

**Order of the
Inter-American Court of Human Rights
of May 2, 2008
Case of Ximenes Lopes v. Brazil
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on merits, reparations and costs of July 4, 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:

[...]

6. The State must secure, within a reasonable time, that the domestic proceedings instituted in order to investigate and punish those responsible for the events in the instant case be operative, as set forth in paragraphs 245 to 248 [t]herein.

7. The State must, within the term of six months, publish [...] once in the Official Gazette and in another nationwide daily newspaper, Chapter VII - Proven Facts - of [the] Judgment, without its footnotes, as well as the operative paragraphs [t]herein, as set forth in paragraph 249 [t]herein.

8. The State must keep developing an education and training program for staff in health care, psychiatry, psychology, nursing, and for any person involved in mental health services, in particular, covering the principles that govern treatment to patients with mental illness, according to international standards and the provisions of [the] Judgment, as set forth in paragraph 250 [t]herein.

9. The State must pay in cash to Albertina Viana-Lopes and Irene Ximenes-Lopes-Miranda, within the term of one year, as compensation for pecuniary damage, the amount fixed in paragraphs 225 and 226 [of the judgment], as set forth in paragraphs 224 to 226 [t]herein.

10. The State must pay in cash to Albertina Viana-Lopes, Irene Ximenes-Lopes-Miranda, Francisco Leopoldino Lopes and Cosme Ximenes-Lopes, within the term of one year, as compensation for non-pecuniary damage, the amount fixed in paragraphs 238 [of the judgment], as set forth in paragraphs 237 to 239 [t]herein.

11. The State must pay in cash, within the term of one year, as costs and expenses incurred in the domestic proceedings as well as in the international proceedings under the Inter-American system of protection of human rights, the amount fixed in paragraph 253 [of the judgment], [...] as set forth in paragraphs 252 to 253 [t]herein.

[...]

2. The briefs dated March 1, 2007 with appendixes and October 18, 2007 with appendixes, in which the Federal Republic of Brazil (hereinafter "the State" or "Brazil") reported on compliance with the judgment delivered by the Court in the instant case.

3. The brief dated November 26, 2007 with appendixes, in which the representatives of the victim and his next of kin (hereinafter "the representatives") submitted their comments on the State's report.

4. The brief dated December 20, 2007, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the State's report.

CONSIDERING:

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

2. That Brazil has been a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") since September 25, 1992 and, in accordance with article 62 thereof, acknowledged the adjudicatory jurisdiction of the Court on December 10, 1998.

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 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.²

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; 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.

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.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 complying 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 with regard to the obligation to secure that the domestic proceedings instituted in order to investigate and punish those responsible for the events in the instant case be operative, as set forth in Operative point 6 of the judgment, the State reported that a technical cooperation agreement was signed on November 28, 2006 between the Ministry of Justice, the Special Secretariat for Human Rights of the President of Brazil, and the National Council of Justice, the governing body of the judicial branch. The purpose of this agreement is to support the National Council of Justice in identifying, locating and monitoring judicial actions and investigations of human rights violations, with the objective of prosecuting them as expeditiously as possible. Specifically, with regard to the criminal investigation in the instant case, the State reported that on August 28, 2007, the National Council of Justice was asked to adopt all measures necessary to ensure faster progress in the criminal action for the death of Damião Ximenes Lopes.

9. That according to the representatives, even though more than eight years have passed since the death of Damião Ximenes Lopes, the perpetrators have yet to be punished and the case remains in impunity. They emphasized a "total lack of information on the progress of the criminal and civil proceedings" in the State report. The representatives also commented on the agreement with National Council of Justice. They stressed that, although it had been signed on November 28, 2006, it was not until August 28, 2007, that is, 11 days after expiration of the term granted for full

³ 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 Cantoral Benavides v. Peru*. Supervision of 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 2, Considering clause 6.

⁴ Cfr. I/A Court HR. *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. 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.

compliance with the judgment, that the Special Secretariat for Human Rights submitted a document asking the National Council of Justice to take all measures necessary to expedite domestic procedural action for investigating the facts of the instant case. The representatives also reported that the criminal proceeding is currently at the stage of receiving testimony; seven years after the proceeding was first opened, the court responsible for it is still sending communications to other jurisdictions, asking people living in other cities to file their statements. They specifically described one of these communications ordering that a statement be taken, pointing out that a full year after it was sent, nothing had yet been done. In the civil proceeding, the representatives reported that compliance is still pending on a communication sent to a locale near the competent court; this communication has been awaiting a response since October 23, 2006.

10. That the Inter-American Commission appreciated "the State's expression of willingness and the orders it had issued and information it had submitted; nevertheless, the Commission observe[d] that it still lacks sufficient information about specific actions and progress in the investigation of the facts that led to human rights violations in the instant case. The Commission fe[It] that the State had not provided enough information to evaluate compliance with this measure of reparation because it did not describe specific measures being taken by the judicial branch for the purpose of identifying, trying and punishing the perpetrators of the violations committed in the instant case, within a reasonable period." Therefore, the Commission believed it would be "useful and necessary for [Brazil] to explain the current stage of the on-going investigation of events that led to the death of Damião Ximenes Lopes, the actions it is taking to complete this measure of reparation as quickly as possible and [...] how these actions qualify as measures that will lead to true compliance with the orders of the Court. The State should also describe all other measures and steps it has taken to complete this still-pending area of reparation."

11. That the Inter-American Court values the signing of the Technical Cooperation Agreement by the Ministry of Justice, the Special Secretariat for Human Rights of the President of Brazil and the National Council of Justice, one of whose objectives is to ensure more expeditious proceedings in cases of human rights violations that come before the judicial branch and are under observation by international protection systems. The Court also takes note of the request for the National Council of Justice to undertake whatever actions are necessary to quicken the criminal proceedings involving the death of Damião Ximenes Lopes. Nevertheless, the Court notes that the State did not provide detailed information on the current procedural status of the investigation or any progress made since the judgment in this case was delivered on July 4, 2006. Moreover the Court notes that nine months elapsed after the Technical Cooperation Agreement was signed, before the National Council of Justice was asked to intervene so as to expedite the criminal investigation in the instant case, a measure that was taken a year after the judgment in the instant case was rendered. Finally, the Court points out that more than eight years have passed since the death of Damião Ximenes Lopes, and no progress has been made to clarify the facts of the case or to identify and, if appropriate, punish the perpetrators. Cognizant of these circumstances, the Court believes that it is critically important for Brazil, in its next report, to provide up-to-date, detailed information on the status of the criminal investigation; on measures taken by the National Council of Justice with regard to the instant case, and on progress made subsequent to August 28, 2007, when the Council was ordered to intervene.

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12. That with regard to the obligation to publish in the Official Gazette and in another nationwide daily newspaper, the chapter on proven facts of the judgment and the operative paragraphs, as set forth in Operative point 7 of the judgment, the State reported that it published these items on February 12, 2007 in the Official Gazette and on February 13, 2007 in the newspaper *Jornal do Brasil* .

13. That the representatives acknowledged and applauded the State for complying with this obligation.

14. That the Inter-American Commission emphasized the important indemnificatory purpose served by this measure and its usefulness in preventing further violations and in giving society full access to the truth, adding that it "uph[eld] the publications attached to the State report, believing that they fully meet the requirements of the Court."

15. That based on the information supplied by the parties, the Court notes that the State has fully complied with the obligation to publish the proven facts and the Operative section of the judgment in the Official Gazette and another widely circulated national newspaper within a period of six months.

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16. That with regard to the obligation to continue developing an education and training program for everyone who is involved in mental health services, in particular, covering the principles that govern treatment to patients with mental disabilities, according to international standards and as established in Operative point 8 of the judgment, the State reported that it had introduced substantial changes in the model for mental health care over the past six years. Brazil especially underscored several specific measures, including "major progress in de-institutionalizing" people who had been in confinement for long periods and "closing psychiatric hospitals that were in deplorable condition," adding that this new mental health policy had received international praise. Specifically with regard to training programs, the State reported that:

a) As part of this new policy, since 2002, a human resources training program, Continuing Education for Psychiatric Reform, has been in development; it supports and finances the implementation of mental-health training modules for the public health network under agreements with educational institutions (especially federal universities), municipalities and states. At present, 21 regional centers are offering refresher courses and specialized training for basic health-care workers and for staff members of the Centers for Psychosocial Care (hereinafter "CAPs"). Every year, approximately 1500 professionals take part in long-term training (over 360 hours), and some 6,000 workers with different levels of education attend short courses (over 40 hours). From 2002 to 2006,

the Ministry of Health supported 29 specialized training programs (over 360 hours) and 74 short courses (over 40 hours) on mental health and on alcohol and other drugs.

b) With support from the Ministry of Health and following the guidelines of the mental health policy, specialized courses on mental health are being offered in the states of Bahia, Paraná, Paraíba and the Federal District. Multidisciplinary residencies in Mental Health are available at universities in the states of Bahia and Rio Grande do Sul, and the state of São Paulo is running a residency in psychiatry. The State also pointed to numerous training courses on mental health that specifically target basic health-care teams in Rio Grande do Sul and in the Federal District. The Ministry of Health regularly supports education and training courses for professionals in different areas as part of its standing program to educate staff under the psychiatric reform. New courses are introduced every semester.

c) In 2005, the CAPs Rating Program was created; it is a mechanism that holds out financial incentives for clinical-institutional supervision and is considered a valuable tool for improved management of support services offered to the mental health teams. From 2006 until August 2007, 80 services in 15 states of the Federation received funding to develop this Rating Program, and from 2007 through 2008, over 150 services benefited from the initiative. Finally, the State explained that it is in the process of implementing a continuing education program for CAPs supervisors and for the psychosocial treatment networks, called the School of Supervisors. It began as an experimental program in the state of Bahia, and over the course of 2008, it will expand into other states of Brazil.

17. That the representatives recognized the progress made, including adoption of Law N. 10.216 of 2001, known as the "Psychiatric Reform Law," and claimed that this reform must be implemented more quickly; at the same time, they stressed serious shortcomings and human rights violations that continue to occur in the public mental health care service. In particular, with regard to training for mental health workers, the representatives commented that "there are no initiatives for intersectoral projects between mental health and other ministries to bring about critical expansion of continuing professional education [...] in the field of psychiatric reform," and that investment in training for mental health workers is concentrated in 15 states, but should be available in the rest of the country as well. At the same time, they noted that the training courses described by the State are offered to personnel working in services that are alternatives to hospital care, and therefore the workers in psychiatric hospitals, where most human rights violations occur, have no access to an on-going process of training and monitoring their work. Finally, they requested detailed information on the specialized programs (over 360 hours) and basic training courses (over 40 hours) that receive support from the Ministry of Health and on federal universities that would be part of the agreement.

18. That the Inter-American Commission recognized the efforts made by the State to adopt public policies and programs to ensure that the rights of persons with mental disabilities are respected. The Commission commented that "the State reported on a

psychiatric reform program that, while it predates the judgment given in the instant case, may yet serve as a mechanism to facilitate compliance with the judgment[.] Therefore, in order to evaluate compliance with this measure of redress, [the Commission felt it was] important to have information on the clear objectives and terms of the reform program and thus ascertain whether in fact it [could] serve as a useful tool of action for responding to the specific requirements of the Court's judgment. Finally, the Commission believe[d] that the State should report on actions taken for the purpose of complying with the specific measure of reparation ordered by the Court."

19. That the Court applauds the different training initiatives the State is carrying out in the field of mental health care and the fact that both long- and short-term activities are available, distributed among different regions of the country and enjoying the support of different types of institutions, from municipalities to federal universities. Nonetheless, the Court draws attention to the report of the representatives and the fact that workers in psychiatric hospitals do not have a program of continuing education for their work. In this regard, the Court emphasizes that compliance with the obligation to continue developing an education and training program should reflect the stated purpose as a measure to guarantee non-repetition of the acts of violation declared in the judgment. The Court would recall that in this case, the victim died in the Guararapes Rest Home, a hospital institution of the public health system. Consequently, acts of reparation to provide staff training for mental health workers must necessarily include personnel from the same kinds of institutions as the one where the violation occurred in this case, that is, psychiatric hospitals.

20. That for this reason, in its next report the State should respond to the observations found in the briefs of the representatives and the Inter-American Commission (*supra* Considering clauses 17 and 18), and report specifically on training initiatives, as ordered in the judgment, that cover "the principles that must govern treatment of patients with mental illness, in accordance with international standards and the provisions of [the] Judgment ([...] paras. 130 to 135)." It should also report on the coverage of these initiatives in terms of personnel benefited.

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21. That with regard to the obligations to pay compensation for pecuniary and non-pecuniary damage to family members of the victim and reimburse costs and expenses, set forth in Operative points 9 to 11 of the judgment, the State reported that on August 17, 2007, it made bank deposits on behalf of the beneficiaries of reparations, thus completing all payments owed. The State submitted a copy of Decree No. 6.185 of August 13, 2007, authorizing payment of the reparations ordered in this case, along with vouchers of the bank deposits.

22. That the representatives acknowledged and applauded the State for complying with this obligation.

23. That the Inter-American Commission took note and acknowledged the compliance with this obligation and "value[d] its importance."

24. That on the basis of information supplied by the parties, the Court concludes that the State has fulfilled its obligations to pay compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses.

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 15 and 24 of this order, Brazil has complied with the measures of reparation in which the State was ordered to:

a) within the term of six months, publish once in the Official Gazette and in another nationwide daily newspaper, the chapter concerning the proven facts and the operative points of the judgment (*Operative point 7 of the judgment*);

b) pay to Albertina Viana Lopes and Irene Ximenes Lopes Miranda, within the term of one year, compensation for pecuniary damage (*Operative point 9 of the judgment*);

c) pay to Albertina Viana Lopes and Irene Ximenes Lopes Miranda, and to Francisco Leopoldina Lopes y Cosme Ximenes Lopes, within the term of one year, compensation for non-pecuniary damage (*Operative point 10 of the judgment*); and

d) pay within the term of one year, the costs and expenses incurred in the domestic proceedings as well as in the international proceedings under the

inter-American system of protection of human rights (*Operative point 11 of the judgment*).

2. That in accordance with the provisions of Considering clauses 11, 19 and 20 of this order, the Court will hold open the proceeding for monitoring compliance with the State's duty to:

a) secure, within a reasonable time, that the domestic proceedings instituted in order to investigate and punish those responsible for the events in the instant case be operative (*Operative point 6 of the judgment*); and

b) keep developing an education and training program for staff in health care, psychiatry, nursing, nurse aides and for any person involved in mental health services, in particular, covering the principles that should govern treatment for patients with mental illness, according to international standards and the provisions 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 and given in Operative points 7, 9, 10 and 11 of its judgment on merits, reparations and costs of July 4, 2006, , in keeping with Considering causes 15 and 24 and the first declarative point of this order.

2. To require the State, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights, to adopt all measures necessary to comply effectively and promptly with the reparations set forth in the July 4, 2006 order and for which compliance is still pending, in accordance with Considering clauses 11, 19 and 20 and the second declarative point of this order.

3. To ask the State 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 on Human Rights and the representatives of the victim and his next of kin 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, of the date they receive the report from the State.

5. To continue monitoring compliance with still-pending points from the July 4, 2006 judgment on merits, reparations and costs.

6. To instruct 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

Manuel 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