

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 25, 2010
CASE OF FERNÁNDEZ ORTEGA ET AL. v. MEXICO
MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on preliminary objection, merits, reparations and costs handed down on August 30, 2010 (hereinafter “the judgment”), by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), in which it ordered, *inter alia*, that:

11. The State must conduct in the ordinary jurisdiction, with due diligence and within a reasonable time, the investigation and, if appropriate, the criminal proceedings with regard to the rape of Mrs. Fernández Ortega, in order to determine those criminally responsible and, if appropriate, to apply the punishments and other consequences that the law dictates, as established in paragraphs 228 to 230 of th[e] judgment.

[...]

15. The State must carry out a public act acknowledging its international responsibility regarding the facts of the present case, in the terms of paragraph 244 of the [...] judgment.

16. The State must make the publications ordered, pursuant to the provisions of paragraph 247 of the [...] judgment.

[...]

21. The State must grant scholarships for study at Mexican public institutions to Noemí, Ana Luz, Colosio, Nelida, and Neftalí, all with the surname Prisciliano Fernández, pursuant to the provisions of paragraph 264 of th[e] judgment.

22. The State must facilitate the necessary resources for the indigenous Me’paa community to establish a community center, to be considered a women’s center, where educational activities on human rights and the rights of women are carried out, pursuant to paragraph 267 of the [...] judgment.

23. The State must adopt measures to ensure that the girls of the community of Barranca Tecoani who are enrolled in secondary school in the city of Ayutla de los Libres have adequate food and lodging, so that they can continue their education in the institutions they attend. Notwithstanding the above, the State may comply with this measure by opting to establish a secondary school in the said community, in the terms of paragraph 270 of th[e] judgment.

[...]

23. The State must pay the amounts established in paragraphs 286, 293, and 299 of the [...] judgment for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, as appropriate, within one year of notification of the [...] judgment, in the terms of paragraphs 300 to 307 [t]hereof.

2. The note of the Secretariat of the Court (hereinafter “the Secretariat”) of October 1, 2010, in which, on the instructions of the President of the Court (hereinafter “the President”), it asked the representatives to “forward the express written consent of Mrs. Fernández Ortega concerning the publication of specific measures of reparation established in paragraphs 230, 244 and 247 of the judgment.”

3. The brief of November 1, 2010, of the Organization of the Tlapaneco/Me'phaa Indigenous People, the Human Rights Center of the Montaña "Tlachinollan," and the Center for Justice and International Law (all hereinafter "the representatives"), in which they responded to the Court's request concerning the publication of specific measures of reparation established in the judgment.

CONSIDERING THAT:

1. The Court established in the judgment (paragraphs 230, 244 and 247) that, if Mrs. Fernández Ortega agreed:

a) "The results of the [domestic criminal investigation] proceedings must be publicized, so that Mexican society learns the truth about the facts";

b) "[The public act acknowledging international responsibility regarding the facts of the case] must be broadcast by a radio station with coverage in Guerrero," and

c) "The State must: (i) publish the official summary issued by the Court in a newspaper with widespread national circulation, in Spanish, and in a newspaper with widespread circulation in the state of Guerrero, in Spanish and Me'paa; (ii) publish th[e] judgment in its entirety, together with the translation into Me'paa of the official summary, on an appropriate web site of the federal State and of the state of Guerrero, taking into account the characteristics of the publication that has been ordered, which must remain available for at least one year, and (iii) broadcast the official summary, in both languages, once on a radio station with coverage in Barranca Tecoani."

2. Regarding Mrs. Fernández Ortega's agreement to full implementation of the measures of reparation mentioned in subparagraphs (a) and (b) of the preceding paragraph, the representatives indicated that the victim had stated expressly that she consented to:

a) "The public dissemination of the results of the criminal investigation proceedings that the State must conduct, as established in [the judgment]";

b) "The broadcast by a radio station with coverage in Guerrero of the public act acknowledging international responsibility [...] in the understanding that [...] '[t]he State must reach agreement with [Mrs. Fernández Ortega] and/or her representatives regarding how the public act of acknowledgement is conducted, as well as any special requirements.'"

3. The Court takes note of the express consent given by Mrs. Fernández Ortega and, consequently, finds that Mexico must proceed to comply with the said measures, as established in the judgment.

4. Regarding the publication of the official summary of the judgment in a national newspaper and a newspaper of the state Guerrero; the broadcast of the official summary on a radio station with coverage in Barranca Tecoani, and the publication of the judgment and of the official summary in the Me'paa language on a web site of the federal State and of the state of Guerrero, the representatives indicated that Mrs. Fernández Ortega had given her express consent to the execution of these measures, on condition that the said publications and the broadcast omit the parts referring to: (i) the granting of scholarships to her

children; (ii) the establishment of a community center, that would be a women's center, in the community of Barranca Tecoani; (iii) the adoption of measures to ensure that the girls of the community of Barranca Tecoani who attend school in the city of Ayutla de los Libres are provided with certain facilities so that they can continue receiving their education, and (iv) the payment of the amounts established for pecuniary and non-pecuniary damage, and costs and expenses.

5. The representatives based this condition on the possible increase in the lack of security and the risk to Mrs. Fernández Ortega, and to her family and her community, which would occur if "information [is provided] concerning the granting of a direct benefit of a monetary or other nature to the victims or their community [...]." They stated that "the collective or community dimension of certain measures of reparation requires a process of communicating the measures, and their collective assessment and discussion in the communities. This process is being implemented [...] and could be affected by the publication of determined aspects of [the judgment] and of certain measures of reparation." Lastly, they emphasized that, if the Court finds that this request cannot be implemented as requested by Mrs. Fernández Ortega, "the Court should consider that [she] does not consent to the said publications being made."

6. In this regard, the Court observes that the consent given by Mrs. Fernández Ortega for the implementation of the measures established in paragraph 247 of the judgment has been made conditional on partial publication; in other words, eliminating specific information that is unrelated to the object of the question raised by the Court, and that is not in keeping with the provisions of the judgment in the instant case. Notwithstanding the foregoing, the Court notes that Mrs. Fernández Ortega has not consented to the said publications and, consequently, orders that this process of monitoring compliance with judgment be considered ended in relation to those measures of reparation.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions under Articles 68(1) of the American Convention on Human Rights, and 31(1) of its Rules of Procedure,

DECLARES:

1. That, in accordance with the second and third considering paragraphs of this order, Mrs. Fernández Ortega has expressly given her consent for the State to implement the following measures established in the judgment:

- a) Publication of the results of the investigations and proceedings conducted by the State in the context of the instant case, and
- b) Broadcast by a radio station with coverage in Guerrero of the public act acknowledging international responsibility for the facts of the case.

2. That, as established in the fourth to sixth considering paragraphs of this order, Mrs. Fernández Ortega has not consented to the implementation of the following measures established in the judgment:

- a) Publication of the official summary issued by the Court in a national newspaper with widespread circulation, in Spanish, and in a newspaper with widespread circulation in the state of Guerrero, in Spanish and Me'paa;
- b) Publication of the judgment in its entirety, together with the translation into Me'paa of the official summary, on an appropriate web site of the federal State and of the state of Guerrero, taking into account the characteristics of the publication that has been ordered, which must remain available for at least one year, and
- c) Broadcast of the official summary, in both languages, once, on a radio station with coverage in Barranca Tecoani

AND DECIDES:

1. To require the State to comply with the measures mentioned in the first declarative paragraph of this order, in accordance with the eleventh and fifteenth operative paragraphs of the judgment handed down in the instant case.
2. To end the process of monitoring judgment with regard to the measures of reparation indicated in the second declarative paragraph of this order, in accordance with the sixth considering paragraph hereto.
3. To continue monitoring the operative paragraphs of the judgment on preliminary objection, merits, reparations and costs of August 30, 2010, that remain pending compliance.
4. To ask the Secretariat of the Court to notify this order to the United Mexican States, the Inter-American Commission on Human Rights, and representatives of the victims.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri

Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary