

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS<sup>1</sup>  
OF AUGUST 21, 2013**

**CASE OF ANZUALDO CASTRO v. PERU**

**MONITORING OF COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The Judgment on Preliminary Objections, Merits, Reparations and Costs (hereinafter "the Judgment") rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on September 22, 2009. The facts refer to the enforced disappearance of Mr. Kenneth Ney Anzualdo Castro, showing that State agents deprived him of his liberty, kidnapped him on December 16, 1993, and took him to the basements of the SIE (Army Intelligence Service), where he has remained in custody for an undetermined period of time, and to this date, his whereabouts remain unknown. In this regard, the Court found that the State was responsible for the forced disappearance of Mr. Anzualdo Castro and, as a consequence, violated the rights to personal liberty, life, and juridical personality, established in Articles 7(1), 7(6), 5(1), 5(2), 4(1), and 3 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to the obligations established in Article 1(1) thereof, as well as Article I of the Inter-American Convention on Enforced Disappearance of Persons, to the detriment of the victim. In this regard, the Court stated that:

5. The State must effectively conduct the criminal proceedings in process and any future proceeding in relation to the enforced disappearance of Kenneth Ney Anzualdo Castro, to determine, within a reasonable time, the perpetrators and instigators who are responsible for the facts of this case and effectively impose the punishments and consequences according to the law, for which it must remove all obstacles, both factual and legal, that hinder the appropriate investigation into the facts and shall not apply any law or domestic legal provision, present or future, to escape from this obligation, under the terms of paragraphs 179 to 183 of [the] Judgment.

6. The State shall immediately proceed to search for and locate Kenneth Ney Anzualdo Castro or, if applicable, his mortal remains, by means of the criminal investigation or any other adequate and effective procedure under the terms of paragraphs 185 of [the] Judgment.

7. The State must continue making all the necessary efforts and adopt the administrative and legal measures and public policies that may correspond, to determine and identify the people who disappeared during the internal conflict according to the most effective technical and scientific means and, as long as it is possible and scientifically advisable, by the standardization of the investigation criteria, for which it is convenient to establish a system of genetic information that would allow the determination and elucidation of the blood relationship of the victims and their identification, under the terms of paragraphs 188 and 189 of [the] Judgment.

8. The State must adopt the necessary measures to reform, within a reasonable time, its criminal legislation as to enforced disappearance of persons, in order to render it consistent with the international standards, paying special attention to the terms of the American Convention and the Inter-American Convention on Forced Disappearance of Persons, under the terms of paragraphs 165 to 167 and 191 of [the] Judgment.

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<sup>1</sup> Judge Diego García Sayán, of Peruvian nationality, did not participate in the hearing and deliberation of this Order, pursuant to that provided in Articles 19(2) of the Statute and 19(1) of the Court Rules of Procedure.

9. The State must implement, within a reasonable time, permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors, under the terms of paragraphs 193 of [the] Judgment.

10. The State must publish, within six months, as of notice of this Judgment, once, in the Official Gazette and in another newspaper with widespread circulation, paragraphs 30 to 203 and the operative paragraphs of [the] Judgment, under the terms of paragraph 194 of [the] Judgment.

11. The State must organize, within the term of six months, as of notice of this Judgment, a public act of acknowledgment of international responsibility for the enforced disappearance of Kenneth Ney Anzualdo Castro and to apologize to him and his next-of-kin, under the conditions and terms of paragraphs 198 to 200 of [the] Judgment.

12. The State must erect a plaque in the Museum of Memory, in the presence of the next-of-kin, if they so wish, in a public act, within the term of two years, as of notice of [the] Judgment, under the conditions and terms of paragraphs 201 of [the] Judgment

13. The State must adopt the necessary measures to provide, immediately as of notice of this Judgment, the next-of-kin of Mr. Kenneth Ney Anzualdo Castro, with the appropriate treatment, by means of health public services, for as long as they need it and including the medicines, under the conditions and terms of paragraphs 203 of [the] Judgment.

14. The State must pay Félix Vicente Anzualdo Vicuña, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro the amounts determined in paragraphs 210, 214, 222 and 230 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, as it may correspond, within the term of one year as of notice of [the] Judgment, under the terms and conditions of paragraphs 231 to 238 [t]herein.

2. The brief filed by the State of Peru (hereinafter "the State" or "Peru") on July 30, 2010,<sup>2</sup> and the reports of May 29, July 5, and August 13, 2013, that made reference to the compliance with the Judgment.

3. The briefs filed by the representatives (hereinafter "the representatives") on June 28 and December 21, 2010, as well as on February 18, and August 8, 2013, wherein they made reported on the compliance with the Judgment.

4. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") had not presented its observations in regard to the compliance with Judgment at the time this Order was rendered.

5. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of December 22, 2010 and January 11, 2013, by which it indicated, pursuant to operative paragraph 15 of the Judgment of September 22, 2009, that the State was supposed to present a report on compliance by no later that October 21, 2010; as well as the note of June 11, 2013, which requested more information from the State.

6. The private hearing on the monitoring compliance with the judgment held on May 23, 2013, at the Court headquarters, wherein the Commission, State, and representatives were present, and the representatives presented various documents related to the case.

## **CONSIDERING THAT:**

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<sup>2</sup> In regard to a note published in the newspaper "Expreso," on June 21, 2010, titled "NGO's get Rich off of I/A Court of H.R.'s rulings" [ONGs se enriquecen con fallos de Corte IDH"] (case file on monitoring of compliance, TI, f. 2 to 3), in regard to the "declarations attributed to the Ministry of Justice" in light of the monitoring of compliance with the judgment rendered by the Court on September 22, 2009, in the case of *Anzualdo Castro V. Perú*.

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Peru became a State Party to the American Convention on Human Rights since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

3. 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.<sup>3</sup>

4. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, 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 its internal law as justification for its failure to perform a treaty.<sup>4</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>5</sup>

5. 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 (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.<sup>6</sup>

6. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. These obligations include the State's duty to inform the Court of the measures adopted to comply with the rulings of the Court in its judgments. The prompt implementation of the State's obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.<sup>7</sup>

7. The Court first notes that pursuant to that provided in the Judgment of the Court of September 22, 2009, the State should have provided its first report on compliance on

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<sup>3</sup> Cf. *Case of Baena Ricardo et al. v. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, third considering paragraph.

<sup>4</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Abrill Alosilla et al.*, *supra* fourth considering paragraph.

<sup>5</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph, and *Case of Abrill Alosilla et al.*, *supra*, fourth considering paragraph.

<sup>6</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Abrill Alosilla et al.*, *supra*, fifth considering paragraph.

<sup>7</sup> Cf. *Case of Five Pensioners V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause five, and *Case of Abril Alosilla et al.*, *supra*, Considering clause six.

October 21, 2010, and it was not received, despite repeated reiterations by the Secretariat. As part of the monitoring of compliance hearing in this case, on May 23, 2013, the State agreed to submit the accompanying report. In view of the abovementioned, the reports from the representatives, prior to the hearing, referred to the State's lack of action to comply with the judgment in question, more than three years after it was published and more than 19 years since the disappearance of Kenneth Ney Anzualdo Castro. In this regard, the Court considers it appropriate to remind Peru, as it has done on previous occasions,<sup>8</sup> that without the proper information from the State, this Court cannot carry out its role of supervising the execution of judgments. To provide sufficient information on the adopted measures is a State obligation established by this Court.<sup>9</sup>

8. In light of the information provided to the Court, the Court will rule on the actions that the State reported on during and after the hearing on this case.

***A. Obligation to effectively conduct the criminal proceedings in process and any future proceeding in relation to the forced disappearance of Kenneth Ney Anzualdo Castro, to determine, within a reasonable time, the perpetrators and instigators who are responsible for the facts of this case and effectively impose the punishments and consequences according to the law (fifth operative paragraph)***

9. In a brief of May 29, 2013, the State reported that "on October 20, 2011 the Second Superior Prosecutor's Office for Crimes of Corruption by State Officials filed a criminal charge against Vladimiro Montesinos Torres, De Bari Hermoza Nicolos Rios, Jorge Enrique Nadal Paiva and Enrique Oswaldo Oliveros Pérez as indirect perpetrators for the crime against humanity of forced disappearance of Kenneth Anzualdo Castro and others. In this sense, it determined that there was merit to proceed to the trial stage." Subsequently, it noted that on April 3, 2012, the trial began before the Second Liquidating Criminal Court of Lima, but due to the replacement of one of its members, it was discontinued and the new trial began on January 22, 2013, which initiated with the questioning of witnesses and defendants. In addition, during the private hearing on compliance, the State specified that the delay in the proceeding was due to the fact that prior to the oral trial, the criminal court that heard the case had to be reinstated, and in the restructuring, some stages of the proceeding were repeated.

10. The representatives indicated during the private hearing on monitoring of compliance of May 23, 2013, that "there was no case or investigation at the Public Prosecutor's Office against the perpetrators of the disappearance of the victim." In addition, they stated that "in relation to the faults in the criminal proceeding, [ ... ] these were due [ ... ] to a change of the judges due to some administrative measures that were taken within the judiciary that could in part be a measure that allows the judges [ ... ] to continue hearing their cases, especially in these types of proceedings, until the judgment is issued, and as such, this is not a strictly legal issue but also one that has to do with the administrative decisions that the Peruvian judiciary can render." This was confirmed by the representatives in brief dated August 8, 2013, which stated that "given the aforementioned changes in the configuration

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<sup>8</sup> Cf. *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering clauses five and eight, and *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering clauses twenty-one and twenty-two.

<sup>9</sup> Cf. *Case of Five Pensioners, supra*, Considering clause five, and *Case of López Álvarez V. Honduras. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 29, 2013, Considering clause fifteen.

of the chamber, the proceeding on the forced disappearance of Kenneth Ney Anzualdo underwent an additional delay of almost a year."

11. The Commission noted that, in the private hearing, the investigations were still at an initial stage, and it agreed with the State that the obstacles in the proceeding were related to the "faults within the hearing and the change of the judges and prosecutors," to which it asked the Court to request the State to provide specific information so that such delays would not occur in the future.

12. The Court recalls that the Judgment highlighted the State's obligation to fight the situation of impunity with all available legal means, as impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims, who are entitled to learn about truth of the facts.<sup>10</sup> Based on the aforementioned, this Court takes into account the actions carried out by the State and values the efforts that were made, aimed at carrying out the criminal proceedings in order to find and punish those responsible for the forced disappearance of Mr. Anzualdo Castro; nevertheless, it is indispensable that in its next brief, it report on the specific advancements made in the investigations, as well as the actions it has taken to identify the indirect perpetrators of the crime.

***B. Obligation to immediately proceed to search for and locate Kenneth Ney Anzualdo Castro or, if applicable, his mortal remains, by means of the criminal investigation or any other adequate and effective procedure (operative paragraph six)***

13. By way of a brief dated July 5, 2013, the State specified that it was "awaiting the receipt of information from the Public Prosecutor's Office on the measures that [have been] carried out in order to determine the whereabouts of Mr. Anzualdo Castro's mortal remains."

14. The representatives noted during the private hearing on monitoring of compliance that "Kenneth Ney Anzualdo's family's main desire is to obtain justice and locate the remains of the victim, regarding which they have not heard any specific information in relation to this case." Similarly, by way of a brief dated August 8, 2013, they reported that "more than 3 years have passed since the judgment was issued, and the State has not report[ed] on the performance of a single procedure aimed at fulfilling this measure," to which they recalled that "the location of the remains and their delivery to the next-of-kin is essential in cases of forced disappearance in order to repair the damage that was caused."

15. The Court recalls that in its Judgment, it noted that "the domestic criminal proceedings ha[d] not provided effective recourses to determine the fate or whereabouts of the victim, or to guarantee the right to access justice and know the truth, by means of the investigation and possible punishment of those responsible and the full reparation of the consequences that resulted from the violations."<sup>11</sup> In this sense, it stated that "the State must conduct and conclude the corresponding investigations and proceedings within a reasonable time, in order to establish the whole truth of the facts, in light of the criteria mentioned regarding the investigations in cases of forced disappearance,"<sup>12</sup> as well as "immediately proceed to search for and locate [Mr. Anzualdo Castro] or his mortal remains, by means of a criminal investigation or another effective and appropriate procedure."<sup>13</sup>

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<sup>10</sup> Case of *Anzualdo Castro V. Perú. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 179.

<sup>11</sup> Case of *Anzualdo Castro*, *supra*, para. 168.

<sup>12</sup> Case of *Anzualdo Castro*, *supra*, para. 181.

<sup>13</sup> Case of *Anzualdo Castro*, *supra*, para. 185.

16. On this specific point, the Court emphasizes the importance of compliance with this measure, since it involves the moral satisfaction of victims and allows the next-of-kin to bring closure to the grieving process they have endured for years.<sup>14</sup> In view of the foregoing, since the State has not reported specific progress in this respect, the Court asks the State to report on the specific actions it has carried out in relation to the search and identification of Kenneth Ney Anzualdo Castro or, where appropriate, his remains, for which it must provide a work schedule on the implementation of the measures to that effect.

***C. Obligation to continue making all the necessary efforts and adopt the administrative and legal measures and public policies that may correspond, to determine and identify the people who disappeared during the internal conflict according to the most effective technical and scientific means and, as long as it is possible and scientifically advisable (operative paragraph seven)***

17. By way of a brief dated May 29, 2013, the State indicated that on November 1, 2012, the Ministry of Justice and Human Rights authorized the transfer of one million, one hundred thousand nuevos soles (amount that adds up to the approximate sum of three hundred (f. 3 TA) thousand dollars of the United States of America) in favor of the Public Prosecutor's Office, "for the purchase of chemical reagents and supplies required for the identification of 1,500 human remains of victims of the violence that took place in the period between May 1980 to November 2000." In addition, during the private hearing on monitoring of compliance, the State indicated that "[a]s a result of the joint work between [different] Criminal Prosecutor's Offices [ ... ] and the Specialized Rulings Team, major advances were made in the recovery, identification, and delivery of bodies of the victims of forced disappearances and extrajudicial executions, [and] as [ ... ] [the State] reported to the United Nation's Human Rights Council, in the period between April 2002 to April 2012 , a total of 2109 individual remains were [recovered, ] of which 1074 [were] identified and returned to their families."

18. By way of a brief dated August 8, 2013, the representatives stated that "[i]n particular, the Court [had] order[ed] the standardization of investigation criteria and the creation of a genetic data system that would allow for the determination and elucidation of blood relationship of the victims, as well as their identification," but nevertheless the State did not present any information in this regard.

