

Miguel Castro Castro Prison v. Peru

ABSTRACT¹

This case is about the Peruvian National Police and Peruvian military's deliberate and unprovoked attack on the Miguel Castro Castro Prison. In the course of this attack, several members of Sendero Luminoso and Tupac Amaru were detained, dozens of inmates were killed, and hundreds of inmates were injured. The Court found that the State violated the American Convention on Human Rights, the American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

July 28, 1990: Albert Fujimori takes the oath of office and begins a five-year term as President of Peru.²

July 31, 1991: The magazine *Caretas* reports that the Communist Party-affiliated terrorist organization *Sendero Luminoso* (“Shining Path”) has taken control of Miguel Castro Castro Prison, has turned several of the pavilions within into “teaching centers,” and that prisoners within were planning several attacks.³

April 6, 1992: President Fujimori dissolves the Congress and the Constitutional Court and removes several judges from the Supreme Court.⁴ Fujimori also reorganizes the National Penitentiary Institute and puts the Peruvian National Police in control of the security for all

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2. *Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 160, ¶ 197(2) (Nov. 25, 2006).

3. *Id.* ¶ 197(11), n.34.

4. *Id.* ¶ 197(2); *see also* *Constitutional Court v. Peru*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 71 (Jan. 31, 2001).

penitentiaries.⁵

April 14, 1992: Law enforcement officials, including prosecutors and prison authorities, among others, inspect the maximum-security prison known as Miguel Castro Castro Prison (“Castro Prison”)⁶ in San Juan de Lurigancho, Lima.⁷ Castro Prison consists of twelve four-story prisoner pavilions, numbered 1-A and 1-B up to 6-A and 6-B, each with its own courtyard.⁸ The administrative office sits near the entrance to the prison grounds.⁹ The prisoner pavilions are surrounded by a sand yard, known as “No Man’s Land.”¹⁰ Access to the pavilions is gained through a central yard, called the “Roundhouse,” and then through an area at the entrance called “Coop.”¹¹ Pavilion 1-A holds about 135 females and fifty males convicted or accused of terrorism or treason and suspected of being members of *Sendero Luminoso*.¹² Pavilion 4-B, consists of about 400 males who are also suspected *Sendero Luminoso* members convicted or accused of terrorism or treason.¹³ Some of these prisoners still in detention have been acquitted and await release.¹⁴ No explosives, weapons, or tunnel excavations are found at the inspection.¹⁵

May 6, 1992: Under the pretext of transferring women prisoners to another maximum security prison, at 4:00 am, National Police officers blow up part of the external wall of Pavilion 1-A’s yard.¹⁶ Police officers simultaneously swarm the rooftops on Pavilion 1-A, creating holes in the roof to allow for rifle access.¹⁷ Then, army soldiers and police officers bomb the pavilion and snipers shoot from rooftops and from nearby prisoner pavilions.¹⁸

By 9:30 am, the police begin firing white phosphorous gas and tear gas bombs, asphyxiating prisoners and burning their eyes, lungs, and skin.¹⁹ The prisoners are forced to use cloths soaked in their own urine

5. Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, ¶ 197(15).

6. *Id.* ¶ 197(14).

7. *Id.* ¶ 197(12).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* ¶ 197(13).

13. *Id.*

14. *Id.*

15. *Id.* ¶ 197(14).

16. *Id.* ¶¶ 197(20), 210.

17. *Id.*

18. *Id.* ¶ 197(21).

19. *Id.* ¶ 197(22).

to filter the air they breathe.²⁰

At 10:00 am, male inmates in Pavilion 4-B begin to protest the attack on their fellow prisoners in 1-A.²¹ In response, the police fire at the male prisoners.²²

In the afternoon, government forces enter the fourth floor of Pavilion 1-A and detain several prisoners suffering from gunshot or shrapnel wounds.²³ These prisoners are taken to the Santa Monica of Chorrillos Prison.²⁴ At 1:00 pm the Interior Secretary and National Police Force Director reportedly arrive at the scene to supervise the operation.²⁵

The attack on Pavilion 4-B continues through the day.²⁶ At the end of the day, President Fujimori reportedly meets his Cabinet and police and army authorities at General Army Headquarters to evaluate the ongoing operation at Castro Prison.²⁷

May 7, 1992: President Fujimori, in consultation with his Cabinet and police and military authorities, cuts off electricity, water, and food supplies to the inmates and bars human rights organizations from the area.²⁸ Police and army forces intensify their attack with grenades, machine guns, and more tear gas.²⁹

May 8, 1992: Helicopters and mortars arrive and fire rockets and grenades upon both Pavilions.³⁰ Negotiations begin between prisoners and government authorities.³¹ The prisoners request the presence of the International Red Cross, Inter-American Commission on Human Rights, their attorneys, and their families.³² The government seeks to transfer the prisoners to another prison.³³ The government refuses to allow the International Red Cross, the Inter-American Commission on Human Rights, or other human rights groups to enter the prison.³⁴

20. *Id.*

21. *Id.* ¶ 197(23).

22. *Id.*

23. *Id.* ¶ 197(26).

24. *Id.*

25. *Id.* ¶ 197(25).

26. *Id.* ¶ 197(27).

27. *Id.* ¶ 197(28).

28. *Id.* ¶ 197(30).

29. *Id.* ¶ 197(31).

30. *Id.* ¶ 197(32).

31. *Id.* ¶ 197(34).

32. *Id.*

33. *Id.*

34. *Id.* ¶ 197(35).

May 9, 1992: At 6:00 am the State forces resume the attack, blasting Pavilion 4-B with grenades, gunfire, and other explosives.³⁵ Finally, by 6:00 pm, the prisoners agree to come out.³⁶ As unarmed prisoners exit the Pavilion, State officers shoot them down indiscriminately, killing many.³⁷ Other prisoners taken into custody are separated by sex.³⁸ Some of these are separated again and killed by State agents.³⁹

During the entire operation over the four days, one police officer dies.⁴⁰ Nine others are injured.⁴¹

May 10, 1992: Police report that two sub-machines guns, four revolvers, one rifle, and three other guns, along with eleven grenades and twenty-four home explosive devices, were found in the prison.⁴² Most of the surviving prisoners, even pregnant women, are forced to lay face down on the ground outside.⁴³ They are kept in this position for several days, eating only bread, water, and thin soup.⁴⁴ They are only allowed to get up to use the bathroom.⁴⁵ Armed security agents accompanied by dogs roam the area, kicking and beating the prisoners who move or complain.⁴⁶ President Fujimori also visits and examines the prisoners lying face down on the ground.⁴⁷

Over the course of several days, some of the female prisoners are thrown into trucks and beaten,⁴⁸ then some are taken to the Santa Monica of Chorrillos Prison and others to the Cristo Rey of Cachiche Prison.⁴⁹ There, they are denied access to books, radios, newspapers, or television, are not allowed to speak to each other, and are denied soap, toilet paper, feminine pads, underwear, or warm clothing.⁵⁰ They are locked in their cells for twenty-three or twenty-four hours a day.⁵¹ Their

35. *Id.* ¶ 197(36).

36. *Id.* ¶ 197(37).

37. *Id.*

38. *Id.*

39. *Id.* ¶ 197(38).

40. *Id.* ¶ 197(40).

41. *Id.*

42. *Id.* ¶ 197(41).

43. *Id.* ¶ 197(42).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 197(43).

48. *Id.* ¶ 197(48).

49. *Id.* ¶ 197(44).

50. *Id.* ¶ 197(51).

51. *Id.*

cells are two meters square and are shared by at least three prisoners.⁵² Because their cells have no light of any kind, the prisoners live in constant darkness.⁵³ The prisoners are frequently threatened with death, beaten with sticks, and given electrical shocks.⁵⁴

Some of the male prisoners are transferred to Lurigancho Prison and others to Yanamayo Prison.⁵⁵ They are treated to similar psychological and physical abuse.⁵⁶

The prisoners are all kept isolated, with no access to their family or attorneys, for several days, some for weeks and even months.⁵⁷ Prisoners released from solitary confinement are allowed to speak through a fence with their families once a month.⁵⁸ Prison authorities deny pregnant prisoners Eva Challco, Vicente Genua Lopez, and Sabina Quispe Rojas any medical attention until they go into labor.⁵⁹ Ms. Quispe Rojas does not receive post-partum medical attention.⁶⁰

May 11, 1992: State investigations of the attack begin, and first focus on prisoner responsibility for instigating the attack.⁶¹ State crime lab experts examine the prison site, remove bodies to the Lima morgue and perform forensic medical, toxicology, and ballistic tests.⁶² The experts limit autopsy reports and forensic medical reports to describing wounds and injuries, and fail to include identities of those bodies removed to the morgue.⁶³

May 22, 1992: State officers strip the remaining prisoners naked and force them to walk past a line of officers into Pavilion 1-A.⁶⁴ As the prisoners walk past, they are beaten and clubbed with blunt objects.⁶⁵ The prisoners are denied medical help, and some of them die from the beatings.⁶⁶ Some of the injured prisoners are taken to the Police Sanity Hospital, where they are kept naked for many days, even weeks.⁶⁷ The

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* ¶ 197(44).

56. *Id.* ¶ 197(52).

57. *Id.* ¶ 197(54).

58. *Id.* ¶ 197(56).

59. *Id.* ¶ 197(57).

60. *Id.*

61. *Id.* ¶¶ 197(60), 197(66).

62. *Id.* ¶ 197(60).

63. *Id.*

64. *Id.* ¶ 197(46).

65. *Id.*

66. *Id.*

67. *Id.* ¶ 197(49).

prisoners here are subjected to psychological abuse, with soldiers aiming their rifles at female prisoners visiting the toilet, and hooded figures giving another female prisoner a “vaginal inspection” with their fingers.⁶⁸

May 6, 1992 – May 12, 1992: Newspaper reports identify the prisoners held in the pavilions that were attacked as “terrorists” or “terrorist criminals.”⁶⁹

June 1, 1992: State prosecutors place blame for the attack on the prisoners and accuse four prisoners of terrorism, illegal possession of guns, and resistance to the State’s authority.⁷⁰

August 7, 1992: A State police investigation concludes that the attack was legal and thwarted a planned prisoner riot.⁷¹

November 5, 1992: The judicial body overseeing the national police forces shelves an accusation against the police forces involved in the attack, declaring that the police performed an act of service under the law.⁷²

April 20, 1996: The State convicts the four prisoners of terrorism, illegal possession of guns, and resistance to the State’s authority and sentences them to life in prison.⁷³

April 13, 1998: The State incinerates the records of the investigation into the attack.⁷⁴

February 3, 2004: Following investigations and hearings, the Supreme Court of Peru acquits the four prisoners previously convicted of terrorism, finding that they were neither rebellious nor violent.⁷⁵ The court concludes that, though there was initially armed resistance from the prisoners to the attack by the State forces, it was impossible for such resistance to have lasted as long as the government alleged.⁷⁶

68. *Id.* ¶ 197(50).

69. *Id.* ¶ 197(59).

70. *Id.* ¶ 197(66).

71. *Id.* ¶ 197(61).

72. *Id.* ¶ 197(68).

73. *Id.* ¶ 197(66).

74. *Id.* ¶ 197(62).

75. *Id.* ¶ 197(67).

76. *Id.*

June 16, 2005: State court begins criminal investigations of the state security authorities in command of the attack on Castro Prison on May 6-10, 1992.⁷⁷ Among those targeted are the former General Director of the National Police Force and the former Secretary of the Interior.⁷⁸

August 29, 2006: The State court calls former President Alberto Fujimori the “alleged author” of the crimes resulting from the attack on Castro Prison, orders his arrest, and freezes his bank accounts and other assets.⁷⁹

B. Other Relevant Facts

Early 1980s-2000: Peruvian police and military forces battle armed insurgencies led primarily by two groups, *Sendero Luminoso* and the Revolutionary Movement Tupac Amará.⁸⁰

II. PROCEDURAL HISTORY

A. Before the Commission

May 18, 1992: Mrs. Sabina Astete presents a petition signed by relatives of Castro Prison inmates to the Commission.⁸¹ The petition refers to the killings in the prison that occurred on May 6-9, 1992 and to the transfer of prisoners to other prisons without giving the prisoners access to their families or attorneys.⁸²

August 18, 1992: The Commission requests the Court order preliminary measures to allow visits of prisoners’ next of kin as well as their attorneys, and provide medical attention to those in need.⁸³ The Commission also requested that the State provide a list of those dead and missing as a result of the attack on the Prison.⁸⁴

January 27, 1993: The Court refuses to grant the requested provisional

77. *Id.* ¶ 197(70).

78. *Id.*

79. *Id.* ¶ 197(75).

80. *Id.* ¶ 197(1).

81. *Id.* ¶ 6.

82. *Id.*

83. *Id.* ¶ 8.

84. *Id.*

measures.⁸⁵ Instead, the Court orders investigations into the facts alleged in the Commission's brief.⁸⁶

June 5, 1997: Curtis Doebbler petitions the Commission on behalf of his client, Mónica Feria Tinta, a prisoner at Castro Prison at the time of the Prison attacks.⁸⁷ The petition describes the attack on May 6, 1992, and the subsequent torture and cruel, inhuman, and degrading treatment of the prisoners there.⁸⁸ The Commission later divides the case into two, one relating to the attack on the prison (Case No. 11796-B) and the other relating specifically to the treatment of Mónica Feria Tinta, which it attaches to another similar case (Case No. 11796 –A).⁸⁹

March 5, 2001: The Commission declares the cases admissible in Admissibility Report No. 43/01.⁹⁰

January 9, 2004: After hearing arguments and reviewing evidence presented by the State and by Mónica Feria Tinta, the Commission adopts Merits Report No. 94/03 and finds the State responsible for violations of Article 4 (Right to Life), Article 5 (Humane Treatment), Article 8 (Fair Trial), and Article 25 (Right to Judicial Protection) of the American Convention in relation to Article 1(1) to the detriments of the victims listed in the Merits Report.⁹¹ The Commission recommends that the State undertake comprehensive, impartial investigations of the events that occurred at Castro Prison, and to identify the remaining bodies, and deliver the victims' remains to their next of kin.⁹² The Commission further recommends that the State make reparations and ensure such actions never happen again.⁹³

B. Before the Court

September 9, 2004: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁹⁴ The Court recognizes

85. *Id.* ¶¶ 9-13.

86. *Id.* ¶ 13.

87. *Id.* ¶ 14.

88. *Id.*

89. *Id.* ¶¶ 15, 16.

90. *Id.* ¶ 17.

91. *Id.* ¶ 25. The Court does not specifically identify the victims in the Commission's Report on the Merits, and the Report was not available at the time of publication. *See generally id.*

92. *Id.*

93. *Id.*

94. *Id.* ¶ 33.

Mónica Feria Tinta and Sabina Astete as the victims' representatives.⁹⁵

January 24, 2005 - January 25, 2005: Sabina Astete gives the Court the final list of victims that she represents with Douglas Cassel, Peter Erlinder, and Berta Flores.⁹⁶ Mónica Feria Tinta likewise gives the Court the final list of victims that she represents.⁹⁷

October 4, 2005: The Court selects Mónica Feria Tinta to represent all the named victims as common intervener because she represented more individual victims and she was herself a victim.⁹⁸ The Court said any victim not named may be represented by the Commission.⁹⁹

February 12, 2006: The State responds to the petition and to the victims' brief.¹⁰⁰ The State makes a partial acknowledgement of international responsibility for certain violations alleged by the Commission.¹⁰¹

June 26, 2006 – June 27, 2006: At the public hearing in El Salvador, the State acknowledges that its military attacked Pavilions 1A and 4B on the dates from May 6 to May 9, 1992.¹⁰² The State admits that the attack was directed toward certain prisoners linked to *Sendero Luminoso*.¹⁰³

The State further acknowledges the facts included in the brief submitted by the common intervener with respect to events transpiring from May 6 to May 9, 1992.¹⁰⁴ The State acknowledges partial responsibility for the deaths, injuries, and mistreatment of prisoners during the attack, as well as the failure to respect the right to a fair trial and judicial protection of the victims and their next-of-kin.¹⁰⁵

The State also admits that authorities attempted to cover up the human rights violations of the government, but says that the rights of the prisoners and their next-of-kin have been restored and no further violations are taking place.¹⁰⁶

95. *Id.* ¶ 36.

96. *Id.* ¶ 37.

97. *Id.* ¶ 38.

98. *Id.* ¶ 40.

99. *Id.*

100. *Id.* ¶ 56.

101. *Id.*

102. *Id.* ¶ 135.

103. *Id.*

104. *Id.*

105. *Id.* ¶ 140.

106. *Id.*

1. Violations Alleged by Commission¹⁰⁷

To the detriment of at least forty-three prisoners that died:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Humane Treatment)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of at least 497 injured or otherwise mistreated prisoners:

Article 5(2) (Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment)

in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the alleged victims and their next of kin:

Article 8(1) (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by the Representative of the Victims¹⁰⁸

Same violations alleged by the Commission, plus:

Article 7 (Right to Personal Liberty)

Article 11 (Right to Privacy)

Article 12 (Freedom of Conscience and Religion)

Article 13 (Freedom of Thought and Expression)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American

107. *Id.* ¶ 2.

108. *Id.* ¶¶ 115, 260, 361, 365, 370. Mónica Fera Tinta was appointed by the Court as common intervener and represented all the named victims.

Convention.

Article 1 (Definition of “Violence against Women”)

Article 4 (Right to the Recognition, Enjoyment, Exercise and Protection of All Human Rights and Freedoms Embodied in International Human Rights Instruments)

Article 6 (Right to Freedom from Violence)

Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women)

Article 8 (Duty to Undertake Measures)

Article 9 (Special Consideration of Women in Specific Circumstances) of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women.

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

III. MERITS

*A. Composition of the Court*¹⁰⁹

Sergio García Ramírez, President

Alirio Abreu Burelli, Vice-President

Antônio A. Cançado Trindade, Judge

Cecilia Medina Quiroga, Judge

Manuel E. Ventura Robles, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 25, 2006: The Court issues its Judgment on Merits, Reparations, and Costs.¹¹⁰

109. Judge Diego García-Sayán and Judge Oliver Jackson excused themselves from the case. *Id.* n.*.

110. *Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 160 (Nov. 25, 2006).

The Court found that the State had violated:

Article 4 (Right to Life), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the forty-one dead prisoners listed in Appendix 1 of the Judgment,¹¹¹ because:

The Court examined the State's actions, taking into account the seriousness of the crimes, the circumstances in which they occurred, and, despite the State's partial acknowledgement of responsibility for the crimes, the State's failure to accept responsibility for events occurring after May 9, 1992.¹¹² The Court found that the events occurring at Miguel Castro Castro Prison from May 6 through May 9, 1992 constituted a massacre.¹¹³ The Court found nothing to support the State's claim that the prisoners in Pavilions 1A and 4B were planning a riot or anything else that would justify the State's actions.¹¹⁴ The Court noted that the State itself, in its acknowledgement of partial responsibility, indicated that its actions were specifically directed toward certain prisoners—members of Sendero Luminoso.¹¹⁵

The Court noted that Article 4(1) obliges States to prevent the arbitrary deprivation of life, in addition to adopting "all appropriate measures to protect and preserve the right to life."¹¹⁶ These obligations extend to all State authorities, including police and military forces.¹¹⁷ Arbitrary executions by police forces are worse when part of a pattern of State violations of human rights.¹¹⁸ The Court said that, because police and military forces possess the right to use legitimate force, the State must particularly supervise such forces to ensure the right to life of its citizenry is respected.¹¹⁹ Further, governmental police and military forces may only resort to armed force when strictly necessary to preserve life.¹²⁰

The Court concluded that the prisoners at Miguel Castro Castro Prison were not in mutiny or otherwise riotous and resorted to armed

111. *Id.* ¶ 258.

112. *Id.* ¶ 233.

113. *Id.* ¶ 234.

114. *Id.*

115. *Id.* ¶ 235.

116. *Id.* ¶ 237.

117. *Id.*

118. *Id.* ¶ 238.

119. *Id.*

120. *Id.* ¶ 239.

resistance only after the attack began.¹²¹ Their efforts were instead directed toward surviving the violence directed at them by the State's forces.¹²² The corpses of the forty-one prisoners who were killed and identified showed multiple bullet wounds to their heads and necks.¹²³ Such evidence proves the State forces aimed to kill their victims rather than immobilize them.¹²⁴

Further, some prisoners announced to the police and military forces that they were going to come out of the Pavilion 4B and requested a ceasefire; when they came out, the State forces greeted them with a hail of gunfire and executed them.¹²⁵ Even when, after the operation had ceased, injured prisoners were taken to hospitals for medical care, the State prevented them from receiving the necessary care, resulting in additional deaths.¹²⁶ Thus, the Court found that the State was responsible for violations of Article 4(1) (Prohibition of Arbitrary Right to Life) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof.¹²⁷

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the forty-one dead prisoners listed in Appendix A of the Judgment and those surviving prisoners identified in Appendix 2 of the Judgment,¹²⁸ because:

The Court noted that, in addition to physical suffering, psychological and moral anguish must be taken into account when determining violations of Article 5 (Right to Humane Treatment).¹²⁹ Further, the mere threat of actions in violation of Article 5, if sufficiently credible,

121. *Id.* ¶ 241.

122. *Id.* ¶ 242.

123. *Id.* ¶ 243.

124. *Id.*

125. *Id.* ¶ 245.

126. *Id.* ¶ 246.

127. *Id.* ¶ 258.

128. *Id.* ¶ 349.

129. *Id.* ¶ 279.

can in itself violate Article 5.¹³⁰ The Court observed that the State forces attacked the prison using explosions, gasses, smoke, and indiscriminate gunshots, all carried out in complete darkness in an enclosed and overcrowded area.¹³¹ During the four days over which the attack occurred, the prisoners were deprived of food, water, electricity, and medical attention.¹³² The Court found that the surviving prisoners suffered psychological torture from the constant threats and danger generated by the State's attack.¹³³ Pregnant prisoners suffered doubly, as they were worried both for their own lives and the lives of their children.¹³⁴

The Court held the actions by the State in the days following the attack to likewise constitute inhuman treatment in violation of Article 5 (Right to Humane Treatment).¹³⁵ The Court found the failure of the State to fulfill its duty to provide medical attention to injured prisoners in the days after the attack especially egregious.¹³⁶ Prisoners transferred to other prisons or simply relocated within Castro Castro were tortured with rubber batons and metal clubs.¹³⁷ Pregnant women were forced to lie on the floor on their stomachs.¹³⁸ Witnesses to such actions likewise suffered mental anguish.¹³⁹ Six women prisoners were stripped naked and watched over by armed guards, which constituted sexual violence against these women, and caused them mental anguish.¹⁴⁰ The Court also found that several hooded State agents raped another female prisoner when they pretended to medically examine her.¹⁴¹ The Court noted additional violations of Article 5 (Right to Humane Treatment), including recognized tortures such as beatings delivered to the bottoms of prisoners' feet ("falanga beatings"),¹⁴² severe solitary confinement,¹⁴³ and application of electrical shocks.¹⁴⁴

130. *Id.*

131. *Id.* ¶ 284.

132. *Id.* ¶ 285.

133. *Id.* ¶ 288.

134. *Id.* ¶ 292.

135. *Id.* ¶ 300.

136. *Id.* ¶ 295.

137. *Id.* ¶ 297.

138. *Id.* ¶ 298.

139. *Id.*

140. *Id.* ¶¶ 306, 308.

141. *Id.* ¶¶ 309, 312.

142. *Id.* ¶ 320.

143. *Id.* ¶ 325.

144. *Id.* ¶ 327.

*The Court ruled that these actions constituted violations of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.*¹⁴⁵

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of the prisoners' next-of-kin,¹⁴⁶ because:

*The Court noted that the victims' next-of-kin also suffered due to State violations of Article 5(1) (Right to Physical, Mental, and Moral Integrity).*¹⁴⁷ *The Court identified solitary confinement of mothers as especially damaging to children deprived of their mothers' presence,*¹⁴⁸ *and the experience some next-of-kin endured searching for their loved ones among the corpses piled in the morgue.*¹⁴⁹ *These corpses were in various states of decomposition and some were even dismembered.*¹⁵⁰

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, in connection to Articles 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, in detriment of the next-of-kin of the forty-one dead prisoners, the surviving prisoners, and the prisoners identified in paragraphs 336, 337, 340, and 341 and identified in Appendix 3 of the Judgment,¹⁵¹ because:

The Court noted that, because the State violated Articles 4 (Right to Life) and 5 (Right to Humane Treatment), the State has the obligation to

145. *Id.* ¶ 293.

146. *Id.* ¶ 350.

147. *Id.* ¶ 342.

148. *Id.* ¶ 341.

149. *Id.* ¶ 339.

150. *Id.*

151. *Id.* ¶ 408.

investigate the violations as part of its duty to guarantee them.¹⁵² Further, the Court stated that justice recognizes the right of alleged victims or their next-of-kin to know the truth concerning events affecting them, and that responsible parties must be punished.¹⁵³ To know the truth, then, requires investigation.¹⁵⁴ The State's actions, however, included significant omissions with respect to the recovery, preservation, and analysis of evidence: records of the removal of bodies were not prepared, the exact place or circumstances surrounding the seizure of weapons were not specified, and autopsy certificates and forensic medical reports ignored bullets removed from victims' bodies.¹⁵⁵ Additionally, although the State did initiate a criminal investigation in July 2005, the thirteen years between such investigation and the events themselves were an unreasonable amount of time that constituted a violation of the right to access justice of both the victims and their next-of-kin.¹⁵⁶

The Court acknowledged that the State had begun criminal proceedings against certain high officials, such as former President Alberto Fujimori, as well as the former director of the Miguel Castro Castro Prison, the former Director of the National Police Force, and the former Minister of the Interior.¹⁵⁷ But such proceedings do not cover all of the human rights violations that occurred and are thus in themselves violations of the right to justice.¹⁵⁸ Further, the State has given no explanation for the failure to begin criminal proceedings that cover all of the events occurring from May 6 through May 10, 1992.¹⁵⁹ Only the deaths have been investigated, but not other human rights violations.¹⁶⁰ This lack of justice has prevented the victims from obtaining reparations for the crimes against them.¹⁶¹

The Court did not rule on:

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of

152. *Id.* ¶ 380.

153. *Id.* ¶ 383.

154. *Id.* ¶ 384.

155. *Id.* ¶¶ 386, 387.

156. *Id.*

157. *Id.* ¶ 388.

158. *Id.* ¶ 390.

159. *Id.* ¶ 391.

160. *Id.* ¶ 393.

161. *Id.* ¶ 395.

the Convention,¹⁶² because:

*Because the alleged victim's violation of Article 7 occurred outside the scope of this case, and because the actions that are alleged to violate Article 7 have been taken into consideration of the violation of Article 5 of the Convention and Article 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, the Court declined to rule on this allegation of a violation of Article 7.*¹⁶³

Article 11 (Right to Privacy), in relation to Article 1(1) of the Convention,¹⁶⁴ because:

*The common intervener argued that official State press releases characterized all prisoners in Pavilions 1A and 4B as "terrorists," which violates the prisoners' privacy as well as the privacy of their next-of-kin.¹⁶⁵ The Court determined that there was insufficient evidence to conclude that the released names were those of the prisoners from those pavilions, and thus cannot identify their next-of-kin.¹⁶⁶ Thus, the Court cannot find the State responsible for a violation of Article 11 (Right to Privacy).*¹⁶⁷

Articles 12 (Freedom of Conscience and Religion) and 13 (Freedom of Thought and Expression), in relation to Article 1(1) of the Convention,¹⁶⁸ because:

The common intervener argued that forcing the prisoners to sign the National Anthem and thus embrace a nationalist ideology constituted a violation of these Articles.¹⁶⁹ Further, solitary confinement is designed to attack the prisoners' states of mind and thus likewise violates these Articles.¹⁷⁰ The Court declared that it took into consideration these arguments when analyzing violations of Article 5 (Right to Humane Treatment) of the Convention and thus declined to rule on these

162. *Id.* ¶ 364. The Merits Judgment did not indicate the victims affected by this alleged violation.

163. *Id.*

164. *Id.* ¶ 360.

165. *Id.* ¶ 352.

166. *Id.* ¶ 360.

167. *Id.*

168. *Id.* ¶ 368. The Merits Judgment did not indicate the victims affected by this alleged violation.

169. *Id.* ¶ 366(a).

170. *Id.* ¶ 366(b).

*allegations.*¹⁷¹

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio García Ramírez¹⁷²

Because this case presents the Court with its first opportunity to apply the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women (“Convention on Violence Against Women”), and because this case involves violence against prisoners, Judge García Ramírez addressed two matters related to these issues.¹⁷³

First, Judge García Ramírez addressed the propriety of Court’s jurisdiction in applying the Convention on Violence Against Women.¹⁷⁴ Judge García Ramírez first discussed the apparent need in international law to create specific conventions and protocols that protect certain populations, such as women, even when current human rights law includes broad guarantees.¹⁷⁵ Judge García Ramírez examined the Court’s assertion of jurisdiction in applying other Conventions, including the Inter-American Convention to Prevent and Punish Torture¹⁷⁶ and the Convention on the Forced Disappearance of Persons.¹⁷⁷ In those cases, the language of the Conventions allowed the Court to assert its authority to issue rulings.¹⁷⁸ Similarly, here, the Court determined that Article 12 of the Convention on Violence Against Women, which states that violating the Article allows “norms and procedures” of the American Convention on Human Rights to govern, justifies the Court’s jurisdiction with respect to the violation of Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention on Violence Against Women.¹⁷⁹

Secondly, Judge García Ramírez addressed what he characterized as a “recurring matter,” that is, the use of force by State agents against prisoners.¹⁸⁰ He identified several cases decided by the Court where

171. *Id.* ¶ 368.

172. Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R., (ser. C) No. 160 (Nov. 25, 2006).

173. *Id.* ¶ 1.

174. *Id.* ¶ 2.

175. *Id.*

176. *Id.* ¶ 24.

177. *Id.* ¶ 25.

178. *Id.* ¶¶ 24, 25.

179. *Id.* ¶ 27.

180. *Id.* ¶ 33.

similar abuses had occurred,¹⁸¹ and pleaded that the state parties to the American Convention take note of these abuses.¹⁸² In concluding, Judge García Ramírez noted the “massive violations” and “extraordinary violence” involved in this case, and hoped that such violation would never be repeated.¹⁸³

2. Concurring Opinion of Judge Antônio A. Cançado Trindade¹⁸⁴

Judge Cançado Trindade reflected on the nature of time and its effect on law, and how the passage of time affects justice and the victims of crime.¹⁸⁵ He also stated his belief that there is no absolute need of an intermediary, that is, the Commission, between the victims of human rights violations and the Court.¹⁸⁶ In Judge Cançado Trindade’s view, the victims, through their representative, more thoroughly and effectively conveyed descriptions of the crimes committed in this case than did the Commission.¹⁸⁷

Judge Cançado Trindade then focused on the State’s international responsibility for violations of international law.¹⁸⁸ In the present case, he finds that State responsibility arose when the armed forces first decided and planned on attacking the prisoners.¹⁸⁹ Judge Cançado Trindade, in accordance with the Judgment, characterized the attack on Castro Castro Prison as a “cold-blooded massacre,” an attempt to “exterminate people deprived of their liberty and in a complete state of defenselessness.”¹⁹⁰ He addressed the doctrine of proportionality, finding that because the victims were not engaged in a riot, were not rebellious, and were completely defenseless, there was an utter lack of proportionality on the part of the State.¹⁹¹

Judge Cançado Trindade next emphasized the reality of State crimes, and recounts the history of the recognition of such crimes.¹⁹² He also addressed the violence directed against women in the present case,

181. *Id.* ¶ 36.

182. *Id.* ¶ 38.

183. *Id.*

184. *Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R., (ser. C) No. 160 (Nov. 25, 2006).*

185. *Id.* ¶¶ 7, 15.

186. *Id.* ¶ 22.

187. *Id.*

188. *Id.* ¶ 32.

189. *Id.* ¶ 33.

190. *Id.* ¶ 37.

191. *Id.* ¶¶ 35-37.

192. *Id.* ¶¶ 41, 44-49.

particularly violence against maternity, and how it differs from other violence.¹⁹³ He analyzed the Court's jurisdiction with respect to the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, finding jurisdiction where the Convention refers to consultations with the Inter-American Commission in accordance with "norms and procedures established" by the Commission.¹⁹⁴

Finally, Judge Cançado Trindade reflected on the eternity of oppression, as reflected in the poets and prophets of the *Iliad* and the Old Testament's *Ecclesiastes*.¹⁹⁵ He noted his own impending retirement from the Court, and stated that he hopes his efforts have helped illuminate injustice and establish "truth and justice."¹⁹⁶

IV. REPARATIONS

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Investigate, Identify, Prosecute, and Punish Those Responsible

The State must effectively carry out the ongoing criminal proceedings within a reasonable time and open any appropriate new proceedings.¹⁹⁷ Further, all measures necessary to determine the facts of the case for determining who participated in the attack should be implemented.¹⁹⁸ The results of these proceedings must be made public so that the Peruvian people may know the truth.¹⁹⁹ The State must also ensure that the police investigation records are preserved so as not to obstruct corresponding investigations.²⁰⁰

2. Deliver the Remains of Mario Francisco Aguilar Vega to His Next-of-Kin

The State must deliver the remains of Mario Francisco Aguilar Vega to his next-of-kin and must cover all expenses relating to the

193. *Id.* ¶¶ 59-65.

194. *Id.* ¶ 73.

195. *Id.* ¶¶ 75-79.

196. *Id.* ¶ 81.

197. *Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 160, ¶ 441 (Nov. 25, 2006).*

198. *Id.*

199. *Id.*

200. *Id.* ¶ 442.

delivery of these remains and to Mr. Vega's burial.²⁰¹ Further, the State must take all actions necessary to identify all prisoners who died during the attack, and to deliver their remains to their next-of-kin.²⁰²

3. Publically Acknowledge Responsibility

The State must publicly acknowledge its international responsibility for the violations set forth in the Judgment, in the presence of high State authorities, the victims, and their next-of-kin.²⁰³ This public acknowledgment must be broadcast on radio and television.²⁰⁴

4. Publish the Judgment

The State must publish the proven facts of the Judgment in the State's Official Newspaper and in another nationally circulated newspaper.²⁰⁵ Further, the State must twice broadcast these same parts of the Judgment on radio and television, with an interval of two weeks between the broadcasts.²⁰⁶

5. Provide Medical and Psychological Assistance

The State must provide free medical and psychological treatments to the victims and their next-of-kin who suffered physical or psychological problems from the attack.²⁰⁷ Specialized health institutions must provide the required treatments.²⁰⁸ Where the victims or their next-of-kin reside outside of Peru, then the State shall pay each victim \$5,000 so that they may receive the necessary care.²⁰⁹

6. Implement Human Rights Education for State Agents

The State must design and implement human rights education programs addressed to Peruvian police forces, focusing on the

201. *Id.* ¶ 443.

202. *Id.* ¶ 444.

203. *Id.* ¶ 445.

204. *Id.*

205. *Id.* ¶ 446.

206. *Id.* ¶ 447.

207. *Id.* ¶ 449.

208. *Id.*

209. *Id.*

international standards pertaining to the treatment of prisoners.²¹⁰

7. Include Victims in the Eye that Cries Monument

“The Eye that Cries” is a monument dedicated to the victims of the internal armed conflicts within the State.²¹¹ The Court ordered the State to ensure that the deceased prisoners identified in the Judgment be represented on this monument.²¹² The prisoners’ names may be inscribed on the monument.²¹³

B. Compensation

1. Pecuniary Damages

The Court awarded \$10,000 to each of the forty-one deceased prisoners identified in Appendix 1 of the Judgment, as compensation for the income they could have received had they survived.²¹⁴ Such compensation is to be divided among their next-of-kin; fifty percent divided in equal parts between the sons and daughters of the victims, and fifty percent to be delivered to the victim’s spouse or permanent partner.²¹⁵ If there are no sons or daughters, or no spouse or permanent partner, then fifty percent of the share shall be delivered to the victim’s parents, and the remaining fifty percent shall be divided between the victim’s brothers.²¹⁶

The Court awarded \$25,000 to surviving prisoners who suffer a complete and permanent handicap preventing future employment.²¹⁷ Upon requests of interested parties, medical clinics that specialize in treating handicaps will determine whether such handicaps exist.²¹⁸ Such requests must be made within eight months.²¹⁹

Similarly, the Court awarded \$10,000 to surviving prisoners who suffer from a partial, permanent handicap that affects their ability to work.²²⁰ When an interested party makes a request, medical clinics

210. *Id.* ¶ 452.

211. *Id.* ¶ 453.

212. *Id.* ¶ 454.

213. *Id.*

214. *Id.* ¶ 424.

215. *Id.* ¶ 421.

216. *Id.*

217. *Id.* ¶ 425.

218. *Id.*

219. *Id.*

220. *Id.*

specializing in treating handicaps will determine the victims' eligibility.²²¹ Such requests must be made within eight months.²²²

The Court awarded \$200 to the thirty-six next-of-kin, identified in Appendix 2 of the Judgment, who incurred expenses while searching for victims in hospitals and morgues.²²³

The Court awarded \$300 to the next-of-kin of forty of the identified deceased victims, who received the victims' remains and assumed all burial expenses.²²⁴ These awards must be delivered to the parents first, in their absence, then to the spouse or partner, and in their absence, then to their children, or, if there are no children, then to the victim's siblings.²²⁵ The next-of-kin must request this payment within eight months of the date of this Judgment.²²⁶

2. Non-Pecuniary Damages

The Court awarded \$50,000 in favor of each of the forty-one deceased prisoners identified in Appendix 1, divided among their next-of-kin, fifty percent divided in equal parts between the sons and daughters of the victims, and fifty percent to be delivered to the victim's spouse or permanent partner.²²⁷ If there are no sons or daughters, or no spouse or permanent partner, then fifty percent of the share shall be delivered to the victim's parents, and the remaining fifty percent shall be divided between the victim's siblings.²²⁸

The Court awarded \$15,000 to the father, mother, spouse or permanent partner, and each son or daughter of Mario Francisco Aguilar Vega, in consideration of the fact that the State has never handed his remains over to his next-of-kin.²²⁹

The Court awarded \$1,200 to each brother or sister of Mario Francisco Aguilar Vega, in consideration of the fact that the State has never handed his remains over to his next-of-kin.²³⁰

The Court awarded \$10,000 to each father, mother, spouse or permanent partner, and each son or daughter of the forty-one deceased

221. *Id.*

222. *Id.*

223. *Id.* ¶ 427.

224. *Id.* ¶ 428.

225. *Id.*

226. *Id.*

227. *Id.* ¶ 433(a).

228. *Id.*

229. *Id.* ¶¶ 432(k), 433(b)(i).

230. *Id.* ¶ 433(b)(ii).

prisoners.²³¹

The Court awarded \$1,000 to each brother or sister of the deceased prisoners.²³²

The Court awarded \$20,000 to each of the surviving victims suffering physical or mental injuries that constitute a permanent handicap.²³³

The Court awarded \$12,000 to each of the surviving victims suffering physical or mental injuries that constitute a partial permanent handicap.²³⁴

The Court awarded \$8,000 to each of the surviving victims who suffered permanent injuries but that did not result in partial or complete handicaps.²³⁵

The Court awarded \$4,000 to each of the surviving victims who did not meet any of the above-mentioned qualifications.²³⁶

The Court made an additional award of \$5,000 in favor of victims Eva Chalco, Sabina Quispe Rojas, and Vicenta Genua López.²³⁷

The Court made an additional award of \$30,000 in favor of the victim of rape whose name is included in Appendix 2 of the Judgment.²³⁸

The Court made an additional award of \$10,000 in favor of the six women, identified in Appendix 2, who suffered sexual violence.²³⁹

The Court awarded \$1,500 to the next-of-kin of the victims of violations of Article 5 (Right to Humane Treatment) described in paragraphs 336, 337, 340, and 341 of the Judgment and identified in Appendix 2 of the Judgment.²⁴⁰ Where such next-of-kin are the prisoners' children under the age of eighteen, then the award shall be \$2,000.²⁴¹ The Court, recognizing its inability to identify all such victims, required that the victims present themselves before competent State authorities within eight months to prove their qualifications for the award.²⁴²

3. Costs and Expenses

231. *Id.* ¶ 433(b)(i).

232. *Id.* ¶ 433(b)(ii).

233. *Id.* ¶ 433(c)(i).

234. *Id.* ¶ 433(c)(ii).

235. *Id.* ¶ 433(c)(iii).

236. *Id.* ¶ 433(c)(iv).

237. *Id.* ¶ 433(c)(viii).

238. *Id.* ¶ 433(c)(ix).

239. *Id.* ¶ 433(c)(x).

240. *Id.* ¶ 433(d).

241. *Id.*

242. *Id.*

The Court ordered the State to pay \$75,000 to the common intervener for costs and expenses incurred in pursuing the case.²⁴³

The Court additionally ordered the State to pay \$15,000 to Sabina Astete, Douglas Cassel, Peter Erlinder, and Berta Flores as representatives of additional victims, for costs and expenses incurred in pursuing the case.²⁴⁴

4. Total Compensation (including Costs and Expenses ordered):

\$3,009,200²⁴⁵

C. Deadlines

The State must investigate, identify, punish, and prosecute those persons responsible for the attack within a reasonable time.²⁴⁶

The State must deliver the remains of Mario Francisco Aguilar Vega to his next-of-kin within six months.²⁴⁷

The State must publicly acknowledge its international responsibility for the attack and the violations identified in the Judgment within one year of the Judgment.²⁴⁸

The State must publish the Judgment in the official State newspaper and another nationally circulated newspaper within six months of the Judgment.²⁴⁹ The State must broadcast the Judgment on radio and television likewise within six months of the Judgment.²⁵⁰

The State must design and implement human rights education programs for the police within a reasonable time.²⁵¹

The State must ensure that all victims of the attack are represented on the public monument “The Eye that Cries” within one year.²⁵²

243. *Id.* ¶ 456.

244. *Id.*

245. This amount constitutes the minimum owed by the State to the victims and their next-of-kin. As indicated in ¶¶ 425, 433(b)(i)-(ii), 433(c)(i)-(iv), and 433(d) of the Judgment, certain sums are payable only where those entitled present to State authorities satisfactory identification within eight months of the Judgment. Thus, this Total Compensation amount may rise, depending on the number of individuals that meet this requirement.

246. *Id.* ¶ 441.

247. *Id.* ¶ 443.

248. *Id.* ¶ 445.

249. *Id.* ¶ 446.

250. *Id.*

251. *Id.* ¶ 452.

252. *Id.* ¶ 454.

Finally, the State must compensate the victims and their next-of-kin within eighteen months.²⁵³

V. INTERPRETATION AND REVISION OF JUDGMENT

March 16, 2007: The State requests an interpretation of several aspects of the Court's Judgment.²⁵⁴ First, in the findings of fact reflected in the Judgment, the State believes the Court wrongly characterized the insurgents against whom the State fought as "armed groups" and instead requests that the State more properly characterize them as "terrorists."²⁵⁵ Further, the State argues that the Judgment should include the insurgents' own violations of human rights, as well as the State's.²⁵⁶

Second, the State makes requests regarding reparations.²⁵⁷ Where the Court ordered the State to inform the victims and their next-of-kin of the true facts of the State's attack on the prison, the State requests including information about *Sendero Luminoso's* own human rights violations.²⁵⁸ Where the Court ordered the State to publicly acknowledge responsibility for the attack, the State asks to include acknowledgment of the crimes the victims were accused or convicted of.²⁵⁹ The State also expresses concern that the Court-ordered public broadcast of the Judgment through television and radio might incite the population against the State, rather than act as a reparative measure.²⁶⁰

Third, where the Court ordered the State to pay monetary sums to certain victims convicted of violent crimes, the State raises concern that the money will be used to commit additional subversive acts and finance *Sendero Luminoso*.²⁶¹ Instead, the State requests that the money be paid to a trust fund managed through either the Organization of American States or the United Nations in order to offer health services, food, or education to the needy.²⁶² The State also requests that any amount awarded to victims who were lawfully convicted of terrorism

253. *Id.* ¶¶ 424-434.

254. Miguel Castro Castro Prison v. Peru, Interpretation of the Judgment on Merits, Reparations, and Costs, Inter-Am. Ct. H.R., (ser. C) No. 181, ¶ 2 (Aug. 2, 2008).

255. *Id.* ¶ 28.

256. *Id.*

257. *Id.* ¶¶ 29(a)-(b).

258. *Id.* ¶ 29(a).

259. *Id.* ¶ 29(b).

260. *Id.* ¶ 29(c).

261. *Id.* ¶ 30(a).

262. *Id.*

should be reduced by the reparations the victims themselves owe, either to the State or other victims of their crimes.²⁶³

Finally, the State requests the Court to consider the responsibility of non-state groups for human rights violations when determining liability for such violations under international law.²⁶⁴

March 20, 2007: Douglas Cassel and Sean O'Brien, who represent a group of victims in this case, request the Court interpret the judgment on the determination of the victims and reparations ordered in the Judgment.²⁶⁵ The representatives request that the Court apply the eight-month term extended to the children of the identified victims to prove their entitlement to reparations to the next-of-kin of victims not identified in Appendix 2 so that they may also prove their entitlement to the same reparations.²⁶⁶ The representatives further request that the State clarify which victims and their next-of-kin are entitled to the medical and psychological treatments ordered as reparations.²⁶⁷ Finally, the representatives note that Mr. Francisco Alcázar Miranda, an inmate with proved injuries from the attack, was omitted from Appendix 2's list of victims, and request that the Court include his name therein.²⁶⁸

February 29, 2008: The State sends the Court a letter written by the creator of "The Eye that Cries" monument, in which the creator expresses the hope that the names of the victims of the attack on Castro Castro Prison, especially those guilty of crimes against humanity, are not engraved upon the monument.²⁶⁹

A. *Composition of the Court*²⁷⁰

Sergio García Ramírez, President
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge

263. *Id.* ¶ 30(b).

264. *Id.* ¶ 32.

265. *Id.* ¶ 3.

266. *Id.* ¶ 58(a).

267. *Id.* ¶ 58(b).

268. *Id.* ¶ 58(c).

269. *Id.* ¶ 12.

270. Judge Diego García Sayán and Judge Judge Alirio Abreu Burelli excused themselves from the Interpretation of the Judgment on Merits, Reparations, and Costs. *Id.* n.*, n.1.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

With respect to the characterization of the insurgents, the Court stated ruling on the nature of victims of their crimes is beyond its jurisdiction, as the Court rules on international law and is not a criminal court.²⁷¹ The Court did note that it has previously expressed its rejection of terrorism and the suffering caused by *Sendero Luminoso* is well-known.²⁷²

With respect to the State's interest in referring to the human rights violations committed by *Sendero Luminoso* when informing victims of the true facts of the attack on Castro Castro Prison, the Court noted that the State's obligation to inform grows out of its international obligation to investigate and prosecute the crimes committed by State agents.²⁷³ This obligation is independent from any domestic obligation to investigate any crimes members of *Sendero Luminoso* committed.²⁷⁴

Further, the Court denied the State's request to include the crimes of which the victims were accused when publicly acknowledging its responsibility for the attack, noting that the acknowledgement is reparation in itself, and must be limited to the facts adjudicated by the Court.²⁷⁵ The Court took note that the State had already acknowledged international responsibility over its attacks.²⁷⁶ Moreover, the Court addressed the State's concerns about the public broadcast of its admission of international responsibility for the attack.²⁷⁷ The Court noted that the purpose of the broadcast is to inform the public in order to avoid similar acts in the future, but agreed to consider the State's suggestions for addressing its concerns when the State is ready to proceed with its broadcast.²⁷⁸

The Court also denied the State's request to deduct from its payments to the victims any amounts the victims owed as reparations for their own terroristic actions.²⁷⁹ The Court determined that any amounts owed by the victims for their own actions lie outside the

271. *Id.* ¶ 40.

272. *Id.* ¶¶ 41, 42.

273. *Id.* ¶ 46.

274. *Id.* ¶ 48.

275. *Id.* ¶ 50.

276. *Id.*

277. *Id.* ¶ 51.

278. *Id.* ¶ 52.

279. *Id.* ¶ 53.

Court's purview and cannot be addressed by its judgments.²⁸⁰ The Court next declined the State's request to entrust the payments with UN or OAS bodies, rather than to victims who may use the amounts to finance further terrorism.²⁸¹ The Court determined that such a request seeks not to interpret the Court's Judgment but instead to change it, but the Court lacked the authority to change or revise prior rulings.²⁸²

Finally, the Court addressed the State's request that it consider the human rights violations of non-state parties in its adjudications.²⁸³ Because the request did not involve a clarification or interpretation of the current case, but instead touched on the Court's interpretation of international treaties, the Court declined to issue a ruling on the matter.²⁸⁴

With respect to the hopes expressed by the creator of "The Eye that Cries" that the Castro Castro Prison victims' names not be added to the monument, the Court allowed the State to instead create a park or other memorial for the victims within a year to fulfill this obligation.²⁸⁵

The Court next addressed the requests for interpretation submitted by Douglas Cassel and Sean O'Brien.²⁸⁶ With respect to extending the eight-month period to those next-of-kin not identified in Appendix 2, the Court ruled that the specific reparations to which the children of victims were entitled were related to specific offenses committed by the State.²⁸⁷ The victims were proven by evidence and through proper procedures of the Court.²⁸⁸ If there are others who are entitled to such reparations, they should have proven so through the appropriate procedures.²⁸⁹ Further, opening up the eight-month period for the proof of identity and entitlement to next-of-kin of victims not identified would allow those not identified in the Judgment as victims to assert claims and the Court lacked the authority to allow this.²⁹⁰

Concerning which victims are entitled to State-provided medical and psychological treatment, the Court directed the representatives' attention to the previously identified forty-one deceased victims, as well as the surviving victims identified in Appendix 2, and the direct

280. *Id.*

281. *Id.* ¶ 54.

282. *Id.*

283. *Id.* ¶ 55.

284. *Id.*

285. *Id.* ¶ 57.

286. *Id.* ¶ 62.

287. *Id.* ¶ 64.

288. *Id.*

289. *Id.*

290. *Id.* ¶ 65.

relatives of the forty-one deceased victims, identified in Appendix 3, all of whom the Court identified as entitled to the medical and psychological treatments.²⁹¹ The Court also recognized as persons entitled to the treatments those next-of-kin to the forty-one deceased victims who are able to prove to competent State authorities their relation to the victims and thus their entitlement to the treatments.²⁹²

Finally, with respect to Mr. Francisco Alcázar Miranda, the Court noted that his name was presented to the Commission as a prisoner and surviving victim, but was mistakenly omitted from Appendix 2.²⁹³ The Court recognized this mistake and declared that his rights under Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, were violated and therefore he was entitled to the appropriate reparations as previously described.²⁹⁴

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Antônio A. Cançado Trindade²⁹⁵

Judge Cançado Trindade concurred but addressed several matters in hopes of solidifying their place in international law.²⁹⁶ Firstly, Judge Cançado Trindade emphasized the primacy of law over the power of brute force.²⁹⁷ He commented on the struggle between reason and passion, as reflected in ancient Greek tragedy, specifically, the works of Aeschylus, and noted how light emerges from darkness and wisdom comes from suffering.²⁹⁸ Secondly, Judge Cançado Trindade reflected on the perennial nature of the search for justice.²⁹⁹ He stressed the need

291. *Id.* ¶¶ 66-68.

292. *Id.* ¶ 68.

293. *Id.* ¶¶ 69, 70.

294. *Id.* ¶ 70.

295. Miguel Castro Castro Prison v. Peru, Interpretation of the Judgment on Merits, Reparations, and Costs, Separate Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R., (ser. C) No. 181 (Aug. 2, 2008).

296. *Id.* ¶ 1.

297. *Id.* ¶ 14.

298. *Id.* ¶¶ 17-19.

299. *Id.* ¶ 20.

for international human rights law to more closely approximate criminal law, where justice for the victims is more consistently attained.³⁰⁰ Instead, international human rights law seems to increasingly dilute the sources of its authority and thus weaken such authority to apply justice.³⁰¹ Judge Cançado Trindade reiterated the right of all victims to reparations for their suffering, and that all parties guilty of human rights violations, whether national agents or international agents, must reap the consequences of their actions.³⁰²

Judge Cançado Trindade next disagreed with the Court's failure to hold a public hearing when issuing its interpretation of the Judgment.³⁰³ He noted that public hearings allow parties to express their views, and the views of experts and others with valuable insights.³⁰⁴ Because the Court does more than resolve cases, but also states what the law is, establishes justice, and restores the dignity of victims, the importance for the Court to hold public hearings is amplified.³⁰⁵ He also addressed the importance of reason and persuasion to the Court, and to any international human rights court.³⁰⁶ Judge Cançado Trindade argued that the Court's use of reason and persuasion, which are unquantifiable, surpasses any statistical measurements that might reflect the Court's success in establishing justice.³⁰⁷

Judge Cançado Trindade then considered the philosopher Emmanuel Kant's recognition of each individual's inherent dignity, and how this dignity is reflected in the due process of law, and in the need to allow individuals public hearings as a means of recognizing their dignity.³⁰⁸ His concurrence then compared an interpretation of its judgment in a prior case, *Barrios Altos v. Peru*, where the Court invoked Article 67 of the American Convention in order to clarify its prior judgment, with the present interpretation, which invoked Article 29(3) to limit its interpretation.³⁰⁹

Next, Judge Cançado Trindade underscored the primacy of law even where a society has fallen into a state of chronic violence.³¹⁰ He affirmed that international human rights law protects all people, and

300. *Id.* ¶ 23.

301. *Id.*

302. *Id.* ¶ 24.

303. *Id.* ¶ 28.

304. *Id.* ¶ 29.

305. *Id.* ¶ 30.

306. *Id.* ¶ 47.

307. *Id.* ¶ 50.

308. *Id.* ¶¶ 54-61.

309. *Id.* ¶¶ 62-65.

310. *Id.* ¶ 68.

therefore the jurisdiction of the Court can apply to state parties as well as to non-state parties.³¹¹ Thus, Judge Cañado Trindade expressed disappointment that the Court did not clarify, as the State requested, that the State include victims of terrorism promulgated by *Sendero Luminoso* in its public acknowledgment of responsibility, which Judge Cañado Trindade saw as an opportunity for the Court to assert that “nothing is beyond the protection of the law.”³¹²

Judge Cañado Trindade also lamented recent vandalism of the memorial “The Eye that Cries” in Lima, comparing the vandalism to similar acts around the world, including the Genocide Memorial in Kigali, Rwanda, and Belower Wald Memorial to concentration camp victims, in Brandenburg, Germany.³¹³ Finally, Judge Cañado Trindade affirmed the right to a fair trial as a right to justice, and thus an imperative of *jus cogens*.³¹⁴

2. Concurring Opinion of Judge Sergio García Ramírez³¹⁵

Judge García Ramírez concurred in the interpretation offered by the Court, but wished to expand upon some of the concerns expressed by the State in its request for interpretation.³¹⁶ He noted that the State sought in its request for interpretation to refer to the violence promulgated by the prisoners prior to their imprisonment.³¹⁷ Judge García Ramírez noted, however, that the Court’s jurisdiction is limited to actions taken by state actors, because states themselves are parties to the Convention which confers upon the Court its authority.³¹⁸ Where the Court referred to “armed groups,” whom the State wished the Court to identify as “terrorists,” Judge García Ramírez said that the Court must use the evidence before it in its rulings, and the actions of the prisoners prior to their imprisonment were outside of the Court’s purview.³¹⁹

Judge García Ramírez next addressed the State’s concerns about monetary reparations due the victims, who the State feared may use to finance further violence.³²⁰ He noted that the Court does not have the

311. *Id.* ¶¶ 83, 90.

312. *Id.* ¶¶ 101, 102.

313. *Id.* ¶¶ 111, 123-24.

314. *Id.* ¶ 131.

315. Miguel Castro Castro Prison v. Peru, Interpretation of the Judgment on Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R., (ser. C) No. 181 (Aug. 2, 2008).

316. *Id.* ¶ 1.

317. *Id.* ¶ 7.

318. *Id.* ¶ 12.

319. *Id.* ¶¶ 15, 16.

320. *Id.* ¶ 24.

authority to change its judgments.³²¹ He expressed his support for the Court's rulings on the State's requests concerning its public broadcast of acknowledgment of responsibility, the destination of funds paid to victims, and to the State's responsibility to build another memorial, instead of "The Eye that Cries."³²² Judge García Ramírez then concluded his opinion by commenting on the request for a public hearing.³²³ He noted that the Court typically does not hold public hearings when issuing an interpretation, that public hearings are held during the initial proceedings of the case, when the facts of the matter at hand are compiled and investigated.³²⁴ But because an interpretation is based on the ruling already issued, a public hearing was not required, unless there was a need for new facts.³²⁵

3. Concurring Opinion of Judge Manuel E. Ventura Robles³²⁶

Judge Ventura Robles discussed the State's stated view, and the purported view of the State's citizens, that the Court favors domestic offenders, whom the State identified as terrorists.³²⁷ Judge Ventura Robles expressed his support for the State's request for a public hearing, and his concern that the State and its people confuse the Court with an international criminal court.³²⁸ But, he pointed out, the Court is a tribunal with jurisdiction over the state parties, not domestic criminal law.³²⁹

VI. COMPLIANCE AND FOLLOW-UP

April 28, 2009: The Court issued its judgment on monitoring compliance.³³⁰ The Court found that the State had failed to inform the Court of measures taken to comply with the reparations ordered by the Court in its Judgment on the Merits, Reparations, and Costs dated November 25, 2006.³³¹

321. *Id.* ¶ 25.

322. *Id.* ¶¶ 29-32.

323. *Id.* ¶ 33.

324. *Id.* ¶¶ 34, 38.

325. *Id.* ¶ 42.

326. *Miguel Castro Castro Prison v. Peru*, Interpretation of the Judgment on Merits, Reparations, and Costs, Separate Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R., (ser. C) No. 181 (Aug. 2, 2008).

327. *Id.* ¶ 3.

328. *Id.* ¶ 7.

329. *Id.* ¶ 8.

330. *Miguel Castro Castro Prison v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Apr. 29, 2009).

331. *Id.* "Declares" ¶ 1.

December 21, 2010: The Court noted that the State had only provided to the Court a report of measures the State had taken to comply with the Court's Judgment on October 6, 2010.³³² This report, however, failed to indicate specific actions compliant with the Judgment.³³³ The Commission noted, in its report to the Court, that, based on the State's own report, the State had not complied with any measures ordered by the Court.³³⁴ The Court therefore summoned the State, the Commission, and the common intervener to a private hearing at the Inter-American Court of Human Rights headquarters on February 26, 2011, so that the Court may obtain from the State reasons for its failure to comply with the Judgment.³³⁵

July 29, 2013: The Court, noting that the Organization of American States had in 2008 created a General Assistance Fund to facilitate access to the inter-American human rights organs by persons lacking sufficient resources otherwise, accepted the common intervener's request to allow access to the Fund to enable the common intervener, an assistant, and a victim to attend a hearing scheduled for August 19, 2013 between the Court, the State, the Commission, and two common interveners.³³⁶ The Court found that she had demonstrated both need and that the expenses to be covered were reasonable, and that further, she represented a majority of the victims in the case.³³⁷

August 7, 2013: The Court rejected the request by Douglas Cassel, on behalf of victim Sebastián Chávez Sifuentes, to access the Fund to allow Mr. Sifuentes to attend the hearing scheduled for August 19, 2013 between the Court, the State, the Commission, and two common interveners.³³⁸ The Court reasoned that because Mr. Sifuentes's representative, Mr. Cassel, is able to attend the hearing without assistance, the need for Mr. Sifuentes to attend is not sufficiently compelling to allow the Court to authorize funding.³³⁹

332. Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 11 (Dec. 21, 2010).

333. *Id.* "Considering" ¶ 14.

334. *Id.* ¶ 13.

335. *Id.* "And Resolves" ¶ 1.

336. Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶¶ 14, 15, "And Decides," ¶ 1 (July 29, 2013).

337. *Id.* "Considering That" ¶ 15.

338. Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides" ¶ 1 (Aug. 7, 2013).

339. *Id.* "Considering That" ¶ 11.

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., \(ser. C\) No. 160 \(Nov. 25, 2006\).](#)

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge A. Cançado Trindade, Inter-Am. Ct. H.R., \(ser. C\) No. 160 \(Nov. 25, 2006\).](#)

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R., \(ser. C\) No. 160 \(Nov. 25, 2006\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 7, 2013\).](#)

[Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 29, 2013\).](#)

[Miguel Castro Castro Prison v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 21, 2010\).](#)

[Miguel Castro Castro Prison v. Peru, Monitoring Compliance with](#)

[Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 28, 2009\).](#)

5. Review and Interpretation of Judgment

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Interpretation of the Judgment, Inter-Am. Ct. H.R., \(ser. C\) No. 181 \(Aug. 2, 2008\).](#)

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge A.A. Cançado Trindade, Inter-Am. Ct. H.R., \(ser. C\) No. 181 \(Aug. 2, 2008\).](#)

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R., \(ser. C\) No. 181 \(Aug. 2, 2008\).](#)

[Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R., \(ser. C\) No. 181 \(Aug. 2, 2008\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

Miguel Castro Castro Prison v. Peru, Admissibility Report, Report No. 43/01, Inter-Am. Comm'n H.R., Case No. 11.015 (Mar. 5, 2001).

3. Provisional Measures

[Not Available]

4. Report on Merits

[Not Available]

5. Application to the Court

[Miguel Castro Castro Prison v. Peru, Application to the Court, Inter-](#)

[Am. Comm'n H.R., Case No. 11.015 \(Sept. 8, 2004\).](#)

VIII. BIBLIOGRAPHY

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Lisa J. LaPlante, *The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition*, 23 AM. U. INT'L L. REV. 51 (2007-08).

Karla I. Quintana Osuna, *Recent Development, Recognition of Women's Rights Before the Inter-American Court of Human Rights*, 21 HARV. HUM. RTS. J. 301 (2008).