

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

OF AUGUST 7, 2013

**REQUEST PRESENTED BY THE COMMON INTERVENER OF THE
REPRESENTATIVES OF THE VICTIMS AND THEIR NEXT OF KIN**

**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") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 25, 2006.
2. The interpretation judgment handed down 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 it advised the parties and the Inter-American Commission on Human Rights that the Court had decided to reschedule the private hearing on monitoring compliance with the Judgment in this case in order to hold it at the seat of the Court on August 19, during its one hundredth regular session.
4. The Order issued by the acting President of the Court for this case on July 28, 2013, in which he ruled on the request filed by Mónica Feria Tinta, victim and common intervener of the representatives of the victims and their next of kin, for access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Victims' Assistance Fund" or "the Assistance Fund").
5. The brief of August 5, 2013, and its attachment, in which Douglass Cassel, common intervener of the representatives of the victims and their next of kin in this case, presented a request for support from the Victims' Legal Assistance Fund of the Inter-American Court in relation to the appearance of a victim at the said private hearing on monitoring compliance.
6. The notes of the Secretariat of August 6, 2013, in which it advised the common intervener Douglass Cassel, the other common intervener of the representatives of the victims, Mónica Feria Tinta, the State of Peru and the Inter-

* Judge Diego García-Sayán did not take part in the deliberation and signature of the Judgment in this case. Pursuant to Articles 4(2) and 5 of the Court's Rules of Procedure, Judge Manuel E. Ventura Robles, Vice President of the Court, was the acting President for this case.

American Commission that the acting President of the Court for this case had been informed of this request.

CONSIDERING THAT:

1. On November 25, 2006, the Court delivered the Judgment on merits, reparations and costs in the *case of the Miguel Castro Castro Prison v. Peru*, which is therefore at the stage of monitoring compliance with judgment.

2. The Court decided to convene the parties and the Inter-American Commission on Human Rights to a private hearing on monitoring compliance with the Judgment, which was held at the seat of the Court on August 19, 2013. The purpose of this hearing was to receive detailed and updated information from the State on compliance with the measures of reparation ordered in the Judgment and to hear the observations of the two common interveners of the representatives of the victims and the opinion of the Inter-American Commission (*supra* having seen paragraph 3).

3. On August 5, 2013, Douglass Cassel, common intervener of the representatives, presented a request for support from the Victims' Legal Assistance Fund to cover "the reasonable and necessary transportation, accommodation and subsistence expenses so [that the victim Sebastián Chávez Sifuentes may] attend the hearing on August 19" (*supra* having seen paragraph 3). Mr. Cassel also explained that he himself was "covering the expenses of [the] three lawyers who [would be travelling] from the United States to attend the hearing," but neither he nor the other two lawyers participate directly in the efforts made in the domestic sphere to achieve compliance with the Judgment. He stressed that Mr. Chávez Sifuentes was the main collaborator for the actions taken in Peru and for direct communication with the victims. Mr. Cassel stated that, for this reason, he considered that the "presence [of Mr. Chávez Sifuentes] at the hearing would be extremely useful to ensure that the Court has the most complete information as regards the purpose of the hearing."

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 "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 According to the provisions of the Rules of Procedure adopted by the OAS Permanent Council in November 2009,² the Assistance Fund of the Inter-American System has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court.³ Regarding the financing of the Assistance Fund of the Inter-American System, currently this depends on "[v]oluntary capital

¹ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, "*Creation of the Legal Assistance Fund of the Inter-American Human Rights System*," operative paragraph 2(a) and (b), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, "*Rules of Procedure for 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 Pursuant to article 4 of the Permanent Council's Rules of Procedure for the Operation of the Assistance Fund of the Inter-American System, it is for the Court to regulate the eligibility requirements to request assistance, as well as the procedure for approving this.

contributions from the Member States of the OAS, the permanent observer States, and other States and donors that may wish to collaborate with the Fund.”⁴

5. In accordance with article 3 of the Rules of the Inter-American Court for the Operation of the Victims’ Legal Assistance Fund⁵ (hereinafter “the Rules of the Assistance Fund”), the Secretariat of the Court submitted the request for assistance to the consideration of the acting President of the Court for this case, who was responsible for taking the respective decision.

6. Pursuant to article 2 of the Rules of the Assistance Fund, in order to access this Fund, presumed victims must meet three requirements; they must: (1) request this in the brief with pleadings, motions and evidence; (2) indicate, by means of an affidavit or other probative means that satisfy the Court, that they lack the necessary financial resources 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 the resources of the Court’s Assistance Fund.

7. Article 6 of the Rules of the Assistance Fund establishes that “[t]he Court shall decide matters not governed by these Rules and questions regarding their interpretation.” In this regard, the Court issued an Order on September 10, 2010, ruling on the request for support from the Assistance Fund presented during the stage of monitoring compliance with judgment in this case. In this Order, the Court ruled on the scope of its power to consider, exceptionally, requests for support from the Assistance Fund outside the framework of the litigation on the merits of contentious cases.⁶

8. In the said Order of September 10, 2010, the Court indicated that, according to article 2⁷ of the Rules of the Assistance Fund, the Fund’s resources are intended to cover the costs of the litigation before the Court during the contentious case prior to the delivery of the judgment. The Court also established the exceptional possibility of assessing the admissibility of a petition for support from the Assistance Fund outside the framework of the litigation on the merits of contentious cases.⁸

9. The acting President reiterates that the regulation of the Victims’ Assistance Fund and the resources available are intended to cover expenses that could arise during the litigation on merits and eventual reparations and costs in contentious cases before the Court that are pending a decision and, among these expenses, priority is given to those relating to an adequate appearance and presentation of evidence in hearings before the Court.⁹ Furthermore, the acting President recalls that the Court’s Assistance Fund does not receive resources from the regular budget of

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

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

⁶ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Request for support from the Victims’ Legal Assistance Fund. Stage of monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 2, 2010.

⁷ Article 2 stipulates that the requests of the presumed victims to Access the Fund must be presented in the respective brief with pleadings, motions and evidence.

⁸ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 6, considering paragraph 16.

⁹ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 6, considering paragraph 15.

the OAS; rather it is composed of voluntary contributions (*supra* considering paragraph 4).¹⁰ It should be stressed that, as the Court has noted previously, the possibility for the Court or its President to consider assessing the admissibility of a request for the support of 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 when the request is submitted.” Thus, the request “must be assessed specifically taking into account that the Fund is intended to give preference to requests relating to the litigation of contentious cases prior to the delivery of the judgment.”

10. The acting President reiterates that the Fund’s resources are intended to cover the costs of the litigation before the Court during the proceedings in the contentious case prior to the delivery of the judgment and that only exceptionally can they be destined to cover the costs of an appearance at a hearing on monitoring compliance convened by the Court, and this has already been accepted in this case. In an Order of July 29, 2013 (*supra* having seen paragraph 3), this President considered that the necessary factors were present to analyze the request for the support of the Assistance Fund made by Mónica Feria Tinta,¹¹ victim and common intervener of the representatives of the victims and their next of kin, and also that the requirements for its admissibility had been met.¹² Consequently, he decided to approve providing the support of the Assistance Fund to cover the reasonable and necessary expenses of the transportation, accommodation and subsistence for Ms. Feria Tinta and another victim to appear before the Court on August 19, 2013, at the said hearing on monitoring compliance with the Judgment. When granting the assistance to both Ms. Feria Tinta and to another victim, the acting President took into account that, since she lived in England, Ms. Feria Tinta has been unable to take any actions in Peru at this stage of compliance with judgment.¹³

11. On this occasion, the acting President does not find the request for the support of the Assistance Fund made on behalf of the victim, Sebastián Chávez Sifuentes, admissible (*supra* considering paragraph 3), taking into account that, at this stage of monitoring compliance with judgment, the financial assistance of the said Fund has been approved to enable two victims in this case to appear at the private monitoring hearing to be held on August 19, 2013. One of these two victims, Ms. Feria Tinta, is also the representative of most of the victims. Even though Mr. Chávez Sifuentes is not represented by Ms. Feria Tinta, but rather by the other common intervener of the representatives, Mr. Cassel, the President takes into consideration that the latter is able to appear at the said hearing together with two other lawyers. In addition, the acting President underscores that the said representatives have a limited time in which to provide their observations during the hearing and that, with the support of the Fund, two victims will appear at the hearing. Consequently, the representative of Mr. Chávez Sifuentes should take the necessary steps to present information to the Court on the actions taken by this

¹⁰ Cf. 2012 Annual Report of the Inter-American Court of Human Rights.

¹¹ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Request for the support of the Victims’ Legal Assistance Fund. Stage of monitoring compliance with judgment. order of the acting President of the Inter-American Court for this case of July 29, 2013, considering paragraphs 11 and 12.

¹² Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 11, considering paragraphs s 9 and 13 to 16.

¹³ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 11, considering paragraph 15.

victim at the domestic level to ensure that the State complies with the reparations ordered by the Court.

THEREFORE:

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

in exercise of his authority in relation to the Victims' Legal Assistance Fund and pursuant to Article 31 of the Rules of Procedure of the Court and article 2 to 6 of the Rules of the Assistance Fund,

DECIDES:

1. To reject the request submitted by Douglass Cassel, common intervener of the representatives of the victims and their next of kin in the *case of the Miguel Castro Castro Prison*, on behalf of the victim, Sebastián Chávez Sifuentes, to receive support from the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights to appear at the private hearing on monitoring compliance with judgment to be held on August 19, 2013.

2. To require the Secretariat of the Court to notify this Order to the common intervener Douglas Cassel, the common intervener Mónica Fera Tinta, the State of Peru and 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