6. That by Order of September 22, 2006, the Inter-American Court declared, *inter alia*, that it [would] keep the proceedings open to monitor compliance with the following points:

- a. payment of interest on the amount of compensation for moral damage;
- b. investigation of the facts surrounding this case and punishment of the perpetrators;
- c. payment of pecuniary damages; and
- d. annulment of the military proceedings and the effects resulting therefrom.

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7. That as regards payment of pecuniary damages, the State affirmed that "[t]he *Ministerio de Justicia* (the Ministry of Justice) took appropriate action so that the budget modification for additional funds to settle any unpaid compensation awarded by the Court be made [...] as a result, Urgency Executive Order No. 030-2005 was published in the Official Newspaper *El Peruano* on December 2, 2005;" and that "[s]uch additional funds, which included the damages awarded to Mr. Cesti-Hurtado, were only expended to pay the compensations awarded to all the victims except for Mr. Cesti-Hurtado because he, before the budget actions yielded any results, instituted collection judicial proceedings and

² Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Raxcacó-Reyes v. Guatemala*. *Supra* note 1, Considering clause 43; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment. *Supra* note 1, Considering clause 6.

³ Cf. *Case of Barrios Altos. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004*, Considering clause 7; *Case of Gómez-Paquiyaury Brothers v. Peru*. Monitoring Compliance with Judgment. Order of the Court of May 3, 2008, Considering clause 7; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 7.

⁴ General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session held on June 5, 2007, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights"; *Case of Baldeón-García v. Peru*. Monitoring Compliance with Judgment. Order of the Court of February 7, 2008, Considering clause 5; and *Case of Gómez-Paquiyaury Brothers v. Peru*. Monitoring Compliance with Judgment, *supra* note 3, Considering clause 7.

obtained a precautionary measure whereunder an attachment was executed before Urgency Executive Order No. 030-2005 was issued;" moreover, the State asserted that "[p]ayment of damages to [Mr. Cesti-Hurtado] out of such additional funds would have entailed an undue payment under the dual payment system," and that "[o]n appeal, [the attachment was later] annulled by the *Primera Sala Superior Civil de Lima* (First Civil Chamber of the Court of Appeals in and for Lima) along with other order [sic] of the Lower Court based on the unenforceability of the precautionary measure [...] and the prosecutor's office has taken action to investigate the alleged commission of the crime of malfeasance in judicial office.

8. That the representatives pointed out that the additional funds referred to by the State "[i]ncluded the unpaid balance, but did not provide for the amount paid by the Lower Court [sic]; therefore, no dual payment [would have been] made and the State would not be prevented from paying the balance." Furthermore, the representatives stated that in the communications sent by the State to the Court "[t]he State pointed out that payment was not made because collection judicial proceedings had been already instituted, in an attempt to hold [Mr.] Cesti liable for non-payment of the balance." To this effect, the representatives highlighted that in spite of the fact that on February 26, 2007, they met with the Ministry of Justice and other officers and agreed that the parties would abandon the proceedings and accept the payment made afterwards, on March 28, 2007, the Attorney General requested the Lower Court to reconstitute the judicial certificate [of the attached money] while "[a]ccording to the agreement reached at the meeting, the balance due to [Mr.] Cesti would be paid out of such certificate directly by the Lower Court once the State and the victim have signed an out-of-court settlement which, in turn, would put an end to the proceedings."

9. That the Inter-American Commission asserted that "[s]uch a situation entails a serious breach of the orders of the Court and the fundamental principles of the Inter-American System and reiterates that it is imperative for the State, under the *pacta sunt servanda* doctrine, to guarantee the adoption of any measures necessary to fully comply with the Judgment of the Court" and "[t]o refrain from taking actions aimed at frustrating the measures of reparations so ordered, the compliance of which had been duly notified to the Court."

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10. That, as regards payment of default interest on the amount of compensation for moral damage, neither the State nor the representatives have submitted any information.

11. That the Inter-American Commission asserted that "[n]o updated information allowing to prove effective payment has been furnished" and that "[t]he foregoing in conjunction with the fact that the term originally set by the Court has fully expired, the method of compliance therewith, the imminent need to redress the violations caused to the aggravated party and the express request by the Court to be informed thereof."

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12. That, as regards the annulment of the military proceedings and the effects resulting therefrom, neither the State nor the representatives have submitted any information.

13. That the Inter-American Commission made reference to “[t]he lack of information about the actions taken to comply with [...] this obligation” and it emphasized that “[i]t is imperative and important that the Court order the State to adopt, as soon as practicable, the measures necessary to comply in good faith with its international obligations deriving from the judgment of the Court.”

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14. That, as regards the investigation of the facts and the punishment of the perpetrators, the State mentioned that Mr. Raúl Aurelio Talledo-Valdivieso had been sentenced to four-year imprisonment for the crime of abuse of authority against Mr. Cesti-Hurtado, and that said conviction had been later ratified by the *Sala Penal Especial de la Corte Suprema de Justicia de la República* (Special Criminal Chamber of the Peruvian Supreme Court of Justice). In turn, the State informed that Mr. Guido Eduardo Guevara-Guerra had been prosecuted for the same crime against Mr. Cesti-Hurtado, but “[t]he Peruvian judicial authority ordered that the proceedings be held in abeyance upon defendant’s failure to appear and issued national and international arrest warrants.”

15. That the representatives pointed out that “[u]p to date no State agent was able to prove that the proceedings they refer to result from the Judgment of the [...] [Inter-American] Court.”

16. That the Inter-American Commission referred to the “[f]act that the State failed to furnish specific information on the actions taken to effectively comply with the measures of reparation.”

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17. That the last report on the progress made regarding compliance with the Judgments delivered by the Court in the instant case (*supra* Having Seen clause 8) was submitted by the State on March 9, 2007.

18. That in said report the State failed to address the measures adopted in relation to the payment of interest on the amount of compensation for moral damage and to the annulment of the military proceedings and the effects resulting therefrom (operative paragraphs 2, 3, 4, 6 and 8 of the Judgment on reparations of May 31, 2001, *supra* Having Seen clause 3).

19. That the parties have failed to agree on the status of compliance with the pecuniary damages payment obligation and the investigation of the facts of the instant case and, in turn, on the punishment of the perpetrators (operative paragraphs 1 and 5 of the Judgment of May 31, 2002, *supra* Having Seen clause 3).

20. That, following instructions of the President, the Secretariat requested the State on several occasions to submit a report on the progress made regarding compliance with the Judgments delivered in the instant case (*supra* Having Seen clause 11).

21. That, according to the provisions of Article 67 of the American Convention, the judgments of the Court are to be promptly and fully complied with by the State. Moreover, pursuant to Article 68(1) of the American Convention, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” The treaty obligation of the States Parties to comply promptly with the Court’s decisions binds all the State’s powers and bodies.⁵

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22. That, in order to monitor the full compliance with the Judgment delivered in the instant case, it is necessary that the State provide the Court with the information on the following obligations so ordered and that are pending compliance (*supra* Having Seen clauses 18 and 19):

- a) payment of interest on the amount of compensation for moral damage;
- b) annulment of the military proceedings and the effects resulting therefrom;
- c) payment of pecuniary damages; and
- d) investigation of the facts surrounding this case and punishment of the perpetrators.

23. That the Court will consider the general status of compliance with said Judgment once it has received the corresponding information regarding the matters of reparation pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

⁵ Cf. *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Court of May 7, 2008, Considering clause 3; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 3.

1. That, pursuant to that stated in Considering clauses 18, 19 and 20 of this Order, the State has failed to complied with its obligation to inform this Court of the measures adopted in compliance with operative paragraphs 1, 2, 3, 4, 5, 6 and 8 of the Judgment on reparations of May 31, 2001.

2. That it will keep the proceedings open to monitor compliance with the all the reparations ordered by this Court in said Judgment, namely:

- a) payment of interest on the amount of compensation for moral damage;
- b) annulment of the military proceedings and the effects resulting therefrom;
- c) payment of pecuniary damages, and
- d) investigation of the facts surrounding this case and punishment of the perpetrators.

AND DECIDES:

1. To order the State to adopt all such measures as may be necessary to promptly and duly comply with the orders of the Court in the Judgment on the merits of September 29, 1999 and in the Judgment on reparations of May 31, 2001, in accordance with declarative paragraphs 1 and 2 above and the provisions set out in Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, by October 17, 2008, a detailed report specifying such measures as may have been adopted to comply with the reparations set out in the Judgment on reparations of the Court delivered on May 31, 2001, which are pending compliance and has been identified in declarative paragraphs 1 and 1 above.

3. To request the victim, or his representative, and the Inter-American Commission on Human Rights to submit comments to the State report mentioned in the foregoing operative paragraph within a period of four and six weeks, respectively, following receipt thereof.

4. To continue monitoring compliance with the provisions of the Judgment on reparations of May 31, 2001.

5. To consider the possibility to hold a private hearing on monitoring compliance with the Judgments delivered in the instant case, of which the parties will be timely notified.

6. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the victim or his representatives.

Cecilia Medina-Quiroga
President

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