

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

OF MARCH 31, 2014

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

HAVING SEEN:

1. The Judgment on the merits, reparations and costs (hereinafter “the Judgment”) issued in this case by the Inter-American Court of Human Rights (hereinafter “the Court,” “the Inter-American Court” or “the Tribunal”) on November 25, 2006.¹ Taking into consideration the partial acknowledgment of responsibility made by the Republic of Peru (“the State” or “Peru”) in this case, the Court determined that the State was internationally responsible for violations of the rights to life and humane treatment for the massacre, extrajudicial executions, and torture perpetrated between May 6 and May 9, 1992, in the Miguel Castro Castro Prison against inmates located in cell blocks 1A and 4B, approximately 135 women and 450 men accused or sentenced for crimes of terrorism or treason, among which there were pregnant women. The Court considered that it had not been proven that there was a riot or other situation that warranted the legitimate use of force by State agents

* Judge Diego García-Sayán, a Peruvian national, did not participate in the deliberation and signature of the judgment in this case, nor in the hearing and deliberation of this Order in accordance with the provisions of Article 19(2) of the Statute of the Court and 19(1) of the Rules of Procedure Court.

¹ In the judgment on the Merits, reparations and costs, the Court declared that the State is internationally responsible for the violation: i) the right to life enshrined in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof it to the detriment of the 41 deceased inmates identified in Annex 1; ii) the right to humane treatment enshrined in Article 5(1) and 5(2) of the Inter-American Convention, in relation to Article 1(1) thereof, in conjunction with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the 41 identified deceased inmates and of the 496 surviving inmates, 185 of whom were injured; iii) the right to a fair trial and judicial protection enshrined, respectively, in Articles 8(1) and 25 of the Convention, in relation with Article 1(1) thereof, in conjunction with Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the next of kin of the 41 identified deceased inmates, of the surviving inmates and of the next of kin of the inmates identified in Annex 3 of the Judgment, and iv) the right to humane treatment enshrined in Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of certain inmates identified in Annex 2 of the Judgment. The full text of the judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_181_ing.pdf

when an “operative” action was carried out. To the contrary, the Court found that the behavior of the security agents, senior State authorities and other State officials during the four days of the so-called “Operative Transfer 1” as well as after this, demonstrate that this involved a massacre, and that the purpose of said “operation” and subsequent handling of inmates was to threaten the lives and integrity of the inmates in cell blocks 1A and 4B of the Miguel Castro Castro Prison.² The Court also found Peru responsible for additional violations of the right to humane treatment because of violations perpetrated against the inmates who survived the massacre after May 9, 1992, when they were taken to the Police Hospital and transferred to other prisons. Three inmates suffered further violations due to the lack of pre and postnatal medical care, one inmate was raped, and six other inmates were subjected to sexual violence. Additionally, the Court found that the State had committed violations against the personal integrity of certain next of kin of the inmates for the treatment by the authorities when they were searching for information regarding what had happened. The Court declared the State’s responsibility for the violations of the right to a fair trial (judicial guarantees) and judicial protection of the immediate family members of the deceased identified inmates, the surviving inmates, and the next of kin of those inmates named and identified in the Judgment. The Court held that its Judgment is *per se* a form of reparation and additionally ordered the State to provide certain measures of reparation (*infra* operative paragraph 1) and indicated that it will monitor the full compliance with the Judgment.

2. The Judgment of Interpretation of the Merits, Reparations, and Costs issued on August 2, 2008³ (hereinafter “the Interpretation of the Judgment”).

3. The Order of April 28, 2009,⁴ wherein the Court declared, *inter alia*, that the State had not complied with its obligation to report to the Court on the measures required to satisfy compliance with that stated in the Judgment, and that it would keep the proceedings for monitoring of compliance open in regard to all the operative paragraphs of the Judgment.

4. The briefs of the State of August 3, 2007, August 4, 2009, and its annexes, and July 26, and October 6, 2010, wherein, respectively, it provided “information regarding [the] compliance with the obligation to investigate, prosecute, and punish,” it requested that the Court “summon a hearing on the monitoring of compliance,” and filed a report on “the steps being carried out by [the] [Specialized] Office of the Public Prosecutor [of the Ministry of Justice] as to compliance with the Judgment.”

5. The briefs of Mrs. Mónica Feria Tinta, victim and common intervening party of the representatives of the victims and their next of kin (hereinafter “common intervener Feria Tinta” or “Mrs. Feria Tinta”) of April 27, October 1, November 17, and December 4, 2009, and March 2, April 11, May 26, October 13, and November 6, 2010, wherein the monitoring of compliance with the Judgment was mentioned.

² The State held that the events that occurred under the so-called “Operative Transfer 1,” which according to official sources intended the transfer of inmates who were in pavilion 1A of the Miguel Castro Castro maximum security prison to another women’s prison. Cf. Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs. Judgment of November 25, 2006, Series C No. 160, paras. 210 to 216.

³ *Case of Miguel Castro Castro Prison. Interpretation of the Judgment on the Merits, Reparations, and Costs.* Judgment of August 2, 2008, Series C No. 181, para. 57. Available at: http://www.corteidh.or.cr/docs/casos/articulos/Seriestc_181_esp.pdf

⁴ *Case of Miguel Castro Castro Prison V. Peru. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of April 28, 2009. Available at: http://www.corteidh.or.cr/docs/supervisiones/castro_28_04_09.pdf

6. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of September 1, and November 23, 2010, in relation to the monitoring of compliance with this case.

7. The Order of the acting President of the Court in this case (hereinafter "the acting President") of December 21, 2010⁵, wherein it was decided, *inter alia*, to summon the State, the common intervener Feria Tinta, and the Commission to a private hearing to be held on February 26, 2011, regarding the monitoring of compliance with the Judgment. The other notes of the Secretary of the Court (hereinafter "the Secretary") of February 11, December 2, 2011, and January 13, 2012, wherein it communicated to the parties and to the Commission, the Court's decisions to suspend and reschedule the hearing (*infra* Having Seen clause 16)⁶.

8. The briefs of January 31, February 4, November 4, 2011, and September 7 and 29, 2012 and its attachments, wherein the common intervener Feria Tinta referred to the compliance with the Judgment.

9. The briefs of February 9, and November 15, 2011, and its attachments, wherein the common intervening party Douglass Cassel (hereinafter "common intervener Cassel" or "Mr. Cassel") made reference to the compliance with the Judgment.⁷

10. The State's brief of February 9, 2011, wherein it made reference to the suspension of the hearing.

11. The briefs of February 8, and November 28, 2011, wherein the Inter-American Commission forwarded its observations to the request to reschedule the hearing formulated by Mrs. Feria Tinta.

12. The notes of the Secretariat of November 8, 2012, wherein it was communicated to the parties and to the Commission that the Court considered it necessary that, prior to rescheduling the private hearing on the monitoring of compliance (*supra* Having Seen clause 7), the State should present, by no later than January 22, 2013, a written, complete, and current report on the monitoring of compliance regarding each of the measures of reparation ordered in the Judgment.

13. The brief of January 23, 2013, and its attachments, wherein the State forwarded the report requested by the Court in a note from the Secretariat (*supra* Having Seen clause 12), in relation to compliance with the Judgment.

⁵ *Case of Miguel Castro Castro Prison V. Peru. Monitoring of Compliance with Judgment.* Order of the Acting President of the Inter-American Court of Human Rights of December 21, 2010. Available at: http://www.corteidh.or.cr/docs/supervisiones/castro_21_12_10.pdf

⁶ The private hearing on the monitoring of compliance with the Judgment in this case was summoned and suspended on two occasions. It was rescheduled for August 19, 2013 (*infra* Having Seen 18).

⁷ During the stage of Monitoring of Compliance With Judgment in this case, the current Rules of Procedure of the Court came into effect, which allows for the participation of up to three common interveners of the representatives. Under Article 25 of that Rules of Procedure, in a note dated January 27, 2011, the Court decided upon the request submitted by the other group of representatives (which consisted of Mr. Douglass Cassel, Sabina Astete, Bertha Flores, Peter Erlinder, and Sean O' Brien) distinct from Mrs. Feria and authorized that they could act as a second common intervener of the representatives of the victims and their next of kin at this stage. Cf. "Request" signed by Douglass Cassel, addressed to the Inter-American Court of Human Rights, of January 22, 2011 (case file on monitoring of compliance, tome III, folios 1645-1650).

14. The briefs of March 12 and 13, 2013, and its attachments, wherein the common intervening parties Feria Tinta and Cassel filed, respectively, their observations to that which was reported by the State.

15. The brief of April 8, 2013, wherein the Inter-American Commission filed its observations to the State's report and to the observations of the common intervening parties.

16. The notes of the Secretary of June 4, July 9 and 23, 2013, wherein it communicated that the Inter-American Court rescheduled the private hearing on monitoring of compliance with the Judgment for August 19, 2013.

17. The Orders issued by the acting President on July 29 and August 7, 2013, in relation to the requests for assistance from the Victim's Legal Assistance Fund of the Inter-American Court (hereinafter "the Assistance Fund").⁸

18. The private hearing on monitoring of compliance with the Judgment, held on August 19, 2013, at the Court's headquarters.⁹

19. The brief of August 28, 2013, wherein the common intervener Feria Tinta filed additional information to that which was provided during the private hearing.

20. The note of the Secretariat of August 30, 2013, wherein, pursuant to the instructions of the acting President, a request was made to the State for it to provide documentation, and to which during the arguments made in the private hearing regarding the monitoring of compliance it stated that it would provide (*supra* Having Seen clause 19), and to clarify which measures of reparations need a determination from the Specialized Court on Execution of Supranational Sentences prior to compliance. Moreover, regarding those reparations that are not pending or require a determination from said Court, a request was made that the State indicate what actions it is taking regarding compliance.

21. The brief of September 24, 2013, and its attachments, wherein the State provided information and documentation on the compliance with the Judgment regarding the requests made on August 30, (*supra* Having Seen clause 21).

22. The briefs of October 17, 18, and 23, 2013, wherein the common interveners Feria Tinta and Cassel filed, respectively, their observations to the information provided by the State on September 24, 2013.

23. The brief of November 9, 2013, wherein the Inter-American Commission filed its observations to the State's reports and to the observations of the common intervening parties.

⁸ Available at: http://www.corteidh.or.cr/docs/supervisiones/castro_07_08_13.pdf

⁹ In accordance with Article 6(2) of the Rules of Procedure, the Court held a private hearing on monitoring of compliance with a panel of judges comprised of: Judge Manuel E. Ventura Robles, Acting President; Judge Robert F. Caldas; Judge Humberto Antonio Sierra Porto, and Judge Eduardo Ferrer Mac-Gregor Poisot. At this hearing, the following appeared: a) for the Inter-American Commission: Silvia Serrano Guzmán, attorney for the Executive Secretariat; b) for the common interveners of the representatives of the victims: Monica Feria Tinta, victim and common intervener; Douglas Cassel, common intervener, Paula Cuellar and Amy Griffin, attorneys accredited by Douglas Cassel, c) for the State of Peru: Krupskaya Rosa Luz Ugarte Boluarte, attorney for the Specialized Supranational Public Prosecutor's Office.

24. The note of the Secretariat of February 21, 2014, wherein, pursuant to the instructions of the President of the Court,¹⁰ the State was given a period until March 14, 2014, to file the observations it deems relevant regarding the expenditures made when applying the Victim's Legal Assistance Fund in the monitoring of compliance with this case (*supra* Having Seen clause 17). Peru did not file observations.

CONSIDERING THAT:

1. More than seven years have passed since the Court issued a Judgment in the *case of the Miguel Castro Castro Prison V. Perú* (*supra* Having seen clause 1).

2. The Court has the inherent authority given its jurisdictional power to monitor compliance with its decisions, which also comes from the provisions in Articles 33, 62(1), 62(3) and 65 of the American Convention, 30 and 69 of its Statute and 69 of the Rules of Procedure.¹¹ As established in Article 67 of the American Convention, the State must comply fully and promptly with the judgments of the Court. Also, 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.¹² The obligation to fulfill that provided by the Court includes the State's duty to inform the Court of the measures adopted to comply with the rulings of the Court, which is essential in order to assess compliance with the Judgment as a whole.¹³

3. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the International law, supported by international jurisprudence, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of domestic law as justification for its failure to carry out its established treaty obligations.¹⁴ The treaty obligations of the States Parties are binding upon all the powers and organs of the State.¹⁵ The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties

¹⁰ The President of the Court elected for the period of 2014-2015 is Judge Humberto Antonio Sierra Porto, of Colombian nationality.

¹¹ *Cf. Case of Baena Ricardo et al. V. Panamá. Jurisdiction. Judgment of November 28, 2003. Series C No. 104, paras. 131-133.*

¹² *Cf. Case of Baena Ricardo et al. V. Panamá. Jurisdiction. Judgment of November 28, 2003. Series C No. 104, paras. 60 and 131, and Case of Atala Riffo and the Girls V. Chile. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 2.*

¹³ *Cf. Case of Five Pensioners V. Peru. Monitoring of Compliance with Judgment. Order of the Court of November 17, 2004, Considering clause 5, and Case of Atala Riffo and the Girls V. Chile. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 2.*

¹⁴ *Cf. 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. Series A No. 14, para. 35; Case of Castillo Petruzi et al. V. Peru. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights November 17, 1999, Considering clause 4, and Case of Atala Riffo and the Girls V. Chile. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 3.*

¹⁵ *Cf. Case of Castillo Petruzi et al. V. Peru. Monitoring of Compliance with Judgment. Order of the Court of November 17, 1999, Considering clause 3 and Case of Atala Riffo and the Girls V. Chile. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 3.*

(that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations must be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.¹⁶

4. The Court deems it necessary to recall that, in exercising its powers of monitoring of compliance, it requested the State on several occasions to, in accordance with the provisions of operative paragraph 24 of the Judgment, file a report on the implementation of all measures of reparation ordered in this case. Such requests were not carried out by Peru in due time. The time period established for filing of the report lapsed on June 20, 2008, and it was not until October 6, 2010, that Peru submitted a report in which it did not mention all the measures of reparation, rather it mainly provided information about the tasks requested by the Specialized Public Prosecutor's Office of the Ministry of Justice to several authorities or State agencies requesting information from them or asking them to undertake action regarding compliance. Earlier, on August 3, 2007, and August 4, 2009, it referred to the obligation to investigate, identify and, where appropriate, punish those responsible for the facts, and it provided "certified copies of major procedural parts" in the 24-2006 proceeding. Subsequently, on January 23, 2013, Peru submitted a report on compliance with the Judgment, after multiple requirements and the establishment of new time periods by the Court or its Presidency.¹⁷ During the private hearing held on August 19, 2013, Peru presented additional and complementary information, and it also provided a written report submitted on September 24, 2013. While the Court appreciates the information provided by the State, it also notes that the delay in submission constituted a breach of its duty to inform,¹⁸ and thus it has hampered the monitoring of compliance with the reparations ordered in this case, and it has also denoted the delay in implementing them.

5. Consequently, the Court will assess the information presented by the parties regarding the various measures of reparation and the respective observations, and will determine the State's level of compliance. For this, the Court will take into account the information it received during the 2013 year, as it is the most current information.

A. Obligation to investigate the facts that led to the violations in this case, identify, and where applicable, punish those responsible (*operative paragraph 8 of this Judgment*)

A.1) Measure ordered by the Court

¹⁶ Cf. *Case of Ivcher Bronstein V. Peru. Jurisdiction*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37 and *Case of Atala Riffo and the Girls V. Chile. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 4.

¹⁷ By way of the notes from the Secretariat of the Court of November 5, 2008, February 2 and March 5, 2009, pursuant to instructions by the Acting President of the Court in this case, the request was reiterated to the State asking it to present its first report on monitoring of compliance with the Judgment. In the Order of April 28, 2009, the Court ordered a new period for the State, until June 1, 2009 to file the mentioned report. Peru did not file the required report. On August 4, 2009, the State filed information regarding its obligation to investigate. On August 3, 2010, a new, nonextendable, period was allotted, until October 3, 2010. In the Order of December 21, 2010, the Acting President in this Case held that "the State has had an adequate and reasonable period of time to comply with its obligation to prepare and file its first complete report on compliance with the Judgment, including two new opportunities granted by the Court to submit them [...]. Nevertheless, the State has not provided the information that allows the Court to determine the state of compliance with the Judgment."

¹⁸ Cf. *Case of Yatama V. Nicaragua. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 22, 2013, Considering clause 17, and *Case of Castillo Páez V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 14.

6. In its Judgment, the Court declared Peru responsible for the violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, in relation to Articles 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, because the domestic proceedings that were carried out did not constitute effective remedies to ensure access to justice within a reasonable period of time, and did not encompass the criminal elucidation of the facts, investigation and, where appropriate, punishment of those responsible.¹⁹ The Court considered it a positive assessment that the State was carrying out criminal proceedings in the regular courts, but considered that there was a violation of the right of access to justice in that the first criminal proceedings in the regular courts²⁰ were initiated about 13 years after the events occurred and only some of the violations were being investigated (the deaths of inmates) and they were not investigating violations to personal integrity. At the time of the Judgment, 13 people were being considered defendants, who at the time of the events held high ranking positions, such as the former President of the Republic Alberto Fujimori Fujimori, the former director of the Castro Castro prison, former Director of the National Police and the former Minister of the Interior, as well as ten other officials of the Peruvian National Police.²¹ The Tribunal took into account "the importance of initiating a criminal case against former Peruvian President Alberto Fujimori Fujimori, who is credited with having planned and executed the Operative Transfer 1".

7. In the Judgment, the Court noted that even though the State had made recent efforts regarding the criminal investigation of some of the facts, violations in this case remained unpunished, and it reminded the State that it had an obligation to combat impunity by all available means. It noted that the obligation to investigate the facts of this case involves, inter alia, that Peru take "all necessary, judicial and diplomatic measures, to prosecute and punish all those responsible for the violations" and to take into account the seriousness of the facts regarding violence against women, taking into account the obligations under the treaties it has ratified on this matter. Similarly, the Court held that "the deaths and torture in this case committed against the victims by State agents [...] constitute crimes against humanity" and, therefore, the State "has an obligation to not leave these crimes unpunished and to this end, it must use the available domestic and international means, instruments, and mechanisms for the effective prosecution of such behavior and punishment of the perpetrators, in order to prevent and avoid that they remain unpunished."

8. In ruling on the reparations, in operative paragraph eight and paragraphs 436 to 442 and 460 of the Judgment, the Court decided that the State "must, within a reasonable period of time, effectively investigate the facts in this case, identify and, where appropriate, punish those responsible, for which the State must initiate the relevant proceedings and effectively carry out the ongoing criminal proceedings as well as any new ones, adopt all necessary measures to elucidate the facts in this case, in order to determine the intellectual

¹⁹ The specific considerations can be found in paragraphs 371 to 408 of the Judgment. Among other aspects, the Court highlighted the omissions regarding the cooperation, preservation, and analysis of the evidence prior to development of the criminal proceedings in course and the effect this had on the development of these proceedings.

²⁰ On June 16, 2005, the State began a criminal proceeding in the 2nd Supraprovincial Criminal Court in order to investigate a part of the facts. *Cf. Case of Miguel Castro Castro Prison Merits, Reparations, and Costs, supra* note 2, paras 197.70 and 386.

²¹ The Court noted that the number of defendants contrasted with the fact that many police troops and Peruvian army troops participated in the "Operative Transfer 1," as well as troops from specialized police units, and that new measures were underway to determine who the agents were involved in such acts. *Cf. Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs, supra* note 2, paras. 197.21 and 399.

and material responsibility of those involved in such violations, and to publish the results of these criminal proceedings.”

A.2) Information and observations of the parties and of the Inter-American Commission

9. *The State* reported that there are “two criminal cases [...] being carried out by the Second Supraprovincial Court”, namely: i) “Proceeding No. 44-05 against [former Intelligence Director] and others as alleged co-perpetrators of the crime against Life, Body and Health (Aggravated Murder by explosion and murder)”²², and ii) “Proceeding No. 24-06 against former President Alberto K. Fujimori Fujimori as alleged indirect perpetrator of the crime against Life, Body and Health (Aggravated Murder)”²³ both against Juan Bardales Rengifo and others (41 victims)”. Moreover, it noted that on June 15, 2010, the National Criminal Court declared the request issued by the Public Prosecutor’s Office admissible regarding the “joining of proceeding N°67-2007”, which “remains in place against Alberto Fujimori Fujimori for the crime of Aggravated Homicide – Murder, to the detriment of [40 of the deceased victims that have been identified]”, to Proceeding N°44-2005, thereby converting from here on out these two case files into Proceeding No°44-2005. These proceedings “[were] joined in application of the [p]rinciple of responsibility and avoidance of contradictory judgments, having been declared complex in differing stages per the request of the Public Prosecutor’s Office [...] and by decision of the Judiciary.” At the time the State’s report of September 24, 2014 was sent, Proceeding N°44-2005 “was with the Public Prosecutor’s Office in order for the respective Prosecutor’s Report to be issued”, after which the “Indictment Act” would follow “with which the [o]ral [t]rial begins in order for the corresponding judgment to be issued,” which could be “appealed by way of an Annulment.” If an appeal were filed “a Supreme Prosecutor’s Report from the Public Prosecutor’s Office would follow, which would lead to a Supreme Court Judgment [...] which would finalize the criminal proceeding.”

10. In addition, *the State* made reference to the “extradition period for Alberto Fujimori Fujimori.” In this regard, it noted that “[t]he Second Supraprovincial Court of the Supreme Court of Justice of Lima requested the expansion of the active extradition of the former president.” It noted that on September 12, 2007, “[b]y way of Supreme Order N°151-2007-JUS [...] the expansion of [his] extradition was authorized to Chile for the occurrences at the Castro Castro Prison” and that on February 18, 2008 “[t]he Permanent Criminal Court of the Supreme Court of Justice [...] declared the request to broaden the active extradition admissible [...] in order for him to be prosecuted for the alleged commission of crimes against Life, Body and Health – Aggravated Murder (for premeditation and explosion) and

²² The State reported that in this proceeding “the following procedural steps have been carried out”: i) formalization of the criminal complaint on May 30, 2005; ii) initiation of the “preliminary stage,” “declared in two or more opportunities of a complex nature” and in which “various measures have been carried out [such] as: Preventive declarations of the victims [and] family members; Instructional Declarations, Testimonial Declarations, Expert reports, [...] Judicial Inspections in the Miguel Castro Castro Prison (reconstruction of the facts); Confrontation (between witnesses and survivors, family members and others) [which] have taken considerable time”; iii) finalization of this proceeding with the Final Report of the Judge of the Second Supraprovincial Court and said Judges reference on December 1, 2006 of the Prosecutor’s Report of the Public Prosecutor’s Office; iv) issuing final Expansion reports the June 14, 2007, November 6, 2008 and May 11, 2009. (State Report of September 27, 2013, case file on monitoring of compliance with Judgment, tome V, folio 2451).

²³ The State noted that in the proceeding initiated against former President Fujimori Fujimori “he is accused of having ordered the planning and implementation of the plan ‘Operative Transfer I’ within the [e]stablishment of the Lockdown Regime Miguel Castro Castro Prison, to murder members of the terrorist group Shinning Path, events which occurred [...] between May 6 to 10, 1992 ”(State Report of September 27, 2013, case file on Monitoring of Compliance with Judgment, take V, folio 2451).

Severe Injuries, to the detriment of Juan Bardales Rengifo and others[, which] currently is Case File N°44-2005.” Moreover, the State noted that “[i]t is the role of the Official Extradition and Transport of Convicted Persons Commission to propose to the Council of Ministers, by way of the Ministry of Justice and Human Rights, whether to accept the request to expand the active extradition formulated by the competent judicial body.” Said Commission gave its approval regarding the request to broaden the extradition on April 13, 2009. Notwithstanding, it clarified that “[p]ursuant to numeral 1 of Article 514 of the Code of Criminal Procedure, [...], it falls upon the Government to decide upon the active or passive extradition, by way of Supreme Order issued in agreement with the Council of Ministers, prior to report of the mentioned Official Commission,” which “is still pending.”

11. *The common intervener FERIA TINTA* considered that it is necessary, in terms of monitoring of these measures, that the State file a copy of “all the referenced records [of the] criminal investigations” processed as case files No. 44-2005 and No.67-2007, since “it is the only way in which access [to these] exists.” In regard to case file No. 44-2005, the common intervener noted that “no substantial progress has been made in this investigation since 2009” and highlighted that “[more] than 8 years have passed since this process started and it has not gone beyond the instructions stage with an accusation from the prosecutor,” despite the fact that there “was an entire investigation conducted by the Inter-American Commission on Human Rights [...], by the Congress of the Republic [...], by the Truth Commission, and an entire preliminary criminal investigation by the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves.” As to the joining of the mentioned investigations, the common intervener noted that “it is necessary [...] since it addresses the need to apply the principle of joinder of proceedings to the judicial investigation and prosecution.” Notwithstanding, the common intervener noted that joinder took place in July 2010 and since then “[n]o substantial progress [...] has been made,” since “as stated by the Public Prosecutor’s Office in its request for joinder, for a complete investigation of the facts, it is necessary to proceed with the prosecution of the individual who ordered the commission of the facts which are being investigated,” with no expansion of the extradition of Alberto Fujimori in order for him to be prosecuted for the facts in this case. Moreover, the common intervener stated that “other defects” have arisen in this proceeding, which include: “a) that the crime is not adequately defined as a crime against humanity thereby [not] allowing for an appropriate investigation of all the complex and diverse actions that took place[;] b) that it does not cover all the possible perpetrators, restricted only to the national police[;] c) that it does not properly identify the aggrieved party[, and] d) [...] that it is ambivalent [regarding the proven facts] in [this] case.”

12. In terms of the expansion of the extradition of former President Alberto Fujimori, *the common intervener FERIA TINTA* noted during the private hearing that, despite the fact that the Judgment in this case noted “the importance of the opening of a criminal case against the [mentioned] former President,” he still “has not been included [in the] proceeding,” which “a particularly serious matter” for the victims because of the time that has passed since the Judgment was issued. In this sense, the common intervener affirmed that the State “has been reluctant [...] to request the expansion of the extradition to [former] President Fujimori from Chile, so that he may be incorporated into the proceeding in the case of Castro Castro Prison,” since “he cannot be prosecuted [...] if there is no formal request made [...] to Chile in order for an expansion of the jurisdiction under which he must respond to a criminal proceeding take place.”

13. *The common intervener CASSEL* indicated in his brief of observations on March 13, 2013, that “it does not appear that the State has adopted, to date, all the necessary measures to clarify the facts in this case, in order to determine the intellectual and material

responsibility of those who participated in said violations.” In addition, the common intervener Cassel agreed with Mrs. Ferial Tinta’s exposition during the private hearing regarding the “justice situation,” and in his brief of observations of September 23, 2013, added that “[t]he individual most responsible for the massacre [was] former President Alberto Fujimori,” and that in regard to this individual and the others responsible “there have been no advances in the judicial investigation during the more than four years that have passed since the last judicial report.”

14. Regarding the expansion of the extradition of former President Alberto Fujimori, *the common intervener Cassel* noted that “[t]he State has the power to request the expansion of [the] extradition of [Alberto Fujimori], to include [the facts of the] Castro Castro case,” and that “[s]aid expansion was approved by the lower courts, by no later than April 2009.” It noted that, nevertheless, “after [...] four and a half years have passed since the approval, the Council of Ministers of the Government - the final instance - has not expanded the request for extradition.” In this sense, he considered that “the State has not complied [...] and does not have the political will to comply.” Moreover, he explained that “without requesting the extradition, even under a possible positive Prosecutorial Judgment, President Fujimori cannot be criminally prosecuted.

15. The *Inter-American Commission* noted that the criminal investigations “remain in the instructive stage and an effective punishment of those responsible has not been provided almost 7 years since the Judgment was rendered.” Moreover, “it not[ed] that the investigation only makes reference to a reduced number of Police members against Mr. Alberto Fujimori”, and thus “it is important that the State report in detail on the additional steps it is taking to determine the responsibility of all the material and intellectual perpetrators of the facts in this case, which includes those persons who participated in the planning and execution of the military objective.” On the other hand, regarding the extension of the extradition of former President Alberto Fujimori, it stated that “it is fundamental that the State provide a specific answer regarding the procedures to expand jurisdiction on the extradition of former President Fujimori to Chile in such a way that these proceedings can continue in an effective manner,” without “delaying, due to diplomatic procedures, the possibility of progress regarding the other persons that are responsible in this case.”

A.3) Considerations of the Court

16. The Court takes into account the existence of criminal proceedings No. 44-2005, No. 24-2006 and No. 67-2007 regarding the investigation of violations in this case. In its Judgment, the Court considers that the opening of proceedings No. 44-2005 and No. 67-2007 in the regular jurisdiction constitutes a positive step towards the investigation and prosecution of those responsible for the deaths that occurred as a consequence of the facts (paragraph 390 of the Judgment).

17. According to the information provided by the parties during the monitoring of compliance stage, the Court has been able to establish the following in relation to the crimes under investigation, those charged for them, and the aggrieved persons:

- a) regarding the criminal proceeding No. 44-05, the Second Supraprovincial Criminal Court resolved to “open proceedings of first instance in the ordinary forum” on June 16, 2005, for the crime of “aggravated homicide-murder” against 13 persons (11

- agents at the time of the National Police of Peru²⁴, the former Minister of the Interior and the former Director of the Castro Castro Prison), to the detriment of 40 persons, declared "identified deceased inmates" in the Judgment²⁵;
- b) the proceeding No. 67-2007, 'against Alberto Fujimori Fujimori for the crime of aggravated homicide—murder" to the detriment of the same 40 persons considered aggrieved persons in the proceeding No. 44-05,²⁶ was joined to the mentioned proceeding No. 44-05, and
- c) Regarding proceeding No. 24-06, for the crime of serious injury against Mr. Fujimori, the Second Supraprovincial Criminal Court resolved on April 28, 2008 "a request to the Supreme Court [...] petitioning by way of the Executive Power of the Republic of Chile, for the authorization to process and prosecute the extradited Peruvian citizen Alberto Fujimori Fujimori in Peru" for two crimes: i) aggravated homicide of 40 victims declared "identified deceased inmates" in the Judgment, and ii) serious injury to the detriment of 6, declared "surviving victims" in the Judgment.²⁷ The relevant authorities of the Judiciary made efforts in this regard, but the Executive has not addressed a request for extension of the extradition to the State of Chile.

18. The Court appreciates the joining of proceedings No. 44-2005 and No. 67-2007 in June 2010 (*supra* Considering clause 17), which may contribute positively to the effectiveness and due diligence in the investigation of the facts. Fiscal and judicial authorities expressed, respectively, that joinder is "not only appropriate and even necessary as it will enable [...] the concentration of the presentation of evidence,²⁸ and that "the defendants in the two case files will appear as the alleged perpetrators of the same punishable act" and that "under the principle of joinder of charges, [joinder allows for] avoidance of the possibility of conflicting rulings."²⁹

19. The Court also notes that both proceedings have been declared "complex" and are currently in "preliminary stages." However, the Court finds that the State has failed in its duty to investigate, within a reasonable time, the allegations in this case, identify and punish those responsible, since more than 20 years have passed since the occurrence of the facts and more than eight years have passed since the start of the criminal investigation of these facts, leaving the proceedings in preliminary stages. As a consequence, the violations in this case remain unpunished.

20. Additionally, the Court notes that in both proceedings (44-2005 and 24-2006), regarding the crime of aggravated homicide, Mr. Agatino Chavez has not been included as an "aggrieved" person, who according to the Judgment of this Court is one of the victims

²⁴ Among them, the former Director General of the National Police, the former General of the National Police of Peru, the former chief of DINOES of the National Police of Peru, the Mayor of the National Police of Peru in 1992, and the deputy chief of "Operative Transfer 1."

²⁵ Order of initiation of legal proceedings of June 16, 2005, issued by the 2nd Supraprovincial Criminal Court on June 16, 2005 (annex 3 to the State's report of September 27, 2013, case file of Monitoring of Compliance with Judgment, tome V, folios 2581 a 2587). Likewise, *Cf. Case of Miguel Castro Castro Prison Merits, Reparations, and Costs, supra* note 2, para. 197.70.

²⁶ Order issued by the Criminal National Chamber in case file No. 4405 of June 15, 2010 (annex 8 to the State's report of September 27, 2013 (case file of Monitoring of Compliance with Judgment, tome V, folio 2588 to 2592 to 2592).

²⁷ Order issued by 2nd Supraprovincial Criminal Court in case file No. 24-06 of April 28, 2008 (annex to the State's brief with "certified copies of the principal procedural pieces" of August 4, 2009, case file of Monitoring of Compliance with Judgment, tome II, folios 748 to 762).

²⁸ Brief signed by Senior Deputy Prosecutor, Head of the National Criminal Prosecutor's Office of September 4, 2007 (annex 7 to the State's report of September 27, 2013, case file of Monitoring of Compliance with Judgment, tome V, folios 2581 and 2582).

²⁹ Order issued by the National Criminal Chamber in case file No. 44-05 of June 15, 2010 (annex 8 to the State's report of September 24, 2013, case file of Monitoring of Compliance with Judgment, tome V, folios 2588-2592).

("identified deceased inmate"). Moreover, from the information provided, the Court finds that former President Alberto Fujimori is only under investigation for the crime of serious injury (proceeding no. 24-06) and that only 6 victims (2 "inmate victims of sexual violence," 3 "injured inmates" and 1 "unharmed inmate") are included as "aggrieved."³⁰ In this sense, it is not evident in the case file on the monitoring of compliance that all the violations of personal integrity that were declared by the Court in the Judgment are being investigated, and in particular, those violations that constitute torture and violence against women as determined in the Judgment. In this regard, the common intervener FERIA TINTA said "there are several defects in the current proceeding" (*supra* Considering clause 11), *inter alia*, that "the crime is not adequately defined as a crime against humanity, "does not address all possible perpetrators" and "the aggrieved party is not properly identified, limiting the investigation to those who are deceased."

21. In this regard, the Court highlights that in the Judgment it considered the fact that the proceedings do not cover all the violations of human rights analyzed in this case to be a violation of the right of access to justice (*supra* Considering clause 6), as both the criminal complaints issued at the time by the prosecution and the order to initiate criminal proceedings issued by the Supraprovincial Criminal Court referred only to crimes of homicide.³¹ In the Judgment, the Court found international responsibility for the violation of the right to personal integrity, including rape and sexual violence. In that sense, although it does not fall on this Court to identify the criminal offenses for which the State must conduct investigations at the domestic level, the Court notes that still has not received an investigation from the State regarding the reasons why it has not been criminally investigated for the violations in this case.³²

22. In addition, based on the examination of the information provided, the Court notes that, following this Court's issuance of a Judgment in 2006, no person has been investigated or prosecuted other than those 13 persons already charged at that time, 11 of which were police officers, which contrasts with the facts established in the Judgment concerning the magnitude of the force used. The Court considered that it had been proven that both police officers as well as special forces troops such as DINOES, UDEX, SUAT and USE and army troops participated in the so-called "Operative Transfer" (*supra* Having Seen clause 1).³³ It also had established that from the first day of the "operative" and during the subsequent three, weaponry was used which experts characterized as "of war" or characteristic of a "military incursion," such as instalazza type grenades, bombs, rockets, artillery helicopters, mortars and tanks, and also tear gas, emetic and stun bombs and weapons of great speed that typically produce more tissue destruction and many internal injuries. The Court considers that these facts involved the participation and planning of a large number of State agents and high-ranking officials, which should be taken into account in the investigation, prosecution, and punishment of those responsible.

23. The Court reiterates the provisions of the Judgment of this case, in the sense that the State is obligated to combat the situation of impunity by all available means (*supra*

³⁰ Cf. Order issued by the 2nd Supraprovincial Criminal Court en el case file No. 24-06 of April 28, 2008 (case file of Monitoring of Compliance with Judgment, tome II, folios 748 to 762).

³¹ Cf. *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, para. 390.

³² Cf. *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, para. 391.

³³ Likewise, the Court considered it proven that during the days of the "operative," on at least two occasions, it was published that former President, Alberto Fujimori, met within the facilities of the General Command of the Army, known as "Pentagonito" with the Cabinet of Ministers and police and military authorities, to assess the prison situation and determine the actions to follow. Cf. *Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs*, *supra* note 2, paras. 197.25, 17.30 and 216.

Considering clause 7).³⁴ The recognition and exercise of the right to truth in a specific situation is a means of reparation, and leads to an expectation of the victims, which the State must satisfy.³⁵

24. The Court notes that the parties submitted information or made reference to the request to Chile to expand the extradition of former President Alberto Fujimori in relation to the investigation and prosecution of the facts in this case (*supra* Considering clauses 10 and 12). The Court takes note of the information provided and recalled that the Judgment stipulated that the obligation to investigate the facts of this case implies that Peru adopt "all necessary measures, judicial and diplomatic, to prosecute and punish all those responsible for the violations that took place" (*supra* Considering clause 7). The request for international cooperation by means of extradition to prosecute persons charged criminally for serious violations of human rights is an important tool to eradicate impunity. On this point, the Court considered it pertinent to mention that the Judgment took into account the importance of dealing with initiating criminal proceedings against former President Alberto Fujimori, who is credited with having planned and executed the "Operative Transfer 1" (*supra* Considering clause 6). In this case, the extradition is presented as a necessary measure to prosecute and possibly criminally punish in Peru for crimes that occurred, considering that, according to Peruvian law "one can only be prosecuted and sentenced for the offense or offenses which have been subject to agreement in the extradition."³⁶ Accordingly, Peru must move forward and take the necessary steps with extreme diligence so as to put in place the extension of the extradition of the former president and ensure that the fact that it remains pending does not constitute an impediment to the continuation of the investigation and determination of other matters entailing criminal responsibility.

25. In view of the foregoing, the Court concludes that the measure of reparation regarding the obligation to investigate the facts in this case is pending compliance. Therefore, the Court requires the State to provide updated and detailed information in its next report (*infra* operative paragraph 4) on: i) the progress regarding joinder of the criminal proceedings No. 44-2005 and No. 24-2006, and that reference be made as to the observance of the criteria established by the Court regarding the proper way to fully comply with the obligation to effectively investigate (*supra* Considering clauses 6 to 8 and indicated in paragraphs 307 to 408 of the Judgment); ii) which facts that are considered violations in the Judgment that would be under criminal investigation and the reasons why those facts not included were not criminally investigated; iii) clearly indicate the number of accused persons and victims, explaining the reasons why they would not be considered victims in this case, to which it should refer to the observations of the common interveners and the Commission thereof, and iv) the status of the request for extension of the extradition of former President Alberto Fujimori that is currently being processed, indicating which state organ or authority still has to adopt any steps in this regard and explain, if applicable, the reasons why it has not done so. Moreover, taking into account the request of the common intervener Ferial Tinta, and due to the lack of complete and detailed information regarding the criminal proceedings, the Court asked Peru to submit all case files.

³⁴ Cf. *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, para. 440.

³⁵ Cf. *Case of Castillo Páez V. Peru. Merits*. Judgment of November 3, 1997, Series C No. 34, para. 90; *Case of García and Next of Kin V. Guatemala. Merits, Reparations, and Costs*. Judgment of November 29, 2012, Series C. No. 258, para. 197, and *Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs*, *supra* note 2, para. 440.

³⁶ Order issued by the National Criminal Chamber in case file No. 44-05 of November 9, 2007 (annex 7 to the State's report of September 24, 2013, case file of Monitoring of Compliance with Judgment, tome V, folios 2583 to 2587).

B. Ensure that information and documentation regarding police investigations be conserved (*Operative paragraph nine of the Judgment*)

B.1) Measure ordered by the Court

26. In operative paragraph 9 and paragraphs 442 and 460 of the Judgment, the Court ordered that the State “must, within a reasonable period of time, establish the necessary means in order to ensure that the information and documentation related to police investigations regarding facts as serious as those of the present case be conserved in a manner such that they do not obstruct the corresponding investigations.”

27. The Court deems it appropriate to recall that this measure was ordered as a guarantee of non-repetition, considering that “State authorities carried out important omissions regarding the recovery, preservation, and analysis of the evidence,” during “actions adopted by the State between May 1992 and the opening of the first ordinary criminal proceeding in June 2005” for the investigation of the events that occurred in the Castro Castro Prison between May 6 and 9, 1992. This lack of preservation of evidence consisted of, among other things, that with respect to police actions in April 1998, “passive documentation produced by the Operative and Administrative Units of the Office of Criminal Investigation during the years 1990, 1991, and 1992 was incinerated, among which a great part of the internal case file of the present case was burned,” pursuant to a Ministerial Ruling and the Rules of Procedure for Police Documentation.³⁷

B.2) Information and observations by the Parties and the Inter-American Commission

28. The *State* reported that in the framework of the criminal proceedings No. 44-2005 and No. 67-2007 (*supra* Considering clause 9) “the Police Authorities have largely contributed to the clarification of the facts, providing evidence, which has served as the successful basis for information that the prosecution [...] has used to [f]ormulate the respective [c]riminal complaint.” Moreover, it also noted that the National Police has formulated three “Police Reports,” with which “the respective criminal proceedings were initiated in each case, before their joinder,” and “the police stage concluded with the preliminary investigation conducted by the Public Prosecutor.” In this regard, it considered that “the National Police reported and documented the most significant events from their investigations into the facts, and as such it has been possible for [the investigation] to reach the procedural stage.” Therefore, it requested that the Court “close this issue.

29. The *common interveners* and the *Inter-American Commission* made no specific observations regarding the information presented by the State neither in the private hearing nor in its report of September 24, 2013 regarding the implementation of this measure of reparation. In a brief of written observations prior to the hearing, Mr. Cassel said “no notice has been provided of the measures the State has carried out so far to comply with this measure.”

B.3) Considerations by the Court

30. The Court appreciates the information presented by Peru regarding the actions that it has adopted, by way of the National Police, to document and to provide evidence that has served as a basis for initiating criminal proceedings as of 2005 relating to a part of the

³⁷ *Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs, supra* note 2, paras. 197.62 and 385.

violations in this case (*supra* Considering clauses 16 and 17). However, the Court recalls that the measure ordered is comprehensive and goes beyond this case, since the burning of the documentation related to this case occurred pursuant to a Ministerial Ruling and the Rules of Procedure for Police Documentation, that is, it came from the application of regulated domestic legislation. Therefore, to comply with the measure ordered (*supra* Considering clauses 26 and 27), Peru must bring its domestic regulations into compliance so as to ensure that the information and documentation of police investigations on serious human rights violations is kept for a long time and allows for investigations to be carried out and the information to be consulted. Peru did not provide information about the current regulations regarding the conservation of information and documentation. Therefore, the Court considers that this measure is pending compliance and requires the State to submit more information.

C. Deliver the remains of the victim Mario Francisco Aguilar Vega to her family members and ensure that all deceased inmates be identified (*Operative paragraphs 10 and 11 of the Judgment*)

C.1) Measures ordered by the Court

31. In operative paragraph 10 and in paragraph 443 of the Judgment, the Court found that the State “must carry out all the actions necessary and adequate to effectively guarantee the delivery [of the remains of victims Mario Francisco Aguilar Vega and his family members], within a 6-month period, thus allowing them to bury the remains however they considered it appropriate.”³⁸ Similarly, it ordered the State to cover all the expenses generated from the delivery of the victim’s body to their next of kin, as well as the burial expenses that may be incurred.

32. In addition, given that there were doubts about whether Peru met its obligation to identify all deceased inmates and the delivery of their remains to their next of kin,³⁹ the Court decided in operative paragraph 11 and paragraph 444 of the Judgment, that Peru “must adopt all the measures necessary to ensure 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 domestic legislation.” The Court ruled that, “[i]f other deceased inmates were to be identified, their next of kin may make the corresponding claims within domestic legislation.”

C.2) Information and observations of the Parties and of the Inter-American Commission

33. In connection with the delivery of the remains of the victim Mario Francisco Aguilar Vega to his next of kin, the State indicated that in the case file “of the preliminary investigation there is information related to [this victim]” which consists of an order issued by the office of the Public Prosecutor addressed to the Second Supraprovincial Court “in which there is a receipt of burial of the body marked with Autopsy No. 2007-1992, removed May 16, 1992 by Mr. Ladislao Alberto Huaman Loayza” without “establishing the type of family relationship” with the victim thereof. In this regard, it stated that Mr. Huaman Loayza has been asked to appear, and that “the widow of [Mr. Aguilar Vega] who is a Civil Party

³⁸ Mr. Mario Francisco Aguilar Vega is listed as one of the 41 deceased identified inmates and it is assumed that the autopsy (No. 2007) concerns him. From the testimonial and documentary evidence provided, it came up that his next of kin had not received his remains. *Cf. Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs, supra* note 2, paras. 251 and 443.

³⁹ *Cf. Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs, supra* note 2, para. 251.

[...] in the criminal proceedings has not provided documentation [...] wherein she has requested [...] delivery [of his] remains." Based on this information, the Peru requested the Court "close this issue."

34. Regarding the measures necessary to ensure that all inmates that died as a result of the attack be identified and their remains returned to their families, the *State* indicated, both in the private hearing held in August 2013 and in its report dated September 24, 2013, that this issue should "be declare[ed] partially complied with." In this regard, Peru stated that "[i]n its Report No. 322-IC-H-DDCV dated September 10, 1992, 41 victims were identified with Autopsy Certificate, the same victims which have been duly identified by the Identification Police Division." In that regard, it said that "[t]he 41 victims were properly identified in accordance with the autopsy protocols of those years." Regarding the delivery of the bodies to the next of kin, the State said that "there is no evidence in the record [...] about the delivery of the bodies" and that "it will provide additional information in subsequent reports." Moreover, it also noted that "there have been no requests from the next of kin to deliver the bodies" despite the fact that in 2006 and 2007 "the Supraprovincial Criminal Court [...] summoned by Edict all the next of kin for the purposes of establishing the family relationship with the victims in the criminal proceedings" and to thereby have "opportunity to appear as a civil party in the criminal proceedings." Finally, it noted that "[m]any of the victims have been buried in the jurisdiction of the Municipality of Lurigancho."

35. The *common intervener* Feria Tinta noted that the State reported on the delivery of the remains of Mr. Aguilar Vega to someone named Ladislao Alberto Huaman-Loayza, "without demonstrating that such person has a family relationship with [the victim]." In this regard, the common intervener reiterated that Mrs. Lastenia Caballero, wife of Mr. Aguilar Vega, "pointed out that the person referred to in the State's report [...] is not her family member and does not know anything about who this is about." The common intervener considers that, consequently, Peru gave "these remains to the wrong person and not to the next of kin as mandated by the Judgment." In this regard, the intervener said that it is necessary that the State "report on the efforts made [in order for] the burial place to be identified to proceed in that way with delivery to the next of kin [...] without delay." The intervener also indicated that "[t]he remains of Santos Genaro Zavaleta have not been delivered [...] to his next of kin." For its part, the *common intervener* Cassel made no specific observations on the information presented by the State in the private hearing and in its report of September 24, 2013 in relation to implementing these measures of reparation, although in the brief of October 22, 2013, he stated that Peru's noncompliance on this issue "is obvious."

36. The *Inter-American Commission* considered it important that "the State provide clarification" regarding the delivery of the remains of the victim Mario Francisco Aguilar Vega to his next of kin. Regarding the identification and return of the remains of the deceased inmates to their next of kin, it noted that "regardless of the summons the State made in 2006 and 2007 by way of Edict, no further steps have been taken to deliver the identified remains" and therefore, "the information that is available indicates that this measure has not been complied with."

C.3) Considerations of the Court

37. Regarding the obligation to deliver the remains of the victim Mario Francisco Aguilar Vega to his next of kin, the Court recalls that in its Judgment of 2006 it had established, based, *inter alia*, on the statements of Lastenia Caballero Mejía, wife of Mr. Aguilar Vega,

that his remains had not been returned to his next of kin.⁴⁰ In this regard, the State argued in the private hearing in August 2013 that it had complied with the order. As an annex to its report in September of that year, it provided copies of the following relevant documents: death certification of Mr. "Mario Francisco Aguilar Vega," in which, among other things, the "Protocol Autopsy" number is provided as "two thousand seven dash ninety-two"; "Act of Recognition" of the corpse of "Mario Francisco Aguilar Vega" signed by a man with the surname Hurtado Mendoza; letter dated February 26, 2007, signed by an official of the Forensic Medicine Institute of the Public Prosecutor's Office addressed to the Second Supraprovincial Criminal Court, in which "copy of the receipt of burial of the body marked with Autopsy No. 2007-1992, removed on May 16, 1992 by Mr. Ladislao Alberto Huaman Loayza [...], by order of the Judge." In that document, the type of relationship between Mr. Huaman Loayza and the victim is not indicated.⁴¹ In her observations on the information provided by the State, the common intervener Feria Tinta stated that Mr. Aguilar Vega's wife said that she has not yet received the remains of her husband and that the person to whom the State claims that they delivered the remains "is not a family member of hers and does not know the individual at all."

38. There is a lack of clarity regarding the person to whom Mr. Aguilar Vega's remains were allegedly given to as well as the legality of the delivery, and Mr. Aguilar Vega's widow claims not to have received the remains and does not know the person who allegedly received the remains. The Court finds that the State must report if the requirements were met to effectuate the delivery of the identified remains to the next of kin and to indicate whether this occurred pursuant to a court order. The Court also requires the State to implement all necessary measures to establish with certainty whether the remains of Mr. Aguilar Vega that were reliably identified and what happened to them and that, prior to delivering the remains to the next of kin, it adopt appropriate measures to prove that the remains are in fact those of Mr. Mario Francisco Aguilar Vega. The State must provide supporting documentation for such an explanation. Considering that the time period for compliance with this measure expired more than six years ago and the importance that this type of measure is for the next of kin of the deceased victim, the Court requires the State to comply with this measure as soon as possible. In that regard, the Court recalls the importance of compliance with this measure of reparation for the families of the victims because it involves a moral satisfaction and allows closure for the grieving process that has developed over the years.⁴²

39. In regards to the obligation to ensure that all inmates that died as a result of the attack in the Castro Castro Prison are identified and their remains returned to their next of kin, the State provided information on the delivery of the remains and not on whether the deceased had been identified. Peru provided copies of the Edicts which "summon[ed] the appearance" of the "next of kin of the victims" on "20 and 21 of [June 2006]" and "7 and 8 of March 2007" to establish "family relationship."⁴³ Peru argues that despite such actions, there was a lack of "requests from the next of kin [for] the delivery of the bodies." The Court considers that, although the common interveners made no reference to whether the

⁴⁰ Cf. *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, supra note 2, paras. 197.55 and 251.

⁴¹ Annex 14 to the State's report of September 24, 2013 (case file of Monitoring of Compliance with Judgment, tome VI, folios 2775 and 2776).

⁴² Cf. *Case of the Dos Erres Massacre V. Guatemala. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 245; *Case of Nadege Dorzema et al. V. The Dominican Republic. Merits, Reparations, and Costs*. Judgment of October 24, 2012, Series C No. 252, para. 114, y *Case of Castillo Páez V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights November 26, 2013, Considering clause 10.

⁴³ "Edicts" signed by Judge of the 2nd Supraprovincial Criminal Court (annex 18 to the State's report of September 24, 2013, case file of Monitoring of Compliance with Judgment, tome VI, folios 2811 and 2812).

State had identified all the deceased inmates, Peru has not dispelled the doubts that arose in the merits stage of this case with respect to the obligation to identify all inmates who died (*supra* Considering clause 32). In addition, the State's assertions do not make clear whether the delivery to the next of kin of the remains of one or more of the 41 victims in this case is still pending. In consideration of the foregoing, the Court requires that Peru present clear and complete information in its next report and that it specifically reference the assertions made by the common intervener that supposedly the remains of the victim Santos Genaro Zavaleta⁴⁴ have not been delivered to the next of kin, and that it explain in more detail if there are victims in this case or others killed in the events that occurred in the Castro Castro Prison that are buried in the jurisdiction of the Municipality of Lurigancho, and the place where their remains are located.⁴⁵

D. Provide medical and psychological treatment to the victims and their family members (*operative paragraphs 13 and 14 of the Judgment*)

D. 1) Measure ordered by the Court

40. Based on the provisions of operative paragraphs 13 and 14 and paragraphs 448, 449, 450 and 461 of the Judgment, the Court decided that 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 sufferings of each of them after an individual evaluation." In this respect, it was established in the Judgment that "it must be offered immediately to those who have been identified, and as of the moment in which the State identifies them in those cases in which they have not been currently identified, and for the necessary period of time."⁴⁶ It also decided that Peru "must pay, within 18 months the amount [of US \$5,000.00 (five thousand dollars of the United States of America)]" to "the victims that prove they reside abroad and, before the competent domestic bodies, that due to the facts of the present case they need to receive an adequate medical or psychological treatment." In this regard, the judgment said "the State must let them prove from their country of residence their physical and mental condition through objective and reliable means, such as medical certificates authenticated before a notary public or diagnosis issued by the Medical Associations of their countries of residence."⁴⁷

⁴⁴ Deceased identified inmate 21: Santos Genaro Zavaleta Hipólito. *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, Annex 2.

⁴⁵ The State submitted a copy of a communication dated March 23, 2007, signed by the Chief of the Headquarters of the Civil Registry of the Municipality of San Juan de Lurigancho addressed to Supraprovincial Criminal Court of the Supreme Court of Justice, whereby "it provide[d] a certified copy of the [35] Death Certificates whose stubs are in his file," and they correspond to the following persons: Juan Barbales Rengifo, Cesar Augusto Paredes Rodríguez, Jorge Muñoz Muñoz, Juan Manuel Conde Yupari, Jaime Gilberto Gutiérrez Prado, Julio Cesar Moreno Núñez, Fidel Rogelio Castro Palomino, Sergio Campos Fernández, Luis Angel Llamas Mendoza, Roberto Carlos Illacanqui, Santos Genaro Zavaleta Hipólito, Rosa Luz Aponte Inga, Marco Callocunto Núñez, Vilma Edda Aguilar Fajardo, Carlos Jesús Aguilar Garay, Wilmer Rodríguez León, Mario Francisco Aguilar Vega, Víctor Hugo Auqui Cáceres, María Consuelo Barreto Rojas, Rufino Obregón Chávez, Wilfredo Fheller Gutiérrez Véliz, Andrés Agüero Garamendi, Ramiro Alberto Ninaquispe Flores, Janet Rita Talavera Sánchez, Mercedes Violeta Peralta Aldazabal, Julia Marlente Olivos Peña, Ana Pilar Castillo Villanueva, Deodato Hugo Juárez Cruzat, Marco Wilfredo Azaña Maza, Yobanka Elizabeth Pardave Trujillo, Tito Roger Valle Travesano, Elvia Nila Sanabria Pacheco, José Antonio Aranda Compani, Fernando Alfredo Orozco Garcia, and Rubén Constantino Chihuan Basilio (annex 19 to the State's report of September 24, 2013, case file of monitoring of compliance with Judgment, tome VI, folios 2815 y 2816).

⁴⁶ *Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs*, *supra* note 2, para. 461.

⁴⁷ *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*. Judgment of November 25, 2006, Series C No. 160, para. 433c) vii.

D.2) Information and observations of the parties and the Inter-American Commission

41. The *State* reiterated at the private hearing its commitment to provide health care service to all victims. In its report of January 23, 2013, it explained that this measure "is satisfied with access to Integral Health Insurance (SIS), through which there is access to the benefits determined in the Universal Health Insurance (AUS) and PEAS (Strategic Plan for Universal Insurance)" since "those people in SIS can access physical and mental health services."⁴⁸ It also assured that "through Supreme Decree No. 006-2006-S.A. SIS health services have expanded [...] for victims of human rights violations declared as such in the rulings of the Inter-American Court." In addition, in its report of September 24, 2013, it held that "the Court should be aware that access to [SIS] requires voluntary and personal action" which "requires that beneficiaries of this [J]udgment participate by showing their national identity [...] at the location nearest to their home to register in the SIS and thereby have access to an evaluation and then be referred to the appropriate center if complex care is required." Finally, in terms of the obligation to pay the amount stated in the Judgment to victims living abroad who establish a need for medical and psychological treatment, it noted that "[t]his has not been implemented" and that "[i]f a case is filed, the judicial authority will order how to execute the mandate."

42. The *common intervener Feria Tinta* noted in a brief of March 12, 2013, that the State had not sent a copy of "Supreme Decree No. 006-2006" wherein it "had extended health services to 'victims of political violence' [and to] victims of human rights violations declared as such in the Judgments of the Inter-American Court"; whereby "its text is unknown to both the Court and to the victims." Moreover, the common intervener also referred to the delicate state of health of some of the next of kin of the victims she represents, and emphasized that Peru "has not provided any documentation [...] proving that the list of victims [it] represents are insured, and may therefore enjoy [the] benefits of the [SIS's general health care plan]." Additionally, in regard to the measure concerning the payment of US\$5,000.00 for her medical and psychological treatment, the common intervener stated, in her role as victim, that despite having established "residence abroad" and that the Judgment established "the need for support to ease the psychological damage that was suffered" to date, "no such payment has been received." She added that "it is clear from the evidence established during the proceeding which was not contested by the State, that there is psychological expertise that establishes that the undersigned suffered from PTSD (Post-Traumatic-Stress-Disorder) and is in need of psychological treatment)."

43. The *common intervener Cassel* has repeatedly referred to "emergency health care for victims," providing detailed information about "the grave health situation" of some of the represented individuals who "continue to suffer medical and psychological consequences due to the events that took place in the prison, and to date have not been granted a measure of reparation for their health needs." In that regard, the common intervener considered that the State has not met the requirements established by the Court for this measure of reparation, in particular, concerning the "preference" when referring victims to the national health system, because "[t]he victims of State violence are not ordinary citizens, entitled to regular public services [but r]ather must benefit from a particular positive treatment, as a response to the specific negative treatment to which they were subjected when their human rights were seriously violated." Additionally, the common intervener considered that the State intends to "place the responsibility of taking initiative for this measure on the victims," proposing, among other things, "to have the individuals go to the same public health centers

⁴⁸ The State indicated that "the members of the SIS are insured under Law No. 29344 (Law under Framework of Universal Health Insurance) and they have coverage of the Essential Plan of Health Insurance, including diagnostic procedures, drug treatment and monitoring of [disease or] mental problems" (State Report of January 23, 2013, case file on monitoring of Compliance with Judgment, take IV, folio 1900).

that they had been rejected from [...] and even harassed in the past." Based on the abovementioned, the common intervener concluded that "what is required from the State is a serious plan, dialogued with victims and with independent experts in the field [...] to diagnose and provide adequate medical services for the victims" and "that imposes responsibility upon the State, and not on the victims." Finally, the common intervener added that "victims residing abroad have also not received the services necessary to access medical and psychological benefits."

44. The *Inter-American Commission* "note[d] that the State has not made efforts to provide the next of kin of the victims with access to medical care under the terms ordered by the Court, but rather, on the contrary, [...] the responsibility falls on the victims to 'register' in the system that is provided for the general population." In this regard, "it consider[ed] that it is the State's obligation to manage the registration of victims in order for them to obtain health services, and that the public health systems accessible to the general population do not necessarily respond to the specific needs required for this measure of reparation." It also considered that this obligation is not exhausted with the mere registration of the victims in the Integral Health System, SIS. It also reiterated "that the implementation of health services for victims must be differentiated, individualized, preferential, comprehensive, and provided by way of specialized institutions and personnel [and] should be provided immediately and avoiding subjecting the beneficiaries to new bureaucratic procedures or otherwise hindering their access to such care."

D.3) Considerations of the Court

45. The Court positively values the State's expressed commitment to provide medical and psychological treatment to the victims. It also values the actions taken by the State in connection with the possibility of providing victims with access to the Integral Health System, SIS, and extending its coverage to human rights victims declared by this Court, as an implementation principle of this measure. However, the Court must note that the provision of appropriate treatment for as long as is necessary, as well as provision of medications, is an obligation requiring immediate compliance and is continuous in nature, to which it does not end with the registration of the victims' next of kin in the Integral Health System.⁴⁹

46. Notwithstanding the measures taken by the State in regards to the general health system, it is necessary that it grant preferential treatment to the victims,⁵⁰ which must be provided in response to the suffering derived from the violations declared in the Judgment.⁵¹ In that regard, the Court has indicated the delivery of social services that the State provides individuals cannot be confused with the reparations entitled to declared victims of human rights violations due to the specific damage generated from the violations.⁵²

⁴⁹ *Case of La Cantuta V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights November 20, 2009, Considering clause 30.

⁵⁰ *Cf. Case of 19 Tradesmen V. Colombia. Monitoring of Compliance with Judgment and Provisional Measures*. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause 30; *Case of García Asto and Ramírez Rojas V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 26, 2013, Considering clause 11.

⁵¹ *Cf. Case of Gutiérrez Soler V. Colombia. Merits, Reparations, and Costs*. Judgment of September 12, 2005, Series C No. 132, para. 101, and *Case of Baldeón García V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause 31.

⁵² *Cf. Case of González et al. ("the Cotton Fields") V. México. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 16, 2009, Series C No. 205, para. 529, and *Case of Anzualdo Castro V. Peru*.

Therefore, the Court considers that the victims should receive differential treatment in relation to the process and procedures that they need to carry out in order to be treated by State institutions.⁵³ This is particularly relevant in this case given the arguments of the common interveners regarding the lack of access and bureaucratic obstacles faced by victims and their next of kin to access to health services, as well as the delicate health situation and urgent need for care of some of them.

47. Taking into account the parameters discussed by the Court with respect to the way the State may comply with this measure of reparation, the Court considers that it remains pending compliance, since Peru has not implemented an effective and differentiated way that benefits the victims in this case. Therefore, the Court urges the State to not only adopt, without delay, all necessary actions to implement this measure, but also to continue to promptly report on the progress and results of its implementation. The Court also notes that the fulfillment of this obligation by the State depends, to a significant degree, on the cooperation and information provided by the common interveners and the beneficiaries. Therefore, it stresses the importance of continuing and advancing coordination between the State and the common interveners in order to comply with the measure so that it can effectively benefit all beneficiaries. In addition, the Court deems it appropriate for the State to forward a copy of the "Supreme Decree No. 006-2006- SA," through which it extended the provision health through SIS to the victims of the human rights violations declared by the Court.

48. With regard to the payment of the amount stated in the Judgment to help the victims who can prove residence abroad receive medical and psychological treatment, the Court points out that the deadline for the implementation of this measure has been widely exceeded since, according to the Judgment, payments were to be made within 18 months of notification. The Court also established a flexible manner in which the State can allow the victims to establish their state of physical and mental health (*supra* Considering clause 40).” In relation to the allegations of the common intervener Monica Feria, who is a surviving victim in this case, with regard to residing abroad and the need for psychological treatment (*supra* Considering clause 42), there is evidence in the case file on the monitoring compliance with the Judgment that an application was filed with the Ministry of Justice on March 31, 2010 for the State “to comply with the deposit of [...] five thousand US dollars [in favor of Mrs. Monica Feria Tinta] who has proven to be domiciled abroad and to be in need of psychological treatment.”⁵⁴ The Court notes that the State bases the failure to execute this reparation because this measure has been ‘judicialized.’ In this regard, the Court considers that the method of compliance with this measure of reparation does not necessarily imply a judicial proceeding, even more so since more than seven years have passed without this measure being effectively implemented. The Court requested the State to report what or which other bodies or competent institutions could, as soon as possible, make appropriate determinations for the implementation of this measure to Mrs. Monica Feria Tinta as well as any other victims who submitted information or requests for such purposes. Peru shall take all necessary actions to comply with this measure as quickly as

Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of August 21, 2013, Considering clause 45.

⁵³ Cf. *Case of Heliodoro Portugal V. Panamá. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 28, 2010, Considering clause 28, and *Case of García Asto and Ramírez Rojas V. Peru. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 26, 2013, Considering clause 11.

⁵⁴ Communication dated March 31, 2010, signed by Mrs. Gaby Balcázar Medina and Jesusa Demetria Chipana, addressed to the Specialized Supranational Public Prosecutor’s Office (annex 3 to the brief filed by the common intervener Mónica Feria Tinta on April 11, 2010, case file of monitoring of compliance, tome II, folios 941 and 942).

possible, in order for it to fulfill its purpose of providing assistance to victims who seek medical and psychological treatment.

E. Education on international standards regarding treatment of prisoners for agents of the Peruvian security forces (*operative paragraph 15 of the Judgment*)

E.1) Measure ordered by the Court

49. In the Judgment the Court found that “[t]he violations attributable to the State in the present case were perpetrated by police, and army personnel, as well as special security forces, in violation of imperative norms of International Law.”⁵⁵ It also found that “in order to adequately guarantee the right to life and integrity, the members of the security forces must receive adequate training.” Therefore, it decided in operative paragraph five and paragraphs 451, 452 and 460 of the Judgment that the State “must design and implement, within a reasonable period of time, human rights education programs, addressed to agents of the Peruvian police force, on the international standards regarding treatment of inmates.”

