

**ORDER OF THE PRESIDENT-IN-OFFICE OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

OF DECEMBER 21, 2010

CASE OF MIGUEL CASTRO CASTRO PRISON V. PERU.

MONITORING COMPLIANCE WITH JUDGEMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 25, 2006, ruled that:

[...]

8. The State shall, within a reasonable time, effectively investigate the allegations in this case, identify and, where applicable, punish those responsible, for which the relevant proceedings must be opened and the criminal proceedings that are still pending must be effectively conducted as well as those that are opened in the future. Also, it shall take all necessary steps to clear up all the facts of this case in order to determine the intellectual and material responsibility of those involved in such violations, and publically publish the results of these criminal proceedings in accordance with paragraphs 436 to 442 and 460 of the [...] Judgment.

9. The State shall establish, within a reasonable time period, the means to ensure that the information and documentation related to police investigations on serious facts is maintained so that it is possible to carry out the necessary investigations, in accordance with paragraphs 442 and 460 of the [...] Judgment.

10. The State must take all necessary and appropriate actions to ensure effective delivery of the remains of the victim Mario Francisco Aguilar Vega to his next-of-kin, within six months, and all delivery costs and burial expenses incurred by the family must be met, under the terms of paragraphs 443 and 460 of the [...] Judgment.

11. The State shall adopt, within a reasonable time, all necessary measures to ensure that all inmates who died as a result of the attack are identified and their remains returned to their families, in accordance with domestic law. If other deceased inmates are identified, their families can make the corresponding claims under domestic law.

12. The State shall, within a year, hold a public act of recognition of its international responsibility for the violations set forth in this Judgment to bring reparation to the victims and to satisfy their families, in a public ceremony, attended by senior government officials and victims and their families, and the ceremony must be disseminated through the media, including a radio broadcast and television, in accordance with paragraphs 445 and 462 of the [...] Judgment.

13. The State shall provide free of charge, through its specialized health institutions, the required medical and psychological treatment for victims and family members, including any medications they require, taking into account the suffering of each individual after an individual assessment in accordance with paragraphs 449 and 461 of the [...] Judgment.

14. The State shall pay, within 18 months, the amount specified in paragraph 450 of the Judgment [...] to the victims that can prove that their domicile is abroad and prove to the competent domestic bodies, that as a result of the facts of this case, they need to receive proper medical or psychological treatment, in accordance with paragraphs 450 and 461 of the [...] Judgment.

15. The State should design and implement, within a reasonable time, educational programs on human rights for staff of the Peruvian security forces on applicable international standards regarding treatment of prisoners under the terms of paragraphs 452 and 460 [...] of Judgment.

16. The State must ensure, within a year, that all persons declared to be victims killed in the [...] Judgment are represented on the monument called "The Eye that Cries," for which it should coordinate the performance of a ceremony with the family of these victims, which may include an inscription with the name of the victim, as appropriate, according to the characteristics of the monument, under the terms of paragraphs 454 and 463 of the Judgment [...].

17. The State shall, within six months, publish in the Official Gazette and another newspaper that is widely circulated nationally, on just one occasion, the chapter on the proven facts of this Judgment, without the footnotes, and the operative paragraphs of this Judgment and to disseminate said parts of the [...] Judgment through a radio station and a television station, both with extensive national coverage, at least on two occasions with an interval of two weeks between each broadcast, in accordance with paragraphs 446, 447 and 459 of the [...] Judgment.

18. The State shall pay, within 18 months, the amount specified in paragraph 424 of the Judgment [...] for pecuniary damage caused to the 41 deceased inmates identified, in accordance with paragraphs 424, 457, 465, 466, 467 and 468.

19. The State shall pay, within 18 months, the amounts awarded in paragraph 425 of the Judgment [...] for pecuniary damage of inmates who survived, in accordance with paragraphs 425, 426, 457, 465, 466, 467 and 468 thereof.

20. The State shall pay, within 18 months, the amounts awarded in paragraphs 427 and 428 of the Judgment [...] for pecuniary damage caused to the families of inmates through search costs and burial expenses, in accordance with paragraphs 427, 428, 457, 465, 466, 467 and 468.

21. The State shall pay, within 18 months, the amounts set out in paragraph 433 of the [...] Judgment, for non-pecuniary damages for each of the 41 deceased victims identified and the surviving victims, in accordance with paragraphs 433, 434, 458, 465, 466, 467 and 468 thereof.

22. The State shall pay, within 18 months, the amounts set out in paragraph 433 of the [...] Judgment, for non-pecuniary damages for the immediate family members of the 41 deceased victims identified, in accordance with paragraphs 433, 434, 458, 465, 466, 467 and 468 thereof.

23. The State shall pay, within 18 months, the amounts awarded in paragraph 433 of the [...] Judgment, for non-pecuniary damages suffered by family members declared as victims of the violation of Article 5 of the American Convention set forth in paragraphs 336, 337, 340 and 341 and identified in Annex 2 of the victims of the [...] Judgment that forms part of the Judgment for these purposes, in accordance with paragraphs 433, 434, 458, 465, 466, 467 and 468 thereof.

24. Monitor the full implementation of this Judgment and will close this case once the State has fully complied with the provisions therein. Within 18 months of the notification of this Judgment, the State shall provide the Court with a report on measures taken to comply, in accordance with paragraph 469 of the [...] Judgment.

2. The Interpreting Judgment of Judgment on merits, reparations and costs issued on August 2, 2008, whereby the Court referred to various issues related to reparation measures and granted additional time to comply with one of the reparation measures of the Judgment with respect to one victim.

3. The Order of April 28, 2009, whereby the Court, *inter alia*, reminded the Republic of Peru (hereinafter "Peru" or "the State") that the term to submit its first report on compliance with the Judgment had expired on June 20, 2008, without Peru informing about the status of compliance thereto. Also, in the Court Order it stated:

1. That [...] the State has not fulfilled its obligation to inform this Court about measures taken to comply with the operative paragraphs of the Judgment [...].

2. To keep [would] open the monitoring procedure concerning all of the operative paragraphs of the Judgment [...], reserving the right to timely convene a hearing on monitoring compliance to assess compliance with this ruling.

AND RESOL[VED]:

[...]

2. To request the State to submit to the Court [...], by no later than June 1, 2009, the first report indicating all the steps taken to comply with the provisions set forth by the Court [in the Judgment].

4. The brief of August 4, 2009, and its annexes, whereby the State presented copies of the documents submitted by the Peruvian judicial branch on compliance with the Judgment.

5. The briefs of April 25, October 1, 17 November and 4 December 2009, and March 2, 2010 and its annexes, whereby the common intervener of the representatives of the victims and their families (hereinafter "the common intervener"), *inter alia*, submitted comments regarding compliance with the Judgment, and indicated that the State had not complied with any of the operative paragraphs therein.

6. The notes of the Secretariat of the Inter-American Court (hereinafter "the Secretariat") of 12 August 30 September 7 and October 21 and December 9, 2009, and March 5, 2010, by which, following instructions of the President of the Court (hereinafter "the Presidency"), it reminded the State that submission of the first State report on the implementation of all measures of reparation ordered by the Court in the Judgment was outstanding, and requested its submission as soon as possible.

7. The briefs of April 11 and May 26, 2010, whereby the common intervener, *inter alia*, asked the Court to consider the issue of "complete incompletion with the [J]udgment" and convene a hearing on the "[m]onitoring of [c]ompliance there[to] [...]" as soon as possible."

8. The communication of July 26, 2010, whereby the State requested a hearing be convened on monitoring compliance with the Judgment, to "expose [...] the treatment that, according to Peruvian law, has been given to economic reparations."

9. The note of the Secretariat of August 3, 2010, whereby following the instructions of the President-in-Office for the present case (hereinafter the "President-in-Office") it informed the State that the hearing could not be convened at present, among other reasons, "the need to firstly have a written report on compliance with each of the reparation measures ordered in the Judgment and the relevant observations of the common intervener of representatives of the Inter-American Human Rights." In light of this, a new deadline was awarded to the State of October 3, 2010, to submit said report, and indicated that this term should be considered non-extendable.

10. The communication of September 1, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted information that was presented by a victim, that it represents, on the status of compliance with the measures ordered in the Judgment.

11. The brief of October 6, 2010, whereby the State submitted a report "in order to inform about the steps tak[en] by [the] Specialized Supranational [Public Prosecutor] with regards to compliance with the Judgment."

12. The briefs of October 13 and November 6, 2010, whereby the common intervener submitted its observations on the report submitted by the State on October 6, 2010, and requested the Court, pursuant to Article 65 of the American Convention on Human Rights (hereinafter "the Convention" or "the Convention"), noted in its annual report that the State had not complied with the Judgment, on the grounds that "it ha[d] failed to comply with any measure so ordered [...] there[in]. "

13. The briefs of November 23, 2010, whereby the Commission presented its observations on the report submitted by the State.

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

2. Peru is a State Party to the American Convention since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

3. In virtue of the definitive and non-appealable judgments of the Court, in accordance with the provisions of Article 67 of the American Convention, the State should promptly and fully comply with the Court's Judgments.

4. Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties." To this end, States should ensure the domestic implementation of the provisions set forth in the Court's rulings.¹

5. In order to fulfill the mandate to monitor compliance with the commitment made by States Parties under Article 68(1) of the Convention, the Court must first determine the degree of compliance with its decisions. For this, the Court must monitor that the States effectively comply with the reparations ordered in the judgment².

6. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Vargas Areco v. Paraguay*. Monitoring Compliance with Judgment Order of the Court of November 24, 2010, Considering Clause three, and *Case of Moiwana v. Surinam*. Monitoring Compliance with Judgment Order of the Court of November 22, 2010, Considering Clause three.

² Cf. *Case of Baena Ricardo et al*, *supra* note1, para. 101; *Case of El Amparo v. Venezuela*. Monitoring Compliance with Judgment Order of the President of the Court of December 18, 2009, Considering Clause four, and *Case of Aritz Barbera et al. ("Corte Primera de lo Contencioso Administrativo" [First Administrative Court]) v. Venezuela*. Monitoring Compliance with Judgment Order of the President of the Court of December 18, 2009, Considering Clause four.

abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, ignore their international responsibility.³ The treaty obligations of State Parties are binding on all branches and bodies of the State.⁴

7. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) within their domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁵

8. The States Parties to the American Convention that have accepted the compulsory jurisdiction of the Court have the obligation to comply with the obligations set forth by the Court. This obligation includes the State's duty to inform the Court about the measures taken to comply with the Court's provisions in the said Judgment. Timely fulfillment of the State's obligation to advise the Court how it is complying with each of the points ordered is essential in order to assess the status of compliance of the case.⁶ Also, the General Assembly of the Organization of American States (hereinafter "OAS") has reiterated that in order for the Court to fully meet its obligation to report on compliance with its judgments, it is necessary for State parties provide the information required from them.⁷

9. As for monitoring compliance with the judgments, Article 69 of the Rules of Court states that:

1. The procedure to monitor compliance with judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations of such reports by the victims or their legal representatives. The Commission shall present observations on the State reports and the observations of victims or their representatives.

a. [...]

³ Cf. *International responsibility for the issuance and application of laws that violate the Convention (Art. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Vargas Areco v. Paraguay*, supra note 1, Considering Clause four, and *Case of the Comunidad Moiwana v. Surinam*, supra note 1, Considering Clause five.

Cf. *Case Castillo Petruzzi et al. v. Peru. Compliance with Judgment*. Order of November 17, 1999. Series C No. 59, Considering Clause three; *Case of Vargas Areco v. Paraguay*, supra note 1, Considering Clause four, and *Case of the Moiwana Community v. Surinam*, supranote 1, Considering Clause five.

Cf. *Case of Ivcher Bronstein v. Peru. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; Case of Vargas Areco v. Paraguay*, supra note 1, Considering Clause five, and *Case of the Moiwana Community v. Surinam*, supra note 1, Considering Clause six.

Cf. *Case of Barrios Altos v. Peru. Monitoring Compliance with Judgment Order of the Court of September 22, 2005, Considering Clause seven; Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of November 18, 2010, Considering Clause seven, and *Case of the Community Moiwana v. Surinam*, supra note 1, Considering Clause seven.

⁷ AG/RES 2292 (XXXVII-O/07) Resolution of the General Assembly of the OAS passed in the fourth plenary session, held on June 4, 2007, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights, operative paragraph four; AG/RES 2408 (XXXVIII-O/08) Resolution of the General Assembly of the OAS PASSED at the fourth plenary session, held on June 3, 2008, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," operative paragraph four, and AG/RES. 2500 (XXXIX-O/09) Resolution of the OAS General Assembly adopted at the fourth plenary session, held on June 4, 2009, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights" , operative paragraph four.

2. When it deems it appropriate, the Court may convene the State and the victims' representatives to a hearing to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.

3. Once the Tribunal has all the relevant information, it shall determine the state of compliance with its decisions and issue the orders that it deems appropriate.

10. The original deadline for the State to submit the first report on the state of compliance with the reparation measures ordered in the Judgment expired on June 20, 2008, i.e., more than two years ago. Subsequently, through the Order of April 28, 2009 (*supra* Having Seen 3) the State was granted a new deadline of June 1, 2009, i.e., over more a year ago. Notwithstanding the foregoing, on August 3, 2010 (*supra* Having Seen 9) Peru is yet to submit its first report on the state of compliance with the Judgment, and thus was given a new non-extendable deadline until October 3, 2010.

11. In response to this last request, on October 6, 2010 the State submitted a report with "the purpose of informing [the Court] on steps tak[en] by [the State Agents] with regard to compliance with the Judgment." In this sense, Peru reported, among other actions, on the submission of an official letter by said state authority to: the Directorate General of the Administration Office, requesting publication of the Judgment; the Prosecutor General, requesting information on investigations in this case; and, the Council of Legal Defense of the State, requesting that it clarify which party is responsible for compliance with the Judgment. Furthermore, it indicated that in its response to the respective official letter, the Prosecutor General had indicated that the corresponding "proceeding [...] was [being] [e]xecuted, pending an expert witness testimony" and that it "ha[d] requested that the Ministry of Justice pay the pecuniary damages awarded in [the] [J]udgment."

12. In its comments on the State report, the common intervener stated that said brief "does not consist [...] of a [r]eport in which, measure by measure, details are given of how [the State], has complied [...] with the various measures ordered by the Court." It reiterated that the State had not complied with any of the reparation measures ordered in the Judgment and requested that the Court report to the OAS General Assembly on the breach of the Judgment by the State, in accordance with Article 65 the American Convention.

13. For its part, the Inter-American Commission notes with concern that, based on the information provided, "four years after the [J]udgment [...] the State has not complied with any of the measures ordered by the Court therein" and requested the Court "to issu[e] an order that clearly defin[es] the outstanding international obligations for Peru," in connection with this case.

14. The President-in-Office noted that the letter submitted by the State on October 6, 2010 does not include specific information about the actions or measures actually taken by the State, whatever the body or instance may have been, to effectively comply with each of the reparation measures ordered in the Judgment.

15. On several occasions the Secretariat of the Court, following instructions from the Presidency or the Court (*supra* Having Seen 6 and 9) has reminded the State that its first report, on the state of compliance of measures of reparation ordered in the Judgment, is yet to be submitted.

16. The State has had an adequate and reasonable time to comply with its obligation to prepare and submit the first complete report on compliance ordered in the Judgment,

and it even received two new opportunities from the Court to submit it (*supra* Considering Clause 10). However, the State has not provided information to allow the Tribunal to determine the state of compliance of the Judgment. Without the due information from the State, this Court cannot exercise their monitoring role of the implementation of the Judgment. In order to ensure and guarantee the implementation of protective measures and reparations, the Court must be able to verify and get information on the implementation of the Judgment, which is "the materialization of the protection of the right recognized in the judicial ruling through the ideal application of said ruling."⁸

17. In its Order of April 28, 2009 the Court noted that "[i]n case of further incompliance by the State to [submit its report], the Court [would] assess the possibility to convene a hearing on compliance." Furthermore, the President noted that both the common intervener and the State have requested the Court to conduct hearings regarding compliance of this case (*supra* Having Seen 7 and 8).

18. In virtue of the above considerations, the President-in-Office considers that as such times it is appropriate and necessary to convene a private hearing so that the Inter-American Court receives full up-to-date information on compliance with the outstanding points of the Judgment, and hear the observations of the common intervener and the Inter-American Commission in this regard.

THEREFORE:

THE PRESIDENT-IN-OFFICE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising the authority to monitor compliance with its decisions in accordance with Articles 33, 61(1), 68(1) of the American Convention on Human Rights, Article 24(1), 25(1) and 25(2) of the Statue, and Article 31 and 4(2), 15(1), 31 and 69 of its Rules of Procedure,

AND RESOLVES:

1. Summon the State of Peru, the Human Rights Commission and the common intervener of representatives of the victims and their families to a private hearing to be held at the headquarters of the Inter-American Court of Human Rights on February 26, 2011, from 9:00 am until 10:30 am during the XC Ordinary Session, in order for the Court to obtain information from the State on compliance with the outstanding points of the Judgment issued in this case and hear the observation of the common intervener of the representatives of the victims and their families, and the observations of the Inter-American Commission on Human Rights in this regard.

2. To request the Secretariat of the Court to notify this Order to the State of Peru, the Inter-American Commission on Human Rights and the common intervener of the

Cf. Case of Baena Ricardo et al. Panama, *supra* note 1, para. 73; *Case of El Amparo v. Venezuela*. Monitoring Compliance with Judgment Order of the Court of February 4, 2010, Considering Clause twenty-one, and *Case of De la Cruz Flores v. Peru*. Monitoring Compliance with Judgment Order of the President of the Court of December 21, 2009, Considering Clause twenty-four.

representatives of the victims and next-of-kin.

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary