

**Order of the
Inter-American Court of Human Rights
of September 21, 2009
Case of Ximenes-Lopes v. Brazil
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations, and costs (hereinafter, "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court", or "the Tribunal") on July 4, 2006.

2. The Order entered by the Court on May 2, 2008, on compliance with Judgment, whereby the Court decided:

[...]

2. To [...] keep open the procedure to monitor compliance with the paragraphs that impose upon the State the obligation 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 Paragraph No. 6 of the Judgment*); and

b) keep developing an education and training program for staff engaged in health care, psychiatry, psychology, nursing, and for any person involved in the provision of mental health services, in particular, covering the principles that govern the treatment of patients with mental disabilities, pursuant to international standards on the subject and the provisions of the Judgment (*Operative Paragraph No. 8 of the Judgment*).

3. The reports of September 4, 2008, July 20, 2009, and August 18, 2009, and their related appendixes, whereby the Federative Republic of Brazil (hereinafter, "the State" or "Brazil") reported on the reparation measures pending compliance.

4. The briefs of October 15, 2008, and August 25, 2009, whereby the representatives of the victim and his relatives (hereinafter, "the representatives") filed their observations to the State reports.

5. The briefs of February 5 and September 8, 2009, whereby the Inter-American Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") filed its observations to the reports of the State and the briefs of observations of the representatives.

CONSIDERING:

1. That monitoring compliance with its decisions is an inherent jurisdictional power

of the Court.

2. That Brazil ratified the American Convention on Human Rights (hereinafter, "the American Convention") on September 25, 1992, and, in accordance with Article 62 thereof, recognized the contentious jurisdiction of the Court on December 10, 1998.

3. That Article 68(1) of the American Convention establishes 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". For that purpose, the States must ensure the implementation, within their jurisdictions, of the orders issued by the Court in its decisions.¹

4. That in view of the final and non-appealable 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 rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, whereby 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 municipal laws to escape their pre-established international responsibility.² The obligations imposed under the Convention upon State Parties bound all powers and authorities of the State.³

6. That the States Parties to the American Convention must ensure 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 (in other words, the clauses on protected rights), but also to procedural provisions, such as the one concerning compliance with the judgments rendered by the Court. These obligations shall be interpreted and applied so that the protected guarantee be truly practical and efficient. The special nature of the human rights treaties must be taken into account.⁴

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Herrera-Ulloa v. Costa Rica. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause No. 3; and *Case of the Pueblo Bello Massacre v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause No. 3.

² Cf. *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, para. 35; *Case of Herrera Ulloa*, *supra* note 1, Considering clause No. 5, and *Case of the Pueblo Bello Massacre*, *supra* note 1, Considering clause No. 5.

³ Cf. *Case of Castillo-Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of November 17, 1999. Series C No. 59; Considering clause No. 3; *Case of Herrera Ulloa*, *supra* note 1, Considering clause No. 5, and *Case of the Pueblo Bello Massacre*, *supra* note 1, Considering clause No. 5.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Herrera Ulloa*, *supra* note 1, Considering clause No. 6, and *Case of the Pueblo Bello Massacre*, *supra* note 1, Considering clause No. 6.

7. That every State Party to the Convention having recognized the contentious jurisdiction of the Court has the duty to fulfill the obligations imposed by the Court. This duty includes the obligation of the State to report to the Court on the measures adopted to comply with the decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance with the Judgment as a whole.⁵

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8. That as regards the obligation to 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 Paragraph No. 6 of the Judgment*), the State reported that, among other measures, the Ministry of Justice and the Special Secretary of Human Rights of the Presidency of the Republic (SEDH) commenced proceedings before the National Justice Council (CNJ) to verify the existence of undue delays in the criminal proceedings related to the instant case. The CNJ sent the petition to the enforcement authority of the Court of Justice of the State of Ceará, which has original jurisdiction to hear the case. This entity concluded that no excess in the term of criminal proceedings or improper performance of the magistrates in charge thereof was verified; that notwithstanding, the judge hearing the case was advised to adopt adequate judicial measures to promptly settle the case. Moreover, the State reported that, among other measures taken, on September 22, 2008, the representatives of *Abogacía General de la Unión*, of the Ministry of Foreign Affairs and the SEDH held meetings with the representatives of the Judiciary and the Office of the Attorney General for the State of Ceará to discuss the need to immediately comply with the Judgment.

9. That later on, Brazil reported that on June 29, 2009, Criminal Action No. 2000.0172.9186-1/0 was resolved in the first instance by *Tercer Juzgado de la Comarca de Sobral* (Court No. 3 of the Community of Sobral), State of Ceará. Such decision sentenced Sérgio Antunes-Ferreira-Gomes, Carlos Alberto Rodrigues-dos Santos, André Tavares-do Nascimento, Maria Salete Moraes Melo-de-Mesquita, Francisco Ivo de Vasconcelos and Elias Gomes-Coimbra, for the crime of mistreatment resulting in death to the detriment of Damião Ximenes-Lopes. Such individuals were sentenced to imprisonment for six years, initially under a semi-flexible system. Moreover, the State also made reference to the first instance judgment rendered in the civil jurisdiction, whereby the clinical director and the administrative director, together with the owner of the Casa de Reposo Guararapes center were sentenced to payment of compensation for non-pecuniary damage to the mother of the victim. Additionally, it reported that the Court of Justice of the State of Ceará sent bills to the Legislature aimed at increasing the number of State magistrates, among other improvements, to speed up and de-bureaucratize procedural instances. Lastly, the State mentioned its willingness to make available to the representatives any information on the case and to hold meetings with them as necessary.

⁵ Cf. *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 No. 7; *Case of Herrera Ulloa*, *supra* note 1, Considering clause No. 7, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 28, 2009, Considering clause No. 7.

10. That the representatives mentioned that the petition filed with the National Justice Council regarding the excess in the term of the criminal action was merely bureaucratic. Furthermore, the representatives alleged that the State has not discussed the matter with them or the relatives of the victim and that the absence of “participation mechanisms and the lack of transparency in the acts of the authorities of Brazil in the instant case have prevented the representatives from [...] fully exercising their right and duty to monitor and cooperate upon compliance with this [J]udgment”. As an example, the representatives indicated that they were not invited to participate in the aforementioned meetings of September, 22, 2008. As regards the criminal action, they confirmed that on June 29, 2009, almost ten years after the death of Damião Ximenes-Lopes, a first instance judgment was rendered. That decision is not conclusive; therefore, the State has not yet complied with Operative Paragraph No. 6 of the Judgment. They alleged that instead of analyzing the existence of an excess in the term elapsed from the filing of the criminal action within the domestic jurisdiction, as already set forth in the Judgment, the State should adopt all measures necessary to avoid subsequent delays in the course of proceedings. As to the civil action, they stated that the passing of the first instance judgment on June 27, 2008, reflects that progress was made, notwithstanding the fact that on July 25, 2008, one of the respondents filed a motion known as *Embargo de Declaração* against the decision, which is still pending resolution.

11. That the Inter-American Commission noted the progress made regarding the criminal action and the issuance of the first instance judgment, and stated that it awaited updated information on the conclusion of proceedings and compliance with the decision. Moreover, the Commission noted the reports of the representatives regarding the civil action. Lastly, it indicated that three years have elapsed since the Judgment was rendered, and the State should adopt measures to remove the obstacles that keep delaying compliance with the orders of the Court.

12. That the Inter-American Court appreciates the performance by the State of various measures adopted to boost criminal proceedings to investigate the death of Damião Ximenes-Lopes, in order to solve the case as soon as practicable.

13. That moreover, the Court notes that on June 29, 2009, a criminal judgment regarding the events of the instant case was rendered in the first instance. Such judgment declared that Damião Ximenes-Lopes “was a victim of mistreatment, experiencing various injuries resulting from the omissions [by defendants, who worked as head nurse, nursing assistants, physician and owner of] Casa de Reposo Guararapes, which did not provide the necessary care [to the victim]”. That notwithstanding, given that there exists the possibility that motions may be filed against the aforementioned decision, Brazil should submit in its first brief thorough and updated information on the status of criminal proceedings.

14. That as to the allegations of the representatives in the sense that they have not participated in discussions with the State or meetings for monitoring compliance with judgment in the instant case, the Court does not find elements to prove that the representatives revealed to the State their interest in holding a meeting, or that their request for such meeting was denied or not answered. Furthermore, in the process for monitoring compliance with the Judgment, the parties have the chance to examine the progress made through timely submission by the Court of the information requested by the State. Hence, it is possible to monitor and make any adequate comments through the observations that the representatives and the Inter-American Commission should

send to the Court. Based on the above, the Court will not make any further comments in that regard.

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15. That as regards to the obligation to continue developing an education and training program for individuals working in health care, psychiatry, psychology, nursing, and for any person involved in mental health services, in particular, covering the principles that govern the treatment of patients with mental disabilities, according to international standards and the provisions of the instant Judgment (*Operative Paragraph No. 8 of the Judgment*), the State reported on the progress made in the transformation of the mental health assistance model. Furthermore, as regards such training, Brazil held that:

i) the Permanent Human Resources Training Program for Psychiatric Reform, which was established for better training of professionals in mental health, has received new elements in 2007 and 2008, and is still under implementation. The mental health specialization and update courses supported by the Ministry of Health continue training professionals in the 23 Regional Centers for Mental Health Training, which “are open to the participation of professionals from the public mental health network, including also professionals from psychiatric hospitals”. Moreover, the Multi-professional Mental Health Residence Programs consolidated in the State of Bahia, Rio Grande do Sul and Rio de Janeiro, which offer assistance to a large number of patients in psychiatric hospitals and in Sobral, Ceará, and the first psychiatric residence was established, directly supported by the municipal mental health network. These actions are essential for the de-centralization of the training programs on psychiatric reform and to increase access to training by mental health professionals;

ii) it established a Pro-Health Program through an agreement between the Ministry of Health and the Ministry of Education in order to review the curricula of superior learning institutions, with the aim at adjusting them to public health interests; it opened the Mental Health School of Rio de Janeiro and the Open University of the Single Health System (UnaSUS), which are aimed at training new technical groups, and providing education and specialization to the staff concerned with mental health care, and

iii) the Ministry of Health established the “Emergency Program for Broader Access for Assistance in Alcohol and Drugs-related Problems”, which includes mental health specialization and update courses, focusing on problems related to the abuse of such substances. Additionally, in 2009, mental health training courses were offered to “Family Health Program” professionals and those who provide assistance in the northern and center-west regions of Brazil. These courses have duration of 180 hours and will provide training to more than 200 professional in 2009.

Based on the foregoing considerations, the State requested the Court to formally declare that the obligation to continue developing training and education programs for professionals involved in the provision of mental health care has been complied with.

16. That the representatives recognized the progress made regarding public policies on mental health. That notwithstanding, they stated that the psychiatric reform in Brazil should be performed promptly, with ongoing and effective investment for training mental health workers and providing social control through monitoring and actual de-registration from the Single Health System (SUS) of the psychiatric institutions that systematically continue violating human rights. The representatives stated that there have been new cases of torture and death in public network hospitals providing mental health services as a result of negligence or acts of violence by the professionals who work at those institutions. As to training measures, they stated that multi-disciplinary education of the professionals in charge of addressing psychiatric emergencies at general hospitals is not satisfactory. They remarked the lack of public investment for training and education of technical teams and mental health professionals, mainly those working at Psychosocial Assistance Centers, who are not subject to a systematic assessment, and the hospitals that have signed agreements with the SUS, which offer "terrible quality" service and "constitute the main human right infringing institutions" for individuals suffering from mental disability. Resources and public investment in training are not sufficient to cover the needs of the various states of the country in a regular manner, hence promoting regional imbalance and scarce knowledge of public policy regarding mental health. They also noted that, despite the request of the Court, the State did not specify the results and content of the training programs promoted by the universities and agreements of the Ministry of Health. Therefore, the representatives requested the Court to continue monitoring compliance with the Judgment and to recommend the State to allow access by petitioners to the public information regarding such compliance.

17. That the Commission restated its acknowledgment of the measures adopted by the State in order to guarantee that the human rights of individuals with mental disabilities are respected. In that sense, the Commission reaffirmed "the importance of allowing the Inter-American System to rely on information as to the purpose and terms of compliance with the [aforementioned] psychiatric reform to refer to compliance with the criteria set forth by the Court in the instant case".

18. The Court would like to remind that the instant stage to monitor compliance refers to the efforts made by Brazil to continue developing a training and education program for all those involved in the provision of mental health services, particularly regarding the principles that should govern the treatment given to individuals suffering from mental disabilities, pursuant to international standards on the field and those set forth in the Judgment.

19. The Tribunal, in its Order to monitor compliance of May 2, 2008, requested the State to report specifically, among all existing activities, on those training initiatives whose content relates to the aspects contained in the Judgment, and the scope of those initiatives in terms of the staff benefiting thereunder.⁶ Moreover, the Court also requested that the information should refer, in particular, to the training of staff involved in the provision of mental health services at institutions similar in nature to those where the violation of the instant case occurred; i.e. psychiatric hospitals.⁷

⁶ Cf. *Case of Ximenes-Lopes v. Brazil*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 2, 2008, Considering clause No. 20.

⁷ Cf. *Case of Ximenes-Lopes*, *supra* note 6, Considering clause No. 19.

20. The Inter-American Court notes the various initiatives of general nature related to mental health services undertaken by the State. That notwithstanding, in order to evaluate the adjustment of these and other activities to the reparation measure ordered by the Court, it is necessary for the State to refer in its next report solely and exclusively to: i) the training activities carried out after the decision, whose content refers to “the principles that must govern the treatment given to individuals with mental disabilities pursuant to international standards on the subject and those set forth in the [...] Judgment”;⁸ ii) the duration, periodicity and number of participants in those activities, and iii) whether they are mandatory.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its 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 30(2) of its Rules of Procedure,⁹

DECLARES:

1. That in accordance with the provisions of Considering clauses No. 13 and 20 of this Order, the Court will keep open the procedure to monitor compliance with the paragraphs that provide for the duty of the State 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 Paragraph No. 6 of the Judgment*); and

b) keep developing an education and training program for staff involved in health care, psychiatry, psychology, nursing, and for any person involved in the provision of mental health services, in particular, covering the principles that govern the treatment of patients with mental disabilities, according to international standards and the provisions of the instant Judgment (*Operative Paragraph No. 8 of the Judgment*).

AND DECIDES:

⁸ Cf. *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, Operative Paragraph No. 8.

⁹ Approved by the Court during its XLIX Ordinary Period of Sessions, held from November 16 to 25, 2000, and partially reformed by the Court during its LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009.

1. To call upon the State to adopt all measures necessary to promptly and effectively comply with the reparations ordered by the Court in its Judgment on the merits, reparations and costs of July 4, 2006, which are pending compliance, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights, as per Considering clauses No. 13 and 20 and the Operative Paragraph of this Order.

2. To call upon the State to submit to the Inter-American Court of Human Rights, no later than January 29, 2010, a report specifying all measures adopted to comply with the reparations ordered by the Court pending compliance as of this date, in accordance with Considering clauses No. 13 and 20 of this Order.

3. To request the representatives of the victim and his relatives, and the Inter-American Commission of Human Rights to submit their comments on the report of the State mentioned in the foregoing paragraph of this Order, within two and four weeks, respectively, after receiving the aforementioned State report.

4. To continue monitoring the paragraphs pending compliance of the Judgment on the merits, reparations and costs of July 4, 2006.

5. To request the Secretariat of the Court to give notice of this Order to the State, the Inter-American Commission of Human Rights, and the representatives of the victims and their relatives.

Cecilia Medina-Quiroga
President

Diego García-Sayán

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