19. In its judgment, the Court highlighted the opinion of expert Baraybar, who determined that the State did not have a public policy that would allow determinations to be made regarding those disappearances that occurred between 1980 and 2000, and he considered that there were serious methodological shortcomings, among which he highlighted the absence of efforts to define the scope of people who they were searching for. In addition, the Court found that there was no agreement regarding the number of disappearances that took place during the internal conflict in Peru.<sup>15</sup> The Court considered it appropriate for the State to establish, among other measures to adopt, a system of genetic information that allows for the determination and elucidation of the blood relationship of the

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<sup>14</sup> Cf. *Case of the Dos Erres Massacre V. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Gómez Palomino. Order of Monitoring of Compliance of February 13, 2013, supra*, Considering clause thirteen.

<sup>15</sup> *Case of Anzualdo Castro, supra*, para. 188.

victims, as well as their identification.<sup>16</sup> Given the information provided by the State, the Court notes the positive advancements made by the State on this matter.

20. In view of the foregoing, the Court finds that the State has undertaken actions aimed at recovering, identifying and delivering the bodies of the victims of the armed conflict, thereby demonstrating significant progress in this regard. Therefore, the Court finds that the State has partially complied with this measure. However, in order to assess the overall compliance thereof, an additional report was requested from the State on the progress made regarding the pending tasks that need to be done in terms of the standardization of identification criteria, the establishment of a genetic information system that allows for the identification and elucidation of the blood relationship of the victims, and their identification.

***D. Obligation to adopt the necessary measures to reform, within a reasonable time, its criminal legislation as to forced disappearance of persons, in order to render it consistent with the international standards, paying special attention to the terms of the American Convention and the Inter-American Convention on Forced Disappearance of Persons (operative paragraph eight)***

21. The State noted that “[to] date, the criminal legislation has not been modified according to the orders of the Court. Notwithstanding the foregoing, the Peruvian State investigates, prosecutes and punishes the offense of forced disappearance under [...] Article 320 of the Criminal Code.”<sup>17</sup>

22. In its brief of December 21, 2010, the representatives stated that the State had not adopted any measures adding the offense of forced disappearance to the Criminal Code according to the American Convention and the Inter-American Convention on Forced Disappearances, despite the fact that such measure of reparation was pending compliance as of the issuance of the judgment of the Inter-American Court in the Case of *Gómez Palomino* of 2005.<sup>18</sup> During the private hearing on monitoring of compliance, they requested that “given the nature of the crime of forced disappearance which hides factual evidence within the context of the only criminal proceeding, which to this date, has been opened, the standards established by the Court be respected, specifically in that at the time that the evidence is assessed, the contextual evidence, the establishment of a relationship between this case and others, and the circumstantial evidence be taken into account.” By way of a brief dated August 8, 2013, they added that “the State has recognized that it still has not fulfilled the Court’s mandate, but has not clarified whether it has taken any steps to comply with this measure. It also did not indicate what steps the State plans on adopting in order to comply with the measure.”

23. The Court considered in its Judgment that, in relation to forced disappearance, the duty to adjust the domestic legislation to the provisions of the American Convention implies the autonomous classification of the crime and the definition of the punishable acts that make it up.<sup>19</sup> Moreover, it noted that, in the *case of Gómez Palomino v. Peru*,<sup>20</sup> the Court

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<sup>16</sup> *Case of Anzualdo Castro, supra*, para. 189.

<sup>17</sup> Article 320, Criminal Code. The employee or public servant that deprives a person of his or her liberty, ordered or took actions that resulted in the duly proven disappearance, shall be punished with deprivation of liberty for no less than 15 years and disqualification, pursuant to Article 36, sections 1 and 2.

<sup>18</sup> Cf. *Case of Gómez Palomino V. Perú. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 149.

<sup>19</sup> *Case of Anzualdo Castro, supra*, para. 165.

ruled on the adaptation of the criminal definition of forced disappearance in force under Peruvian legislation since 1992, to the text of the American Convention and the Inter-American Convention on the Forced Disappearance of Persons (ICFDP), and it noted that so long as that criminal law is not correctly adapted, the State continues in its failure to comply with Articles 2 of the American Convention and III of the ICFDP.<sup>21</sup>

24. In this regard, this Court has held in the case of *Almonacid Arellano et al v. Chile*,<sup>22</sup> that it is aware that domestic authorities are subject to the rule of law and, therefore, they are required to apply the provisions in force in legislation; however, when a State has ratified an international treaty such as the American Convention, all its bodies, including its judges, are subject to it, forcing them to ensure that the effects of the provisions of the Convention and, consequently, the decisions of the Inter-American Court are not undermined by the application of rules that are contrary to its purpose and means. Domestic authorities at all levels are obligated to exercise ex officio “control of conformity with the Convention” between domestic standards and the American Convention, in the framework of their respective jurisdictions and relevant procedural regulations. Such control of “conformity with the Convention” also serves an important role in the compliance or implementation of a judgment of the Inter-American Court.

25. In this sense, the Constitutional Court of Peru has stated that:

[T]he binding nature of the decisions of the [Inter-American] Court does not end with its operative paragraphs (which, only the State that is party to the proceedings can satisfy), but rather it extends to the merits or *ratio decidendi*, with the addition that, by operation of the [Fourth Final and Transitory Provision (CDFT (for its acronym in Spanish)) of the Constitution and Article V of the Preliminary Chapter of the [Code of Constitutional Procedure], in said forum, the judgment is binding on all public national powers, even in cases in which the Peruvian State was not involved in the proceedings. Indeed, the interpretive and applicative nature of the Inter-American Court's Convention, recognized in Article 62(3) thereof, coupled with the mandate of the CDFT of the Constitution, makes the interpretation of the provisions of the Convention to be held in every proceeding binding upon all domestic government powers, including upon this Court.”<sup>23</sup>

26. Given the aforementioned, the Court appreciates the measures adopted at the judicial level, notwithstanding, it finds that the State has not demonstrated that it has taken legislative measures to adapt the criminal legislation on forced disappearance, in the terms indicated by the Court, and thereby it asks the State to report specifically on the actions taken in attempts to implement the corresponding reforms, including a schedule wherein it notes the steps it will adopt in this regard.

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<sup>20</sup> In Operative Paragraph 12 of the Judgment in the *Case of Gómez Palomino*, the Court requested the State to adopt the necessary measures to reform, within a reasonable period, the criminal legislation in order to adapt it to international standards on matters of forced disappearance of persons, paying special attention to that provided in the American Convention and the Inter-American Convention on Forced Disappearance of Persons. Paying close attention to Article 320 of the Criminal Code of Peru that defines a “Forced Disappearance,” as first, restrictive to “employees or public servants,” without including other forms of criminal participation recognized in Article II of the Inter-American Convention on Forced Disappearance of Persons. Second, it does not include “refusal to acknowledge the deprivation of liberty or to give information on the fate or whereabouts of persons and leaving no trace or evidence,” which allows the crime to be differentiated from others such as plagiarism or kidnapping. Lastly, it contains an ambiguous requirement, which is “duly proving” the forced disappearance, which makes interpretation difficult.

<sup>21</sup> *Case of Anzualdo Castro*, *supra*, paras. 165-167.

<sup>22</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 124, and Case of Apitz Barbera et al. (“First Court on Contentious Administrative Matters”) V. Venezuela. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 23, 2012, Considering clause twenty-six.*

<sup>23</sup> Cf. Judgment issued by the Constitutional Court of Peru in the case file No. 2730-2006-PA/TC, on July 21, 2006, point 12, available at: <http://www.tc.gob.pe/jurisprudencia/2006/02730-2006-AA.html>



***E. The State must implement, within a reasonable time, permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors (operative paragraph nine)***

27. The State offered information on different human rights programs for officials of the Ministry of the Interior, for example: The Office of Police Education and Doctrine included in its curriculum the subject of Human Rights and International Humanitarian Law in its educational, training, specialization and continuing education courses within the Police Education System; the Division of the Joint Chiefs of Staff of the Armed Forces since 2003 created the Center for International Humanitarian Law and Human Rights Law of the Ministry of Defense; the Army, Air Force, and Navy Intelligence Offices provided courses in Human Rights and International Humanitarian Law, as part of their curriculum; the Office of Education and Doctrine of the Peruvian National Police provided the curriculum of five bodies of the National Police educational system, where courses on Human Rights are offered, among other courses. In regard to the Military-Police Forum, it noted that: on October 22, 1996 the Center for Advanced Studies on Military Justice [Centro de Altos Estudios de Justicia Militar (CAEJM for its acronym in Spanish)] was created, as a dependant body of the Supreme Tribunal of the Military-Police Forum, in order to prepare and provide continuing education to the personnel of the Military Judicial Corps, in which five First Level courses for Military-Police Magistrates have been implemented and concluded, as well as a course for Legal Assistants; among others. With regard to the Public Prosecutor's Office (of the Nation), the State noted that the Office of the Superior Criminal National Prosecutor's Office and the Supra-provincial Criminal Prosecutor's Office reported on the trainings offered to the administrative personnel and prosecutors on human rights protection, carried out academic events (seminars, workshops, conferences, and other events) on human rights and authorized the participation of the Superior Coordinating Prosecutor, Superior Prosecutors, Provincial Prosecutors, Provincial Deputy Prosecutors, and administrative personnel to contribute to the trainings and continuing education in order to improve their professional capabilities. In terms of the Ministry of Defense, the State noted that "in the Training School for Officers, Technicians, and non-commissioned officers of the Army, subjects on Human Rights and International Humanitarian Law are provided to all cadets and students in their general training."

28. Similarly, they submitted information provided by the National Commission for the Study and Application of International Humanitarian Law (CONADIH for its acronym in Spanish) which states that the Ministry of Defense is providing education on International Humanitarian Law (IHL) and Human Rights (HR) in its centers such as the Center for National Studies (CAEN for its acronym in Spanish) and the Centre for International Humanitarian Law and Human Rights, which are responsible for organizing and conducting training programs for the Armed Forces and personnel at nationwide and decentralized State institutions.

29. By way of a brief dated August 8, 2013, the representatives mentioned that "the mere existence of training courses within the various State agencies is not sufficient to demonstrate compliance with this measure of reparation," since "the State's brief does not make reference to the content of the courses, their duration, the people who teach and number of students attending, and their impact on ensuring the non-repetition of the events referred to in this case."

30. The Court recalls that in its Judgment it noted, as a basis for ordering the guarantee of non-repetition, that "the violations attributable to the State [...] were perpetrated by State

agents [and] were heightened by the existence [...] of a widespread context of impunity for serious human rights violations fostered by judicial operators.<sup>24</sup>

31. From the information provided by the State, the Court values the various measures aimed at providing human rights training for public officials at various levels and sectors, and therefore considers that the State has partially fulfilled this measure. However, for a complete assessment, it is necessary that the State provide systematic, specific, and detailed information on its permanent education programs and their content for intelligence service officers, the Armed Forces, as well as judges and prosecutors, in order to confirm that special mention is made of the Judgment, international human rights instruments, and specifically those relating to the forced disappearance of persons and torture, in accordance with what is stated in the ruling of the case.

***F. The State must publish, within six months, as of notice of this Judgment, once, in the Official Gazette and in another newspaper with widespread national circulation, paragraphs 30 to 203 and the operative paragraphs of the Judgment (operative paragraph ten).***

32. By way of a brief dated July 5, 2013, the State expressed that “to date, it had not published the Judgment pursuant to that ordered by the Inter-American Court.”

33. In the hearing on monitoring of compliance, the representatives stated that the State had not mentioned this measure, but that regrettably it is a measure that fully depends on the will of the executive, which they expressed in the brief dated August 8, 2013.

34. During the hearing on monitoring of compliance, the Commission stated that “in regard to measures of satisfaction, [...] there has been no compliance despite the fact that there has been a willingness of the executive branch,” and it stated that the only publication existent in a national newspaper was published by *Diario Expreso de Perú*<sup>25</sup>, which the Commission stated, “essentially defames the representatives of the victim and the Inter-American Court,” reason for which it argued that “while measures of compliance are not met, if the State [does not] provide the publication of the [...] Judgment before a newspaper with national circulation, what will happen is that the Peruvian public opinion will only have access to such information and the Commission thinks it is very worrisome that there is not a more truthful version.”

35. The Court notes that a period of six months was granted to comply with this measure, to which an excessive period of time has elapsed for the implementation thereof. In view of the foregoing, the State shall carry out, without further delay, the publication of the judgment in the Official Gazette and in another newspaper with widespread national circulation, and it must inform the Court about such publication.

***G. The State must organize, within the term of six months, as of notice of this Judgment, a public act of acknowledgment of international responsibility for the forced disappearance of Kenneth Ney Anzualdo Castro and to apologize to him and his next-of-kin (operative paragraph eleven).***

36. The State reported that on July 4, 2013, it drafted, with the presence of officials from

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<sup>24</sup> *Case of Anzualdo Castro Vs Perú, supra*, para. 193.

<sup>25</sup> Note published in the newspaper “Expreso,” *supra*.

the Ministry of Justice and Human Rights, representatives of the victims and the next-of-kin of Mr. Anzualdo Castro, a "Coordination Act in order to carry out a public apology ceremony," which set July 23, 2013, as the date to carry out the corresponding ceremony at the Ministry of Justice and Human Rights, in accordance with the terms established by the Judgment on Preliminary Objections, Merits, Reparations and Costs of September 22, 2009. Subsequently, on August 13, 2013, the State reported on the implementation of this act, which was attended by high-ranking officials and the next-of-kin of the victim, and it was translated into Quechua. This information was disseminated on the website of the Ministry of Justice and Human Rights and other publications, and therefore requested that this measure be deemed fulfilled.

37. By way of a brief dated August 8, 2013, the representatives mentioned that "the act of acknowledgment of responsibility held on July 23, 2013," at the Ministry of Justice, with the presence of the President of the Inter-American Court of Human Rights, the President of the Council of Ministers, the Minister of Justice, representatives of the Public Prosecutor's Office and the next-of-kin of the victim.

38. The Court values that the public act of acknowledgment of responsibility for the disappearance of Mr. Anzualdo Castro was carried out last July 23, 2013, in which the victim's next-of-kin and high-ranking government officials participated. In light of the information provided by the parties, the Court considers that the State has fully complied with this measure of reparation.

***H. The State must erect a plaque in the Museum of Memory, in the presence of the next-of-kin, if they so wish, in a public act, within the term of two years, as of notice of this Judgment (operative paragraph twelve)***

39. During the hearing on monitoring of compliance, the State informed that "the plaque of the Museum of Memory had not been carried out because [there is] not yet a Museum of Memory." Similarly, by way of a brief of July 5, 2013, it stated that the construction of the Museum of Memory was in progress.

40. By way of a brief of August 8, 2013, the representatives stated that "the State did not provide information that would objectively allow progress to be monitored in the construction and placement of a plaque in the museum of memory nor when this measure is expected to be accomplished." Moreover, they reported about several requests that have been made to domestic authorities in attempts at setting the plaque.<sup>26</sup>

41. In this regard, the Court appreciates the actions taken by the State to carry out the construction of the Museum of Memory, and urges that the State, once the site is established, proceed without delay with the public act of setting the plaque in memory of Mr. Anzualdo Castro. Specifically, the State is required to report on the scheduled date for the completion of the Museum and the respective placement of the plaque.

***I. The State must adopt the necessary measures to provide, immediately as of notice of this Judgment, the next-of-kin of Mr. Kenneth Ney Anzualdo***

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<sup>26</sup> Cf. The request addressed to the President of the High Level Presidential Commission to organize a Place for Memory, Tolerance, and Social Inclusion, on April 24, 2013, which requested the placement of the plaque, in order to preserve the memory of Mr. Anzualdo Castro and as a guarantee of non-repetition, under the terms provided in Judgment of September 22, 2009, since the period of two years that had been granted to the State had expired.

***Castro, with the appropriate treatment, by means of health public services, for as long as they need it and including the medicines (operative paragraph thirteen)***

42. The State reported that the “beneficiaries [were provided] with the means to access health care coverage offered by the Integral Health System (SIS for its acronym in Spanish),” which is a service offered to the entire population of the country, which includes programs on psychological care, “for which one has to personally sign-up.” In this regard, it noted that “among the benefits of the [Essential Plan for Health Insurance] [to which the victims in Anzualdo Castro were added,] there is a set of conditions, interventions and services that can be provided in all public and private health establishments based on the complexity of each case.”

43. The representatives of the victims stated that the Integral Health System does not meet the requirements to be considered a measure of reparation, because it is a service that is open to the general public, to which the State cannot claim that the SIS can effectively be implemented with this measure. They also indicated that the State has not even approached them in order to provide access to medical and psychological care. Moreover, they stated that the information provided by the State “made it clear that, to date, after more than 3 years since the judgment was issued, Kenneth Anzualdo’s next-of-kin have not received the ordered medical and psychological care” to which it is clear “that the health care provided by the State in its report is not aimed at providing reparation for the damage caused to the victims of this case for the violations committed against them.”

44. The Court notes that in the Judgment it stated that health care should be provided free of charge and immediately, taking into consideration the health of each of the beneficiaries, to which it shall previously conduct the respective physical and psychological evaluation. Moreover, the treatment must be provided for as long as they need it and must include the medicines they may eventually require.<sup>27</sup> However, from the information provided, the Court will only assess the State’s affirmation that it will make the health services available through SIS, for which, each person should register.

45. It is important to reiterate that in addition to the measures taken under the general health care system, it is necessary that the State provide specific and particularized attention to victims.<sup>28</sup> In this sense, the Court has noted that the reparation measures to which the victims of human rights violations are entitled cannot be confused, due to the specific harm caused by the violation.<sup>29</sup> For this reason, the Court finds that the victims must receive preferential treatment with respect to the steps they have to take in order to receive medical care in public hospitals.<sup>30</sup>

46. It is therefore necessary that the State, without delay, carry out the physical and psychological evaluation of the beneficiaries of this measure in order to identify their

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<sup>27</sup> *Case of Anzualdo Castro, supra*, para. 203.

<sup>28</sup> *Cf. Case of 19 Tradesmen V. Colombia. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause thirty-four and *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, Considering clause twenty-five.

<sup>29</sup> *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 Gómez Palomino. Order on Monitoring of Compliance with Judgment* of July 5, 2011, *supra*, Considering clause twenty-five.

<sup>30</sup> *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 twenty-eight, and *Case of Gómez Palomino. Order on Monitoring of Compliance* of July 5, 2011, *supra*, Considering clause twenty-five.

sufferings and in that vein, establish a plan for medical and psychological care, drafted by professionals from specialized health institutions. The State shall report to the Court on: a) the medical-psychological profile of the victims, derived from the specialist's evaluation, b) the treatment plan that the beneficiary will follow, and c) the appropriate measures that will put the plan in action.

***J. Obligation to pay Félix Vicente Anzualdo Vicuña, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro the amounts determined in the Judgment, as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, as it may correspond (operative paragraph fourteen).***

47. The State noted, at the hearing on the monitoring of compliance, that the reason it had not covered the amounts established by the Court as compensation was not because it did not differentiate between one case and another, but rather because of a lack of resources. This, given that previously, the Supra-national Specialized Prosecutor's Office that was in charge of following up on the cases pending before the Court, had a budget of about five million to cover the payment of reparations, but due to internal policy, it no longer had those resources, and it was taking the respective steps to provide the money. In addition, by way of a brief dated July 5, 2013, it stated that "to date, it ha[d] not complied with the orders of the Inter-American Court."

48. In regard to this matter, the representatives requested in their brief of August 8, 2013 to "urge the State to take action in order for this measure to be implemented as soon as possible." It is worth mention that on November 30, 2010, the representatives asked the Supra-national Special Public Prosecutor's Office to report on these payments, and no response was given.

49. Based on the aforementioned, and given that the period established in the Judgment has expired, the Court notes that the State has not complied with the obligation, and therefore urges the State to make the payments without delay and to report to the Court on the matter.

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50. Lastly, the Court notes that since several deadlines established in the judgment have expired, it is essential that the State promptly and comprehensively report on the measures taken to fully comply with its obligations as per the Judgment (*supra* Considering clause seven).

**THEREFORE:**

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

in exercise of its authority to monitor compliance with its judgments under Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, 30 of its Statute and 31(2) and 69 of its Rules of Procedure,

**DECLARES THAT:**

1. Pursuant to that noted in the relevant considering paragraphs of this Order, the State has fully complied with the following obligations:

- a) organize, within the term of six months, as of notice of this Judgment, a public act of acknowledgment of international responsibility for the forced disappearance of Kenneth Ney Anzualdo Castro and to apologize to him and his next-of-kin, under the conditions and terms of operative paragraph eleven of the Judgment.

2. Keep the proceeding on monitoring compliance open as to operative paragraphs 7 and 9 of the Judgment, which show partial progress, in regard to the following obligations of the State:

- a) continue making all the necessary efforts and adopt the administrative and legal measures and public policies that may correspond, to determine and identify the people who disappeared during the internal conflict according to the most effective technical and scientific means and, as long as it is possible and scientifically advisable, by the standardization of the investigation criteria, for which it is convenient to establish a system of genetic information that would allow the determination and elucidation of the blood relationship of the victims and their identification, under the terms of operative paragraph seven of the Judgment, and
- b) The State must implement, within a reasonable time, permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors, under the terms of operative paragraphs nine of the Judgment.

3. Keep open the proceeding on monitoring of compliance as to operative paragraphs 5, 6, 8, 10, 12, 13 and 14, pending compliance, in regard to the following State obligations:

- a) The State must effectively conduct the criminal proceedings in process and any future proceeding in relation to the enforced disappearance of Kenneth Ney Anzualdo Castro, to determine, within a reasonable time, the perpetrators and instigators who are responsible for the facts of this case and effectively impose the punishments and consequences according to the law, for which it must remove all obstacles, both factual and legal, that hinder the appropriate investigation into the facts and shall not apply any law or domestic legal provision, present or future, to escape from this obligation, under the terms of operative paragraph five of the Judgment.
- b) The State shall immediately proceed to search for and locate Kenneth Ney Anzualdo Castro or, if applicable, his mortal remains, by means of the criminal investigation or any other adequate and effective procedure under the terms of operative paragraph six of the Judgment.
- c) The State must adopt the necessary measures to reform, within a reasonable time, its criminal legislation as to enforced disappearance of persons, in order to render it consistent with the international standards, paying special attention to the terms of the American Convention and the Inter-American Convention on

Forced Disappearance of Persons, under the terms of operative paragraph eight of the Judgment.

- d) The State must publish, within six months, as of notice of this Judgment, once, in the Official Gazette and in another newspaper with widespread circulation, paragraphs 30 to 203 and the operative paragraph ten of the Judgment.
- e) The State must erect a plaque in the Museum of Memory, in the presence of the next-of-kin, if they so wish, in a public act, within the term of two years, as of notice of [the] Judgment, under the conditions and terms of operative paragraph twelve of the Judgment
- f) The State must adopt the necessary measures to provide, immediately as of notice of this Judgment, the next-of-kin of Mr. Kenneth Ney Anzualdo Castro, with the appropriate treatment, by means of health public services, for as long as they need it and including the medicines, under the conditions and terms of operative paragraph thirteen of the Judgment, and
- g) The State must pay Félix Vicente Anzualdo Vicuña, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro the amounts determined in paragraphs 210, 214, 222 and 230 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, as it may correspond, within the term of one year as of notice of [the] Judgment, under the terms and conditions of operative paragraph fourteen of the Judgment.

4. The State adopt all necessary measures to effectively and promptly fulfill the measures that are pending compliance, mentioned in operative paragraphs two and three *supra*, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

5. The State provide the Inter-American Court of Human Rights, by no later than October 30, 2013, a report that indicates all the measures that have been taken to comply with the pending matters, in accordance with Considering Clauses 12, 16, 20, 26, 31, 35, 41, 46 and 49 of this Order. Subsequently, the State must continue to inform the Court on the measure every three months.

6. The representatives of the victims and the Inter-American Commission on Human Rights provide any observations they deem relevant to the reports rendered by the State mentioned in the previous paragraph, in the period of four and six weeks, respectively, counted from receipt thereof.

7. The Court will continue monitoring compliance with the Judgment on the merits of September 22, 2009.

8. The Secretariat of the Court shall notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights, and the representatives of the victims.

Manuel E. Ventura Robles  
Acting President

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Manuel E. Ventura Robles  
Acting President

Pablo Saavedra Alessandri  
Secretary