E.2) Information and observations of the parties and the Inter-American Commission

50. The *State* made reference in its report of January 23, 2013 to the training of staff of the “National Penitentiary Institute (INPE for its acronym in Spanish), the governing body of the National Prison System.” In this regard it said it has “selected and trained” “new prison providers” by way of “three modules with courses for prison security specialists on matters relating to the orders of the Court, such as: [...] 1. Human Rights 2. Legal framework (laws), 3. Use of weapons, 4. Ethics 5. Leadership, 5. First Aid, and 7. Anger Management.” Also, in this report, it noted that the Office of Legal Counsel of the National Penitentiary Institute (INPE) reported on the “Human Rights Manual on Prison Roles” which “was approved on July 18, 2008” and “makes the following points: the theoretical and normative framework of Human Rights in the National Penitentiary System [;] the inmate in the context of Human Rights[;] Prison staff in the context of Human Rights[;] Ethical conduct in the Prison System[;] Prison Security [and] Use of force in the Prison System.” With respect to the Ministry of the Interior, that document states that the National Human Rights Commission of said Ministry reported on Ministerial Resolution No. 1452-2006-IN of May 31, 2006, according to which “the Office of Police Education and Doctrine includes the subject of Human Rights and International Humanitarian Law in its curriculum or study plan at the police education systems.” Moreover, it also indicated that the abovementioned subjects are mandatory and were taught to the staff of the National Intelligence Office and that the Division of General Staff of the Joint Command of the Armed Forces since 2003 “created the Center for International Humanitarian Law and Humans Rights within the Ministry of Defense.” Regarding education programs for police forces, the State referred to “the curriculum of the institutions of the educational system of the National Police,” among which it included that “[i]n the Institute of Graduate Police Studies [...] the course on Human Rights and the Environment was rendered”; that “[i]n the Police School three programs are carried out, [in which] [t]he “Workshop on Human Rights and Police Roles” was carried out with a total of 30 teaching hours,” “[t]he Human Rights and policing” seminar with “a total of 30 teaching hours” and “the Workshop on Human Rights and Ethical Conduct” with a total of 35 teaching hours.” It also said that “[i]n the Training and Police Specialization School [a]ll the courses approved in its Annual Plan make the subject of Human Rights a mandatory requirement” and that at the “Schools for PNP Officials” and “Technical Schools”

⁵⁵ *Case of Miguel Castro Castro Prison. Merits, Reparations, and Costs, supra note 2, para. 451.*

the subject of Human Rights is rendered “within various academic semesters. It also said that “[t]he National Human Rights Commission of the Ministry of the Interior [...] has been developing since 2001, a training for police instructors in human rights within the police force with the collaboration of national and international human rights agencies.” It also indicated that it has signed a cooperation agreement with the International Red Cross, which helps them with the review of “the adaption of the institutional doctrine, regulations, manuals, directives, etc. with international standards on use of force and the protection and promotion of human rights; [...] reviewing the curriculum of the course plans, and trains the police personnel.” In regard to the Public Prosecutor’s Office, the National Criminal Prosecutor’s Office and Supraprovincial Criminal Prosecutor’s Offices, it reported that as for “the training provided to administrative and prosecutorial personnel for the protection of human rights,” it carried out “academic events (seminars, training workshops, conferences and others) on human rights.” With regard to the Ministry of Defense, the State indicated that “at the Training Schools for Officials, Technicians, and Non Commissioned Army Officers, the subject of Human Rights and International Humanitarian Law is taught to all staff cadets and students in the general training course.”

51. The *common intervener Feria Tinta* stated in the brief of March 13, 2013, that the State has not designed or implemented any policy “that provides education [to] police, army and special security forces personnel [...] concerning peremptory norms of international law on ‘applicable international standards regarding treatment of prisoners in situations of public disorder in prisons.’” She therefore considered it necessary that “the State [...] take on with the seriousness it merits, [t]he obligation to ensure that the police and others involved in the treatment of persons in detention, receive [...] training on the international standards of human rights applicable to people in detention” as this is not merely about “general courses on human rights, but rather [about] a program focused on the specific issue of the treatment of detainees in prison under the standards established in the specific instruments on persons deprived of liberty.”

52. The *common intervener Cassel* made reference in the brief of March 13, 2013, to “various flaws regarding compliance” with this measure of reparation. He noted that “such education programs have been limited to prison officers and not to all agents of the Peruvian security forces that are directly or indirectly involved in the treatment of prisoners.” He also claimed that “the program was not outlined regarding each of the subjects listed [by the State] in [its] report [...], to which it is impossible to assess whether, in fact, they are in line with the applicable international standards on the treatment of prisoners.” The common intervener therefore considered that “it is not possible to determine if there has actually been any real change regarding the treatment of prisoners.” In its brief of October 22, 2013, it reiterated that the State has not complied with this measure of reparation.

53. The Commission noted during the private hearing that “the State referred to the training of civilians in charge of prisons on the subject of human rights and [...] on trainings specifically of [the] police and military corps.” The Commission considers that the State’s obligation remains pending to accurately report on training initiatives for specific situations such as those indicated by the Court regarding disturbances of public order in prisons as that is precisely the content of the specific measure of reparation.”

E.3) Considerations of the Court

54. The measure ordered by the Court in this case (*supra* Considering clause 49) is centered on training and education of the “Peruvian security forces on the applicable international standards on treatment of prisoners.” That is, it is important that the trainings

develop on this specific topic and that the trainings address both prison staff and members of the National Police, as well as army and special security forces to the extent that these people have authority and jurisdiction to support the National Police in restoring internal order. After analyzing the information provided by the State and taking into account the observations of the parties and the Commission, the Court considers that Peru has taken significant action with regard to training and education directed to officials of the Penitentiary System, either through courses for "new prison staff" or through the issuance of the "Human Rights Manual on Prison Roles" adopted in July 2008. However, the information presented by Peru is not clear on whether such specialized courses are taught to prison staff at different levels and distinct times of employment or if they are only taught to "new" prison staff. With regard to education aimed at agents of the National Police and the Armed Forces, the Court appreciates the various measures taken since the beginning of the last decade to provide training in "human rights" and "international humanitarian law" to the staff at the various levels and sectors of those security forces (*supra* Considering clause 50). Notwithstanding the foregoing, for the Court to properly assess compliance with this measure of reparation and to declare that it has been fulfilled, it requires that Peru provide a copy of the documents confirming the actions taken, and that its content cover the international standards of use of force to maintain public order in prisons, as well as provide clarity as to the officials who have received and will receive training, and will continue with it.

F. Measures of satisfaction and guarantees of non-repetition (Operative paragraphs 12, 16, and 18)

F.1) Measures ordered by the Court

55. According to the provisions of operative paragraphs 12, 16, and 17, and paragraphs 445, 446, 447, 454, 459, 462 and 463 of the Judgment as well as in paragraphs 12, 13, 19 and 57 of the Judgment of Interpretation, the Court decided that the State should implement the following measures of satisfaction:

- a) "must carry out, within a one-year period, a public act of acknowledgment of its responsibility in relation to the violations declared in [the] Judgment and as any apology to the victims and for the satisfaction of their next of kin, in a public ceremony with the presence of high State authorities and of the victims and their next of kin, and [...] transmit said act through the media, including the transmission on radio and television";
- b) "publish[, within a period of six months, as of notification of the Judgment,] in the Official Newspaper and in another newspaper of national circulation. For these publications the Court establishes a six- month period, as of the notification of [the] Judgment, without the corresponding footnotes, and the operative part of the same, as well as broadcast the mentioned parts of the [...] 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," and
- c) "within one year from the date of notification of the Judgment," "establish a park or erect a monument that meets the objective and purpose of the measure of reparation ordered by the Court in [the] Judgment" on the merits, reparations and costs.⁵⁶ The Court had ordered another measure in the Judgment on the merits⁵⁷, but in order to

⁵⁶ *Case of Miguel Castro Castro Prison Interpretation of the Judgment on the Merits, Reparations, and Costs*, *supra* note 3, para. 57.

⁵⁷ In paragraphs 453 and 454 of the Judgment on the merits, the Court indicated that "[r]egarding the measures requested by the Commission and the intervener, on the construction of monuments and the creation of

overcome the difficulties indicated by Peru after the notification thereof, in the judgment of interpretation this other measure was authorized.

F.2) Information and observations of the parties and the Inter-American Commission

56. The *State* indicated during the private hearing in August 2013 that the measures of reparation "have not been implemented." In its report of September 24, 2013, it explained that the public acknowledgments of responsibility and the publication of the Judgment "have not been carried out." Previously, in its report of January 23, 2013, it had indicated, regarding the publication of the judgment, that the "Specialized Supranational Public Prosecutor's Office has been carrying out the necessary steps in order to comply with the measure." As for the measure to establish a park or erect a monument (*supra* Considering clause 55(c)), in the report of September 24, 2013, instead of referring to this measure, Peru referred to the matter originally discussed in the Judgment on the merits concerning the obligation to ensure that all deceased victims in this case are represented in the monument "El Ojo que Llora [the Eye that Cries]" (*supra* footnote 58). In this regard, Peru reported that that monument "is a place of public access built in favor of all victims of the conflict, and that it is the place for continuous acts of remembrance and commemoration," adding that "it is carrying out a series of actions to maintain the Campo de Marte, where the [mentioned] monument is" to "guarantee its security and conservation."

57. The common intervener Feria Tinta considered, in her brief of October 17, 2013, that the information reported by the State with respect to these measures of reparation "demonstrates an attitude of open contempt for the judgment of the Court" and shows that "no effort has been made to explain how such simple measures [...] have not been undertaken in almost 7 years since the issuance of the Judgment." Mrs. Feria Tinta made the following observations regarding the implementation of each of the measures of satisfaction:

- i) *Public acknowledgment is responsibility.*- The common intervener recalled that the timeline for compliance with the measure is one year as of notification of the judgment, and said that participation of the Inter-American Commission would be ideal.
- ii) *Establishment of a park or monument.*- The common intervener argued that the State "not even in its own 'report' seems to understand [...] what specific measure of satisfaction must be carried out." The common intervener argued that "[n]o report regarding [the] monument '[El] Ojo que Llora' was necessary"[, since] in the interpretation of the Judgment, the parties came together (at the request of the Peruvian State itself) [...] that instead of [this] measure [...], a park be built." In this regard, she pointed out that the park could be built in "San Juan de Lurigancho district where the Castro Castro prison is located," and
- iii) *Publication of the Judgment.*- The common intervener stated that she did not understand "why [...] the State refuses [...] to publish sections of the Judgment" and considered that this measure "should be carried out immediately" and that "there are [n]o reasons to justify non-compliance" with the measure.

a park in "the area of Canto Grande", the State argued that "a monument (called the Eye that Cries) has already been erected in a public place of the capital of the Republic in favor of all the victims of the conflict, and that it is the subject of continuous memorial and commemoration acts." In this sense, the Court valued the existence of the monument and public area called "The Eye that Cries," created upon the request of civil society and with the collaboration of state authorities, which constitutes an important public acknowledgment to the victims of violence in Peru. However, the Tribunal considered that, within a one-year period, "the State [was to] ensure that all the people declared as deceased victims in the present Judgment be represented in said monument." For this, the Court ordered that the State was to "coordinate with the next of kin of the deceased victims an act, in which they may include an inscription with the name of the victim as corresponds according to the monument's characteristics."

58. The *common intervener Cassel* stated in his brief of October 23, 2013, that “[t]here is no need to make observations on [those] measures where the noncompliance is obvious and even admitted by the State itself in some cases.” In the past, the common intervener has noted that it is not apparent that the State has taken the necessary measures to comply with these measures of reparation.

59. The *Inter-American Commission* held in the private hearing of August 2013 that the measures of reparation “have not been completed at all although they are measures that do not require higher than usual efforts to be undertaken.” The Commission noted that some progress regarding compliance “can contribute very positively to the dissemination of information regarding what actually happened in this case and to change or at least reduce the structural difficulties impeding progress in regard to its implementation.” In its brief of October 9, 2013, regarding the publication of the Judgment and the public acknowledgment of responsibility, the Inter-American Commission noted with concern that the deadlines for compliance with these measures of reparation have expired long ago and therefore request[ed] that the Court [...]require the State [...] to comply immediately.”

F.3) Considerations of the Court

60. The Court emphasizes that for the fulfillment of the measure ordered in this case the State was given a period of six months and one year (*supra* Considering clause 55). In that regard, the Court notes that more than seven years have passed since the notification of the judgment on the merits without the State complying with these measures, which is an unjustified and excessive delay. As for the assertion by the State regarding the publication of the Judgment, in the sense that it “is taking the necessary steps in order to comply” (*supra* Considering clause 56), the Court found that along with its report of October 6, 2010, Peru provided a copy of a communication dated May 17, 2010 from the Specialized Public Prosecutor’s Office of the Ministry of Justice addressed to the Director General of the Office of Administration of the Ministry requesting cooperation for the realization of publications and broadcasts on seven Judgments of the Court, including this case. Peru has not explained the reasons why nearly four years have passed and there has not been compliance with publications in this case.

61. The Court agrees with the Inter-American Commission (*supra* Considering clause 59) as to the importance of promptly complying with those measures of satisfaction, keeping in mind the specifications under which they were ordered. The public act of acknowledgment of international responsibility and the publication and dissemination of relevant parts of the Judgment are intended to provide redress for the victims and their families for the serious violations and damages caused by the State in this case. In turn, they constitute measures which, through publication and their broad scope, permit avoidance of the repetition of violations of human rights such as those in this case, revealing the violations to State authorities and members of society. The Court recalls that in 2006, in the proceedings before this Court, the State partially acknowledged its international responsibility for the events that occurred May 6 to 9, 1992 in the Miguel Castro Castro⁵⁸ (*supra* Having Seen clause 1). In its Judgment, the Court found that the official version held by Peruvian authorities at the time of the events regarding what happened was different from that given by the Tribunal in the Judgment, particularly in regard to the legitimate use of force against both male and female inmates.⁵⁹ The Court also found that the victims in this case were

⁵⁸ *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, paras. 135 to 148.

⁵⁹ *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs*, *supra* note 2, para. 197.16.

referred to by the press and in official statements issued by the Ministry of the Interior of Peru as “terrorists,” “Shining Path terrorists,” “criminal terrorists” and “inmates for terrorism” despite the fact that the majority did not have a final sentence in their name, and their next of kin were stigmatized as “family members of the terrorists.”⁶⁰

62. Based on the foregoing, the Court requires Peru to comply effectively with these two measures of compliance as soon as possible and, upon reporting to the Court about it, explain what procedures have caused a delay in the compliance of measures for so many years and what actions are to be taken to end this situation. In no way may Peru take longer than six months from the date of notification of this order, to give full effect to these measures.

63. Lastly, the Court appreciates the information provided by the State regarding access, maintenance and conservation of the monument called “El Ojo que Lloro” [The Eye that Cries]. However, this is not the measure that is subject to monitoring of compliance by the Court, since it was amended at the request of the State, in the judgment of interpretation, taking into account the obstacles and difficulties referred to by Peru regarding compliance. Thus, the Court requires the State to comply as soon as possible with the establishment of a park or erect a monument as provided by the Court (*supra* Considering clause 55(b)), for which the State must coordinate with the victims or their representatives. In its next report, Peru should refer clearly and specifically to the efforts made regarding the effective implementation of this commemorative measure.

G. Compensation for pecuniary and non-pecuniary damages (operative paragraphs 18 to 23 of the Judgment)

G.1) Measure ordered by the Court

64. The Court ordered compensation to repair the pecuniary and non-pecuniary damages declared in operative paragraphs 18 to 23 and paragraphs 424 to 428, 433, 434, 457, 458, 465, 466, 467 and 468 of the Judgment. With regard to pecuniary damage, the Court decided that the State must pay, within 18 months, the amounts established in the Judgment for pecuniary damages caused to the 41 identified deceased inmates, surviving inmates, and next of kin of the inmates for search related expenses and burial costs. Also, in regard to non-pecuniary damages, the Court fixed the compensation the State must pay to each of the 41 identified deceased victims and the surviving victims, to the next of kin of the 41 identified deceased victims, and to the next of kin declared victims of the violation of Article 5 of the American Convention determined in paragraphs 336, 337, 340 and 341 and identified in Annex 2 of victims of the Judgment. In paragraph 433 of the Judgment, “the Court set[,] in equity, the following compensations for non-pecuniary damages.” Specifically, in paragraph 433(c), it provided the compensations for non-pecuniary damages to the “surviving victims,” to which it established the following categories with distinct compensation amounts: i) for “each of the victims with injuries of physical or mental illnesses that imply a complete permanent handicap to work” the amount of US\$20,000.00; ii) for those “victims with injuries of physical or mental illnesses that imply a permanent partial handicap to work” the amount of US\$12,000.00; iii) for those “the victims with permanent consequences due to injuries suffered that did not result in a complete or partial handicap” the amount of US\$8,000.00, and iv) for “each of the other surviving victims not included in any of the previously mentioned categories,” the amount of US\$4,000.00. Moreover, in paragraph 433(c)(v), it established that “to individually determine in which of

⁶⁰ *Case of Miguel Castro Castro Prison Merits, Reparations, and Costs, supra* note 2, paras. 356 to 360.

the previous categories each of the surviving victims must be included, said determination must be made by the domestic bodies specialized in the classification of injuries and handicaps upon request of the interested parties, who must present their request within an 8-month term."

G.2) Information and observations of the parties and of the Inter-American Commission

65. The *State* indicated that the "responsibility" to pay compensation established in the Judgment for pecuniary and non-pecuniary damages, "is conditional on the outcome of the judicial process that is pending in case file No. 11891-2010, under the Specialized Court on the Execution of Supranational Sentences" as of April 7, 2010, and thus "being that this case is in judicial proceedings," the obligation to provide redress is determined by the judicial decision in the domestic forum." In this regard, the *State* indicated that the supranational court takes into account that mentioned in paragraph 433(c)(v) of the Judgment in this case, which should be done at the request of the interested parties within eight months as of the notification of the Judgment. Regarding the calculation of the period of time, the *State* indicated that "it currently considered the date of December 20, 2006, as the date upon which the *State* [...] was notified of the Judgment." In that sense, according to the calculation of the period established per domestic law" the deadline for submitting the requests for compensation inevitably lapsed September 5, 2007."⁶¹ It noted that this is the period that "the court takes into account when declaring the inadmissibility of the appearances that took place from that date forward" and consequently, the judicial decisions that followed this criteria "are being appealed." Moreover, it also noted that "the Ministry of Justice and Human Rights through the Public Prosecutor's Office at the National Headquarters has asked the Judge to forward the exact amounts of compensation once they are determined to the Office of Expertise of the Judiciary."

66. Furthermore, in relation to "the appearances of the family members of the 41 victims in the case," Peru argued that "they have not appeared in these proceedings pursuant to the law (they have not established the familiar relationship)," and it stated that "in regard to appearances, there are two groups of people": i) "[t]hose that appeared as parties to the proceeding within the period of time,"⁶² and ii) "[t]hose that appeared as parties in these proceedings after the deadline"⁶³ (*supra* Considering clause 65). Regarding this latter group of people, it stated that their requests have been "declared inadmissible because [they] exceeded the time period set by the Judgment of the Court, granting the appeal, and a decision of the Higher Courts is pending." Moreover, as to the request of the common

⁶¹ In this regard, the *State* indicated that "[a]t first, the Supranational court considered the date of August 10, 2009 as the date of the calculation of deadlines," and that by way of "Order No. 16 dated August 19, 2012" the "Fifth Civil Chamber of the Superior Court of Lima [...] corrected this interpretation and said [that] it was wrong." It also noted that the deadline only takes into account the working days as of notification of the Judgment of the Court. (State Report of September 24, 2013, case file on Monitoring of Compliance With Judgment, tome V, folio 2456).

⁶² It reported that within this first group "140 [individuals] appeared among which there are next of kin of the deceased victims and those declared injured and unharmed survivors," regarding whom "the Supreme Court has responded to [all] these requests dated September 3, 2007, " and that "[i]t was as of March 2008, that these 140 people began to submit requests for absolution of transfer and others, determining their legal status and specifying the amount that corresponds to them"(State Report September 24, 2013, case file on Monitoring of Compliance with Judgment, take V, folio 2456).

⁶³ It noted that within this 2nd group there are "a group of beneficiaries of the judgment" that "have appeared in the civil proceeding [...] after of the [eight months] provided by the [...] Court [, s]uppressing many orders the deadline by the Supranational Judge on September 5, 2007 "(State Report of September 24, 2013, case file of Monitoring of Compliance with Judgment, take V, folio 2456).

intervener Feria Tinta on the standardization of the list of beneficiaries presented with her briefs of March 5 and August 28, 2013, it reported that "currently a ruling is pending from a higher court than that of the supranational judge on this matter."

67. Regarding the State's argument about the legal proceeding underway within the domestic forum for the determination of compensation, the *common intervener Feria Tinta* said that this does not explain why a judgment of the Inter-American Court, which already determined the measures of reparation, would need to be "seen again before a Peruvian court." As such, "the State [...] makes it [...] uncertain whether or not it has an obligation regarding reparations." In this regard, she stated that "[a] State cannot invoke reasons of 'domestic law', such as ineffective mechanisms created to withhold payments and not comply with the Judgment, as a justification for failure to comply with the measures ordered by the Court."

68. In addition, Mrs. Feria Tinta, referred to the actions undertaken so that those she represents are recognized by the State as beneficiaries of the Court's reparations,⁶⁴ which include requests for approval of a complete list of victims with the payments ordered by the Court in each respective case, plus the calculation of interest, to serve as reference for the State in order for it to meet its obligations. Lastly, she referred to the lack of information from the State regarding the "12 million dollars from the budget approved by Congress for 2012, for payment of compensation to the bereaved individuals and victims in [this] case." She said the lack of compliance with these measures, "despite having had the budget for it' and 'carrying out proceedings for implementation of the judgment' which have proven to be completely ineffective," demonstrate that the State "is not only in contempt with respect to the Court's orders, but also that the Executive branch has acted against the will of the Peruvian people represented by the Congress of the Republic."

69. The *common intervener Cassel* expressed that implementing "legal proceedings" regarding the measures of "monetary compensation" in order for a judge at the domestic level to determine compliance "has meant year long delays, and excluded many victims and their next of kin from appropriate measures of reparation." Thus, "[i]nstead of a quick, simple and accessible process, there has been a transfer to a judicial forum where the victims and their next of kin, the vast majority without resources to afford attorneys, lack the legal and technical assistance to follow-up with their requests for compensation." Furthermore, she stated that "[p]robably due to the difficulties in communication on the part of the representatives of the victims and their next of kin with a large number of those represented who are geographically dispersed, the names and surnames of some victims were spelled incorrectly in the attachments to the Judgment issued by the Court." She specified that the differences range "from the alteration of the names due to omission or incorrect placement of some of the letters that make up the names or surnames to the complete omission of some names and surnames" and that it "has served as an excuse for the State to not comply with the judgment." In that regard, the common intervener said

⁶⁴ Mrs. Feria Tinta indicated that: i) in 2007, within eight months provided for in the Judgment, "she made contact with the Prosecutor's Office of the Ministry of Justice to bring the request for payment of reparations of the victims she represents, who have been properly identified," to which there was no answer and she decided "to submit a request through the Inter-American Court, including victims who were newly incorporated (next of kin and some surviving victims)"; ii) in 2009, "insistence was made on the appearance of [the] victims [...] at the Supranational Specialized Prosecutor's Office in the Ministry of Justice," which was "fruitless" and that iii) in 2011 "the insistence of the next of kin was also fruitless regarding payment of compensations, and they repeatedly presented the list of victims represented by [her], with the payments ordered by the Court in their respective cases so as to serve as a reference for the Ministry of Justice in order to include the requests in the Republic's 2012 budget by Congress" (brief of the common intervener Monica Feria Tinta of March 13, 2013, case file of monitoring of compliance, tome IV, folio 2055).

that "[t]he State cannot justify its noncompliance [...] on the grounds that jurisdiction is in the hands of a domestic court, and not directly in the hands of the government," because on the contrary, "domestic courts form part of the State, and they have a duty to ensure the implementation of the Convention and the jurisprudence of the Court." Faced with the "failure" of the legal proceedings, the common intervener considers it necessary that the State "present a plan to urgently overcome this failure." The common intervener added that "none of the victims", despite having submitted "requests on time", "have received payment [...] in the nearly seven years that have passed since the issuance of the Judgment." As for the other victims that the State said submitted their requests after the deadline, the common intervener estimated that "it is not just to deny them compensation." In this regard, he said that "it would be inequitable and unfair to insist that victims comply with a period of eight months [pursuant to the provisions of Judgment]," while the State "fails to meet deadlines for all the measures of reparation." Mr. Cassel said that "[i]n fairness, the Court should extend the periods for the victims until the State complies with the periods for the ordered measures of reparation." Based on the abovementioned, he argued that "the State proposes to place the responsibility on the victims themselves to initiate proceedings for redress, whether or not they go through legal proceedings," although "[i]t is the State, not the victims, who must take the lead in carrying out the measures of reparation."

70. The Inter-American Commission stated in its observations of November 9, 2013, that it is "essential to ensure that the State does not impose additional burdens on the victims in obtaining redress," which in this case "has materialized in the need to go through an additional legal proceeding that has lasted for more than six years with additional costs and the requirement of legal representation to receive the compensation to which they are entitled." In regard to the pecuniary and non-pecuniary damage, it highlighted in the private hearing that "payments [...] could be executed directly, immediately and without the intervention of the Supranational Court and that this proceeding is still [...] underway." Nevertheless, it clarified that, according to the Judgment, "the pecuniary damage which could imply a determination at the domestic level is related to the degree of disability of the survivors." In this regard, it referred to the method for determining, at the domestic level, the payment of compensation for which the Court established a maximum period of 18 months, indicating that "once the 8 months have passed for individuals to report, the State has 10 months as a maximum to make the relevant domestic determinations." In this regard, it said that "the mechanism provided at the domestic level is not working at all, because [...] until now the Supranational Court is considering the appeal regarding whether certain individuals should be considered within the 8 months." It added that it is "unacceptable that any progress be delayed regarding domestic determinations that are necessary for appeals" because "the State must distinguish this type of discussion from what it actually can begin to implement and could have begun to implement more than six years ago." Moreover, in terms of the budget approved by the Congress of Peru for 2012 for the payment of compensation, it considered it to be "very important" that the Court request from the State specific information on what happened to that money and what the objective reasons are as to why it cannot proceed with payments that could be made immediately." In light of the foregoing, it concluded that "the State must ensure the budgetary allocations needed to provide compensation to the victims as quickly as possible and report on the situation of those individuals who presented their requests for compensations extemporaneously in order for the Court to decide how to proceed."

G.3) Considerations of the Court

71. The Court notes that the State has argued that its "responsibility" to pay compensation for pecuniary and non-pecuniary damages as established in the Judgment "is

conditional on the outcome of the judicial proceeding that is pending within [the domestic forum]" at the Specialized Court on Execution of Supranational Sentences (*supra* Considering clause 65). The Court deems it appropriate to clarify that it does not correspond to the domestic judicial authorities of Peru to determine the obligation to provide reparation for pecuniary and non-pecuniary damages and that this obligation and its particularities, such as the determination of the beneficiaries of the reparations and compensation amounts, were determined by the Court in the Judgment. When the Court establishes these aspects regarding compensation, it is precisely to avoid, insofar as possible, that the beneficiaries of these pecuniary reparations have to go through an internal process that could unnecessarily delay the delivery of the compensation established in the Judgment. In this regard, the Court considers that the method for compliance with this measure of reparation should not necessarily imply a legal proceeding, much less, if more than seven years have passed wherein this method has not allowed for the effective implementation of the measure.

72. Nevertheless, it must be stated that in paragraphs 425 and 433(c)(v) and (vi) of the judgment regarding compensation for pecuniary and non-pecuniary damages, respectively, of the surviving victims, the Court ruled that, because it did not have the necessary evidence to determine the disability level of each individual, such determination should be made by the domestic bodies specialized in classification of injuries and disabilities at the request of the interested parties, who should submit their request within eight months from the notification of the Judgment. Upon the determination of domestic bodies specialized in this field, each surviving victim would be paid in accordance with the compensation amounts established in paragraphs 425 and 433(c)(i), (ii),(iii), and (iv) of the Judgment corresponding to amounts for pecuniary and non-pecuniary damage. In that regard, the Court notes that the intervention of the domestic bodies in this case applies only to the determination of disability category of the surviving victims and not for other damages ordered in the Judgment.

73. In addition, in paragraph 420 of the judgment, the Court ordered a period of eight months from the date of notification thereof, in order for the next of kin of the 41 deceased victims who were not singled out by the Court in the merits proceeding, to appear before the competent authorities of the State and demonstrate, through a sufficient means of identification, their relationship or kinship with the victim and that they were alive at the time the events occurred. This was requested in order that compensation be delivered directly to them, similarly to the way it was ordered for those who were identified in the Judgment.

74. Referring to the proceedings before the Specialized Court of Supranational Sentences, the *common intervener* Cassel in his brief of March 13, 2013, stated that certain differences between the names in the attachment to the Judgment and the actual names of victims "has served as an excuse for the State's noncompliance with the Judgment" regarding this measure of reparation (*supra* Considering clause 69). In this regard, the common intervener indicated as an example of the differences between the name entered in the Judgment and the actual name of the victim, among others, the omission of one of the last names of the victim, the omission of a middle name, and the substitution of one letter for another in the name.⁶⁵ In this sense, in the case file of monitoring compliance with the Judgment there is a request made on August 26, 2010 submitted by the Public Prosecutor of

⁶⁵ Indicated that: The correct name is Cesar Augusto Rodriguez Paredes, and the name entered in the Judgment was Cesar Augusto Paredes; the correct name is Consuelo Rojas Barreto and the name entered in the Judgment is Maria Consuelo Rojas Barreto; the correct name is Tito Roger Valle Travezaño and the name entered in the Judgment is Tito Roger Valle Travezaño (brief filed by the common intervener Douglass Cassel on March 13, 2013, case file on Monitoring of Compliance with Judgment, take IV, folio 1957).

the Ministry of Justice to the Special Court on Execution of Supranational Sentences in the framework of the proceeding regarding compensation in case file 11891-2010,⁶⁶ noting that five of the victims” are not the same people who were identified in the [J]udgment.” That communication shows the name entered in the Judgment and then the name of the individual “[n]amed in the order,” respectively, as follows: Luis Villanueva Rosales, instead of Luis Orlando Villanueva Rosales; Delia Taquiri Yanqui, instead of Delia Natividad Taquiri Yanqui; Arturo Agüero Garamendi, instead of Arturo Carlos Agüero Garamendi; Danielo Blanco Cabeza, instead of Danilo Deciderio Blanco Cabeza, and Osman Morote Barrionuevo, instead of Osman Roberto Morote Barrionuevo. Also, in that communication, the Public Prosecutor seeks “a declaration of the inability to enforce the Judgment as to such persons” and adds as grounds, *inter alia*, that “the abovementioned people have not been fully identified” and “safeguards [the] legitimate right to due process, considering that the judgments of [the] [Inter-American] Court are of exclusive jurisdiction under the provisions of Art. 30 [...] of the Rules of Procedure of the Inter-American Court.”

75. The Court notes the information presented by the common intervener and requested that the State report if indeed it would exclude victims from its compliance with this measure of reparation due to differences that, if the assertions of the common intervener are true, are not decisive regarding the identification of victims.

76. Based on the foregoing, the Court notes that “implementing legal proceedings to comply with the measures of reparation has caused the victims or their next of kin to go through a judicial process that has unduly delayed them from receiving compensation for pecuniary and non-pecuniary damage. It has been over six years since the expiration of the 18 months given to the State to implement the measure, without Peru complying with any payment of compensation. Through judicial means, Peru has not resolved some of the requests that have been made. This delay is particularly serious, especially after the alleged availability of “an approved budget [...] for the payment of compensation to be made.” (*supra* Considering clauses 68 and 70).

77. Finally, the Court notes that Peru claims that a large number of surviving victims and next of kin of the unidentified victims in the Judgment may have submitted requests after the expiration of the eight months allotted for submission, which for the State, “expired without fail on September 5, 2007” and that the State declared those requests “inadmissible.” The Court considers as valid the arguments presented by the common interveners (*supra* Considering clauses 67 to 69) to request that Peru be more flexible regarding the acceptance of requests by the surviving victims and their next of kin and the corresponding evidence, especially since after notice of the Judgment, Peru did not communicate in a clear and comprehensive manner to the victims what the mechanism or procedure would be for implementing the measure and which authorities would be responsible for doing so. In this sense, Peru must accept all the requests made by the surviving victims to determine the category of disability in accordance with paragraphs 425 and 433(c) paragraphs (i) to (vi) of the Judgment, as well as of the next of kin of the unidentified victims in the Judgment, even those presented after September 5, 2007.

78. The Court considers that Peru proceed immediately and directly with payment of compensation to all individuals whose circumstance does not require a determination by the domestic authorities and, in the case of those whose intervention is required, that it

⁶⁶ Request of August 26, 2010, signed by the Public Prosecutor of the Public Prosecutor’s Office addressed to the Specialized Court on the Execution of Supranational Judgments (brief filed by the common intervenor Douglass Cassel on March 18, 2013, annex IV, case file of Monitoring of Compliance with Judgment, tome IV, folios 2010 to 2013).

implement the necessary steps in order for this to occur as soon as possible and no later than six months. Regarding proper monitoring of compliance with these measures, the Court considers that, in its next report, the State must provide detailed and complete reference to the progress made as to the actual payment of compensation, as well as the outcome of the ruling made regarding the request of the common intervener Feria Tinta on the "Approval of a complete list of victims with the payments ordered by the Court, [...] and the calculation of interest" (supra Considering clause 68). It must provide information on: i) the state of the determinations regarding degree of disability for each of the surviving victims who submitted request in this regard; ii) detail regarding what next of kin of the 41 victims had appeared in order to "establish family relationship," as well as the state of the processing of payment of compensation pursuant to the provisions of the Judgment, and iii) information about the requests of the surviving victims and the next of kin of the victims not identified in the Judgment that have been rejected by the domestic authorities.

H. Reimbursement of costs and expenses (*paragraph 456 of the Judgment*)

H.1) Measure ordered by the Court

79. In paragraphs 456 and 464 of the Judgment, the Court ordered that, within a year, the State must provide reimbursement for costs and expenses "in the amount of US\$75,000.00 (seventy five thousand dollars of the United States of America or its equivalent in Peruvian currency) to Mrs. Mónica Feria Tinta (common intervener), and the amount of US\$15,000.00 (fifteen thousand dollars of the United States of America or its equivalent in Peruvian currency) to [...] the group of representatives [formed by Sabina Astete, Douglas Cassel, Peter Elinder and Berta Flores]." ⁶⁷

H.2) Information and observations of the parties and the Inter-American Commission

80. The State made no specific reference to the obligation to reimburse the amounts established in the Judgment for costs and expenses.

81. The common intervener Feria Tinta pointed out that the State "has not failed to report anything about its compliance with the measure" but "has also been ignoring" that a measure exists regarding the reimbursement of costs and expenses, although "the State [...] has had a budget established to comply with this measure [...] since [2012]."

82. The *common intervener* Cassel said it has not received payment of costs ordered by the Court.

H.3) Considerations of the Court

83. The State has not reported on compliance with the reimbursement of the amounts provided for costs and expenses. Both common interveners said they had not received such payments. In this regard, the Court notes with concern that the deadline for the implementation of this measure was one year from the notification of the Judgment and six years and nine months have passed without Peru having complied with the measure. In light of the foregoing, the State must, immediately, provide reimbursement and report it to the Court.

I. Reimbursement to the Victim's Legal Assistance Fund

⁶⁷ Moreover, it ordered that said group of representatives should assign one person in representation to receive the mentioned amount.

84. In 2008, the General Assembly of the Organization of American States created the Inter-American Court of Human Rights Legal Assistance Fund with the "objective [to] provide access to the Inter-American System of human rights to those persons who currently do not have the resources to bring their cases before the system."⁶⁸ In this case, during the monitoring compliance with judgment stage, Mrs. FERIA TINTA, victim and common intervener of the representatives of the victims and their next of kin, sought support from the Court's Legal Assistance Fund to appear at the hearing of monitoring of compliance at the headquarters of the Court on August 19, 2013.

85. By way of an Order of the President in this case dated July 29, 2013,⁶⁹ authorization was granted for the Fund to cover the reasonable costs of travel, accommodation and meals and other necessities for Mrs. FERIA TINTA to appear at the private hearing for monitoring of compliance (supra Having Seen clause 19).⁷⁰ The State had the opportunity to submit its observations regarding the expenditures made in connection with the appearance at the private hearing, which amounted to the sum of US\$2,756.29 (two thousand seven hundred fifty-six dollars and twenty cents of the United States of America). Peru did not submit observations.

86. Accordingly, it falls on the Court, pursuant to Article 5 of the Fund's Rules of Procedure, to assess the admissibility of ordering the respondent State to reimburse the Legal Assistance Fund for the expenditures incurred. On the grounds that the State has not given Mrs. FERIA TINTA the amount ordered in the Judgment in this case by way of reimbursement of costs and expenses (supra Considering clause 83) and that this amount does not include future costs that the victims may incur in the monitoring of compliance stage, the Court orders the State to reimburse said Fund in the amount of US\$2,756.29 (two thousand seven hundred fifty-six dollars and twenty cents of the United States of America) for expenses incurred. This amount should be reimbursed to the Court within ninety days from the notification of this Order.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions, in accordance with Articles 33, 62(1), 62(3), and 68(1) of the American Convention on Human Rights, 24 and 30 of the Statute, and 31(2) and 69 of its Rules of Procedure,

⁶⁸ AG/RES. 2426 (XXXVIII-O/08), Order adopted by the General Assembly of the OAS during a celebration held in the XXXVIII Ordinary Period of Sessions of the OAS, in the 4th plenary session, held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American System of Human Rights," Operative Paragraph 2(a), and CP/RES. 963 (1728/09), Order adopted on November 11, 2009 by the Permanent Council of the OAS, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American System of Human Rights," Article 1(1).

⁶⁹ Cf. *Case of Miguel Castro Castro Prison V. Peru*. Order issued on July 29, 2013 by the Acting President of the Inter-American Court of Human Rights. Victim's Legal Assistance Fund, Considering clauses 7 to 19, and operative paragraph 1.

⁷⁰ In the Order issued on September 2, 2010, the Court ruled on the scope of its power to consider, exceptionally, requests for assistance by the Fund outside of the framework regarding the merits of the contentious case. Cf. *Case of Miguel Castro Castro Prison V. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering clause 16.

DECIDES TO:

1. Keep open the proceedings of monitoring compliance with all measures of reparation ordered more than seven years ago in the Judgment in this case, since all are pending compliance:

- a) effectively investigate the facts denounced in the present case, identify, and, in its case, punish those responsible (*operative paragraph eight of the Judgment*).
- b) 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 (*operative paragraph nine of the Judgment*);
- c) carry out all the 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 it must cover all the expenses generated from the delivery of the victim's body to his next of kin, as well as the burial expenses in which they may incur (*operative paragraph 10 of the Judgment*);
- d) 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 domestic legislation (*operative paragraph 11 of the Judgment*);
- e) 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 any apology to the victims and for the satisfaction of their next of kin, in a public ceremony with the presence of high State authorities and of the victims and their next of kin, and it must transmit said act through the media, including the transmission on radio and television (*operative paragraph 11 of the Judgment*);
- f) 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 sufferings of each of them after an individual evaluation (*operative paragraph 13 of the Judgment*);
- g) pay, within an 18-month period, the amount set in Article 450 of the present Judgment to the victims that prove they reside abroad and, before the competent domestic bodies, that due to the facts of the present case they need to receive an adequate medical or psychological treatment (*operative paragraph 14 of the Judgment*);
- h) design and implement, within a reasonable period of time, human rights education programs, addressed to agents of the Peruvian police force, on the international standards applicable to matters regarding treatment of inmates (*operative paragraph 15 of the Judgment*);
- i) establish or erect a monument that satisfies the purpose and objective of the measure of reparation in operative paragraph 16 and paragraph 43 of the Judgment (*operative paragraph two and paragraph 57 of the Interpretation of the Judgment*);
- j) must, within a six-month period, publish the Chapter on facts proven 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 (*operative paragraph 18 of the Judgment*), and
- k) pay the amount set in the Judgment, for the pecuniary and non-pecuniary damages and for compensation of costs and expenses (*operative paragraph 18 and 23 of the Judgment*).

2. Require the State to adopt, definitively and without delay, all measures necessary to effectively and promptly comply with all the paragraphs of the judgment on the merits, reparations and costs in this case, according to that considered in this Order, and with the provisions of Article 68(1) of the American Convention on Human Rights.

3. Require the State to reimburse the Victim's Legal Assistance Fund of the Inter-American Court of Human Rights the amount indicated in Considering clause 86 of this Order within ninety days.

4. Require the State to submit to the Inter-American Court of Human Rights, by no later than August 8, 2014, a report indicating all the measures taken to comply with the reparations ordered by this Court that are pending compliance in accordance with the provisions of Considering clauses 25, 30, 37 and 39 and in the first operative paragraph of this Order.

5. Require the common interveners that represent the victims and their next of kin, and the Inter-American Commission on Human Rights to submit observations on the State's report mentioned in the preceding paragraph within four to six weeks, respectively, from receipt of the report.

6. Request the Secretary of the Court to provide notice of this Order to the State, the common interveners of the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac- Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary