

**Order of the
Inter-American Court of Human Rights*
of April 28, 2009
Case of the Miguel Castro-Castro Prison v. Perú
(Monitoring Compliance with Judgement)**

HAVING SEEN:

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

[...]

8. The State must, within a reasonable period of time, effectively investigate the facts denounced in the present case, identify, and, if applicable, punish those responsible, for which it must open the corresponding proceedings and effectively carry out the ongoing criminal proceedings as well as any new ones, adopt all the measures necessary to elucidate all the facts of the present case in order to determine the intellectual and material responsibility of those who participated in said violation, and publicize the results of these criminal proceedings, in the terms of paragraphs 436 to 442 and 460 of the [...] Judgment.

9. The State must establish, within a reasonable period of time, the necessary means in order to ensure that the information and documentation related to police investigations regarding very serious facts be conserved in a manner such that the corresponding investigations may be carried out, in the terms of paragraphs 442 and 460 of the [...] Judgment.

10. The State must carry out all actions necessary and adequate to effectively guarantee the delivery of the remains of the victim Mario Francisco Aguilar-Vega to his next of kin, within a 6-month period, and cover all the expenses arising from the delivery of the victim's body to his next of kin, as well as the burial expenses in which they may incur in the terms of paragraphs 443 and 460 of the [...] Judgment.

11. The State must adopt, within a reasonable period of time, all the measures necessary to guarantee that all the inmates that died as a result of the attack be identified and their remains be handed over to their next of kin, pursuant to the domestic legislation. In the event that other deceased inmates are identified, their next of kin may present the corresponding claims, pursuant to the domestic law.

12. The State must carry out, within a one-year period, a public act of acknowledgment of its responsibility in relation to the violations declared in this Judgment and as an apology to the victims and to the satisfaction of their next of kin, in a public ceremony with the presence of high State authorities and the victims and their next of kin, and it must broadcast said act through the media, including radio and television, in the terms of paragraphs 445 and 462 of the [...] Judgment.

13. The State must offer, without cost and through its specialized health institutions, the medical and psychological treatment required by the victims and their next of kin, including any medication required by them, taking into consideration the

* On June 26, 2006, Judge Diego García-Sayán disqualified himself from hearing the instant case, under the terms of Article 19 [current Article 20] of the Rules of Procedure. On the same day, the Court delivered an Order whereby it decided to accept said self-disqualification, taking into consideration the above-mentioned provisions and the analysis of the reasons stated by Judge García-Sayán. Therefore, said Judge did not participate in the deliberation and signing of the Judgment nor of this Order.

suffering of each of them after an individual evaluation, in the terms of paragraphs 449 and 461 of the [...] Judgment.

14. The State must pay, within an 18-month period, the amount set in Article 450 of the [...] Judgment to the victims that show to reside abroad and prove before the competent domestic bodies that due to the facts of the present case they need to receive adequate medical or psychological treatment, in the terms of paragraphs 450 and 461 of the [...] Judgment.

15. The State must design and implement, within a reasonable period of time, human rights education programs, addressed to the agents of the Peruvian police force, on the international standards applicable to matters regarding the treatment of inmates, in the terms of paragraphs 452 and 460 of the [...] Judgment.

16. The State must guarantee that, within a one-year period, all the persons declared as deceased victims in the present Judgment are represented in the monument called "The Eye that Cries," for which it must coordinate with the next of kin of the mentioned victims the realization of an act in which they may include an inscription with the name of the victim, according to the monument's characteristics, in the terms of paragraphs 454 and 463 of the [...] Judgment.

17. The State must, within a six-month period, publish the Chapter on proven facts of this Judgment, without the corresponding footnotes, and the operative part of the same, once, in the Official Newspaper and in another newspaper of national circulation, as well as broadcast the mentioned parts of the present Judgment, through a radio station and a television channel, both of ample national coverage, at least on two occasions with an interval of two weeks between each of them, in the terms of paragraphs 446, 447, and 459 of the [...] Judgment.

18. The State must pay, within an 18-month period, the amount set in paragraph 424 of the [...] Judgment, for the pecuniary damages caused to the 41 deceased inmates identified, in the terms of paragraphs 424, 457, 465, 466, 467, and 468.

19. The State must pay, within an 18-month period, the amounts set in paragraph 425 of the [...] Judgment, for pecuniary damages to the surviving inmates, in the terms of paragraphs 425, 426, 457, 465, 466, 467, and 468 of the same.

20. The State must pay, within an 18-month period, the amounts set in paragraphs 427 and 428 of the [...] Judgment, for the pecuniary damages caused to the next of kin of the inmates for the expenses incurred in during the search as well as burial expenses, in the terms of paragraphs 427, 428, 457, 465, 466, 467, and 468.

21. The State must pay, within an 18-month period, the amounts set in paragraph 433 of the [...] Judgment, for the non-pecuniary damages caused to the 41 deceased inmates identified and to the surviving victims, in the terms of paragraphs 433, 434, 458, 465, 466, 467, and 468 of the same.

22. The State must pay, within an 18-month period, the amounts set in paragraph 433 of the [...] Judgment, for the non-pecuniary damages caused to the next of kin of the 41 deceased inmates identified, in the terms of paragraphs 433, 434, 458, 465, 466, 467, and 468 of the same.

23. The State must pay, within an 18-month period, the amounts set in paragraph 433 of the [...] Judgment, for the non-pecuniary damages due to the next of kin declared victims of the violation of Article 5 of the American Convention as determined in paragraphs 336, 337, 340, and 341 and identified in Appendix 2 on victims to the [...] Judgment, which to these effects is considered part of the same, in the terms of paragraphs 433, 434, 458, 465, 466, 467, and 468 of the same.

24. It will monitor compliance with the present Judgment in all its aspects and will close the present case once the State has fully implemented all the provisions of this Judgment. Within an 18-month period as of notification of this Judgment, the State must present a report of the measures taken in compliance with this Judgment to the Court, in the terms of paragraph 469 of the [...] Judgment.

2. The Judgment on the Interpretation of the merits, reparations and costs rendered on August 2, 2008, whereby the Inter-American Court addressed various matters regarding the reparations ordered and granted an additional term for compliance with one of the reparation measures ordered in the Judgment.

3. The briefs of September 14 and December 7, 2007, whereby the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") referred to compliance with the Judgment.

4. The briefs of August 14, September 4 and 5, and October 15, 2007; April 3, July 30, October 24, and November 6, 2008; whereby the common intervener of the victims' representatives (hereinafter "the common intervener") referred to compliance with the Judgment.

5. The briefs of August 3 and September 18, 2007; October 10, 2008; January 15, and February 25, 2009; whereby the Republic of Perú (hereinafter "Perú" or "the State") referred to compliance with the Judgment.

6. The note of the Secretariat of the Inter-American Court (hereinafter "the Secretariat") of November 5, 2008, whereby, on instructions from the Court's President, it reminded the State that, in accordance with the twenty-fourth operative paragraph of the Judgment, the term for submitting the first report on compliance with the Judgment expired on June 20, 2008, and that said report had not been received by the Court within said term, whereby the State was requested to forward said report as soon as possible.

7. The communication of January 15, 2009 and its appendix, whereby the State informed that "Delia Muñoz-Muñoz, Esq., Supranational Special Public Prosecutor, had been appointed Agent of the Peruvian State in all the proceedings started before said [...] Court." Pursuant to Resolution No. 008-2009-JUS, said appointment was made within the framework of the State's Legal Defense System, which was created "in order to consolidate, unify, and modernize the legal defense of the State in [...] the supranational and international spheres."

8. The note of the Secretariat of February 2, 2009, whereby it reiterated its request to the State to forward its first report on compliance with the Judgment, as "the term for submitting it expired over seven months ago," wherefore an additional term to that effect was granted on February 16, 2009.

9. The communication of February 25, 2009, whereby the State pointed out that "a new system for the defense of the State has been created [...] having supranational venue [...] and which at present is in the process of being transferred" and that the Supranational Special Public Prosecutor "is taking the necessary steps regarding coordination with the various parties related to compliance with the [above-mentioned] Judgment," and that "once the pertinent information has been gathered, it will be referred to [the Court] in due time."

10. The note of March 5, 2009, reiterating the request to the State so that it submit its first report on compliance with the Judgment, as "the term for its submissi[on] expired over eight months ago."

CONSIDERING:

1. That it is a power inherent in the judicial functions of the Court to monitor compliance with its judgments.

2. That Perú has been a State Party to the American Convention on Human Rights since July 28, 1978 and it acknowledged the binding jurisdiction of the Court on January 21, 1981.

3. That pursuant to Article 68(1) of the American Convention, "[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 that end, the States are required to guarantee the adoption at the domestic level of the measures ordered by the Court.¹

4. That given the final and unappealable nature of the Court's judgments, as established in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the Court's judgments conforms to a basic tenet of the law of the international responsibility of the States, as supported by international case law, under which the States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, domestic laws may not be invoked to justify non-fulfillment of pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.²

6. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and to secure their effects (*effet utile*) at the domestic law level. This principle applies not only in connection with the substantive provisions of human rights treaties (i.e. those dealing with the protected rights), but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Court. This obligation includes the State's duty to inform of the measures adopted to comply with the provisions of the above-mentioned Court's Judgment. Timely fulfillment of the State's obligation to report to the Court on the manner in which it is complying with each of the measures ordered by the latter is essential to evaluate progress in compliance with the Judgment as a whole.⁴ Furthermore, OAS General Assembly has reiterated that, in order for the Court to fully comply with its obligation to inform it on compliance with the Court's judgments, it is necessary that the States Parties duly submit the information the Court may request them.⁵

¹ Cf. *Case of Baena-Ricardo et al v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, para. 131; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Court of April 3, 2009, Considering clause 3, and *Case of Baldeón-García v. Perú*. Monitoring Compliance with Judgment. Order of the Court of April 4, 2009, Considering clause 3.

² Cf. *I/A Court H.R. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of the Mayagna (Sumo) Awas Tingni*, *supra* note 1, Considering clause 5, and *Case of Baldeón-García*, *supra* note 1, Considering clause 5.

³ Cf. *Case of Ivcher-Bronstein v. Perú*. Competence. Judgment of September 24, 1999, Series C No. 54, Para. 37; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 1, Considering clause 6, and *Case of Baldeón-García*, *supra* note 1, Considering clause 6.

⁴ Cf. *Case of Barrios Altos v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7; *Case of Suárez-Rosero v. Ecuador*. Monitoring Compliance with Judgment. Order of the President of the Court of March 20, 2009, Considering clause 5, and *Case of Baldeón-García*, *supra* note 1, Considering clause 7.

⁵ General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) approved at the fourth Plenary Session held on June 5, 2007, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights."

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8. That the term for submitting the first report on compliance with the reparation measures ordered in the Judgment expired on June 20, 2008, that is, over ten months ago.

9. That by means of the notes addressed to the State by the Secretariat of the Court, on instructions from the Court's President (*supra* Having Seen clauses 6, 8 and 10), the State was reminded of its obligation to inform on the measures adopted to comply with the Judgment.

10. That the State had a reasonable and adequate term for complying with its obligation to issue and forward its first report on compliance with the measures ordered in the Judgment, including an additional term for its submission granted by the Court (*supra* Having Seen clause 8).

11. That, notwithstanding the foregoing, Perú has not informed on the progress in compliance with the Judgment and, therefore, it has failed to fulfill its obligation to inform.

12. That in order to guarantee and secure the execution of the Judgment, the Court must be able to verify and have information on the adoption of the reparation measures ordered therein. Thus, it is essential that the State submit forthwith its first report on compliance with the reparation measures ordered by the Court in its Judgment.

13. That the Court will consider the general status of compliance with the Judgment once it has received the report due by Perú and the observations of the common intervener and of the American Commission. Should the State fail to submit its report again, the Court will consider the possibility of summoning a hearing with regard to monitoring compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own 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 30 and 63 of its Rules of Procedure,⁶

DECLARES:

1. That pursuant to Considering clauses 8 to 13 of this Order, the State has failed to comply with its obligation to submit information to the Court on the measures adopted to comply with the reparations ordered by the Court in its Judgment on the merits, reparations and costs of November 25, 2006.

2. That it will keep open the proceedings to monitor compliance with all the operative paragraphs of the Judgment rendered on November 25, 2006, making

⁶ Rules approved by the Court at its XLIX Ordinary Period of Sessions held on November 16-25, 2000 and partially amended at the LXXXII Ordinary Period of Sessions held on January 19-31, 2009, pursuant to Articles 71 and 72 thereof.

reservation of the possibility of summoning a hearing for monitoring compliance with the above-mentioned Judgment.

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to fully and promptly comply with all the operative paragraphs of the Judgment on the merits, reparations and costs in the instant case, under the provisions of the Considering clauses of this Order and Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit its first report to the Inter-American Court of Human Rights no later than June 1, 2009, specifying all the measures adopted to comply with the reparations ordered by the Court.
3. To request the Secretariat of the Court to notify this Order to the State, to the Inter-American Commission on Human Rights, and to the common intervener.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary