

**Order of the
Inter-American Court of Human Rights
of February 6, 2008
Case of the "Juvenile Reeducation Institute" v. Paraguay
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment delivered by the Inter-American Court of Human Rights (hereinafter "The Court" or "the Inter-American Court") on September 2, 2004.¹
2. The order on monitoring compliance with judgment, delivered on July 4, 2006, in which the Court:

DECLARE[D]

1. That, as indicated in the eighth *Considering* paragraph of this Order, the State has complied partially with the provisions of the tenth operative paragraph of the judgment on preliminary objections, merits and reparations delivered by the Court on September 2, 2004, since it has complied with publishing the pertinent parts of the judgment in the official gazette and in a newspaper with extensive national circulation.

2. That it will continue the procedure of monitoring compliance with the aspects pending full compliance. They are:

a) The organization, in consultation with civil society, of a public act to acknowledge international responsibility at which it announces the elaboration of a short, medium and long-term State policy concerning children in conflict with the law (eleventh operative paragraph);

b) The psychological treatment for all the former interns of the Institute between August 14, 1996, and July 25, 2001; medical and/or psychological treatment for the former interns injured in the fires, and psychological treatment for the next of kin of the interns who died or were injured (twelfth operative paragraph);

c) Vocational assistance and a program of special education for the former interns of the Institute between August 14, 1996, and July 25, 2001 (thirteenth operative paragraph);

d) Providing a place for the burial of Mario del Pilar Álvarez Pérez, son of María Teresa de Jesús Pérez, in a cemetery near her residence (fourteenth operative paragraph);

e) The safeguard of the life, integrity and security of the persons who testified and of their next of kin (fifteenth operative paragraph);

f) Payment of the compensation for pecuniary and non-pecuniary damage to the victims and their next of kin (sixteenth and seventeenth operative paragraphs), and

¹ I/A Court HR. *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112.

g) Reimbursement of expenses and costs to the representatives of the victims (eighteenth operative paragraph).

AND DECIDE[D]:

1. To require the State to adopt all necessary measures to comply effectively and promptly with the reparations ordered by the Court in the judgment on merits, reparations and costs of September 2, 2004, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

[...]

3. The September 11, 2006, April 17, 2007 and November 7, 2007 briefs in which the State of Paraguay (hereinafter "The State" or "Paraguay") reported on compliance with the Court's judgment in the instant case. With regard to measures for which compliance is still pending, the State reported as follows:

a) On the obligation to carry out a public act acknowledging international responsibility and develop a State policy on juveniles in conflict with the law, on May 17, 2006, the State set up a Technical Working Group charged with developing a State policy on juveniles in conflict with the law, as ordered in the judgment; a working subgroup has been tasked to develop a draft, as soon as possible, to be submitted for consideration by the members of the Technical Working Group.

b) On the obligation to provide psychological care for all former inmates, medical care and/or psychological treatment for former inmates injured in the fires and psychological care for family members of deceased and injured inmates, national health authorities have had difficulties identifying victims and next of kin who receive services in the different health institutions because they themselves do not use the identification documents provided by the State to exempt them from payment of fees for medical and psychological services.

c) On the obligation to provide vocational assistance and a special education program for former inmates of the Institute, the Ministry of Education and Culture has implemented vocational programs and special educational plans conducted jointly by the Vocational Outreach Service and the Service for Care of Juvenile Offenders, together with the Ministry of Education and Culture. These programs are being offered in all facilities where adolescents are held in custody.

d) On the obligation to provide a resting place for the remains of Mario del Pilar Álvarez Pérez, son of Mrs. María Teresa de Jesús Pérez, in a mausoleum near her place of residence, on May 4, 2007, the Municipality of the City of Asunción signed a contract with Mrs. Maria Teresa de Jesús Pérez, granting her the use of a plot in the cemetery.

e) On the duty to pay compensation for pecuniary and non-pecuniary damages to victims and their next of kin and reimburse them for costs and expenses, the 2007 General Expense Budget of the Nation contained an item apportioning a sum for the second partial payment of compensation for pecuniary and non-pecuniary damage to victims and their next of kin, and the Ministry of Finance has been asked to include an amount in the 2008 General Budget to cover the balance of the payment for damages. The State has not reimbursed costs and expenses for the representatives of the victims and their next of kin, as the representatives did not include these amounts in the document assessing compensation; according to the States, this reflects their desire to attach higher priority to payment of damage for victims, "resulting in a temporary delay of payment of costs and expenses."

4. The October 17, 2006, May 16, 2007 and December 6, 2007 briefs of the representatives of the victims and their next of kin (hereinafter "the representatives"), containing their comments on the reports by the State, in the following terms:

a) On the obligation of the State to carry out a public act recognizing international responsibility and to develop a State policy on children in conflict with the law, the Technical Working Group has met only three times. No State agency has been assigned to coordinate its work, and no timetable exists for consultation with civil society entities. No concrete progress has been made toward developing this State policy.

b) On the obligation to provide psychological care for all former inmates, medical care and/or psychological treatment for former inmates injured in the fires, and psychological care for family members of deceased and injured inmates, the Visiting and Oversight Commission for Juvenile Detention Facilities, made up of public officers and civil society representatives, reported on conditions of incarceration of juveniles in the *Itaguá Centro Educativo*, successor of the Juvenile Reeducation Institute, and found that conditions of incarceration of minors in the facility had deteriorated significantly.

c) On the obligation to provide vocational assistance and a program of special education for former inmates of the Institute, the educational programs cited in the State's reports do not specifically target former inmates of the Juvenile Reeducation Institute, but are available to the general population.

d) On the obligation to provide a resting place for the remains of Mario del Pilar Álvarez Pérez, son of Mrs. María Teresa de Jesús Pérez, in a mausoleum near her place of residence, the clause on the mausoleum tax has not yet been resolved, as the contract for usufruct mentioned by the State entails a payment.

e) On the duty to pay compensation for pecuniary and non-pecuniary damages to victims and their next of kin and reimburse them for costs and expenses, to date the State has paid the victims only about 20% of what it owes them for compensation and expenses, without considering overdue interest. At present,

as of seven months ago, a second payment is being processed approximately equivalent to the first partial payment. Nevertheless, this second payment has not yet been made.

f) On the duty to protect the life, integrity and safety of persons who gave testimony and their next of kin, the representatives have reported on several occasions that "...for now, the victims have received no type of threat that would merit the granting of special measures of protection."

5. The November 1, 2006 and June 1, 2007 briefs of the Inter-American Commission on Human Rights (hereinafter "the Commission"), responding to the reports of the State and indicating as follows:

a) On the obligation to carry out a public act acknowledging the international responsibility of the State and to develop a State policy on juveniles in conflict with the law, the State has not undertaken a committed effort to ensure compliance with this order; neither the simple creation of the Technical Working Group, nor compliance with the Convention-based obligation to separate adults from children in detention, is enough to satisfy the order of the Court.

b) On the obligation to provide psychological care for all former inmates, medical and/or psychological treatment for former inmates injured in the fires and psychological care for family members of deceased and injured inmates, the state of health of some of the victims still in custody continues to be a source of concern.

c) On the obligation to provide vocational assistance and a program of special education for former inmates of the Institute, the general measures taken are significant but not sufficient to satisfy the orders of the Court to provide surviving victims with vocational assistance and access to a program specially designed for them.

d) On the duty to pay compensation for pecuniary and non-pecuniary damages to victims and their next of kin and reimburse them for costs and expenses, the compliance with payment of pecuniary redress has been neither effective nor efficient.

6. The decision delivered by the President of the Court on December 10, 2007 in which, exercising the powers of the Court to monitor compliance with its decisions, in consultation with the other Judges of the Court, and in accordance with Articles 67 and 68(1) of the American Convention on Human Rights (hereinafter "the Convention"), he ordered the State of Paraguay, the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to attend a private hearing for the purpose of obtaining information from the State on its actions to comply with pending points of the judgment, and for receiving comments to this effect from the representatives and the Commission.

7. The February 4, 2008 private hearing on monitoring of compliance with the judgment on preliminary objections, merits, reparations and costs delivered in the instant case, and the documents and statements submitted to that hearing by the parties.²

8. The Memorandum of Understanding between the State of Paraguay and one of the representatives of the victims and their next of kin, in which the State agreed to adopt a series of measures, within a period of two to six months, for complying with the still-unmet provisions of the judgment (*infra Considering* clause 13). The State also undertook to adopt measures for victims still in custody, in response to a request by Mrs. Teofista Domínguez, who is a victim and appeared in the private hearing on behalf of the victims and their next of kin (*infra Considering* clause 14).

CONSIDERING:

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

2. That Paraguay has been a State Party to the American Convention since August 24, 1989 and, in accordance with Article 62 thereof, acknowledged the adjudicatory jurisdiction of the Court on March 26, 1993.

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.³

² The Court, in accordance with Article 6(2) of the Rules of Procedure, conducted the hearing by means of a commission made up of the following judges: Judge Diego García-Sayán, Vice-president; Judge Sergio García Ramírez and Judge Rhadys Abreu Blondet. The following parties appeared at the hearing: a) for the Inter-American Commission: Santiago Canton, Delegate, and Juan Pablo Albán A. and Lilly Ching Soto, advisors; b) for the State of Paraguay: Darío Díaz Camaraza, Public Prosecutor of Paraguay; Arnaldo Frutos, Deputy Minister for Children; Julio Arriola, Business Attaché of the Republic of Paraguay to the Government of the Republic of Costa Rica; Edgar Fidas Taboada Ynsfrán, Director General of Human Rights for the Ministry of Justice and Labor; Francisco Barreiro Perrota, Human Rights Director for the Ministry of Foreign Affairs; Nury Natalia Montiel Mallada, Human Rights Director for the Supreme Court; Silvio Ortega Rolón, Human Rights Director for the Ministry of Public Health and Social Welfare; Sonia Chávez Galeano, Chief of Compliance and Follow-up of Judgments, and Stella Azuaga, Director General of the National Service for Care of Juvenile Offenders; and c) for the representatives of the victims: Liliانا Tojo, of the Center for Justice and International Law (CEJIL) and Mrs. Teofista Domínguez.

³ *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; I/A Court HR. *Case of Palamara-Iribarne v. Chile.* Monitoring Compliance with Judgment. Order 30 of November, 2007, *Considering* clause 3; and I/A Court HR. *Case of Molina-Teissen v. Guatemala.* Monitoring Compliance with Judgment. Order of July 10, 2007, *Considering* clause 2.

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 judgments 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.⁴

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 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.⁵

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7. That regarding the duty to pay indemnification for pecuniary and non-pecuniary damages, the representatives stated in the private hearing that the judicial process by which the first payment had been made and by which the second payment would be made obliged the beneficiary of reparations to hire an attorney and appear personally in court to claim payment. The representatives also reported that so far, the State had paid the victims the equivalent of 18% of the amount due for redress and expenses, without considering interest payments for arrearage. The Court takes note of the commitment assumed by Paraguay (*infra Considering* clause 13) and points out that the State is under obligation to abide by the orders without imposing additional burdens on the victims in order to make redress viable. For this reason, it is essential for the State not only to pay what it owes, but to do so in whatever way is most practical and expeditious for the beneficiaries.

8. That regarding the duty to provide medical and psychological care, the State claimed in the private hearing that health authorities had found it difficult to identify victims in order to provide them with needed health care and, moreover, many victims did not present the identification cards they had received to exempt them from paying

⁴ 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 Palamara-Iribarne v. Chile*, Monitoring Compliance with Judgment, *supra* note 3, *Considering* clause 5; and I/A Court HR. *Case of Molina-Theissen v. Guatemala*, Monitoring Compliance with Judgment, *supra* note 3, *Considering* clause 3.

⁵ Cfr. I/A Court HR. *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999, Series C No. 54, par. 37; I/A Court HR. *Case of Palamara-Iribarne v. Chile*, Monitoring Compliance with Judgment, *supra* note 3, *Considering* clause 6; and I/A Court HR. *Case of Gómez Palomino v. Peru*. Monitoring Compliance with Judgment. Order of October 18, 2007, *Considering* clause 4.

fees at health facilities. The representatives replied that public health facilities did not recognize this identification card when it was presented. They added that victims had attended several meetings with State authorities, and therefore it would not be difficult to identify them, and it was therefore necessary for the State to begin providing efficient and ongoing healthcare for all the victims. In this regard, the Court takes note of the commitment assumed by Paraguay (*infra Considering* clause 13) and adds that the State should be the one to take the initiative of providing victims and their family members with medical and psychological care that is effective and consistent with the terms of the judgment.

9. That regarding the obligation to "ensure the life, personal integrity and safety of the persons who gave affidavits and their next of kin and [to] provide them with protection against anyone," as provided in Operative point 15 of the judgment, the Court observes the report by the representatives to the effect that "...for now, the victims have received no type of threat that would merit the granting of special measures of protection." The Court finds that it would be appropriate to continue receiving information on this operative point.

10. That in the framework of the private hearing on monitoring compliance with the judgment delivered in the instant case, the parties presented their arguments on the state of compliance with judgment. They also submitted to the Court a Memorandum of Understanding signed in a working meeting held between the parties upon completion of the private hearing, in which the State agreed to adopt a variety of procedures to bring it into full compliance with some of the measures of redress, as well as other measures that would bring progress in complying with the orders of the Court.

11. That the Court applauds the preparation of the Memorandum of Understanding by the parties and the commitments adopted therein by the State.

12. That the Court recalls that, in accordance with the provisions of paragraphs 315 to 322, 330, 331 and Operative point 19 of the judgment of September 2, 2004, all the deadlines for complying with the measures of redress ordered in the judgment have now elapsed. Notwithstanding this fact, a Court takes a positive view of the agreement made by the parties in which they set specific deadlines and name authorities who will be responsible for adopting concrete measures for complying with the judgment.

13. That the measures outlined in the Memorandum of Understanding must be performed in accordance with the provisions of the operative points in the September 2, 2004 judgment. That for the purpose of weighing the state of compliance with that judgment, and in view of timetables set by the parties in the Memorandum of Understanding, the Court will require reports from the State within three and six months (*infra* Operative point 2). To this effect, the State must provide the Court with specific information on adoption of the following measures specified in the Memorandum of Understanding:

- a) in the space of six months, a draft public policy for treatment of children and adolescents in conflict with the law, through the Human Rights Department of the Supreme Court, the office of the Deputy Minister of the National Secretariat for Children and the General Directorate of the National Service for Care of

Juvenile Offenders, in keeping with the terms of Operative point 11 of the judgment;

b) over the space of two months at the most, a medical, psychological and educational needs assessment of the victims, performed by a multidisciplinary team made up of a clinical physician, a specialist in reconstructive surgery, a social worker, a specialist in adult education, a psychologist and a psychiatrist, in keeping with the terms of Operative points 12 and 13 of the judgment;

c) take all necessary measures for the Municipal Board of Asunción to grant a piece of land to Mrs. María Teresa de Jesús Pérez where she can lay to rest the remains of her son, Mario del Pilar Álvarez Pirez, in keeping with the provisions of Operative point 14 of the judgment; and

d) through the Human Rights Directorate of the Ministry of Foreign Affairs, arrange with the Ministry of Finance to modify the procedure for issuing payment of indemnification, "using as a reference other procedures for redress by means of individual payroll transfers" in keeping with the provisions of Operative points 16 and 17 of the judgment.

14. That the Court takes note of the commitment assumed by the State in response to a request by Mrs. Teofista Domínguez, who is a victim and who attended the private hearing on monitoring compliance in her capacity as representative of the victims and their next of kin, to arrange for victims still being held in custody in the Tacumbit Prison to be moved to a cell where they can be together, if they so desire.

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), 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, in accordance with the provisions of *Considering* clauses 7 through 13 of this order, the Court will hold open the procedure for monitoring compliance with judgment on the following pending items:

a) The organization, in consultation with civil society, of a public act to acknowledge international responsibility at which it announces the

elaboration of a short, medium and long-term State policy concerning children in conflict with the law (*Operative point 11*);

b) The psychological treatment for all the former interns of the Institute between August 14, 1996, and July 25, 2001; medical and/or psychological treatment for the former interns injured in the fires, and psychological treatment for the next of kin of the interns who died or were injured (*Operative point 12*);

c) Vocational assistance and a program of special education for the former interns of the Institute between August 14, 1996, and July 25, 2001 (*Operative point 13*);

d) Providing a place for the burial of Mario del Pilar Álvarez Pérez, son of María Teresa de Jesús Pérez, in a cemetery near her residence (*Operative point 14*);

e) The safeguard of the life, integrity and security of the persons who testified and of their next of kin (*Operative point 15*);

f) Payment of the compensation for pecuniary and non-pecuniary damage to the victims and their next of kin (*Operative points 16 and 17*), and

g) Reimbursement of expenses and costs to the representatives of the victims (*Operative points 18*).

AND DECIDES:

1. To require the State to adopt the necessary measures to comply promptly and effectively with the decisions of the Court in the judgment on merits, reparations and costs of September 2, 2004, that are pending fulfillment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit to the Inter-American Court of Human Rights a first report on May 30, 2008, and a second report on August 29, 2008, outlining all measures taken to complete reparations ordered by this Court that are still pending compliance, in accordance with the provisions of *Considering* clause 13 of this order.

3. To request the representatives of the victims and their family members and the Inter-American Commission on Human Rights to submit their observations on the reports of the State cited in the previous operative point, and to do so within periods of four and six weeks respectively, of the date each report is received.

4. To continue monitoring items still pending compliance from the September 2, 2004 judgment on preliminary exceptions, merits, reparations and costs.

5. To order the Secretary of the Court to notify the State, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin of this order.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary