

**Order of the
Inter-American Court of Human Rights*
of August 4 , 2008
Case of Las Palmeras v. Colombia
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on merits delivered by the Inter-American Court of Human Rights (hereinafter the "Court", "the Inter-American Court" or "the Tribunal") on December 06, 2001.
2. The Judgment on reparations delivered by the Inter-American Court on November 26, 2002.
3. The Order issued by the Court on November 17, 2004, wherein it stated:
[...]
 2. That it shall maintain the supervision of compliance procedure concerning requirements still to be complied with in the instant case, such as:
 - a) proceedings conducted to investigate the facts of the instant case and to identify and punish those responsible (*Operative paragraph one of the November 26, 2002 Judgment*);
 - b) proceedings required to identify NN/Moisés, within a reasonable time; to locate, exhume and deliver his remains to his next of kin; and to provide reparation to them in relation to the events in the instant case (*operative paragraphs two and five of the November 26, 2002 Judgment*); and
 - c) payment of the sum owed by the State in relation to operative paragraphs 5, 6, 7, 8 and 9 of the November 26, 2002 Judgment.
4. The briefs of April 9, 2005; October 6, 2006; and August 28, 2007, wherein the Republic of Colombia (hereinafter, "the State" or "Colombia") reported on the compliance with the Judgment on Reparations (*supra* Having Seen clause 2).
5. The briefs of October 4, 2005 and March 27, 2008, wherein the victims' representatives (hereinafter, "the representatives") submitted their observations on the reports of the State (*supra* Having Seen clause 4).
6. The briefs of December 16, 2006 and October 12, 2007, wherein the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted its observations on the reports of the State (*supra* Having Seen clause 4).

CONSIDERING:

* Judge Diego García-Sayán informed the Court, that, for reasons of *force majeure*, he would not be present at the deliberation and signing of the instant Order.

1. That supervising compliance with its decisions is one of the attributions inherent to the Court's jurisdictional functions.

2. That Colombia ratified the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") on July 31, 1973 and accepted the jurisdiction of the Inter-American Court on June 21, 1985, pursuant to Article 62 of the Convention.

3. That 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 must ensure implementation at the national level of the decisions of the Court contained in its judgments.¹

4. That, in view of the final and unappealable nature of the judgments of the Court, as established in Article 67 of the American Convention, they should be fully and promptly complied with by the State.

5. That the obligation to comply with the decisions contained in the judgments of the Court arises from a basic principle of the international responsibility of States, supported by international case law, according to which they must fulfill their international treaty obligations in good faith (*pacta sunt servanda*), and, as the Court has already noted and pursuant to Article 27 of the 1969 Vienna Convention on the Law of Treaties, said States may not invoke domestic law to refrain from assuming already established international responsibility.² States Parties' treaty obligations to comply with Court decisions promptly bind all State powers and bodies.³

6. That the States Parties to the Convention must guarantee 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 (that is, those concerning the protected rights), but also to procedural provisions, such as those referring to compliance with Court decisions. These obligations must be interpreted and applied in such a way that the protected

¹ Cfr. *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 Inter-American Court of Human Rights of May 7, 2008, Considering clause 3; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of June 10, 2008, Considering clause 3.

² Cfr. *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; *Case of Raxcacó-Reyes v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 09, 2008, Considering clause 4; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5.

³ Cfr. *Case of Baena-Ricardo et al.* Competence, *supra* note 1, para. 60; *Case of the Mayagna (Sumo) Awas Tingni Community*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 6.

guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁴

7. 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 contained in its judgments. The prompt implementation of the State's obligation to report to the Court on how each item ordered by the Court is being fulfilled is essential to assess the degree of compliance with the Judgment in its entirety.⁵

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8. That, pursuant to operative paragraph one of the Judgment on reparations (*supra* Having Seen clause 2), Colombia must effectively complete the ongoing criminal proceedings – at the time of delivery of said Judgment – “pertaining to the death of the victims and which generated violations of the American Convention in the instant case, identify the principals and their aiders and abettors, as well as possible accessories after the fact, and punish them, and publish the results of the proceedings.”

9. That in the Order issued on November 17, 2004, the Tribunal required the State to submit a detailed report on the measures adopted to comply with the above mentioned operative paragraph one of the Judgment on reparations (*supra* Having Seen clause 3).

10. That in the report of April 19, 2005 (*supra* Having Seen clause 4), the State informed that on December 13, 2004, in the context of case No. 212-2001, the 41st Criminal Court of the Circuit of Bogotá convicted the following persons:

- Antonio Alonso-Martínez, sentenced to serve a 27-year prison term for perpetrating the crime of aggravated murder with conspiracy, causing the deaths of Hernán Javier Cuarán-Muchavisoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez and NN/Moisés;
- Jaime Alberto Peña-Casas, sentenced to serve a 16-year prison term for perpetrating the crime of aggravated murder, causing the death of NN/Moisés and acquitted on the charge of murdering Hernán Javier Cuarán-Muchavosoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez, and

⁴ Cfr. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Raxcacó-Reyes*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause 43; and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 6.

⁵ Cfr. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7; *Case of the Gómez-Paquiyaqui Brothers*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 03, 2008, Considering clause 7; and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 7.

- Elías Sandoval-Reyes, sentenced to serve a 9-year prison term for perpetrating the crime of attempted aggravated murder against NN/Moisés and acquitted on the charge of murdering Hernán Javier Cuarán-Muchavisoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez.

11. That in its report of October 6, 2006 (*supra* Having Seen clause 4), the State informed that the judgment of December 13, 2004, delivered by the 41st Criminal Court of the Circuit of Bogotá, was appealed by the Office of the Solicitor General of the Republic, the “partie civile” and the convicted persons’ defense counsel. Said appeal was heard by the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, in whose judgment of March 31, 2006 it decided:

- to modify the operative paragraphs of the appealed judgment in order to sentence Antonio Alonso-Martínez to serve a prison term of 26 years and 9 months for co-perpetrating the aggravated murders of Hernán Javier Cuarán-Muchavisoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez and NN/Moisés;
- to reverse the acquittal of Jaime Alberto Peña-Casas and to sentence him, in his capacity as guarantor, to serve a 24-year prison term for the murders of Hernán Javier Cuarán-Muchavisoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez and NN/Moisés;
- to reverse the acquittal of Elías Sandoval-Reyes and to sentence him to serve a 22-year prison term for co-perpetrating the murders of Hernán Javier Cuarán-Muchavisoy, Julio Milcíades Cerón-Gómez, Edebrades Norberto, William Hamilton-Cerón, Artemio Pantoja-Ordóñez and NN/Moisés, and
- to reverse the appealed ruling and convict Antonio Alonso-Martínez, Jaime Alberto Casas and Elías Sandoval-Reyes and to compensate the victims for pecuniary and moral damages.

12. That in its report of August 28, 2007 (*supra* Having Seen clause 4), Colombia informed that Elías Sandoval-Reyes had been imprisoned since January 18, 2005 at the Penitentiary Center of the National Police. As regards Jaime Alberto Peña-Casas, the State pointed out that he had been released on bail on January 19, 2004. Said report contained no information regarding the whereabouts or the situation of Antonio Alonso-Martínez.

13. That the Inter-American Commission expressed that even if the judicial decision delivered by the 41st Criminal Court of the Circuit of Bogotá is a final judgment following the decision of the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, the State must increase its efforts to identify and punish all those involved in the facts of the instant case and to apprehend those who have already been convicted (*supra* Having Seen clause 6).

14. That the representatives of the victims affirmed that the obligation to conclude the ongoing investigations to establish criminal liability implies effectively complying with the punishment imposed. They added that the State failed to report in detail on the activities performed by competent authorities to execute arrest warrants. Likewise, the representatives observed that the State has not published the results of the concluded criminal proceedings.

15. That the representatives also pointed out that a preliminary investigation of the facts of the instant case is being conducted at the National Human Rights Unit of

the Public Prosecutor's Office, about which the State has furnished no information. In relation to this investigation, they observed that no significant progress has been made and that the participation of representatives was obstructed for one year by the prosecutor in charge of the investigation. The State has remained silent in this regard.

16. That the Court deems it positive that the criminal proceedings brought before the 41st Criminal Court of the Circuit of Bogotá have been concluded through a judgment entered by the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, which judgment is final (*supra* Considering clauses 10 and 11). Notwithstanding the foregoing, the Court does not know whether the sentences imposed by the Superior Court of the Judicial District of Bogotá are being executed, and whether the results of these criminal proceedings have been published as ordered in the Judgment on reparations.

17. That in order to assess the effective compliance with this operative paragraph of the Judgment on reparations, the Tribunal needs updated and detailed information on the measures adopted by the State in this regard. Therefore, the State must inform the Court 1) whether the sentences imposed by the Superior Court of the Judicial District of Bogotá are being executed; 2) whether the results of the relevant criminal proceedings have been published, and 3) whether a preliminary investigation into the facts of the instant case is being conducted at the National Human Rights Unit of the Public Prosecutor's Office.

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18. That in the Judgment on reparations, the Court ordered the State to take all necessary steps to identify N.N./Moisés, a victim in the instant case, as well as to locate, exhume and deliver his remains to his next of kin (*operative paragraph two of the Judgment on reparations of November 26, 2002*).

19. That in its Order of November 17, 2004, the Court required the State to report in detail on the measures adopted to comply with operative paragraph two of the Judgment on reparations (*supra* Having Seen clause 3).

20. That in its reports the State detailed the steps taken between the months of June 2001 and January 2005 at Mocoa and Las Palmeras to locate the victim's remains. Said steps included searches and excavations in cemeteries and surrounding areas, as well as interviews and expert analyses. The State informed that, as from the year 2005, entering the area became impossible due to serious disturbances of public order in the region. However, in its report of October 6, 2006, Colombia held that the Office of the Solicitor General of the Republic was taking steps to locate the remains of N.N./Moisés "but to no avail" (*supra* Having Seen clause 4).

21. That the Commission considered that the information furnished by the State on the measures adopted to locate the victim's remains was not detailed enough and stressed that the State has not taken the necessary steps to locate said victim's next of kin. In this regard, the Commission emphasized that complying with the payment of compensation to the victim's next of kin is directly linked to locating them (*supra* Having Seen clause 6).

22. That the victim's representatives expressed that they have not participated in or learned about the steps taken by the State to comply with operative paragraph two of the Judgment on reparations. Besides, they consider it inappropriate that, taking into account that the National Police is involved in the facts of the instant case, said institution should take part in the steps taken to contact the next of kin of the victim N.N./Moisés.

23. That although in its report of October 6, 2006 Colombia held that the Office of the Solicitor General of the Republic was taking steps to locate the remains of N.N./Moisés "but to no avail" (*supra* Having Seen clause 4), the State has not reported on the activities performed since the year 2005 to comply with operative paragraph two of the Judgment on reparations.

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24. That in the Judgment on reparations (*supra* Having Seen clause 2), the Court ordered the State to pay certain amounts of money to the victims' next of kin and their representatives as compensation for pecuniary and non pecuniary damages and for legal costs and expenses (*operative paragraphs five, six, seven, eight and nine of the Judgment on Reparations of November 26, 2002*).

25. That in the Order issued on November 17, 2004, the Court required the State to report in detail on the measures adopted to comply with operative paragraph two of the Judgment on Reparations (*supra* Having Seen clause 3).

26. That the State informed that on November 1, 2005 it had paid the victims' representatives the total amounts for compensation ordered by the Court in operative paragraphs 5, 6, 7, 8 and 9 of the Judgment on Reparations (*supra* Having Seen clause 4).

27. That the victims' representatives informed that on May 8, 2008, the funds corresponding to the term deposit certificate issued in favor of Johana Carolina Lizcano, daughter of Hernán Lizcano-Jacanamejoy, who has become of age, were collected. Likewise, they expressed that the remaining items "have been fulfilled as ordered by the Court" (*supra* Having Seen clause 5).

28. That the Commission did not refer specifically to this item but nevertheless observed that the payment of compensation to the next of kin of N.N./Moisés is directly linked to locating said next of kin (*supra* Having Seen clause 6).

29. That the parties are satisfied as regards the payment by the State of the compensations ordered in operative paragraphs 6, 7, 8 and 9 of the Judgment on reparations.

30. That the State must take all necessary measures to ascertain the identity of victim N.N./Moisés (Considering clause 18) and, as appropriate, proceed to compensate his next of kin, pursuant to operative paragraph five of the Judgment on reparations, and that, therefore, compliance with both obligations will be assessed on a joint basis.

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

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

DECLARES:

1. That, pursuant to Considering clause 29 of this Order, the State has fully complied with operative paragraphs six, seven, eight and nine of the Judgment on reparations delivered in the instant case.
2. That, pursuant to Considering clause 16 of this Order, the State has partially complied with operative paragraph one of the Judgment on reparations.
3. That it will keep open the procedure to monitor the items that are still pending compliance, to wit:
 - a) steps taken to investigate the facts of the instant case, to identify and punish those responsible, and to publish the results of the proceedings (*operative paragraph one of the Judgment on reparations of November 26, 2002*), and
 - b) necessary steps to identify N.N./Moisés, within a reasonable time, to locate, exhume, and deliver his remains to his next of kin, and to pay said next of kin the amount owed by the State (*operative paragraphs two and five of the Judgment on reparations of November 26, 2002*).

AND DECIDES:

1. To call upon the State of Colombia to adopt all necessary measures to comply promptly and effectively with the items pending fulfillment mentioned in declaratory paragraph three above, pursuant to Article 68(1) of the American Convention on Human Rights.
2. To request the State of Colombia to submit before the Inter-American Court of Human Rights, by January 12, 2009 at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that are still pending fulfillment (*supra* Considering clauses 17, 23 and 30).
3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit such observations as they may deem relevant on the report of the State of Colombia mentioned in the previous operative paragraph, within four and six weeks, respectively, from the moment they receive the report.

4. To continue monitoring the items of the Judgment on reparations that are still pending compliance.
5. To consider the possibility of holding a private hearing to monitor compliance with the Judgments delivered in the instant case, in which case the parties shall be duly notified.
6. To request the Secretariat of the Court to give notice of this Order to the State of Colombia, the Inter-American Commission on Human Rights, and the victims' 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