

**ORDER OF THE ACTING PRESIDENT OF
INTER-AMERICAN COURT OF HUMAN RIGHTS
FOR THIS CASE ***

OF JULY 29, 2013

**REQUEST SUBMITTED BY THE COMMON INTERVENER FOR THE
REPRESENTATIVES OF THE VICTIMS AND THEIR FAMILIES**

**CASE OF THE MIGUEL CASTRO CASTRO PRISON V. PERU
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 25, 2006.
2. The Interpretation of said Judgment issued by the Inter-American Court on August 2, 2008.
3. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of June 4 and July 9 and 23, 2013, in which the parties and the Inter-American Commission on Human Rights were informed that the Court had decided to reschedule the private hearing on monitoring compliance with the Judgment in this case, and to hold it on August 19, 2013, at the Court's seat, during its 100th Regular Period of Sessions.
4. The brief presented on July 13, 2013, in which Mrs. Monica Feria Tinta, a victim and the common intervener for the representatives of the victims and their relatives in this case (hereinafter "the common intervener" or "Mrs. Feria Tinta"), requested support from the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Victims' Assistance Fund" or "the Assistance Fund") for the appearance at the aforementioned private hearing on monitoring compliance.
5. The notes of the Secretariat of July 18, 2013, informing the common intervener Monica Feria Tinta, the other common intervener of the representatives of the victims,

* Judge Diego García-Sayán did not participate in the deliberation and signing of the Judgment in this case. According to Articles 4(2) and 5 of the Court's Rules of Procedure, Judge Manuel E. Ventura Robles, Vice President of the Court, assumed the acting Presidency in this case.

Mr. Douglas Cassel, the State of Peru and the Inter-American Commission that said request was brought to the attention of the acting President of the Court for this case.

CONSIDERING THAT:

1. The Court issued the Judgment on merits, reparations and costs in the *Case of the Miguel Castro Castro Prison v. Peru* on November 25, 2006, and therefore this case is currently at the stage of monitoring compliance with judgment.

2. The Court decided to summon the parties and the Inter-American Commission on Human Rights to a private hearing, to be held on August 19, 2013, at the seat of the Court, for the purpose of monitoring compliance with the Judgment. This hearing is being convened for the purpose of receiving up-to-date and detailed information from the State regarding compliance with the measures of reparation ordered in the Judgment and to hear the observations of the two common interveners for the representatives of the victims and the opinion of the Inter-American Commission (*supra* Having Seen 3).

3. On July 13, 2013 Mrs. Monica Feria Tinta, a victim and the common intervener for the representatives, submitted a request for support from the Victims' Legal Assistance Fund "to be able to attend [the] private hearing" on monitoring compliance with judgment (*supra* Having Seen 4). With respect to the expenses requested, she specified that the assistance was to cover "air tickets, board and lodging expenses and the payment of exit taxes from Costa Rica, for 3 people, namely: the legal representative (who [would] travel from the United Kingdom), a relative who has been negotiating the implementation [of the Judgment] in Peru (who is part of the team submitting its report to the Court) and a survivor who [would] also travel from Peru and who would also form part of the team that [would] present its report to the Court, on behalf of the largest group of victims." She added that "[t]he presence of these last two [individuals] on the team that will present a report to the Court on behalf of the largest group of victims is of the utmost importance, given that this group has made many efforts to ensure the implementation of the Judgment in the case of Castro Castro Prison and its participation in the hearing is important to answer any questions that could arise during the examination of the case, on the actions by Peruvian State in the stage of implementation of the Judgment." The common intervener also stated that she represents the "largest group of victims [, which] includes the majority of the beneficiaries (over 100) of those who were murdered in the Castro Castro Prison (more than 20 families) and more than 200 survivors" and indicated that "[this] group [...] has been monitoring the implementation of this Judgment, without receiving funds or assistance of any type of six years."

4. In 2008, the General Assembly of the Organization of American States (hereinafter the "OAS") created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter "the Assistance Fund of the Inter-American System"), in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."¹ As established in the Rules of Procedure adopted by the Permanent Council

¹ Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the Thirty-Eighth Ordinary Session of the OAS, at the fourth plenary session, held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," Operative Paragraph 2.a and 2.b, and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the

of the OAS in November 2009², the Assistance Fund of the Inter-American System maintains two separate accounts: one for the Inter-American Commission and the other for the Inter-American Court.³ As to the financing of the Assistance Fund of the Inter-American System, this is currently comprised of “voluntary capital contributions from Member States of the OAS, the Permanent Observer States, and other States and donors that may wish to collaborate with the Fund.”⁴

5. As stipulated in Article 3 of the Rules of the Inter-American Court on the Operation of the Victims’ Legal Assistance Fund⁵ (hereinafter the “Rules of the Assistance Fund”), the request for assistance was submitted by the Secretariat of the Court to the consideration of the acting President of the Court who is to decide this matter.

6. According to Article 2 of the Rules of the Fund, alleged victims wishing to have access to the Fund must follow three steps: 1) request assistance in the brief containing pleadings, motions and evidence; 2) demonstrate, by means of a sworn affidavit and other probative evidence that will satisfy the Court, that they lack the financial resources needed to cover the cost of litigation before the Inter-American Court, and 3) state precisely the aspects of their participation in the proceedings that require the use of resources of the Court’s Legal Assistance Fund.

7. Article 6 of the Rules of the Assistance Fund establishes that “The Court shall decide matters not governed by these Rules and questions regarding their interpretation” Accordingly, the Court issued a ruling on September 10, 2010 in relation to a request for support from the Assistance Fund submitted during the stage of monitoring compliance with judgment in this case. In that ruling, the Court defined the scope of its authority to consider, exceptionally, requests for support from the Assistance Fund outside the context of litigation on the merits of contentious cases⁶.

8. In the Order of September 10, 2010, the Court stated that, pursuant to Article 2⁷ of the Rules of the Assistance Fund, the Fund’s resources are used to cover the cost of litigation before the Court during the processing of a contentious case prior to delivery of the judgment. Accordingly, the Acting President reiterates that the rules and the funds available from the Victims’ Assistance Fund are aimed at covering expenses that could arise during the litigation of the merits and possible reparations and costs in contentious cases before the Court pending a decision, with priority given to expenses related to an effective appearance and presentation of evidence at

Permanent Council of the OAS, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” Article 1(1).

² Cf. Resolution CP/RES. 963 (1728/09), *supra* note 1, Article 3(1).

³ Under Article 4 of the Rules of the Permanent Council on the Assistance Fund of the Inter-American System, the Court shall regulate the eligibility requirements for requesting assistance and the approval procedure.

⁴ Cf. Resolution CP/RES. 963 (1728/09), *supra* note 1, Article 2(1).

⁵ Rules for the Operation of the Victims’ Legal Assistance Fund of the Inter-American Court of Human Rights, approved on February 4, 2010. These Rules entered into force on June 1, 2010, and their purpose is to “regulate the operation of and access to the Fund [...], for the litigation of cases before it.”

⁶ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010.

⁷ Article 2 stipulates that alleged victims wishing to access the Fund must inform the Court in the respective brief containing pleadings, motions and evidence.

hearings before the Court.⁸ The Acting President further recalls that the Assistance Fund of the Court does not receive resources from the OAS' regular budget, but rather is comprised of voluntary contributions (*supra* Considering para. 4)⁹.

9. Likewise, the Court established the possibility, as an exception, of considering the admissibility of a request for support from the Assistance Fund outside the framework of the litigation on the merits of contentious cases, in the following terms:

the Court is aware that the amounts ordered for costs and expenses in the Judgment issued by the Court in [the] case [of the Miguel Castro Castro Prison] did not include future expenses that the victims or their representatives might incur during the stage of monitoring compliance with judgment, and that Article 69(3) of the Court's current Rules of Procedure allow the Court to summon hearings during that stage to evaluate the status of compliance with the judgment. Thus, the Court may consider requests for resources from the Assistance Fund outside the framework of the litigation on the merits of contentious cases, provided that the expenses are reasonable and necessary, and duly proven, so that the victims or their representatives who can demonstrate a lack of sufficient economic resources can attend a future hearing.¹⁰

10. It is important to emphasize that, as the Court pointed out, the possibility that the Court or its President might consider the admissibility of a request for support from the Assistance Fund outside the framework of the litigation on the merits of contentious cases "will depend on the resources available in the Assistance Fund at the time when the request is submitted." Therefore, the request "shall be assessed specifically, bearing in mind that the Fund is primarily intended to give preference to requests related to the litigation of contentious cases prior to the issuance of the Judgment."

11. On this occasion, having regard to the resources currently available in the Assistance Fund, the Acting President deems it feasible to consider the request for assistance submitted by Mrs. Ferial Tinta in the current stage of monitoring compliance with judgment, since this would not impair the attention given to requests for support from the Assistance Fund to cover costs related to an effective appearance and presentation of evidence at hearings before the Court in contentious cases currently at the stage of merits, and possible reparations and costs.

12. During the stage of monitoring compliance in the *Case of the Miguel Castro Castro Prison* two other factors arise which together influence the acting President's decision to consider the aforementioned request for support from the Assistance Fund. The first is that the sum ordered by the Court in the Judgment for reimbursement of costs and expenses did not include any future expenses that might be incurred by victims in the stage of monitoring compliance with judgment. This Presidency also takes into account the fact that, according to the reports submitted by the State during the stage of monitoring compliance with judgment and the corresponding observations, more than six years have elapsed since the Judgment was issued, and Peru has not made any payment whatsoever to Mrs. Monica Ferial Tinta as reimbursement for the costs and expenses ordered in paragraphs 456 and 464 of the Judgment. From that information it is also clear, *prima facie*, that Peru has not paid any of the compensation

⁸ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering para. 15.

⁹ Cf. 2012 Annual Report of the Inter-American Court of Human Rights, page 87.

¹⁰ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering para. 16.

for pecuniary and non-pecuniary damages ordered in Operative Paragraphs 18 to 23 of the Judgment.

13. In order to assess the admissibility of the request submitted by Mrs. Feria Tinta, this Presidency shall now determine whether the requirements established by the Court have been fulfilled (*supra* Considering para. 9).

14. Regarding the requirement that any victim requesting support must “lack sufficient economic resources”, Mrs. Feria Tinta did not submit, together with her request, any evidence of her own lack of resources or that of the other two people mentioned in her brief of July 13, 2013. However, the Acting President considers that Mrs. Feria Tinta’s lack of resources was demonstrated in evidence provided for an order issued in October 2012 in another case regarding Peru.

15. The Acting President considers that her application also complies with the requirement that any support requested must be used to cover reasonable and necessary expenses to appear at a hearing on monitoring compliance summoned by the Court. Mrs. Feria Tinta requested limited and specific financial assistance to appear at the private hearing to be held by the Court on August 19, 2013 at its seat (*supra* Having Seen 4 and Considering para. 3). Given that Mrs. Feria Tinta represents the majority of the victims and relatives in this case, the Acting President considers it reasonable to grant assistance, both for the appearance of Mrs. Feria Tinta, and for the appearance of one of the two persons specified by Mrs. Feria Tinta (*supra* Considering para. 3). The Acting President also takes into account the explanation provided by Mrs. Feria Tinta that, because she lives in England, she has been unable to participate in the domestic procedures in Peru at this stage of monitoring compliance with judgment and that these procedures have been carried out by the other victim and by a relative of a victim who live in Peru.

16. Based on the foregoing, the Acting President considers admissible the request of Mrs. Feria Tinta and orders that financial resources from the Legal Assistance Fund be assigned to cover the travel and board and lodging expenses necessary to enable Mrs. Feria Tinta, and one of the two individuals mentioned in the request, to appear before the Court on August 19, 2013 at the private hearing on monitoring compliance with judgment in this case. Mrs. Feria Tinta shall provide the name of the victim or relative who shall receive assistance from the Fund, no later than August 2, 2013.

17. The Court shall take the pertinent and necessary measures to cover the costs of travel, board and lodging of the persons summoned to appear with resources from the Assistance Fund.

18. In accordance with Article 4 of the Rules of the Court on the Operation of the Assistance Fund, the Secretariat shall open a file of costs in order to record all expenditures made in relation to said Fund.

19. Finally, the Acting President recalls that, pursuant to Article 5 of the Rules of the Assistance Fund, Peru shall be notified, in due course, of the expenditures made from said Fund, so that it may submit any observations, if it so wishes, within the term established for that purpose. The Court shall then decide whether it is appropriate to order the State to reimburse the Assistance Fund for the expenditures incurred.

THEREFORE:

**THE ACTING PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THIS CASE,**

in the exercise of his authority in relation to the Victims' Legal Assistance Fund, and in accordance with Article 31 of the Court's Rules of Procedure and Articles 2 to 6 of the Rules of the Legal Assistance Fund,

DECIDES:

1. To declare admissible the request submitted by Mrs. Monica Feria Tinta, a victim and common intervener for the representatives of the victims and their relatives in the *Case of the Miguel Castro Castro Prison*, to receive support from the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, specifically to cover reasonable and necessary costs of travel, board and lodging so that Mrs. Feria Tinta and one of the two persons indicated in said request may appear before the Court on August 19, 2013 at the private hearing on monitoring compliance with judgment in this case, in accordance with Considering paragraphs 7 to 19 of this Order.

2. Pursuant to Article 4 of the Rules of the Court on the Operation of the Victims' Legal Assistance Fund, to require the Secretariat of the Court to open a file on expenses, documenting each of the expenditures made in application of said Fund.

3. To require the Secretariat of the Court to notify this Decision to the common intervener, Monica Feria Tinta, to the common intervener Douglas Cassel, to the State of Peru and to the Inter-American Commission on Human Rights.

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary