



Miguel Castro-Castro Prison v. Peru

Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006).

Country: Peru

Region: Americas

Year: 2006

Court: Inter-American Court of Human Rights Inter-American Court of Human Rights

Health Topics: Diet and nutrition, Disasters and emergencies, Health care and health services, Health information, Hospitals, Infectious diseases, Medicines, Mental health, Prisons, Sexual and reproductive health, Violence, Water, sanitation and hygiene

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to life, Right to privacy

Facts

During the conflict between armed groups and government forces that lasted from the 1980s until 2000, the government of Alberto Fujimori issued a law decree on April 6, 1992, ordering "the reorganization of the National Penitentiary Institute (INPE) and put[ting] the National Police of Peru in charge of the control of security at the penitentiaries." The execution known as "Operative Transfer 1" in the maximum security prison Miguel Castro Castro was conducted under this law decree. Although the official objective of the operation was to transfer the women inmates to another prison, the real objective was to "a premeditated attack" on the prisoners occupying two specific pavilions of the Miguel Castro Castro Prison through the use of snipers, explosives, grenades, gas bombs, and tear gas. The inmates in these pavilions had been accused or sentenced for terrorism crimes or treason. Ultimately, the acts that took place between May 2 and 9, 1992, under "Operative Transfer 1" resulted in the death of at least 42 inmates, injured 182 inmates, and subjected another 322 inmates to a cruel, inhuman, and degrading treatment. Those that survived the attack were subjected to constant physical and psychological mistreatment amounting to torture. These included the wounded and pregnant women. Some wounded inmates that were taken to hospitals died from not receiving medications or medical care. Inmates taken to the Police Sanity Hospital, which included women, were subjected to derogatory treatment, such as being forced to strip off their clothes and remaining nude throughout their time in the hospital and women inmates being subjected to abrupt vaginal "inspection" by hooded people.

The Commission submitted the case before the Court, alleging violations of Articles 4 (right to life) and 5 (right to humane treatment) of the American Convention with respect to at least 42 inmates that died; the violation of Article 5 (right to humane treatment) with respect to at least 175 inmates that were injured and of 322 inmates that have resulted [allegedly] uninjured were submitted to a cruel, inhuman, and degrading treatment; and for the violation of Articles 8(1) (right to a fair trial) and 25 (right to judicial protection) of the Convention.

Decision and Reasoning

The Court found the State of Peru in violation of Art. 4 (right to life) of the American Convention on Human Rights in detriment of the identified dead inmates. The Court also found the State in violation of Art. 5(2) (right to humane treatment) of the American Convention and Arts. 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture for acts inflicted on inmates that constituted physical and psychological torture.

The Court recognized the right to life as a fundamental right on which other rights depend and the State's corresponding duties to "guarantee the conditions required" to ensure the right to life and prevent State agents from violating it. The right to life guarantees that nobody will be arbitrarily deprived of his/her life (negative obligation) and also requires States to adopt the necessary measures to protect and preserve his/her right to life (positive obligation) in accordance with the right to guarantee full and free exercise of all the people under its jurisdiction under Art. 1(1) of the American Convention.

The Court also reiterated that torture and cruel, inhuman and degrading punishment or treatment are strictly

prohibited international human rights law and that the State, as guarantor of rights enshrined in the American Convention, is responsible for ensuring adherence to the right to humane treatment of any individual under State custody. The State bears the burden of disproving allegations against State regarding the State's responsibility to ensure the right to humane treatment. The Court further underscored the State's duty to guarantee criminal center conditions that respect inmates' fundamental rights and protect their dignity in accordance to Art. 5 of the American Convention.

Decision Excerpts

"237: The Court has established that the right to life plays a fundamental role in the American Convention for being the essential prerequisite for the realization of the other rights. The States have the obligation to guarantee the creation of the conditions required so that violations [sic] to that inalienable right do not occur, and the duty to prevent their agents from endangering it. The compliance of Article 4, related to Article 1(1) of the American Convention, not only presupposes that nobody will be arbitrarily deprived of their life (negative obligation), but it also requires that the States adopt all the appropriate measures to protect and preserve the right to life (positive obligation), pursuant to the right to guarantee the full and free exercise of the rights of all the people under its jurisdiction. This active protection of the right to life by the State not only involves its legislators, but the entire state institution [sic] and those that must protect the security, being these either police forces or armed forces."

"271-73: [T]orture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and mental, is currently part of the international jus cogens. Said prohibition subsists even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes. [â€¦] Likewise, [â€¦] the threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture. [â€¦]The State is responsible, in its condition of guarantor of the rights enshrined in the Convention, of the observance of the right to humane treatment of any individual under its custody. It is possible to consider the State responsible for the tortures, cruel, inhuman, or degrading treatments suffered by a person under the custody of state agents, if the authorities have not carried out a serious investigation of the facts followed by the prosecution of whoever appears as responsible for them. The obligation to provide a satisfactory and convincing explanation of what occurred and disprove the allegations regarding its responsibility, through adequate evidentiary elements falls upon the State."

"276: Similarly, with regard to the mentioned aspects specific to violence against women, this Court will apply Article 5 of the American Convention and will set its scope, taking into consideration as a reference of interpretation the relevant stipulations of the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women, ratified by Peru on June 4, 1996, and the Convention on the Elimination of all Forms of Discrimination against Women, ratified by Peru on September 13, 1982, in force at the time of the facts, since these instruments complement the international corpus juris in matters of protection of women's right to humane treatment, of which the American Convention forms part."

"330: The severe solitary confinement had specific effects on the inmates that were mothers. Several international organizations have made emphasis on the States' obligation to take into consideration the special attention that must be offered to women due to maternity, which implies, among other measures, ensuring that appropriate visits be permitted between mother and child. The impossibility to communicate with their children caused an additional psychological suffering in the inmates that were mothers."