

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 29, 2013**

CASE OF LÓPEZ ÁLVAREZ v. HONDURAS

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

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

2. The Order on monitoring compliance with judgment issued by the Inter-American Court on February 6, 2008, in which it declared:

[...]

2. That, as indicated in considering paragraphs 13 and 21 of th[e] Order, it will keep open the proceeding of monitoring compliance with the aspects pending compliance in this case, namely:

a) To investigate the facts of the case and to apply the measures that derive from this investigation to those responsible for the said facts (*seventh operative paragraph of the Judgment*); and

b) To adopt measures designed to create conditions that permit ensuring to the inmates of Honduran prisons adequate food, medical attention, hygiene and physical conditions, and to implement a training program on human rights for officials who work in the prisons (*ninth operative paragraph of the Judgment*).

3. The reports of the State on progress in compliance with the Judgment submitted on July 1, 2008, April 21, 2009, and September 6, 2011.

4. The briefs of the representatives of the victims (hereinafter "the representatives") presented on August 1, 2008, May 28, 2009, November 1, 2011, and February 21, 2012, submitting their observations on the State's reports and information on compliance with the Judgment.

5. The observations of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on the State's reports, presented on September 29, 2008, June 11, 2009, and November 21, 2011.

6. The communication of the Secretariat of the Court (hereinafter "the Secretariat") of June 2, 2010, in which it urged the State to present a detailed report by July 30, 2010, indicating all the measures adopted to comply with the Judgment of February 1, 2006. The request made to the State for information was repeated in the Secretariat's communications of August 16, September 28 and November 2, 2010, July 15, 2011, July 6, August 24 and November 1, 2012, and January 17, 2013.

7. The Secretariat's communication of April 18, 2013, in which, on the instructions of the President of the Court (hereinafter "the President"), it convened the State, the representatives and the Inter-American Commission to a private hearing (hereinafter "the hearing") on monitoring compliance with the Judgment.

8. The hearing held on May 23, 2013, at the seat of the Court in San José, Costa Rica, on monitoring compliance with the Judgment.¹

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Honduras has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 8, 1977, and accepted the binding jurisdiction of the Court on September 9, 1981.

3. Article 68(1) of the American Convention stipulates 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." To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.²

a) Information and observations presented on the obligation to investigate the facts of the case and to apply the measures that derive from this investigation to those responsible for the said facts (seventh operative paragraph of the Judgment)

4. Regarding the seventh operative paragraph (*supra* having seen paragraph 2), the State indicated in its report of July 1, 2008, that "the Special Prosecutor for Human Rights [was] coordinat[ing] measures [...], in order to open an investigation to determine whether or not officials [of that institution] had been guilty of willful misconduct during the detention of Mr. López Álvarez." During the hearing, the State affirmed that, in 2000, based on the fact that senior authorities had prohibited a group of individuals in the Tela Prison –

¹ Under Article 62(1) of the Court's Rules of Procedure, the Court held the private hearing with a committee of judges composed of: Diego García-Sayán, President, Alberto Pérez Pérez and Eduardo Ferrer Mac-Gregor. In addition, there appeared: for the Inter-American Commission on Human Rights: Silvia Serrano Guzmán, adviser; for the representatives of the victims: Cristian A. Callejas Escoto, OFRANEH; Marcia Aguiluz, CEJIL; Paola Limón, CEJIL; Sergio Pacheco, CEJIL, and Léa Gaudry, CEJIL, and for the State of Honduras: Ethel Suyapa Deras Enamorado, Attorney General; Maura Jacqueline Portillo, lawyer, principal consultant, and Jhon César Mejía, prosecutor attached to the Prosecution Service of La Esperanza, Intibucá.

² Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131, and *Case of Gelman v. Uruguay*. Monitoring compliance with judgment. Order of the Court of March 20, 2013, third considering paragraph.

including Mr. López Álvarez – from communicating among themselves in their own language (Garifuna), the Public Prosecution Service had filed charges against two officials. Following several investigative measures, the Tela Sectional Court issued “a provisional dismissal of the case in favor of the accused.” The Public Prosecution Service appealed this decision and the La Ceiba Court of Appeal confirmed the decision of the first instance judge. Subsequently, the Tela First Instance Court issued a “final dismissal in favor of both the accused,” and this decision is now final.

5. In their written observations (*supra* having seen paragraph 4), the representatives asserted that the State had not presented sufficient information. Then, during the hearing, they alleged that the information on the investigation presented by the State referred to a single incident that had taken place before the Judgment in this case had been delivered. They added that the investigation had not covered all the facts that needed to be investigated. In addition, they indicated that the victim in this case, Alfredo López Álvarez, could not participate in the hearing and, in particular, had asked the representatives to state, on his behalf, that “until the facts had been investigated, he was in a situation of continuing revictimization.” They asked the Court to declare that this measure of reparation had not been complied with because no progress had been made, and that the State must investigate all the facts and determine administrative or criminal responsibilities. Lastly, they considered it pertinent that the State “elaborate an investigation plan [...] that includes a timetable for its execution.”

6. In its written observations (*supra* having seen paragraph 5), the Commission indicated that the State’s reports were insufficient. Later, during the hearing, it stated that it shared “the concerns mentioned by the representatives” during this proceeding. It indicated that the State should identify those responsible based on the different facts determined in the Judgment, and expressed its concern that the possible application of the statute of limitations would prevent compliance with the measure. Consequently, it considered that it was “very important that [...] the Court establish a clear time frame for the State to provide information.”

b) Information and observations presented on the obligation to adopt measures designed to create conditions that permit ensuring to the inmates of Honduran prisons adequate food, medical attention, hygiene and physical conditions, and to implement a training program on human rights for officials who work in the prisons (ninth operative paragraph of the Judgment).

7. At the hearing, the State advised that “there are numerous structural shortcomings in the prison system.” It also referred to the existence of various norms that would help improve this situation, including the Penitentiary System Act, approved by the National Congress of Honduras on May 8, 2012.³ It affirmed that, based on this law, “an assessment has been initiated of the 24 prisons throughout the country in order to prepare the work plan,” and that different regulations had been drawn up on aspects relating to persons deprived of liberty. In addition, it indicated that the State had “made investments in the infrastructure and safety of the institutions.”

8. The State also presented information on the access of those deprived of liberty to health care and education services, and to new prisons. It described “progress in [the]

³ In its written reports, the State had indicated, *inter alia*, that measures to obtain an increased budget for the prisons were pending, as well as the adoption of laws and regulations, including the Penitentiary System Act.

increase in medical and nursing staff, and the creation of health clinics in the different prisons," and that 1,795 persons deprived of liberty were enrolled in different educational programs." It indicated the existence of a new prison in Juticalpa and, at the hearing, referred to the acquisition of a piece of land for the construction of a prison.

9. In its report of July 1, 2008, the State indicated, *inter alia*, that "the topic of human rights [had been added] to the curriculum that candidates for prison police must follow." Subsequently, during the hearing, it indicated that it "now had an assessment of the needs for human rights training in the national prison system," and that "the Justice and Human Rights Secretariat [...] had implemented several training programs on human rights; in [...] particular, [...] for officials who work in prisons." With regard to the foregoing, including the information provided on infrastructure and safety, it indicated that it would send the Court "a detailed report."

10. At the hearing, the representatives expressed their appreciation of the enactment of legislation, but indicated that it was insufficient, because it had not resulted in an improvement in the conditions of persons deprived of liberty. On that occasion, as well as in their written observations, they indicated that the budget was insufficient to improve the living conditions of the persons deprived of liberty, which were deplorable, because the prisons had inadequate lighting, safety was inexistent, some of those deprived of liberty slept on the floor and in places corresponding to sanitary facilities, and food was of a dubious quality and variety. They also referred to prison overcrowding, lack of sufficient health care, and absence of adequate information on access to education for persons deprived of liberty. They stressed that, over recent months and years, there had been numerous attempted uprisings in different prisons that, among other consequences, had resulted in deaths and injuries, and that were the result of deficient detention conditions and food, among other reasons. They stated that the fact that detention conditions in the prisons were inhuman had led to the occurrence of tragic incidents that must not be repeated.

11. Furthermore, regarding the human rights training for prison officials, on August 1, 2008, the representatives indicated that the State had failed to describe the content of the human rights course, or when it was implemented and, during the hearing, they indicated that the State must provide sufficient information on the specific training activities that it was implementing and the results. Even though they had the information mentioned by the Attorney General that an assessment had been made of the human rights training needs, they had not had access to the results. Therefore, during the hearing, the representatives considered it pertinent that the Court "ask the State [...] to present a detailed report with exhaustive, verified and substantiated" information.

12. In its written observations (*supra* having seen paragraph 5), the Commission indicated that the State had not "presented information proving that budget increase has been reflected in an improvement in the prisoners' food," and that it had insufficient information with regard to the construction of new prisons, and about the medical attention and infrastructure in the existing ones, or about the education of persons deprived of liberty. During the hearing, it stated that, based on a visit that the Commission had made to Honduras, the Commission's Rapporteur on the Rights of Persons Deprived of Liberty had noted the "persistence of the structural crisis," including the situation of overcrowding, as well as problems relating to sanitation and infrastructure.

13. Regarding the training of officials, the Commission indicated in its written observations that the State had not provided sufficient information and, at the hearing, it indicated that, during the above-mentioned visit (*supra* considering paragraph 12), it had

verified “the lack of basic training of prison guards” and, therefore, considered that it was “very important that, over and above the basic training, training is provided on human rights issues.” In addition, it stated that “indicators could be established for [the] measures of non-repetition ordered by the Court, and [...] much more specific information could be provided” on these measures.

c) Considerations of the Court

14. First, it should be indicated that, following the Order of February 6, 2008 (*supra* having seen paragraph 2), the State submitted written reports on three occasions, in 2008, 2009 and 2011 (*supra* having seen paragraph 3). On several occasions, the Secretariat urged the State to present information (*supra* having seen paragraph 6). In this regard, on July 6, 2012, on the instructions of the President, the Secretariat asked the State to present a detailed report in which it referred to the measures taken to comply with the two elements of the Judgment that remained pending. It repeated this request on August 24 and November 13, 2012, and on January 17, 2013.

15. Regarding the State’s failure to submit this report despite the various reminders that were sent to it in this regard (*supra* having seen paragraph 6), it should be noted that “[t]he State’s failure [to provide a report] is contrary to its obligation to comply with the measures of reparation ordered by the Court at the domestic level, and to inform the Inter-American Court about the steps taken to execute them, and also denies the right of access to international justice of the victims and beneficiaries of the said reparations.”⁴

16. In relation to the seventh operative paragraph of the Judgment, concerning the investigation of the facts (*supra* having seen paragraph 2), during the hearing the State reported on the actions started in 2000 that concluded with the dismissal of the case against the individuals who had been indicated as those possibly responsible (*supra* considering paragraph 4). The information presented does not reveal that other proceedings have been opened to investigate the facts of the case.

17. As regards the ninth operative paragraph of the Judgment (*supra* having seen paragraph 2), the Court notes that, at the hearing, the State recognized that there are different structural shortcomings in the Honduran prison system, but also provided information on the adoption of different laws and regulations, as well as actions that would help improve this situation. In this regard, the Court notes, in particular, the information provided by the State on the enactment of the Penitentiary System Act on May 8, 2012, and that the State has made a diagnosis of the 24 prisons that exist across the country (*supra* considering paragraph 7). In addition, the State informed of progress in providing medical attention and in the establishment of new prisons (*supra* considering paragraph 8). Furthermore, it asserted in writing that the topic of human rights had been added to the program of studies for “candidates for prison guards” (*supra* considering paragraph 9).

18. Despite the above-mentioned progress, the Court also notes that the representatives and the Commission stated that different problems exist, including the absence of information on the prisons, such as budgetary and structural insufficiencies, overcrowding, and inadequate food for those deprived of liberty, as well as inadequate access to health

⁴ Cf. *Case of Bámaca Velásquez v. Guatemala*. Monitoring compliance with judgment. Order of the Court of July 4, 2006, eleventh considering paragraph, and *Case of Juan Humberto Sánchez v. Honduras*. Monitoring compliance with judgment. Order of the Court of February 20, 2012, eighth considering paragraph.

care services and the insufficient training of the "prison guards" (*supra* considering paragraphs 10 to 13).

19. Based on the foregoing, the Court notes that the information on progress submitted by the State is insufficient to determine full compliance with the Judgment, and therefore decides that the State must present the Court with updated information on the following aspects that remain pending:

a) The status of the investigation of the facts of the case and the actions that will be taken within the investigation to apply the measures derived from it to those responsible for the said facts (*seventh operative paragraph of the Judgment*), and

b) The actions and goals as regards improving prison conditions and the provision of human rights training to the prison officials (*ninth operative paragraph of the Judgment*). In this regard, the State must present detailed information on progress under the actual normative framework, including an implementation timetable and the results that, gradually, it is expected to achieve. In addition, it must provide information on a specific timetable and goals with regard to the process of improving the physical and sanitary conditions of the different prisons, as well as on the food and medical attention for those deprived of liberty. With regard to the training of officials who work in these establishments, it must provide precise information on the implementation and expected results of a human rights training program for them. Regarding all the above, the Court finds it pertinent that the State describe the steps to be taken based on an annual timetable that must be presented to the Court.

20. The Court will consider the general situation of compliance with the Judgment when it has received pertinent information on the aspects of the reparations that remain pending.

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, 25(1) and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECIDES THAT:

1. It will keep the proceeding of monitoring compliance open with regard to operative paragraphs 7 and 9 of the Judgment concerning the State's obligation:

a) To investigate the facts of the case, and to apply the measures derived from this investigation to those responsible for the said facts, and

b) To adopt measures designed to create conditions that permit ensuring to the inmates of Honduran prisons adequate food, medical attention, hygiene and physical conditions, and to implement a training program on human rights for officials who work in the prisons.

2. The State must adopt all necessary measures to comply promptly and effectively with the aspects pending compliance indicated in the first operative paragraph, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

3. The State must present to the Inter-American Court of Human Rights, by August 30, 2013, at the latest, a report indicating all the measures taken to comply with the reparations ordered by this Court that remain pending, as indicated in considering paragraphs 16, 17, 18 and 19, as well as in the first operative paragraph of this Order. Subsequently, the State must continue reporting to the Court every three months in this regard.

4. The representatives of the victims and the Inter-American Commission on Human Rights must present any observations they deem pertinent on the State reports mentioned in the preceding operative paragraph, within four and six weeks, respectively, of receiving them.

5. It will continue to monitor the aspects pending compliance of the Judgment of February 1, 2006.

6. The Secretariat of the Court shall notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary