

**Order of the
Inter-American Court of Human Rights*
May 2, 2008
Case of Claude Reyes *et al.* v. Chile
(*Monitoring Compliance with Judgment*)**

HAVING SEEN:

1. The judgment on merits, reparations and costs of September 19, 2006 (hereinafter "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), in which it decided that:

[...]

5. The State shall, through the corresponding entity and within six months, provide the information requested by the victims, if appropriate, or adopt a justified decision in this regard, in the terms of paragraphs 157 to 159 and 168 of [the] judgment.

6. The State shall publish, within a period of six months, once in the official gazette and in another newspaper with extensive national circulation, the chapter on the Proven Facts of [the] judgment, paragraphs 69 to 71, 73, 74, 77, 88 to 103, 117 to 123, 132 to 137 and 139 to 143 of [the] judgment, which correspond to Chapters VII and VIII on the violations declared by the Court, without the corresponding footnotes, and the operative paragraphs [t]hereof, in the terms of paragraphs 160 and 168 of [the] judgment.

7. The State shall adopt, within a reasonable time, the necessary measures to ensure the right of access to State-held information, pursuant to the general obligation to adopt provisions of domestic law established in Article 2 of the American Convention on Human Rights, in the terms of paragraphs 161 to 163 and 168 of [the] judgment.

8. The State shall, within a reasonable time, provide training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right; this training should incorporate the parameters established in the Convention concerning restrictions to access to this information, in the terms of paragraphs 164, 165 and 168 of [the] judgment.

9. The State shall pay Marcel Claude Reyes, Arturo Longton Guerrero and Sebastián Cox Urrejola, within one year, for costs and expenses, the amount established in paragraph 167 of [the] judgment, in the terms of paragraphs 167 and 169 to 172.

[...]

2. The briefs dated February 23, 2007 and attachment, March 23, 2007 and attachments, June 29, 2007, July 9, 2007 and attachment, and January 2, 2008 and attachments, in which the Republic of Chile (hereinafter "the State" or "Chile") reported on progress in complying with the judgment.

3. The brief dated February 20, 2008 and its attachments, in which the representative of the victims (hereinafter "the representative") submitted his observations to the State's report on compliance with the judgment.

4. The March 19, 2008 brief in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its comments to the report of the State on compliance with judgment.

CONSIDERING:

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

2. That Chile has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since August 21, 1990 and accepted the binding jurisdiction of the Court that same day.

3. That, 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." For such purpose, the States are required to guarantee that the Court's orders are implemented in decisions made at the domestic level.¹

4. That, because the judgments of the Court are final and not subject to appeal, as established in Article 67 of the American Convention, the State is required to promptly and fully comply therewith.

5. That the obligation to comply with the Court's decisions conforms to a basic principle of the law on 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 previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their internal laws for failure to honor their pre-established international responsibility. The States Parties' obligations under the Convention bind all branches and organs of State.²

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) within their own domestic laws. This principle is applicable not only to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights), but also to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to

¹ Cfr. I/A Court HR. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, par. 131; Cfr. I/A Court HR *Case of López Álvarez v. Honduras*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause 7; and I/A Court HR. *Case of Caballero Delgado y Santana v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause 3;

² Cfr. I/A Court HR. *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, par. 35; I/A Court HR. *Case of Cantoral Benavides v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 7, 2008, Considering clause 5; and I/A Court HR. *Case of Caballero Delgado y Santana v. Colombia*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5.

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.³

7. That the States Parties to the Convention, having once accepted the binding jurisdiction of the Court, must honor obligations set by the Court. This includes the duty of the State to inform the Court of all measures taken to comply with the orders that the Court delivers in these decisions. If the Court is to evaluate progress in compliance with the overall judgment, the State must be prompt in submitting Court-ordered reports on its action to discharge each of the items called for in the decision.⁴

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8. That in compliance with the obligation to provide victims with the information they requested, if appropriate, or adopt a justified decision in this regard, established in Operative point 5 of the judgment, the State submitted a note from the Foreign Investment Committee (FIC) on June 25, 2007. According to the note, on May 19, 1998, the then-Executive Vice President of the FIC met with the victims in the instant case. Their questions were answered and they were provided the information they requested about the Río Cóndor project, "obviously respecting standards of publicity and confidentiality in effect at that time." It also stated that, "the information provided was what the FIC [...] had available and basically included the identity of investors, the amount of the authorized investment, timetables for capital income and capital actually produced." Regarding the rest of the information that the victims had requested at that time, the State reported that "in keeping with its powers, the FIC seeks advance information from interested organizations only when so required in the specific sectoral laws covering the activity to be developed by the investor [...]. In the case of the Río Cóndor project, no such legal requirement existed, and therefore the FIC had no information to provide on this point. We acknowledge that in the meeting, the applicants were indeed not apprised of this legal situation. In view of all this, [...] they were given [...] the information that was available and that [the FIC] was empowered to deliver in accordance with its legal capacity."

9. That the representative reported that "the Foreign Investment Committee, [...] within the six-month term granted by the Court [...], proceeded to respond to the request for access [to information submitted by] the victims in the instant case" and felt that the State had fully complied with this measure of redress ordered in judgment.

10. That the Inter-American Commission said that "it understands that [...] the representatives of the injured party fe[lt] that the State had responded to their request."

³ Cfr. I/A Court HR. *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999, Series C No. 54, par. 37; Cfr. I/A Court HR. *Case of Cantoral Benavides v. Peru*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause 9; and I/A Court HR. *Case of Caballero Delgado y Santana v. Colombia*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause 6.

⁴ Cfr. I/A Court HR. *Case of Barrios Altos v. Peru*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7; I/A Court HR. *Case of Baldeón García v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause 5; and I/A Court HR. *Case of Gómez Palomino v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering clause 5.

11. That on the basis of information supplied by the parties, the Court concludes that the State has discharged its obligation to provide the information requested by the victims.

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12. That with regard to the obligation to publish the judgment, as ordered in Operative point 6 of the text, the State reported that it had completed the publication in the Official Gazette of the Republic of Chile on January 17, 2007 and in the "La Nación" newspaper on January 22, 2007, and it attached copies thereof.

13. That the representative confirmed that these publications had been released and felt that the State had fully complied with this measure of redress ordered in the judgment.

14. That the Inter-American Commission observed "the publications made and the position of the parties" and acknowledged "the importance of this measure in the process of complying with reparations ordered by the Court and of recognizing the injury caused."

15. That based on the information provided by the parties, the Court concludes that the State has honored its obligation to publish the relevant sections of the judgment, within a period of six months, in the Official Gazette and in another widely circulated national newspaper.

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16. That with regard to the obligation to adopt the necessary measures to ensure the right of access to State-held information, established in Operative point 7 of the judgment, Chile reported that "the draft bill developed for this purpose is currently in the final stages of the legislative process before the National Congress." The State also submitted a record reflecting the status of the draft bill in the Congress, the principles that will be legislated therein and the scope that the new law will give to the right of access to public information. This record also notes that the Court's judgment in the instant case was reflected in the draft bill and that the expected law will "legislate the principle of transparency that the constitutional reform of 2005 incorporated [into Chile's domestic law], specifically targeting the provisions given in the new Article 8 of the [National] Constitution."

17. That the representative informed the Court that "both chambers of the National Congress recently approved the regulatory provisions governing transparency in public office and access to information on State administration [...], soon to go into effect after the text has been published in the Official Gazette," which was expected to occur in the first quarter of 2008. The representative noted that "the State of Chile respond[ed] to the obligations contained in the American Convention on Human Rights and the judgment of the Inter-American Court of Human Rights;" he highlighted the main features of the new law and "recognized and applauded the upcoming entry into force of the law and the sense of commitment displayed by the executive branch and the Congress in processing it." Notwithstanding this, he expressed "misgivings on certain specific provisions of the new law, with regard to guaranteeing the right to State-held information that, when they go into effect and are applied to potential

specific cases, will entail [...] breach of the judgment and infringement of Article 2 of the American Convention." In particular, he expressed disagreement with Article 22, subparagraph 3, providing for information to remain secret or confidential indefinitely in the case of certain acts and documents; Article 29, to suspend the release of information if the authority or a third party should bring a claim before the appropriate appeals court, and transitional Article 1, which would accept as legitimate the legislation on secrecy and confidentiality that existed prior to the law.

18. That the Inter-American Commission applauded "the procedures and efforts undertaken to comply with this measure of redress and looks forward to receiving information on progress and implementation of this important process in the next State report." In particular, the Commission "awaits information on whether the newly approved law is compatible and appropriate for fully complying with [...] the reparations ordered by the Court."

19. That the Inter-American Court applauds the recent adoption by the National Congress of a new law on access to public information that regulates the provisions of Article 8 of the National Constitution of Chile and that, according to information provided by the representative, was to have gone into effect in the first quarter of this year. The Court asks the State to submit a copy of the full text of the law as approved and to submit its observations on comments made by the representative concerning the three specific Articles of the new law (*supra* Considering clause 17).

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20. That with regard to the obligation to provide training to public entities, authorities and agents that receive and respond to requests for access to State-held information, informing them about the laws and regulations governing this right, and that such training should incorporate the parameters established in the Convention concerning restrictions on access to this information, as established in Operative point 8 of the judgment, Chile reported that "on October 19, [2007], a seminar took place on 'Access to public information: what does the new law have to say?' This seminar was organized by the Minister/Secretary General of the President, [social organizations] and the Pro Acceso Foundation, whose president [...] was the legal representative of the applicants [in the instant case]. The seminar was attended by authorities from the government and the legislative branch. The purpose was to meet with [...] government officials [and others] to examine the effects and possible applications of the new law on access to information, an initiative designed to bring greater transparency to the procedures of public administration and guarantee the right of all citizens to have access to information emerging from any public entity." The State also attached a document reporting on an international seminar held on November 5-6, 2007: "Toward a new institutional structure for access to public information in Chile." The activity was organized by the Pro Acceso Foundation with support from the Minister/Secretary General of the President of Chile. The objective of the seminar was "to publicize the content and scope of this new legal instrument, thus contributing to the process of applying and implementing the new law." It was attended by a large number of people, including public officials.

21. That the Representative recognized "progress made [...] in [implementing] concrete measures to promote a cultural change in favor of transparency and access to public information in the administrative structure of the State." He emphasized a number of measures: "Under the tutelage of the Minister/Secretary General of the

President, a unit was created for the purpose of promoting and coordinating a public policy of honesty and transparency inside the administration; government initiatives have been implemented to promote practices of good governance, and an orientation and training system has been designed and implemented for employees of the government bureaucracy, with an emphasis on honesty and transparency." He also "recognize[d] the willingness of the State to work in cooperation with civil society, especially the Pro Acceso Foundation, by sponsoring activities for seminars and exchanges." Notwithstanding this, the representative emphasized that these initiatives were "insufficient to comply fully with the judgment. The current training programs emphasize content on transparency, overlooking discussion of obligatory Convention-based parameters regarding such subjects as restrictions on the right of access to public information[...], especially [those parameters] intended to reverse the State's practice of not responding to requests for access to public information." Finally, the representative added that the "measures adopted have not been extended to the judicial branch, which is responsible for receiving and protecting requests for access to public information." He therefore concluded that, "if the State is to comply fully with the judgment, it must deepen Convention-based content in training programs for government bureaucrats and extend this training to judges as well, particularly the judges on the Court of Appeals, which the new law defines as the only venue authorized to settle these matters[...]".

22. That the Inter-American Commission noted "with satisfaction the information about activities undertaken to implement training programs on access to State-held information, anticipates that the State will continue to implement the measures necessary for full compliance with its obligations and hopes it will overcome the obstacles described by the representatives, so that State of Chile can report very soon on full compliance with this [obligation]."

23. That the Court applauds the training actions reported on by the State and appreciates that these actions are taking place in cooperation with civil society organizations involved in these issues, including the organization presided over by the representative of the victims in the instant case. The Inter-American Court also takes a positive view of the information supplied by the representative concerning other initiatives the State has adopted to train government bureaucrats in this area. Nonetheless, aware that international obligations are binding on all the branches and entities of the States Parties, and considering the essential role that the judicial branch of Chile is called upon to play in this area, the Court feels that in its next report, the State should provide information on training actions targeting the judicial branch. Finally, the Court also believes it is necessary for the State, in its next report, to respond to the representative's comments about the content of training activities.

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24. That with regard to the obligation to pay costs and expenses, established in Operative point 9 of the judgment, the State reported that on June 25, 2007, it performed this duty "by sending three bank checks by certified mail, one each to Marcel Claude Reyes, Luis Sebastián Cox Urrejola and Arturo Longton Guerrero, for a total amount in Chilean currency equivalent to US\$ 10,000 (ten thousand US dollars), divided equally among the three."

25. That the representative confirmed the information supplied by the State and felt that the State had fully complied with this measure of redress ordered in the judgment.

26. That the Inter-American Commission acknowledged "compliance with this obligation."

27. That based on the information provided by the parties, the Court concludes that the State has fully honored its obligation to pay costs and expenses within the period of one year.

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28. That the Inter-American Court notes with approval that the State has fully honored three measures of reparation ordered in the judgment on merits, reparations and costs of September 19, 2006, and has taken major steps toward full compliance with the two remaining measures of reparation.

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), 62(3), 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 according to the terms of Considering clauses 11, 15 and 27 of this order, the State has fully complied with the operative points of the judgment in the instant case which ordered the State to:

a) through the corresponding entity and within six months, provide the information requested by the victims, if appropriate, or adopt a justified decision in this regard, in the terms of paragraphs 157 to 159 and 168 of [the] judgment (*Operative point 5 of the judgment*);

b) publish, within a period of six months, once in the official gazette and in another newspaper with extensive national circulation, the chapter on the

Proven Facts of [the] judgment, paragraphs 69 to 71, 73, 74, 77, 88 to 103, 117 to 123, 132 to 137 and 139 to 143 of [the] judgment, which correspond to Chapters VII and VIII on the violations declared by the Court, without the corresponding footnotes, and the operative paragraphs [t]hereof, in the terms of paragraphs 160 and 168 of [the] judgment (*Operative point 6 of the judgment*); and

c) pay Marcel Claude Reyes, Arturo Longton Guerrero and Sebastián Cox Urrejola, within one year, for costs and expenses, the amount established in paragraph 167 of [the] judgment, in the terms of paragraphs 167 and 169 to 172 (*Operative point 5 of the judgment*).

2. That according to the terms of Considering clauses 19 and 23 of this order, the Court will hold open the procedure on compliance with the operative points of the judgment in the instant case in which it has ordered the State to:

a) adopt, within a reasonable time, the necessary measures to ensure the right of access to State-held information, pursuant to the general obligation to adopt provisions of domestic law established in Article 2 of the American Convention on Human Rights, in the terms of paragraphs 161 to 163 and 168 of [the] judgment (*Operative point 7 of the judgment*); and

b) within a reasonable time, provide training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right; this training should incorporate the parameters established in the Convention concerning restrictions to access to this information, in the terms of paragraphs 164, 165 and 168 of [the] judgment (*Operative point 8 of the judgment*).

AND DECIDES:

1. To declare fully satisfied the measures of reparation ordered by the Inter-American Court of Human Rights in its judgment on merits, reparations and costs of September 19, 2006, given in Operative points 5, 6 and 9, in keeping with Considering causes 11, 15 y 27 and the first declarative point of this order.

2. To order the State of Chile to adopt all measures necessary to give effective, swift completion of reparations ordered in the September 19, 2006 judgment for which compliance is still pending, in accordance with Article 68(1) of the American Convention on Human Rights and the second declarative point of this order.

3. To request the State of Chile to submit to the Inter-American Court of Human Rights, by July 11, 2008 at the latest, a report indicating what measures have been adopted to complete reparations ordered by this Court for which compliance is still pending.

4. To ask the Inter-American Commission of Human Rights and the representative of the victims to submit whatever comments they deem relevant on the State's report mentioned in the previous operative point, within a period of four and six weeks respectively, as of the date they receive the report from the State.

5. To continue monitoring compliance with still-pending points from the September 19, 2006 judgment on merits, reparations and costs.

6. To order the Secretary to notify the State of Chile, the Inter-American Commission on Human Rights and the representative of the victims of this order.

Diego García-Sayán
President

Sergio García Ramírez

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary